



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00400-CV

WSG ASIA PACIFIC, LTD., Appellant

v.

FIFIELD, INC., Appellee

On Appeal from the 442nd District Court
Denton County, Texas
Trial Court No. 19-1648-442

Before Bassel, Womack, and Wallach, JJ.
Per Curiam Memorandum Opinion

MEMORANDUM OPINION

Appellant WSG Asia Pacific, Ltd. (WSG) attempts to appeal from the trial court's order granting Appellee Fifield, Inc.'s motion to dismiss pursuant to the Texas Citizens Participation Act (TCPA). We dismiss this appeal for want of jurisdiction.

On October 8, 2019, the trial court granted Fifield's motion to dismiss pursuant to the TCPA. The trial court's order (1) dismissed all causes of action WSG asserted against Fifield, (2) awarded Fifield its reasonable attorney's fees and expenses in an unspecified amount, and (3) awarded Fifield sanctions against WSG in an unspecified amount. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a), (b). The order stated that it “finally dispose[d] of all claims and all parties, and [was] therefore a final[,] appealable judgment” and that “[a]ny additional relief requested by the parties not granted in this Order [was] . . . denied.” But the trial court ordered Fifield to file briefing and materials and to request a hearing in support of its requests for attorney's fees and expenses and for sanctions within thirty days of the date of the order.

On October 28, 2019, WSG filed its notice of appeal. On October 31, 2019, Fifield filed in the trial court an Emergency Motion to Amend Order Pursuant to Rule 329b of the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 329b(a), (e). Fifield requested that the trial court amend its October 8, 2019 order to remove the language indicating that it was a final, appealable judgment and to provide a schedule for briefing on the attorney's fees and sanctions awards.

Consequently, on December 18, 2019, the trial court entered an “Amended Interlocutory Order on Defendant Fifield, Inc.’s Motion to Dismiss Pursuant to the Texas Citizens[] Participation Act.” *See* Tex. R. Civ. P. 329b(e). The amended order removed the language stating that it was a final, appealable judgment and continued to order Fifield to propose a schedule for the submission of briefs and evidence relating to the awards of attorney’s fees and sanctions, but it removed any deadline for Fifield to propose any such schedule.

On December 23, 2019, WSG filed in this court an “Unopposed Motion to Abate Appeal Due to Amended Judgment.” WSG stated that because the trial court granted Fifield’s Emergency Motion to Amend Order and amended the October 8, 2019 order, there is no final, appealable judgment in this case. WSG requested this court to abate this appeal until the trial court entered a final judgment.

On January 8, 2020, we granted WSG’s motion, abated this appeal, and suspended all deadlines until March 9, 2020. We ordered that a supplemental clerk’s record containing the trial court’s final judgment be filed with this court within ten days after entry of the final judgment. We ordered that if a final judgment was not entered by March 9, 2020, then we may dismiss this appeal for want of jurisdiction.

On March 27, 2020, we granted in part WSG’s “Unopposed Motion to Extend Abatement of Appeal,” extending the abatement until May 26, 2020, for entry of a final judgment in the trial court. We ordered that if a final judgment was not entered by May 26, 2020, then this appeal may be dismissed for want of jurisdiction. We also

again ordered that a supplemental clerk's record containing the trial court's final judgment be filed with this court within ten days after entry of the final judgment.

No supplemental clerk's record containing a final judgment has been filed with this court.

We have jurisdiction to consider appeals only from final judgments or from interlocutory orders made immediately appealable by statute. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). An order that does not dispose of all pending parties and claims remains interlocutory and unappealable until a final judgment is rendered unless a statutory exception applies. *See id.*; *In re Roxsane R.*, 249 S.W.3d 764, 774–75 (Tex. App.—Fort Worth 2008, orig. proceeding). An order granting a TCPA motion to dismiss is not an appealable interlocutory order. *See Flynn v. Gorman*, No. 02-16-00131-CV, 2016 WL 4699198, at *1 (Tex. App.—Fort Worth Sept. 8, 2016, no pet.) (per curiam) (mem. op.).

Here, the amended order of dismissal expressly leaves for future disposition the statutorily required award of attorney's fees and an award of sanctions. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a), (b). Thus, there is no final judgment, and we therefore lack jurisdiction over WSG's attempted appeal. *See DeAngelis v. Protective Parents Coalition*, 556 S.W.3d 836, 860 (Tex. App.—Fort Worth 2018, no pet.) (holding that trial court may timely grant a request for dismissal pursuant to the TCPA while retaining jurisdiction to later resolve issues relating to statutorily required attorney's fees and sanctions); *Leachman v. Stephens*, No. 02-13-00357-CV, 2016 WL 6648747, at

*4 (Tex. App.—Fort Worth Nov. 10, 2016, pet. denied) (mem. op.) (op. on reh'g) (stating that judgments awarding attorney's fees but not specifying the amount did not dispose of the attorney's fees issue); *Trane US, Inc. v. Sublett*, 501 S.W.3d 783, 787 (Tex. App.—Amarillo 2016, no pet.) (per curiam) (holding that order of dismissal expressly leaving for future disposition the statutorily required award of attorney's fees and sanctions was not a final judgment).

Accordingly, on our own motion, the court lifts the abatement imposed by its January 8, 2020 order and then extended by its March 27, 2020 order. Because the order from which WSG attempts to appeal is not a final judgment or an appealable interlocutory order, we dismiss this appeal for want of jurisdiction. Tex. R. App. P. 42.3(a), 43.2(f).

Per Curiam

Delivered: June 18, 2020