



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

**MEMORANDUM OPINION**

No. 04-21-00243-CV

Edythe **PRINCE** and Jared Prince,  
Appellants

v.

Sharon L. **PETERS**, Individually; Sharon Peters Real Estate Inc.; Christopher Russo, Individually; Christopher Russo Home Inspections PLLC; The Agency Austin, Inc., d/b/a The Agency San Antonio, n/k/a The Agency Texas, Inc.; Thomas J. Brown; Henry Justin Sheppard; Joseph Keresztury; Timothy Brown; CityWorth Mortgage LLC and Its Successors in Interest; and Department of Veterans' Affairs Home Loan Program,  
Appellees

From the 198th Judicial District Court, Bandera County, Texas  
Trial Court No. CVOC-20-0000305  
Honorable M. Rex Emerson, Judge Presiding

PER CURIAM

Sitting: Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice  
Irene Rios, Justice

Delivered and Filed: November 3, 2021

DISMISSED FOR WANT OF JURISDICTION

Appellants Edythe and Jared Prince sued Sharon L. Peters and other defendants for alleged fraud in a real estate transaction. Appellants initially nonsuited some defendants and later nonsuited all defendants. We abated the appeal to allow Appellants to obtain a final order, but the supplemented record still does not include a final, appealable judgment or order. Therefore, we reinstate this appeal and dismiss it for want of jurisdiction.

## **BACKGROUND**

In the underlying suit, Appellants Edythe Prince and Jared Prince sued Sharon L. Peters and other defendants for alleged fraud and DTPA violations involving a real estate transaction.

### **A. Partial Nonsuits**

On December 8, 2020, Appellants nonsuited defendants Joseph Keresztury and Thomas J. Brown. On January 8, 2021, Appellants nonsuited Henry Justin Sheppard. The trial court's January 13, 2021 order addressing the Sheppard nonsuit acknowledged Appellants' nonsuit "of their case against only Defendant, Henry Justin Sheppard," and noted that "this case is dismissed without prejudice to re-file [sic]." The signed order shows a hand drawn underscore of "this case" with an arrow pointing to "Henry Justin Sheppard." The trial court's January 13, 2021 order addressing the Keresztury and Brown nonsuit is similarly annotated with the word "this" underlined and an arrow drawn from "this" and pointing to Thomas J. Brown.

### **B. Plea to the Jurisdiction, Motion to Compel**

Months later, Appellants filed a plea to the jurisdiction. In it, they argued that the trial court's January 13, 2021 order addressing Sheppard dismissed the case in its entirety.

The trial court denied Appellants' plea to the jurisdiction and granted Sharon L. Peters's motion to compel discovery and motion for monetary sanctions against Appellants and their counsel. Two days later, the trial court granted Timothy Brown's motion to compel discovery and motion for sanctions against Appellants and their counsel.

### **C. Subsequent Nonsuit, Notice of Appeal**

On June 14, 2021, Appellants filed a nonsuit against all remaining defendants and a notice of appeal. In the notice of appeal, Appellants challenged the trial court's orders denying their plea to the jurisdiction and granting the motions to compel discovery and sanctions.

**D. Order to Show Cause**

After the clerk's record was filed, we ordered Appellants to show cause why this court had jurisdiction in this appeal. Appellants reasserted their argument that the trial court's January 13, 2021 order addressing Sheppard dismissed the entire suit, and they asserted they are appealing the trial court's order denying their plea to the jurisdiction and both motions to compel discovery and award sanctions.

**E. Abate for Final Judgment**

On September 2, 2021, because the clerk's record did not appear to contain a final judgment or appealable order, we abated this appeal, remanded the cause to the trial court, and ordered Appellants to ensure that a supplemental clerk's record with a final judgment or appealable order was filed in this court by October 4, 2021. *See* TEX. R. APP. P. 27.2; *Iacono v. Lyons*, 6 S.W.3d 715, 717 (Tex. App.—Houston [1st Dist.] 1999, order) (per curiam). We warned Appellants that if they failed to cure the jurisdictional defect as ordered, we would reinstate this appeal and dismiss it for want of jurisdiction without further notice. *See* TEX. R. APP. P. 42.3(a).

**F. Supplemental Clerk's Record**

A supplemental clerk's record was timely filed that contains the trial court's September 17, 2021 order acknowledging Appellants' nonsuit of all their claims against all defendants.

The order's printed text states "This case, as to all parties and all claims, is hereby ORDERED dismissed without prejudice to re-file [sic]." However, the trial court struck through the words "parties and all" and added "Plaintiffs" above the stricken words. Thus, the annotated order reads "This case, as to all Plaintiffs' claims, is hereby ORDERED dismissed without prejudice to re-file [sic]."

The order does not state that it disposes of all parties and all claims, nor does it state that it is a final, appealable order.

## DISCUSSION

### A. No Final Order

Generally, “an appeal may be taken only from a final judgment. 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 “[t]he intent to finally dispose of the case must be unequivocally expressed in the words of the order itself.” *Id.* at 200.

The trial court’s September 17, 2021 order, filed in the supplemental clerk’s record, does not expressly state or otherwise indicate an intent to dispose of all claims and all parties, nor does it state that it is a final, appealable order. *Cf. id.* To the contrary, the trial court annotated the order to show only the Plaintiffs’ claims were dismissed.

We conclude the trial court’s September 17, 2021 order it is not a final or otherwise appealable order, *cf. id.*, and Appellants failed to comply with our September 2, 2021 order.

### B. Motion to Strike, Replace Orders

On October 12, 2021, Appellants moved this court to strike two “late-altered” orders from the clerk’s record and replace them with “unaltered” orders. Appellants argue that the handwritten annotations on the trial court’s January 13, 2021 orders were made after the trial court’s plenary power expired, and the unaltered orders are the proper versions of the orders. Appellants’ concerns may be addressed in the trial court. *See* TEX. R. APP. P. 34.5(d).

### C. Reinstate, Dismiss

Irrespective of which versions of the January 13, 2021 orders are proper, neither disposes of all parties and all claims, and the record does not contain a final judgment. We reinstate this appeal and dismiss it for want of jurisdiction. All other relief requested by Appellants is denied.

PER CURIAM