



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00110-CV

Michael E. **HARMS** (Cross-Appellee),
Appellant

v.

Wayne **BENKE** (Cross-Appellant),
Appellee

From the County Court at Law No. 10, Bexar County, Texas
Trial Court No. 2016CV01012
Honorable David J. Rodriguez, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Irene Rios, Justice

Delivered and Filed: August 23, 2017

DISMISSED

Appellee Wayne Benke has filed a motion to dismiss, arguing this court is without jurisdiction to consider appellant Michael Harm's appeal. We agree.

Generally, appellate courts have jurisdiction only over appeals from final judgments. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *Ne. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 895 (Tex. 1966) (citations omitted). To be final, a judgment must dispose of all issues and parties in a case. *Aldridge*, 400 S.W.2d at 895 (citations omitted). Here, the trial court granted Harm's motion to reconsider his petition for bill of review in Cause No. 2106CV01012.

The trial court's order states that the "judgment returns this case for trial on the merits." "The judgment in a bill of review proceeding is not final until the judgment: (1) denies any relief to the petitioner; or (2) grants the bill of review and sets aside the former judgment, insofar as it is attacked, and substitutes a new judgment which properly adjudicates the entire controversy." *Mungia v. Via Metro. Transit*, 441 S.W.3d 542, 545-46 (Tex. App.—San Antonio 2014, pet. denied); *see Kiefer v. Touris*, 197 S.W.3d 300, 302 (Tex. 2006) (holding a judgment rendered in a bill of review proceeding that sets aside a prior judgment but does not dispose of the case on the merits is interlocutory and not a final judgment from which an appeal will lie). Because the trial court's order does not purport to dispose of the claims between the parties and does not substitute a new judgment properly adjudicating the entire controversy, the order is interlocutory and is not a final and appealable order.

Accordingly, we conclude this court does not have jurisdiction over Harm's attempted appeal. For the same reasons, we do not have jurisdiction to consider the cross-appeal. We grant Benke's motion, and we dismiss both this appeal and the cross-appeal for lack of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any other pending motions as moot.

PER CURIAM