Opinion issued May 10, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-22-00099-CV

IN RE STATE FARM FIRE AND CASUALTY COMPANY, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator State Farm Fire and Casualty Company filed a petition for writ of mandamus, claiming that the trial court lacked plenary power to sign the January 3, 2022 order granting the motion to reinstate filed by real party in interest Candace Terrell's.[1] We conditionally grant the petition.

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[1] The underlying case is *Candace Terrell v. Narciso Pavon and State Farm Fire and Casualty Company*, cause number 2017-62740, pending in the 113th District Court of Harris County, Texas, the Honorable Rabeea Sultan Collier presiding.

Background

The underlying case is a personal injury suit in which real party in interest Candace Terrell sought damages for injuries she allegedly suffered in a motor vehicle accident. Terrell initially sued Narciso Pavon and later added relator State Farm as a defendant. Terrell settled her claim with Pavon and submitted to the trial court an Agreed Final Order of Dismissal, which contained the signatures of counsel for Terrell and Pavon. On October 26, 2021, the trial court signed the order. The order contained the following language:

> ORDERED, ADJUDGED AND DECREED that this suit be and it is hereby DISMISSED WITH PREJUDICE, and the Defendant Narciso Pavon, is hereby in all things discharged.
>
> All relief sought herein by any of the parties hereto which is not expressly granted is denied. This Order is final and disposes of all parties and claims.

On January 3, 2022, Terrell filed a motion to reinstate her claims against State Farm.[2] On January 11, 2022, the trial court signed an order granting the motion to reinstate. The case is set for trial on June 6, 2022.

[2] The motion to reinstate included in the mandamus record contains no file stamp, but it does contain a certificate of service showing that the motion was served to all parties on January 3, 2022. Terrell does not contest State Farm's assertion that the motion was filed on January 3, 2022.

Standard of Review

To be entitled to mandamus relief, a relator must show both that the trial court abused its discretion and that there is no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004). When an order is void, "the relator need not show it does not have an adequate appellate remedy, and mandamus relief is appropriate." *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000).

Analysis

State Farm contends that, because the dismissal order signed on October 26, 2021 was final, the trial court's plenary power expired before it signed the January 11, 2022 order reinstating the case. Therefore, State Farm asserts that the January 11, 2022 order of reinstatement is void and its rendition constitutes an abuse of discretion.

1. The October 26, 2021 order is a final judgment

State Farm argues that, under *Lehmann v. Har-Con Corporation*, the October 26 order is final because it contains finality language disposing of all parties and claims. *See* 39 S.W.3d 191 (Tex. 2001). In *Lehmann*, the Texas Supreme Court held that a judgment is final if it "actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties." 39 S.W.3d at 192–93. If the trial court's language is clear and unequivocal, "it must be given effect despite any

other indications that one or more parties did not intend for the judgment to be final." *Id.* at 206. If the judgment or order does not contain clear finality language, the reviewing court must review the record to determine if the judgment or order is final. *See id.*

As an example of language that would be clear and unequivocal, the *Lehmann* court recited the following language which would leave no doubt that the trial court entered a final judgment: "This judgment finally disposes of all parties and claims and is appealable." *Id.* The language used by the trial court in the October 26, 2021 order provided: "This Order is final and disposes of all parties and claims."[3]

Despite the inclusion of finality language in the order, Terrell responds that the October 26 order is not a final judgment because Mother Hubbard language does not support finality, the order does not mention State Farm, and the record shows that there was no intent to dispose of any claims other than those against Pavon. We find no merit to any of these arguments.

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[3] The October 26 order does not state that it is also appealable but the Texas Supreme Court has not required that an order state that it is appealable for it to be final. For example, in *In re Daredia*, the judgment stated: "This judgment disposes of all parties and all claims in this cause of action and is therefore FINAL." 317 S.W.3d 247, 248 (Tex. 2010). Although the *Daredia* judgment was entitled "Default Judgment" and only concerned the failure to answer by one of two defendants, the Texas Supreme Court held that this was a final judgment based on the finality language it contained. *Id.* And the finality language in the October 26 order is indistinguishable from the finality language in *Daredia*. *See id.*

The Texas Supreme Court coined the phrase "Mother Hubbard clause" in *Teer v. Duddleston*, referring to language in orders or judgments stating that "all relief not expressly granted is denied." *See* 664 S.W.2d 702, 704 (Tex. 1984). The October 26 order contains the following Mother Hubbard language: "All relief sought herein by any of the parties hereto which is not expressly granted is denied." But Mother Hubbard language "does not indicate that a judgment rendered without a conventional trial is final for purposes of appeal." *Lehmann*, 39 S.W.3d at 204. And we do not consider the Mother Hubbard language included in the trial court's October 26 order in our determination whether the order constituted a final judgment.

Terrell next contends that *Lehmann* requires a review of the record to determine whether the order disposes of all parties and claims. Because the October 26 order concerned the settlement between Terrell and Pavon and did not discharge or identify State Farm as a party, Terrell contends that the order cannot be final and cites to *Lehmann* in support of reviewing the record to determine whether the order disposes of all parties and claims. But Terrell is incorrect because *Lehmann* does not mandate a review of the record if the order or judgment contains a finality phrase.

The *Lehmann* instructed "reviewing courts to look at the record 'only if the order [i]s not clear and unequivocal.'" *In re Elizondo*, 544 S.W.3d 824, 828 (Tex. 2018) (quoting *Lehmann*, 39 S.W.3d at 195). If a judgment or order includes a

finality phrase that clearly and unequivocally disposes of all parties and claims, the reviewing court must take it at face value or "finality phrases would serve no purpose." *Elizondo*, 544 S.W.3d at 828. Because the October 26 order contained a clear and unequivocal finality phrase, we do not look at the record. *See Elizondo*, 544 S.W.3d at 827–28.

Although Terrell may have intended for the order only to dismiss claims against Pavon in accordance with the settlement agreement between Terrell and Pavon, the inclusion of finality language disposed of all parties and claims. The *Lehmann* court stated that an order expressly disposing of an entire case by disposing of all parties and claims "is not interlocutory merely because the record fails to show an adequate motion or other legal basis for the disposition." *Lehmann*, 39 S.W.3d at 206. Thus, inclusion of finality language in the order resulted in rendition of a final judgment—"erroneous, but final." *See Elizondo*, 544 S.W.3d at 829 (citing to *Lehmann*, 39 S.W.3d at 205). In *Elizondo* and *Daredia*, the Texas Supreme Court applied *Lehmann* and found the judgments to be final under facts similar to those presented here. *See Elizondo*, 544 S.W.3d at 829; *In re Daredia*, 317 S.W.3d 247, 248–49 (Tex. 2010).

In *Elizondo*, the parties who hired the defendants to build a home, placed a lien on the builder's property and the builder filed a motion to remove the lien. *See Elizondo*, 544 S.W.3d at 825. The builders drafted and submitted an order entitled,

"Order on Defendants' Summary Motion to Remove Invalid Lien," which the trial court signed. *See id.* This order, though intended only to remove an invalid lien, included the language: "This judgment is final, disposes of all claims and all parties, and is appealable." *Id.* The builders argued that this order was not final and was never intended to be a final judgment because it only concerned removal of a lien, but the Texas Supreme Court held that the finality language clearly and unequivocally disposed of all claims and parties and therefore, the order was final. *See id.* at 827–28.

In *Daredia*, the trial court signed a no-answer default judgment against one of two defendants, but the trial court's judgment also contained a finality phrase stating that the judgment disposed of all parties and claims and was final. 317 S.W.3d at 248. The court of appeals found the judgment ambiguous and thus held that the judgment was not final, *see In re Daredia*, 317 S.W.3d 274, 277 (Tex. App.—Fort Worth 2009, orig. proceeding), but the Texas Supreme Court disagreed and held that the judgment was final under *Lehmann* because of the inclusion of the clear and unequivocal finality language. *See* 317 S.W.3d at 249.

Although the trial court's October 26 order did not expressly mention State Farm or any claims other than those against Pavon, the finality language in the trial court's October 26, 2021 order disposed of all parties, including State Farm, and all

claims, including those against State Farm. Accordingly, this finality language rendered the October 26 order final. *See Lehmann*, 39 S.W.3d at 200.

2. The January 11, 2022 order was signed after plenary power expired

Because the October 26 order was final, we next address whether the trial court had plenary power to enter the January 11, 2022 order granting Terrell's motion to reinstate. In her motion to reinstate, Terrell stated that State Farm was disingenuously asserting that it had been dismissed from the case on October 26 and asked the trial court either to issue an order that State Farm was never dismissed from the case or to reinstate the case against State Farm. The trial court granted the motion on January 11, 2022.

Because the October 26 order was final, the length of the trial court's plenary power to reinstate the case depended upon whether a timely filed post-judgment motion was filed. If a party seeks to overturn the judgment, the party may file a motion for new trial or other post-judgment motion within thirty days after the judgment is signed. *See* TEX. R. CIV. P. 329b(b). If a timely post-judgment motion is filed, the trial court's plenary power extends until thirty days after such motion is overruled by operation of law. TEX. R. CIV. P. 329b(e). A post-judgment motion is overruled by operation of law seventy-five days after the judgment is signed. TEX. R. CIV. P. 329b(c).

If no post-judgment motion is timely filed, the trial court has plenary power to grant a new trial within thirty days after the judgment is signed. *See* TEX. R. CIV. P. 329b(d). Once that thirty-day time period expires, the trial court may not set aside the judgment but may only correct clerical errors. *See* TEX. R. CIV. P. 329b(f).

In this case, no timely motion for new trial or other post-judgment motion was filed. Although the copy of Terrell's motion to reinstate in the record bears no file stamp date, Terrell does not contest State Farm's assertion that it was filed on January 3, 2022 and thus, it was not filed within thirty days of the signing of the October 26 order. The motion's certificate of service date of January 3, 2022 also supports the filing date of January 3, 2022.

Thus, Terrell's motion to reinstate, filed on January 3, 2022, was filed more than sixty days after the October 26 order was signed and more than thirty days after the deadline for filing a post-judgment motion. *See* TEX. R. CIV. P. 329b(b). Because Terrell's motion to reinstate was filed after the thirty-day deadline under Rule 329b(b), the motion was not timely filed. With no timely-filed motion, the trial court had plenary power to vacate the judgment or reinstate the case only for thirty days after the trial court signed the October 26, 2021 order. *See* TEX. R. CIV. P. 329b(d).

Because the trial court signed its January 11, 2022 order granting the motion to reinstate more than 75 days after the October 26 order was signed—long after

expiration of the trial court's plenary power—the order was void and of no legal effect. *See* TEX. R. CIV. P. 329b(d), (f) (trial court's plenary power extends to thirty days after judgment signed if no timely post-judgment motion is filed); *In re Brookshire Groc. Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (holding that order granting new trial signed after plenary power expired was void); *In re Romero*, No. 01-21-00629-CV, 2022 WL 23939, at *2 (Tex. App.—Houston [1st Dist.] Jan. 4, 2022, orig. proceeding) (mem. op.) (conditionally granting mandamus relief because reinstatement order signed after plenary power expired was void). When, as here, the trial court's order is void, the relator is entitled to mandamus relief and does not need to show that it lacked an adequate remedy by appeal. *See Sw. Bell Tel. Co.*, 35 S.W.3d at 605.

Conclusion

Having held that the October 26, 2021 order was a final judgment disposing of all parties and claims, the trial court's January 11, 2022 order granting Terrell's motion to reinstate the case was signed after the trial court's plenary power had expired, making the order void and its rendition an abuse of discretion. *See Daredia*, 317 S.W.3d at 250; *M & O Homebuilders*, 516 S.W.3d at 110. Accordingly, we conditionally grant State Farm's petition for writ of mandamus and direct the trial court to vacate its January 11, 2022 order granting Terrell's motion to reinstate. *See* TEX. R. CIV. P. 329b(f) (stating that trial court may declare previous judgment or

order void because signed after expiration of court's plenary power). We are confident that the trial court will promptly comply. The writ will issue only if it does not.

Richard Hightower
Justice

Panel consists of Justices Landau, Hightower, and Rivas-Molloy.