Dismissed and Memorandum Opinion filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00496-CV

ESTATE LAND COMPANY, AARON WIESE AND KAMAL BANNAN (BANANI), Appellant

V.

ANTHONY WIESE, Appellee

On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. 2009-00136

M E M O R A N D U M O P I N I O N

This appeal arises in connection with a partition case. After the property at issue was sold, appellants Estate Land Company, Aaron Wiese, and Kamal Banani (Bannan) complain the trial court erred in denying appellants' amended motion to compel the post-judgment deposition of a receiver. Appellants contend on appeal that (1) the trial court lacked jurisdiction to sign the May 23, 2016, order denying the amended motion to compel the post-judgment deposition of the receiver as a

final judgment had been signed by the court on May 15, 2013; (2) the trial court's order denying the amended motion to compel the post-judgment deposition of the receiver contradicts the final judgment, is void, and should be set aside; (3) this court's memorandum opinion of March 10, 2015, is the controlling law and the trial court's order denying the amended motion to compel the post-judgment deposition of the receiver is an impermissible attempt to enforce the final judgment; and (4) the trial court abused its discretion by signing the order denying the amended motion to compel the post-judgment deposition of the receiver as the appellants are permitted by Rule 621a to conduct post-judgment discovery, including the deposition of the receiver. We dismiss for want of jurisdiction.

I. Background

In 1999, Aaron Wiese ("Aaron") and his brother, Anthony ("Tony") Wiese, jointly purchased three properties in Houston, Texas: 812 Main Street; 110-114 Main Street; and I–10 McKee–Chapman ("McKee–Chapman"). In 2001, along with Kamal Bannan, they purchased a fourth property, 3302 Polk Street. The parties secured financing, and the record reflects that both Aaron and Tony were equally responsible for the entire amounts of the loans. After disagreements between the brothers arose, Tony sued appellants in 2009 seeking partition of the properties and reimbursement for contributions he had made to the properties. He also requested injunctive relief regarding a lease on the property at 812 Main Street ("Pearl Lease").

In February 2013, the case proceeded to a bench trial. Thereafter, in May 2013, the trial court signed a first amended final judgment and order of sale. Because the trial court found the properties were incapable of partition, the trial court appointed a receiver, Donald Worley, and ordered the sale of the properties pursuant to Rule 770 of the Texas Rules of Civil Procedure.

Aaron did not agree with the judgment of the trial court partitioning two of

the properties (812 Main and 110-114 Main) and appealed the final judgment. This Court affirmed the final judgment and issued a Memorandum Opinion dated March 10, 2015. The Texas Supreme Court denied review in July 2016.

In connection with the sale of one property, 110-114 Main, the trial court issued several post-judgment orders. On December 18 and 23, 2015, respectively, over appellants' objections, the trial court signed a First Amended Decree Confirming Sale of 110-114 Main Street ("Decree Confirming Sale") and an Order Granting Motion to Turnover Net Sales Proceeds of 110-114 Main to Donald Worley, Receiver ("Turnover Order").[1] Thereafter, on May 23, 2016, the trial judge signed an order denying Aaron's motion to compel the post-judgment deposition of the receiver ("Deposition Order"). Appellants filed a notice of appeal in which they sought to appeal from the Deposition Order. This appeal concerns only the appellants' attempt to appeal from the Deposition Order.

Decree Confirming Sale

After the judgment was final, the court-appointed receiver, Worley, began marketing the properties for sale. In August 2015, Worley obtained two earnest money contracts for the sale of the 110-114 Main property, and presented to the trial court a contract from Zimmerman Interests, Inc. On August 31, 2015, the trial court approved the contract from Zimmerman Interests, Inc., and authorized Worley to "take all reasonable step[s] to finalize the sale of the 110-114 Main property. . . ."

In December 2015, Worley finalized the terms of the sale to Zimmerman Interests, Inc., and filed a report of sale with the trial court. On December 18, 2015, the trial court signed the First Amended Decree Confirming Sale of 110-114 Main

[1] The December 18 and 23, 2015, orders are the subject of a separate appeal in this Court under Case No. 14-16-00040-CV.

Street, ordering the fees for the receiver and broker be calculated from the reduced sales price, approving and confirming the sale to Zimmerman Interests, Inc., and ordering that "the net sales proceeds, after payments of all fees of indebtedness, including payment to extinguish all valid mortgages, liens, other valid encumbrances, and reasonable and necessary receiver, legal and brokerage fees, if any, shall be distributed" among Tony, Aaron, and Kamal.

Turnover Order

In order to close the sale and insure title to 110-114 Main, Stewart Title requested a court order directing it to release the net sales proceeds from the sale to the receiver, Worley, who would then make the distributions in accordance with the final judgment. On December 23, 2015, the trial court signed the Turnover Order, wherein it ordered Stewart Title to turn over the net sales proceeds of 110-114 Main to Worley. It further ordered Worley to deposit the net sales proceeds in an IOLTA trust account and then make the distributions in accordance with the trial court's final judgment. The sale of the property proceeded. It is undisputed that 110-114 Main was sold on December 30, 2015.

Worley paid the proceeds from the sale due to Tony and Kamal. Aaron was to receive his share of the sales proceeds from the sale; however, he refused to provide a valid release of a judgment lien held by his ex-wife. Thus, the sale of 110-114 Main closed with an exception to title for the lien. As a result, Aaron's share of the sale proceeds was held in escrow pending receipt of a valid release of the judgment lien.

After seeking twice unsuccessfully to replace Worley as receiver, on April 7 2016, Aaron moved to compel the post-judgment deposition of Worley. Aaron claimed he is a "judgment creditor to the extent he was granted affirmative relief in the judgment and was a successful party." In this regard, Aaron asserts, he was

"awarded certain interests in real property." Aaron asserted that he noticed Worley's deposition pursuant to Rule 621a. Worley refused to appear for a deposition, and Aaron claimed he had an "absolute right" to depose Worley under Rule 621a.

Worley opposed the amended motion to compel arguing that Aaron was not a "successful party" as required under Rule 621a, Aaron was attempting to prevent enforcement of the judgment by the receiver, and that a receiver, as an extension of the court, had judicial immunity from liability for action undertaken in his capacity as a court-appointed receiver.

Order Denying Amended Motion to Compel Post-Judgment Deposition of Receiver

On May 23, 2016, the trial court, over the objection of appellants, signed the Deposition Order. The court included the following notation in the order:

> Further, if Movant believes the Receiver is acting improperly as to current matters, Movant should file a detailed motion complaining of those matters and set it for an oral evidentiary hearing at which time the Court will allow Movant to call Receiver as a witness for a brief but reasonable amount of time to provide any evidence Movant believes is relevant to any said motion filed by Movant.

Aaron did not file a detailed motion regarding any allegedly improper acts of Worley. Instead, the appellants sought to appeal the Deposition Order.

II. Analysis

A party may not appeal an interlocutory order unless authorized by statute. *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). Even if the trial court signed an interlocutory order that is void for lack of jurisdiction, this court still has no jurisdiction to entertain an interlocutory appeal from that order absent statutory authority. *Young v. Villegas*, 231 S.W.3d 1, 6 (Tex. App.—Houston [14th Dist.] 2007, pet. denied)). The parties have not cited, and our research has not revealed, any statute authorizing an appeal from the Deposition Order; therefore, the

appellants may appeal the Deposition Order only if it is final. *See id*.

Under the general rule for determining finality, an order is final for purposes of appeal if it disposes of all pending parties and claims in the record, except as necessary to carry out the order. *See Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *SJ Med. Ctr., L.L.C. v. Estahbanati*, 418 S.W.3d 867, 870 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Nonetheless, appellate courts have found certain post-judgment orders to be final and appealable. *See, e.g., Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995) (holding that a turnover order is a final and appealable order) (per curiam). The Supreme Court of Texas also has stated that orders resolving certain discrete matters in receivership cases may be final for purposes of appeal, even though these orders do not dispose of all pending parties and claims. *See Lehmann*, 39 S.W.3d at 195; *Crowson v. Wakeham*, 897 S.W.2d 779, 781–83 (Tex. 1995); *Huston v. Fed. Deposit Ins. Corp.*, 800 S.W.2d 845, 847–49 (Tex. 1990).

Aaron, one party to the trial court's prior final judgment, filed a motion to compel a post-judgment deposition of the receiver under Texas Rule of Civil Procedure 621a. In the Deposition Order, the trial court denied this motion. We conclude that the determination of whether this motion should be granted does not rise to the level of a discrete matter in a receivership case under the *Huston* analysis. *See Huston*, 800 S.W.2d at 847–49; *SJ Med. Ctr., L.L.C.*, 418 S.W.3d at 870–71. Even considering the post-judgment context of this case, we conclude that the Deposition Order was not final. *See Parks v. Huffington*, 616 S.W.3d 641, 645 (Tex. Civ. App.—Houston [14th Dist.] 1981, writ ref'd n.r.e.) (holding that trial court's order quashing notices of post-judgment depositions was not final and not appealable). Because the Deposition Order is not final and because no statute authorizes an appeal from this order, we lack appellate jurisdiction to review this

order. *See Youngblood & Assocs., P.L.L.C. v. Duhon*, 57 S.W.3d 63, 65 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

Appellants have a potential remedy to challenge the Deposition by seeking mandamus relief as to the Deposition Order. *See In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) ("Mandamus is proper if a trial court issues an order beyond its jurisdiction."); *In re Thomas*, No. 14–10–00001–CV, 2010 WL 183519, at *1 (Tex. App.—Houston [14th Dist.] Jan. 21, 2010, orig. proceeding) (mem. op.) (noting that post-judgment discovery orders may be reviewed by mandamus).

Appellants have not filed a petition for writ of mandamus, and they have not requested that we treat their appeal as a petition for writ of mandamus. *See CMH Homes v. Perez*, 340 S.W.3d 444, 452–54 (Tex. 2011) (where party "specifically request[ed] that its appeal be treated as a mandamus petition," court of appeals instructed to consider appeal as a petition for writ of mandamus); *Jones v. Brelsford*, 390 S.W.3d 486, 497 n. 7 (Tex. App.—Houston [1st Dist.] 2012, no pet.) ("[I]n an appropriate case, we may treat an appeal as a petition for writ of mandamus, and an appellant who specifically requests that her appeal be treated as a mandamus petition invokes this Court's original jurisdiction. Dianna, however, did not invoke our original jurisdiction because she did not request ... that her issue ... be construed as a request for mandamus relief should this Court determine that the issue is outside the scope of our jurisdiction in this interlocutory appeal.") (citations omitted); *In re Estate of Aguilar*, 435 S.W.3d 831, 834 (Tex. App.—San Antonio 2014, no pet.) ("We also recognize that, in certain circumstances, we may treat an appeal as a petition for writ of mandamus. However, to do so, the party seeking appellate review must specifically request that its appeal be treated as a mandamus petition to invoke this court's original jurisdiction.") (citations omitted). Because review of the

challenged order must occur *via* mandamus, we cannot entertain appellants' contentions.

III. Conclusion

We hold that the Rule 621a discovery order in this case is not a final order or judgment that can be appealed. We dismiss the appeal for want of jurisdiction.

/s/ John Donovan
Justice

Panel consists of Chief Justice Frost, Justice Donovan, and Justice Wise.