Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00380-CV

Arthur **RAKOWITZ**,
Appellant

v.

Wayne **PITTMAN** and Barbara Pittman, et al.,
Appellee

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-01622
Honorable Cathleen M. Stryker, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: August 16, 2017

DISMISSED FOR LACK OF JURISDICTION

Arthur Rakowitz filed this action against Wayne Pittman and Barbara Pittman in January 2017. On April 19, 2017, the Pittmans filed a motion for an order determining Rakowitz to be a vexatious litigant and requiring him to furnish security as a prerequisite to continuing the litigation. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 11.051 – 11.057 (West 2017). The Pittmans' motion was heard May 4, 2017, and the trial court signed an order on July 28, 2017. The order "finds that Arthur Rakowitz should be required to post security in the amount of $7,500.00" and orders the "suit is abated until such time as Plaintiff, Arthur Rakowtiz, posts security for attorney's fees and

expenses in the amount of $7,500.00 for all purposes other than Plaintiff, Arthur Rakowitz, dismissing or taking a nonsuit in this case." Rakowitz filed a notice of interlocutory appeal.

The trial court's order is not a final judgment because it does not follow a conventional trial on the merits, actually dispose of all claims and parties before the court, or state with unmistakable clarity that it is a final judgment as to all claims and all parties. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191 (Tex. 2001). The trial court's order does not dispose of Rakowitz's claims; rather, it abates them. It is an interlocutory order. This court does not have jurisdiction to consider an appeal of an interlocutory order unless the appeal is expressly authorized by statute. *Stary v. DeBord*, 967 S.W.2d 352, 352 (Tex. 1998); *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). No statute authorizes an interlocutory appeal from an order abating a case or from a section 11.055 order finding a plaintiff to be a vexatious litigant and requiring him to furnish security.

We therefore dismiss this appeal for lack of jurisdiction.[1]

PER CURIAM

[1] When a trial court finds a plaintiff to be a vexatious litigant under section 11.054 of the Civil Practice and Remedies Code, the court is required to order the plaintiff furnish security, set the amount of security, and set the date by which it must be furnished. TEX. CIV. PRAC. & REM. CODE ANN. § 11.055. If security is not posted by the date ordered, the trial court is required to dismiss the litigation as to the moving defendant. *Id.* § 11.056. If security is not posted as ordered and all of the claims and parties in the case are disposed of, the judgment is final and appealable. However, if the trial court abates a case for an indefinite period, the plaintiff has no effective means of challenging the order and mandamus may provide a remedy. *See, e.g.*, *In re Am. Homes For Rent Props. Eight, LLC*, 498 S.W.3d 153, 155-56 (Tex. App.—Dallas 2016, orig. proceeding).