

**Motion granted; Dismissed and Memorandum Opinion filed January 10, 2017.**



**In The**

**Fourteenth Court of Appeals**

---

**NO. 14-16-00678-CV**

---

**KERRY FIELDS, AN INDIVIDUAL, TONYA FIELDS AND KERRY FIELDS AS PARENTS, AND NEXT FRIEND OF KRIS FIELDS AND TYLER FIELDS, Appellants**

**V.**

**GEICO ADVANTAGE INSURANCE COMPANY, Appellee**

---

**On Appeal from the County Civil Court at Law No. 1  
Harris County, Texas  
Trial Court Cause No. 1064742**

---

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

This is an attempted appeal from the denial of a motion for summary judgment. On November 8, 2016, appellee filed a motion to dismiss the appeal for lack of jurisdiction because the order being appealed is a nonappealable interlocutory order. Alternatively, appellee asks the court to affirm the trial court's

judgment and to grant appellee damages for a frivolous appeal, under Texas Rule of Appellate Procedure 45, and judgment for costs. Appellants did not file a response.

Absent certain exceptions that do not apply here, an appellate court does not have jurisdiction to hear denied motions for summary judgment on appeal. *Ackermann v. Vordenbaum*, 403 S.W.2d 362, 365 (Tex. 1966); *William Marsh Rice Univ. v. Coleman*, 291 S.W.3d 43, 45 (Tex. App.—Houston [14th Dist.] 2009, pet. dismissed); *see also* Tex. Civ. Prac. & Rem. Code Ann. § 51.014. Accordingly, appellee’s motion to dismiss for lack of jurisdiction is granted.

This court may award just damages under Rule 45 if, after considering everything in our file, we make an objective determination that the appeal is frivolous. *Glassman v. Goodfriend*, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (en banc). To determine whether an appeal is objectively frivolous, we review the record from the viewpoint of the appellant and determine whether appellant had reasonable grounds to believe the case could be reversed. *Id.* Rule 45 does not mandate that this court award just damages in every case in which an appeal is frivolous; the decision to award such damages is a matter within this court’s discretion, which we exercise with prudence and caution after careful consideration. *Id.* We conclude that damages under Rule 45 are not warranted in this case.

The appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Christopher, Jamison, and Donovan.