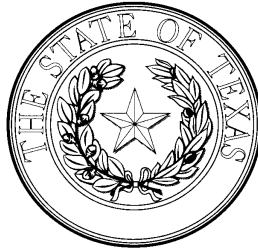


Opinion issued February 27, 2018



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-17-00656-CV

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**DON R. JOHNSON, Appellant**

**V.**

**TEXAS SERENITY ACADEMY, INC., Appellee**

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**On Appeal from the 215th District Court  
Harris County, Texas  
Trial Court Case No. 2010-78587**

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**MEMORANDUM OPINION**

Appellant, Don R. Johnson, filed a notice of appeal prior to a judgment by the trial court in the underlying case on remand from our Court. Appellee, Texas Serenity Academy, has moved to dismiss the appeal for want of jurisdiction because

the trial court has not signed a final judgment. We grant the motion and dismiss the appeal.

### **Background**

On June 16, 2014, the trial court issued a judgment against Johnson. On appeal, our Court reversed the judgment's award of punitive damages and attorney's fees against Johnson and remanded for further proceedings. *See Johnson v. Tex. Serenity Acad., Inc.*, No. 01-14-00438-CV, 2015 WL 1135947, at \*9 (Tex. App.—Houston [1st Dist.] Mar. 12, 2015, pet. denied). On July 19, 2017, after a bench trial on the remanded issues, the trial court issued its Findings of Fact and Conclusions of Law. Johnson subsequently filed a Notice of Appeal on August 18, 2017. On December 28, 2017, Texas Serenity Academy filed a motion to dismiss the appeal for want of jurisdiction. No record of a judgment has been provided and it is undisputed among the parties that the trial court has not issued a judgment in the case.

### **Discussion**

This Court has jurisdiction only over appeals from final judgments and those interlocutory orders specifically authorized by statute. *See Bison Bldg. Materials, Ltd. v. Aldridge*, 422 S.W.3d 582, 585 (Tex. 2012); *CMH Homes v. Perez*, 340 S.W.3d 444, 447–48 (Tex. 2011); *see also* TEX. CIV. PRAC. & REM. CODE 51.014 (authorizing appeals from certain interlocutory orders). But Johnson does not assert,

and there is no record demonstrating, that the trial court issued either a final judgment or an appealable interlocutory order in the remanded case. Instead, Johnson acknowledges that “[he] filed his Notice of Appeal before the Trial Court issued a document designated a final order,” but requests that we retain this appeal by considering his notice of appeal as premature under Texas Rule of Appellate Procedure 27.1(a).

Under Rule 27.1(a), a prematurely filed notice of appeal is effective and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal. TEX. R. APP. P. 27.1(a). But “Rule 27.1 does not contemplate an appellate place holder until there is a final appealable judgment.” *Tate v. Dean*, No. 01–17–00036–CV, 2017 WL 1326098, at \*1 (Tex. App.—Houston [1st Dist.] Apr. 11, 2017, no pet.) (quoting *Ganesan v. Reeves*, 236 S.W.3d 816, 817 (Tex. App.—Waco 2007, pet. denied)); *see also Dias v. Dias*, No. 13–11–00756–CV, 2012 WL 171913, at \*2 (Tex. App.—Corpus Christi Jan. 19, 2012, no pet.) (“[T]here is nothing in Rule 27.1 or the remainder of the Rules of Appellate Procedure that indicate, and the clear implication is to the contrary, that a notice of appeal can be filed in anticipation of an appeal that may be somewhere in the indefinite future.”) (quoting *Ganesan*, 236 S.W.3d at 817). Rather, the rule is designed to allow a notice of appeal filed before the final appealable judgment is rendered to nevertheless be effective in invoking our appellate jurisdiction over such a judgment. *See id.* A final judgment must still

be rendered for our court to have jurisdiction. *See Tate*, 2017 WL 1326098, at \*1. Accordingly, our court has held that “Texas Rule of Appellate Procedure 27.1 does not require the Court to docket and hold an appeal open until there is an appealable judgment or order at some future date.” *Tate*, 2017 WL 1326098, at \*1; *Correa v. Greater Northside Mgmt. Dist.*, No. 01–14–00169–CV, 2014 WL 1803016, at \*1 (Tex. App.—Houston [1st Dist.] May 6, 2014, no pet.).

Because there is no final judgment or appealable interlocutory order to appeal in the underlying case, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any other pending motions as moot.

**PER CURIAM**

Panel consists of Justices Bland, Lloyd, and Caughey.