

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00034-CV

GEORGE DANNER, Appellant

V.

KATHRYN DANNER, Appellee

On Appeal from the 418th District Court
Montgomery County, Texas
Trial Cause No. 17-03-04143-CV

MEMORANDUM OPINION

George Danner filed a notice of appeal from the trial court's January 4, 2018 Order Finding Alleged Partition and Exchange Agreement Unenforceable. On January 30, 2018, the appellee, Kathryn Danner, filed a motion to dismiss the appeal on the ground that the order was interlocutory and not subject to accelerated appeal. Appellant did not file a response to the motion to dismiss.

Generally, temporary orders in a divorce case may not be immediately appealed. *See* Tex. Fam. Code Ann. § 6.507 (West 2006). Because the order does

not dispose of all issues before the trial court and it has not been severed, it is an interlocutory order not subject to immediate appeal. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001). Accordingly, we dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

Appellee requests that we award her “just damages” in an unspecified amount because the appeal is frivolous. *See* Tex. R. App. P. 45. “Rule 45 does not mandate that this court award just damages in every case in which an appeal is frivolous; rather the decision to award such damages is a matter within this court’s discretion, which we exercise with prudence and caution after careful deliberation.” *Glassman v. Goodfriend*, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). We deny Appellee’s request for Rule 45 damages.

APPEAL DISMISSED.

CHARLES KREGER
Justice

Submitted on March 7, 2018
Opinion Delivered March 8, 2018

Before McKeithen, C.J., Kreger and Horton, JJ.