

Motion Granted; Appeal Dismissed and Memorandum Opinion filed December 7, 2017.



In The

Fourteenth Court of Appeals

NO. 14-17-00348-CV

GILCHRIST COMMUNITY ASSOCIATION, Appellant

V.

COUNTY OF GALVESTON, TEXAS, Appellee

**On Appeal from the County Court at Law No. 2
Galveston County, Texas
Trial Court Cause No. CV-0076026**

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

This is an attempted appeal from a partial summary judgment order signed April 19, 2017. Generally, appeals may be taken only from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). When orders do not dispose of all pending parties and claims, the orders remain interlocutory and unappealable until final judgment is rendered unless a statutory exception applies. *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001).

On May 9, 2017, appellee County of Galveston filed a motion to dismiss this appeal on the grounds that this court does not have jurisdiction over an interlocutory appeal. The partial summary judgment from which appellant Gilchrist Community Association seeks to appeal is not final because the judgment does not actually dispose of all claims and all parties before the court and the judgment does not state with unmistakable clarity that it is a final judgment. *See Lehmann*, 39 S.W.3d at 192, 200. Appellant has not cited, and this court has not found, any statute authorizing an interlocutory appeal in this case. Thus, this court lacks appellate jurisdiction to review this interlocutory order. *See In the Interest of E.S.*, No. 14-14-00328-CV, 2015 WL 1456979, at *3 (Tex. App.—Houston [14th Dist.] Mar. 26, 2015, no pet. h.) (mem. op.). Accordingly, we order this appeal dismissed.¹

Appellee further requests that we sanction appellant for filing a frivolous appeal by awarding it damages under Texas Rule of Appellate Procedure 45.

Rule 45, entitled “Damages for Frivolous Appeals in Civil Cases,” permits courts of appeals to award “just damages” to a prevailing party on the objective determination that an appeal is frivolous. *Id.* “An appeal is frivolous when the record, viewed from the perspective of the advocate, does not provide reasonable grounds for the advocate to believe that the case could be reversed.” *Woods v. Kenner*, 501 S.W.3d 185, 198 (Tex. App.—Houston [1st Dist.] 2016, no pet.). “Rule 45 does not mandate that this court award just damages in every case in which an appeal is frivolous; rather the decision to award such damages is a matter within this court’s discretion, which we exercise with prudence and caution after careful deliberation.”

¹ On July 21, 2017, the trial court entered an order finding that appellant lacked standing to proceed in the underlying proceeding. On July 26, 2017, the trial court signed a final judgment. Appellant filed a timely notice of appeal from both the July 21, 2017 order and the July 26, 2017 final judgment. This court docketed that appeal in cause number 14-17-00681-CV. That appeal remains pending.

Glassman v. Goodfriend, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). We deny appellee’s request for Rule 45 damages.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Christopher and Brown.