



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00200-CV

V. Keith **DULLYE**, Managing Member of Maxon Enterprises, LLC,  
Appellant

v.

**GUME TRANSPORT & STORAGE, INC.**,  
Appellee

From the 111th Judicial District Court, Webb County, Texas  
Trial Court No. 2014-CVF-001744 D2  
Honorable Monica Z. Notzon, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice  
Luz Elena D. Chapa, Justice  
Jason Pulliam, Justice

Delivered and Filed: June 8, 2016

DISMISSED FOR LACK OF JURISDICTION

V. Keith Dullye, Managing Member of Maxon Enterprises, LLC filed a notice stating his desire to appeal the trial court's judgment signed January 7, 2016. The January 7 judgment rendered a take nothing judgment against Maxon Enterprises, LLC on its claims against Gume Transport & Storage, Inc. It further awarded damages and attorney's fees in favor of Gume Transport and against Maxon Enterprises. Dullye, on behalf of Maxon Enterprises, timely filed a motion for new trial, which was overruled by operation of law on March 22, 2016. *See* TEX. R. CIV. P. 329b(c). However, on April 12, 2016, the trial court signed a written order that stated the

award of attorney's fees in the January 7, 2016 judgment "is vacated and a new trial on this issue is granted." The April 12 order was signed while the trial court had plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment. *See* TEX. R. CIV. P. 329b(e). The record does not reflect that the trial court has either severed or disposed of the attorney's fee claim.

After reviewing the clerk's record, it appeared to this court that the trial court had left the issue of appellee's claim for attorney's fees for future decision and that the court had not disposed of all parties and claims in the case. We therefore questioned the finality of the judgment and our jurisdiction over the appeal and ordered appellant to file a response showing why the appeal should not be dismissed.

Dullye has filed a response in which he contends that the unresolved attorney's fee claim "has no bearing as to the finality of the other issues set forth in the Final Judgment" and asserts the judgment is final and appealable. For authority, Dullye relies on a United States Supreme Court decision construing 28 U.S.C. § 1291. *See Ray Haluch Gravel Co. v. Central Pension Fund of the Int'l Union of Operating Eng'rs and Participating Emp'rs*, 134 S.Ct. 773 (2014) (holding judgment that disposes of merits is final and appealable in federal court even if award or amount of attorney's fees remains to be determined). However, 28 U.S.C. § 1291 concerns only the appellate jurisdiction of federal courts of appeal and has no application in this case.

The jurisdiction of this court is governed by the Texas Constitution and Texas statutes, as interpreted by the courts of this state. *See Texas Dep't of Pub. Safety v. Barlow*, 48 S.W.3d 174, 175-76 (Tex. 2001). "Our constitution vests jurisdiction over appeals from final judgments of district and county courts in the courts of appeals, subject to any restrictions and regulations prescribed by law." *Barlow*, 48 S.W.3d at 174 (citing TEX. CONST. art. V, § 6). In Texas, "[a] judgment 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 decree." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191,

195 (Tex. 2001). And, in Texas courts, unlike federal courts, a judgment is not final if it fails to dispose of a party's claim for attorney's fees. *See Farm Bureau Cty Mut. Ins. Co. v. Rogers*, 455 S.W.3d 161 (Tex. 2015); *McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2001).

Although the January 7, 2016 judgment was final and appealable when it was rendered, it became interlocutory when the trial court granted a partial new trial on the issue of attorney's fees and did not sever the issue. *See McNally*, 52 S.W.3d at 196; *Ne. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 897-98 (Tex. 1966); *Hurd v. Maxwell*, 762 S.W.2d 700, 701 (Tex. App.—Eastland 1988, no writ). Because the attorney's fee claim has been neither severed nor disposed of by written and signed order, the judgment remains interlocutory.

We therefore dismiss this appeal for lack of jurisdiction.

PER CURIAM