



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00156-CV

VERDUN OIL & GAS, LLC,
Appellant

v.

Neri QUINTANILLA,
Appellee

From the 229th Judicial District Court, Duval County, Texas
Trial Court No. DC-18-238
Honorable Baldemar Garza, Judge Presiding

PER CURIAM

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: May 12, 2021

MOTION TO DISMISS GRANTED; DISMISSED FOR LACK OF JURISDICTION

Verdun Oil & Gas, LLC (“Verdun”) seeks to appeal an interlocutory venue ruling pursuant to section 15.003 of the Texas Civil Practice and Remedies Code. For the reasons set forth below, we conclude we lack jurisdiction over the appeal.

BACKGROUND

The underlying lawsuit arose from a workplace injury. It was filed in 2018 by Abel Garcia against appellant Verdun, appellee Neri Quintanilla, and others. The petition alleged venue was proper in Duval County because defendant Quintanilla resided there. Quintanilla answered and filed cross-claims against Verdun and the other defendants. Verdun filed motions to transfer venue

of the claims and cross-claims, arguing, among other things that Quintanilla was fraudulently joined as a defendant because Garcia could not state a cause of action against Quintanilla, and therefore venue could not be based on Quintanilla's residence. After a hearing in March 2019, the trial court denied the motion to transfer venue.

Garcia settled his claims and in August 2020, he nonsuited all his claims against all the defendants. Three months later, Verdun filed a motion to transfer or, alternatively, to reconsider the prior venue ruling, "objections to the joinder of plaintiff Neri Quintanilla," and a motion to transfer venue or to dismiss pursuant to section 15.003 of the Texas Civil Practice and Remedies Code. After a hearing, the trial court signed an order denying all of Verdun's motions. Verdun filed a notice of accelerated interlocutory appeal, stating the appeal is authorized by section 15.003(b). Quintanilla has filed a motion to dismiss for lack of jurisdiction, to which Verdun has responded.

DISCUSSION

When a trial court rules on a party's motion to transfer venue, as a general rule, "no interlocutory appeal shall lie from that determination." TEX. CIV. PRAC. & REM. CODE § 15.064(a). The ruling may be reviewed on appeal only after a trial on the merits. *Id.* § 15.064(b). When cross-claims, counterclaims, or third-party claims are properly joined in a case, "venue of the main action shall establish venue" of such claims. *Id.* § 15.062(a). Thus, when Quintanilla filed his cross-claim against Verdun, venue was determined by the main action, which was pending in Duval County. *See id.* § 15.062(a). And the trial court's ruling denying Verdun's motion to transfer the main action out of Duval County was not subject to interlocutory appeal, either when the original ruling was made in 2019 or when the trial court denied Verdun's motion to reconsider the venue ruling in 2021. *See id.* § 15.064.

Verdun contends its appeal is authorized by section 15.003(b) of the Civil Practice and Remedies Code. Section 15.003 applies “[i]n a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise.” *Id.* § 15.003(a). It requires each plaintiff to independently establish venue. If a plaintiff cannot establish proper venue in the county of suit, that plaintiff’s part of the case must be transferred or dismissed unless the plaintiff makes four specific showings.

Id. Section 15.003(b) provides:

[a]n interlocutory appeal may be taken of a trial court’s determination under Subsection (a) that:

- (1) a plaintiff did or did not independently establish proper venue; or
- (2) a plaintiff that did not independently establish proper venue did or did not establish the items prescribed by Subsections (a)(1)-(4).

Id. § 15.003(b).

The suit in the trial court is not a suit “in which there is more than one plaintiff.” *See id.* § 15.003(a). It was filed by one plaintiff, Garcia, and no other plaintiffs have been joined. Quintanilla is a defendant in the suit who filed a cross-claim against Verdun.¹ The filing of the cross-claim did not transform Quintanilla into a “plaintiff.” *See Pedison USA, Inc. v. CNC Constr. Inc.*, No. 02-16-00271-CV, 2016 WL 6900877 (Tex. App.—Fort Worth Nov. 23, 2016, no pet.) (mem. op.) (holding defendant who filed third-party claims is not “plaintiff” within meaning of section 15.003, even after original plaintiff dismissed all its claims; venue of third-party claims was governed by section 15.062, not section 15.003; and court lacked jurisdiction over interlocutory appeal from denial of motion to transfer); *Harding Bars, LLC v. McCaskill*, 374 S.W.3d 517, 520 (Tex. App.—San Antonio 2012, pet. denied) (holding defendants’ cross-claim did not transform them into “plaintiffs” and dismissing interlocutory appeal because venue of

¹ There is no contention the cross-claim was improperly joined as part of the same lawsuit.

cross-claim was governed by section 15.062, not section 15.033); *Hopson v. Dallas Indep. Sch. Dist.*, No. 05-02-01819-CV, 2003 WL 402881, at *2 (Tex. App.—Dallas Feb. 24, 2003, pet. denied) (mem. op.) (holding section 15.003 deals with joinder of parties plaintiff and “joinder of parties defendant and third party claims are governed by different statutes, none of which provide for interlocutory appeal”). We conclude the cross-claim Verdun sought to have transferred or dismissed is not a claim brought by a *plaintiff* in a suit in which there are multiple plaintiffs, and therefore section 15.003 does not apply. Moreover, the trial court’s order does not contain any of the determinations that subsection 15.003(b) states may be appealed.

Verdun’s response to Quintanilla’s motion to dismiss this appeal focuses on Verdun’s contention that venue of the main action was not proper in Duval County because Garcia did not plead a viable cause of action against Quintanilla. Verdun seeks to avoid the statutory prohibition on an interlocutory appeal from the trial court’s initial venue ruling by asserting, “[i]f venue of the main action is improper, section 15.062(a) does not apply, and section 15.003(a) applies instead.” Verdun provides no authority or argument to support this statement and we find no support for it in the language of the statute or in any caselaw.

We conclude that venue of the main action controls venue of Quintanilla’s cross-claim. TEX. CIV. PRAC. & REM. CODE § 15.062(a); *Pedison*, 2016 WL 6900877, at *1-2; *Harding Bars*, 374 S.W.3d at 520. The trial court’s 2019 ruling regarding venue of the main action and its reconsideration of that ruling in 2021 may be appealed after the trial on the merits, but not interlocutorily. TEX. CIV. PRAC. & REM. CODE §15.064. Because section 15.003 has no application in this case and the trial court did not make any of the determinations for which interlocutory appeal is authorized, we do not have jurisdiction over this appeal.

We therefore dismiss this appeal for lack of jurisdiction.

PER CURIAM