

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed May 9, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-17-00337-CV**

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**IN RE DATRIL BOSTON, Relator**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
269th District Court  
Harris County, Texas  
Trial Court Cause No. 2011-34714**

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**MEMORANDUM OPINION**

On May 1, 2017, relator, Datriil Boston, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Dan

Hinde, presiding judge of the 269th District Court of Harris County, to vacate the April 30, 2013 order granting a bill of review.

Real party in interest, Bryce Daniel d/b/a Fast & Free Real Estate, filed a bill of review to set aside a default judgment that was entered in favor of relator. On April 30, 2013, the trial court granted the bill of review. Relator filed a motion to set aside the April 30, 2013 order, which was overruled by operation of law.

In 2016, relator filed a motion to reconsider the order on the bill of review and for entry of judgment for relator, or, in the alternative, motion to set aside the judgment granting the bill of review and set the case for trial on the merits. The trial court heard argument and requested further briefing from the parties. On July 30, 2016, the trial court, holding that the April 30, 2013 order was final and that the court no longer had plenary power over the order, denied relator's motion.

Whether a judicial decree is final must be determined from its language and the record in the case. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2000). A judgment that expressly disposes of all claims and parties is final. *Id.* at 200. The intent to finally dispose of the case must be unequivocally expressed in the words of the order itself. *Id.*

The trial court expressly stated its intent in the April 30, 2013 order that the order be final: "This order disposes of all claims in Cause No. 2011-34714, is a final judgment in Cause No. 2011-34714, and is appealable." *See id.* at 206 (explaining that the following language, "'This judgment finally disposes of all parties and claims and is appealable', would leave no doubt about the court's intention"). The trial court's plenary power over the April 30, 2013 order expired

on July 14, 2013, when relator's motion to set aside the order was overruled by operation of law. *See* Tex. R. Civ. P. 329b(c). Therefore, in the absence of plenary power, the trial did not abuse its discretion by not setting aside the April 30, 2013 order.

Relator has not shown that he is entitled to mandamus relief. Accordingly, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Christopher, Brown, and Wise.