



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

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No. 02-21-00345-CV

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JOSE ALBA, CANDELARIA ALBA, JOSE ALBA, JR., AND LIZBETH  
GURRUSQUIETA, Appellants

v.

CALATLANTIC HOMES OF TEXAS, INC., LENNAR CORPORATION, AND  
LENNAR PACIFIC PROPERTIES MANAGEMENT, INC. D/B/A VILLAGE  
BUILDERS, Appellees

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On Appeal from the 431st District Court  
Denton County, Texas  
Trial Court No. 19-9952-16

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Concurring and Dissenting Memorandum Opinion by Justice Wallach

**CONCURRING AND DISSENTING MEMORANDUM OPINION**

Assuming this court has jurisdiction of this case, I concur in the judgment and rationale of the majority opinion. However, because it is my opinion that this court does not have jurisdiction, I respectfully dissent.

The only allegedly dispositive order in this case is entitled “Order.” It provides, in its entirety, as follows,

CAME ON BEFORE this Court Defendants CalAtlantic Homes of Texas, Inc., Lennar Corporation, and Lennar Pacific Properties Management, Inc. d/b/a Village Builders’ Traditional and No-Evidence Motion for Summary Judgment. The Court, having considered the motion, Plaintiffs’ response thereto, any replies, and the pleadings on file, hereby orders that the motion is:

  X   GRANTED

       ~~DENIED~~

SIGNED this 10th day of June, 2021.

/s/  
JUDGE PRESIDING

The only other dispositive document was a Notice of Nonsuit Without Prejudice filed on July 14, 2021 where CalAtlantic Homes of Texas, Inc., Lennar Corporation, and Lennar Pacific Properties Management, Inc., d/b/a Village Builders nonsuited their third-party claims against Perez Masonry Construction, LLC.

Does this record present a final appealable judgment? I would hold that it does not. Appellants bring this appeal as an appeal from a final judgment.<sup>1</sup> If an order on a motion for summary judgment is not final, we must dismiss the appeal for lack of jurisdiction. *Frausto v. RC Indus. LLC*, 605 S.W.3d 54, 56 (Tex. App.—San Antonio 2020, no pet.).

As held by our supreme court in *Naaman v. Grider*, 126 S.W.3d 73, 74 (Tex. 2003), “[a]n order that merely grants a motion for judgment is in no sense a judgment itself. It adjudicates nothing.” Likewise, an order that “merely grants a motion for summary judgment without any decretal language actually disposing of a claim is not a judgment on any claim.” *Frausto*, 605 S.W.3d at 56–57; *see also Sheteny v. Mediation Inst. of N. Tex., LLC*, 624 S.W.3d 285, 288 (Tex. App.—Fort Worth 2021, no pet.); *Redwine v. Peckenpaugh*, 535 S.W.3d 44, 48 (Tex. App.—Tyler 2017, no pet.). Precisely all that is in the record in this case is an order granting a motion for summary judgment, period. While there may be other circumstances where the entire record, combined with the language used in a court order, may be construed to constitute an adjudication, such is not the case here.<sup>2</sup>

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<sup>1</sup>Interlocutory appellate jurisdiction is not in issue.

<sup>2</sup>*See In re Guardianship of Jones*, 629 S.W.3d 921, 926 (Tex. 2021). In distinguishing its prior holding in *Naaman*, quoted above, the court noted that the order in question regarding dismissal of a bill of review petition was a final adjudication where, even though the order did not announce the petition’s disposition with words like “ordered,

Until the supreme court overrules its holding in *Namaan*, I feel compelled to hold that this “Order” which merely “granted” the motions for summary judgment is not a final judgment. I would dismiss the appeal for want of jurisdiction.

/s/ Mike Wallach

Mike Wallach  
Justice

Delivered: May 5, 2022

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adjudicated or decreed,” it not only granted the motion to dismiss it also expressly stated it was a “final order” constituting “the dismissal of the Bill of Review filed in this case.”