



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

No. 02-21-00399-CV

JANA SHEPHERD, Appellant

v.

HELEN PAINTER & CO., CATHERINE TAYLOR, AMY DEFOREST,
YOUNGER RANCH, LLC, SCOTT REAL ESTATE, AND SHILA MANLEY,
Appellees

On Appeal from the 348th District Court
Tarrant County, Texas
Trial Court No. 348-295290-17

Before Kerr, Birdwell, and Bassel, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Jana Shepherd attempts to appeal from interlocutory orders disposing of her claims against Appellees Helen Painter & Co.; Catherine Taylor; Amy DeForest; Younger Ranch, LLC; Scott Real Estate; and Shila Manley (collectively, Appellees). Because there is no final judgment and because none of the interlocutory orders are appealable, we dismiss this appeal for want of jurisdiction.

In July 2017, Shepherd entered into a contract to purchase a tract of unimproved real property from Younger Ranch. After the deal fell apart, Shepherd sued

- Defendant Younger Ranch for breach of contract and specific performance;
- Defendants Helen Painter & Co. (Younger Ranch’s real-estate broker), Taylor (Helen Painter’s designated broker), and DeForest (Helen Painter agent, the property’s listing agent, and Shepherd’s initial agent) for breach of contract, negligence, and breach of fiduciary duty; and
- Third-Party Defendants Scott Real Estate and Manley¹ (Shepherd’s agents after she fired DeForest) for breach of contract and negligence.

The Painter Defendants—Helen Painter & Co., Taylor, and DeForest—and the Manley Defendants—Scott Real Estate and Manley—counterclaimed against Shepherd for attorney’s fees.

Nearly four years after Shepherd sued, the Painter Defendants moved to dismiss Shepherd’s claims for want of prosecution. *See* Tex. R. Civ. P. 165a(2);

¹Helen Painter & Co., Taylor, and DeForest asserted a third-party contribution claim against Scott Real Estate and Manley.

Villarreal v. San Antonio Truck & Equip., 994 S.W.2d 628, 630 (Tex. 1999). The Manley Defendants did likewise. *See* Tex. R. Civ. P. 165a(2); *Villarreal*, 994 S.W.2d at 630. The Painter Defendants and Younger Ranch also moved for summary judgment on Shepherd's claims against them. *See* Tex. R. Civ. P. 166a(c). The trial court granted all three motions. Shepherd moved to reinstate her claims and to modify or correct the summary-judgment orders, but the trial court denied her motions.

Shepherd has appealed and challenges the trial court's orders dismissing her claims for want of prosecution, granting summary judgment in favor of the Painter Defendants and Younger Ranch, and denying her motions to reinstate and to modify or correct the summary-judgment orders. Shepherd filed her brief, which complained in part that the trial court had failed to hold a mandatory hearing on her motion to reinstate, *see* Tex. R. Civ. P. 165a(3), and pointed out that her appeal was interlocutory because the trial court had not disposed of the Manley Defendants' attorney's-fees counterclaim. In response, Appellees moved to abate the appeal and to remand the case to the trial court for it to determine the Painter Defendants' and the Manley Defendants' attorney's-fees counterclaims and to conduct a hearing on Shepherd's reinstatement motions. *See* Tex. R. App. P. 44.4; Tex. R. Civ. P. 165a(3); *see, e.g., Mortell v. Pruett*, No. 02-19-00123-CV, 2019 WL 5608236, at *1 (Tex. App.—Fort Worth Oct. 31, 2019, no pet.) (mem. op.).

After reviewing Shepherd's brief, Appellees' motion to abate, and the record, we notified the parties by letter that we were concerned that we lacked jurisdiction

over this appeal because it appeared that there was no final judgment or appealable interlocutory order and that Shepherd's notice of appeal was thus premature. *See* Tex. R. App. P. 26.1, 27.1(a). We gave the parties 20 days to provide a signed copy of (1) a final judgment or (2) an order disposing of all remaining parties and claims. *See* Tex. R. App. P. 44.3, 44.4(a)(2). We warned the parties that if they did not furnish us with a signed judgment or order within 20 days, we would dismiss the appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 43.2(f). On Shepherd's motion, we granted her an additional 30 days to supplement the record with the requested documents. *See* Tex. R. App. P. 44.3, 44.4(a)(2). Those additional 30 days have passed, and we have not received a final judgment or order disposing of all remaining parties and claims. Instead, Shepherd responded to our jurisdiction letter, asserting that we have jurisdiction over this appeal because "the orders amount to final interlocutory orders" disposing of all her claims against Appellees.

When, as here, there was no conventional trial on the merits, we cannot presume that an order or judgment is final. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 199–200 (Tex. 2001); *see, e.g., Chase Manhattan Bank, N.A. v. Lindsay*, 787 S.W.2d 51, 53 (Tex. 1990) (orig. proceeding) (op. on reh'g) ("If a summary judgment does not refer to or mention issues pending in a counterclaim, then those issues remain adjudicated."); *Macarungal v. Andrews*, 838 S.W.2d 632, 634 (Tex. App.—Dallas 1992, orig. proceeding) (stating that there is no presumption that a dismissal for want of prosecution disposes of counterclaims or cross-claims). An order or judgment is

final and appealable if it actually disposes of all claims and all parties or if it “clearly and unequivocally” states that it does. *Lehmann*, 39 S.W.3d at 205.

Here, the dismissal orders and the summary-judgment order lack language clearly and unequivocally expressing an intent to finally dispose of the case. *See id.* at 206 (explaining that a phrase such as “[t]his judgment finally disposes of all parties and all claims and is appealable” clearly and unequivocally expresses an intent to finally dispose of a case). And after reviewing the record, we have determined that, at a minimum, the Painter Defendants’ and the Manley Defendants’ attorney’s-fees counterclaims remain pending. *See In re Elizondo*, 544 S.W.3d 824, 827–28 (Tex. 2018) (orig. proceeding); *Lehmann*, 39 S.W.3d at 205–06. There is thus no final judgment. *See Lehmann*, 39 S.W.3d at 205–06. And none of the orders from which Shepherd appeals are appealable interlocutory orders. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014. Absent a final judgment or appealable interlocutory order, we lack jurisdiction over an appeal, and we must dismiss it. *See Lehmann*, 39 S.W.3d at 195; *see, e.g., Ratley v. Ratley*, No. 02-21-00166-CV, 2021 WL 4319707, at *1 (Tex. App.—Fort Worth Sept. 23, 2021, no pet.) (mem. op.). Accordingly, we deny all pending motions, and we dismiss this appeal for want of jurisdiction.² *See* Tex. R. App. P. 42.3(a), 43.2(f).

²Our dismissing this appeal does not bar Shepherd from pursuing an appeal from a final judgment in this case.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: May 26, 2022