



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

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No. 02-22-00087-CV

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MARK CARROLL, Appellant

v.

METRO OFFICE EQUIPMENT, INC. D/B/A MOVING OFFICE  
EQUIPMENT, Appellee

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On Appeal from the County Court at Law No. 3  
Tarrant County, Texas  
Trial Court No. 2021-007202-3

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Before Sudderth, C.J.; Kerr and Birdwell, JJ.  
Memorandum Opinion by Chief Justice Sudderth

## MEMORANDUM OPINION

Appellants Mark and Charlotte Carroll attempt to appeal the trial court’s dismissal order. The order grants Appellee Metro Office Equipment, Inc.’s motion to dismiss,<sup>1</sup> *see* Tex. R. Civ. P. 91a, and it awards Appellee its “costs and reasonable and necessary attorneys’ fees . . . in the amount of \_\_\_\_\_.” No amount for the award was written in the blank provided.

Generally, appeals may be taken only from final judgments.<sup>2</sup> *In re Guardianship of Jones*, 629 S.W.3d 921, 924 (Tex. 2021); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 196 (Tex. 2001). Where, as here, a judgment is rendered without a conventional trial on the merits, the judgment “is not final unless (1) it actually disposes of every pending claim and party or (2) it clearly and unequivocally states that it finally disposes of all claims and parties, even if it does not actually do so.” *Jones*, 629 S.W.3d at 924; *Lehmann*, 39 S.W.3d at 205–06. The trial court’s dismissal order does neither.

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<sup>1</sup>The dismissal order states that “[a]ll of Plaintiffs’ [i.e., Appellants’] claims in this lawsuit are DISMISSED WITH PREJUDICE to the refiling of same.”

<sup>2</sup>Although the legislature has authorized interlocutory appeals in certain circumstances, none of those circumstances apply here, and Appellants do not claim that they do. *DRC Constr. v. Pickle*, No. 01-20-00576-CV, 2022 WL 479918, at \*4 (Tex. App.—Houston [1st Dist.] Feb. 17, 2022, no pet.) (per curiam) (mem. op.) (recognizing that “[n]o statutory or other authority allows for an interlocutory appeal from an order that grants a Rule 91a motion to dismiss but does not dispose of all pending claims”); *see* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a).

While the dismissal order disposes of all of Appellants' claims, Appellee's claim for attorney's fees remains pending. *See DRC Constr.*, 2022 WL 479918, at \*3–4 (recognizing that a request for fees under Rule 91a is “an affirmative claim for relief” that, if left pending, can prevent a judgment from being final). Although the order purports to grant Appellee's request for fees, it does not specify the amount of fees awarded, and thus fails to dispose of the claim. *Cf. id.* (holding Rule 91a dismissal order interlocutory where dismissal motion reserved right to offer evidence of fees and trial court granted motion but did not rule on fee request); *Cooper v. Mowla*, No. 05-21-00757-CV, 2021 WL 4947194, at \*1 (Tex. App.—Dallas Oct. 25, 2021, no pet.) (mem. op.) (holding Rule 91a order interlocutory where dismissal motion requested fees and corresponding evidentiary hearing and trial court granted motion but did not rule on fee request); *Regent Gen. Contractors, Inc. v. 2016 Old Town Plano E., Ltd.*, No. 05-20-01039-CV, 2020 WL 7396008, at \*1 (Tex. App.—Dallas Dec. 17, 2020, no pet.) (mem. op.) (similar); *cf. Leniek v. Evolution Well Servs., LLC*, No. 14-18-00954-CV, 2019 WL 438825, at \*1–2 (Tex. App.—Houston [14th Dist.] Apr. 2, 2019, no pet.) (per curiam) (mem. op.) (holding TCPA dismissal order interlocutory where statute provided for mandatory fee shifting but trial court did not specify amount of fees awarded).

Nor does the dismissal order contain “clear and unequivocal” language of finality. Nothing in the order states that it “disposes of all parties and all claims and is appealable,” nor is there anything in the record indicating a similar intent. *Jones*, 629 S.W.3d at 924 (noting that “[t]alismanic phrases are not required or dispositive,” but

that the quoted statement would leave no doubt as to the trial court's intention). Rather, the dismissal order clearly leaves an unresolved matter: the amount of fees to be awarded. *Cf. Cyphers v. Children's All. of S. Tex.*, No. 04-21-00225-CV, 2021 WL 3516688, at \*1 (Tex. App.—San Antonio Aug. 11, 2021, no pet.) (per curiam) (mem. op.) (holding TCPA dismissal order interlocutory because it “expressly state[d] it ha[d] not yet determined the court costs and reasonable attorney’s fees and expenses that it must award to the defendants”).

Because the fee issue is still pending, the dismissal order is not final. Accordingly, we notified the parties of our concern that we lacked jurisdiction over this appeal and warned that we would dismiss the appeal unless, within ten days, a party showed grounds for continuing it. *See* Tex. R. App. P. 42.3(a), 44.3. More than a month has passed, and neither party has responded to our letter.

Therefore, we dismiss Appellant’s attempted appeal for want of jurisdiction. Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Bonnie Sudderth

Bonnie Sudderth  
Chief Justice

Delivered: May 26, 2022