



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00587-CV

IN THE INTEREST OF C.S.K.

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-17273
Honorable David A. Canales, Judge Presiding

PER CURIAM

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: November 29, 2017

MOTION TO DISMISS GRANTED; APPEAL DISMISSED

On August 18, 2017, appellant Lynn M. Kolb was held in contempt for violating certain provisions of a prior final decree of divorce. On September 19, 2017, appellant filed a notice of appeal seeking to appeal the trial court's order of contempt. This court does not have jurisdiction to review contempt orders by direct appeal. *See, e.g., Norman v. Norman*, 692 S.W.2d 655, 655 (Tex. 1985); *Chavira v. Quarry Hills Mgmt., LLC*, 458 S.W.3d 561, 565–66 (Tex. App.—El Paso 2014, pet. denied). Contempt orders may only be reviewed by an application for a writ of habeas corpus, if the contemnor has been confined, or by a petition for a writ of mandamus, if the contemnor has not been confined. *See Rosser v. Squier*, 902 S.W.2d 962, 962 (Tex. 1995); *Ex parte Williams*, 690 S.W.2d 243, 243 n.1 (Tex. 1985); *Chavira*, 458 S.W.3d at 566.

We therefore ordered appellant to show cause in writing why this appeal should not be dismissed for lack of jurisdiction, without prejudice to refileing this action as a petition for writ of mandamus. *See Rosser*, 902 S.W.2d at 962; *Chavira*, 458 S.W.3d at 566. In response, appellant filed a motion to dismiss the appeal without prejudice to refileing this action as a petition for writ of mandamus. After reviewing appellant's motion, we grant the motion to dismiss and dismiss the appeal for want of jurisdiction.

In addition, this court had previously granted a stay of all proceedings with regard to this matter. After the trial court, the Honorable David A. Canales presiding, rendered its order of contempt, it also granted an order of severance. Thereafter, appellant filed her notice of appeal — the appeal we are now dismissing. However, appellant also filed a petition for declaratory judgment, or alternatively, for modification. In that petition, appellant sought a declaration that the trial court lacks jurisdiction over C.S.K. because she is not a child. Mother also sought to modify the decree and asked for additional relief. Appellant's newly-filed matter was assigned to the Honorable Cathy Stryker. After contacting Judge Stryker's court, this court learned that a trial on appellant's matter was scheduled to begin on October 9, 2017, at 8:30 a.m.

After appellant filed her notice of appeal, appellee, Carl J. Kolb, filed an emergency motion in this court, asking that we stay all proceedings in this matter, including the proceedings in Judge Stryker's court, pursuant to Rule 29.5 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 29.5. After reviewing both the motion for stay and appellant's response to the motion, we ordered all trial court proceedings relating to this matter, including any proceedings in Judge Stryker's court stayed pending further order of this court. *See id.* Given that we have now dismissed the appeal, we order our previous stay lifted.

PER CURIAM