



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-14-00014-CV

**REBECCA TERRELL AND
CHANDRASHEKHAR THANEDAR, APPELLANTS**

V.

PAMPA INDEPENDENT SCHOOL DISTRICT, APPELLEE

On Appeal from the 223rd District Court
Gray County, Texas
Trial Court No. 35,621, Honorable Abe Lopez, Presiding

February 1, 2016

MEMORANDUM OPINION

Before **CAMPBELL** and **HANCOCK** and **PIRTLE, JJ.**

In response to the motion for rehearing filed by appellants, Rebecca Terrell and Chandrashekhhar Thanedar, we grant the motion, withdraw our opinion and judgment of October 29, 2015, and issue the following in its place.

Factual and Procedural Background

As our resolution of the present appeal turns on the procedural history of the case, we will not address the factual history. However, the facts of this case are identified in *Terrell v. Pampa Indep. Sch. Dist.*, 345 S.W.3d 641, 642 (Tex. App.—Amarillo 2011, pet. denied).

In May of 2009, appellants filed their original petition alleging that appellee, Pampa Independent School District (PISD), had committed numerous violations of the Texas Open Meetings Act (TOMA). In May of 2010, the trial court granted PISD's motion for summary judgment without specifying the grounds upon which the motion was being granted. Appellants appealed presenting a number of reasons why the trial court's judgment was in error as well as generally challenging the trial court's grant of summary judgment. By their appeal, appellants presented "an extensive number of reasons why the trial court's judgment was in error." *Id.* This Court classified these issues as follows:

the trial court erred in not finding that PISD violated the provisions of TOMA regarding: 1) posting of notice of meetings, 2) requirements for specificity in the notice of meetings and the place of the meetings, 3) internet posting provisions, 4) requirement that all deliberations of the type involved be held in a public meeting, 5) allegations that the notices posted were not posted by a person with authority to post notices of meetings. In addition to the alleged violations of TOMA, appellants allege that the trial court erred in: 6) ruling on various objections to some of PISD's summary judgment evidence, 7) in granting PISD's motion for summary judgment, and 8) in denying appellants' motion for summary judgment.

Id. at 642-43. However, after identifying each of these issues as having been presented by appellants, we expressly stated that "one of the issues appellants raise regarding violations of TOMA is dispositive of this matter" *Id.* at 643. After discussing this

issue, we held that “there is a material fact issue about whether PISD actually attempted to post the notices and, therefore, met the good faith exception to the requirement to concurrently post notices of the School Board meetings on its website.” *Id.* at 644. As such and without addressing any of the other issues raised by appellants, “we reverse[d] the judgment of the trial court [and] remand[ed] this matter for further proceedings consistent with this opinion.” *Id.*

On remand, the case was called for trial to the bench. During the trial, appellants attempted to offer evidence that would support its claims that PISD violated TOMA in ways that were “systematic” and “pervasive.” Specifically, appellants offered evidence of defects in the content of the notices, that the physical notice was not posted in a proper place, and that at least one meeting was improperly closed. In each of these instances, the trial court sustained PISD’s relevancy objections and explained that the only issue before the trial court was the internet postings and whether PISD could establish the good faith exception found in Texas Government Code section 551.056(d). See TEX. GOV’T CODE ANN. § 551.056(d) (West 2012). The trial proceeded limited to the issue of PISD’s internet postings and whether PISD’s failure to comply with the internet posting requirements was excused due to the good faith exception. At the close of trial, the trial court entered judgment, denominated “Final Judgment,” that ordered that appellants take nothing by their suit, taxed costs against appellants, and awarded \$30,000 to PISD for attorney’s fees. Appellants timely filed a motion for new trial which, *inter alia*, raised the issue that the trial court refused to hear appellants’ other claims

that PISD had violated TOMA.¹ Appellants' motion for new trial was overruled by operation of law.

By their appeal, appellants identify twenty-one issues. However, the only issue necessary to our disposition of this appeal is their first, that the trial court erred in refusing to hear appellants' claims that PISD violated TOMA in ways other than by failing to post internet notices. See TEX. R. APP. P. 47.1. However, before we address this issue, we must determine whether the judgment appealed from was final and appealable.

Finality of Judgment

It is presumed that a judgment entered after a conventional trial on the merits is final and appealable. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 199 (Tex. 2001). Further, the words of a judgment can make it final and appealable if, by its language, it unequivocally disposes of all claims and parties. See *id.* at 200. If a judgment clearly expresses its intent to be final, the judgment is final and appealable even though the record does not provide an adequate basis for rendition of judgment. *Id.* A judgment that grants more relief than a party is entitled to is subject to reversal but is not, for that reason alone, interlocutory. *Id.*

In the present case, the trial court's Final Judgment states that the "case was tried to the bench" and orders that, "Plaintiffs[] take nothing by their suit against Defendant" This language indicates that the entirety of the case was before the

¹ Subsequently, appellants filed an untimely motion for reconsideration that again raised the issue that the trial court had denied appellants the opportunity to present evidence regarding its live claims that PISD had violated TOMA in ways other than by failing to comply with the internet posting requirements.

trial court and the judgment orders that appellants take nothing by their suit. As such, this language makes it unequivocal that the trial court intended the judgment to dispose of all claims between the parties. This is true even though the record reflects that the only claim that the trial court actually heard was whether PISD met the good faith exception to the requirement that it post internet notices on its website. Consequently, we conclude that the trial court's judgment was final and appealable.

Trial Court's Limitation of Issues

By their first issue, appellants contend that the trial court erred in refusing to hear appellants' claims that PISD violated TOMA in ways other than by failing to post internet notices on its website.

Appellants' live pleadings claim that PISD violated TOMA by: (1) failing to post meetings on its internet website; (2) failing to post physical notice on the bulletin board in its Central Administrative Office; (3) not having notices posted for the statutorily required period of 72 hours before meetings; (4) not specifying the place of meetings in its notices; (5) not following the proper process to close the March 26, 2009 meeting; and (6) having notices signed by a person not designated or authorized to sign the notices. While this Court's April 29, 2011 opinion addressed only the internet posting issue, our conclusion that there was a genuine issue of material fact as to that issue led to our reversal of the trial court's summary judgment in favor of PISD. See *Terrell*, 345 S.W.3d at 642. Because we did not specifically affirm the summary judgment as to any other issue or claim, our remand of the cause sent the entire case back to the trial court as if the summary judgment had never been granted. As such, all of appellants' claims

were properly before the trial court. However, the record reflects that the trial that was held on remand only addressed claims relating to PISD's internet posting of notices. This was the case even though appellants preserved error by offering evidence to prove some of these other claims. However, this evidence was excluded by the trial court when it sustained PISD's relevancy objections. Further, appellants timely filed a motion for new trial that, *inter alia*, raised the issue of the trial court's refusal to hear appellants' other claims. This motion for new trial was overruled by operation of law. As a result, the judgment issued on remand did not address all claims that were properly presented by appellants and before the trial court. See *Lehmann*, 39 S.W.3d at 200, 204; *Wasserberg v. RES-TX One, LLC*, No. 14-13-00674-CV, 2014 Tex. App. LEXIS 13085, at *7 (Tex. App.—Houston [14th Dist.] Dec. 9, 2014, pet. denied) (mem. op.) (“Granting a final judgment that does not address all claims ‘makes the order reversible, but not interlocutory.’”). Because the trial court granted a take-nothing judgment as to claims that it did not allow appellants to present, it granted greater relief than it was authorized to grant. See *Lehmann*, 39 S.W.3d at 200; *Crooks v. Moses*, 138 S.W.3d 629, 641 (Tex. App.—Dallas 2004, no pet.) (concluding that trial court erroneously granted greater relief than requested where defendant movant did not address claims plaintiff timely added by amendment, but trial court nevertheless rendered take-nothing final judgment as to all claims). As such, we reverse the judgment of the trial court and remand for a new trial on all causes of action asserted in appellants' live pleading.

Conclusion

Because the trial court erroneously denied appellants the opportunity to present their live claims before rendering a take-nothing judgment as to all of those claims, we

reverse the judgment of the trial court and remand for a new trial on all of appellants' properly presented causes of action.

Mackey K. Hancock
Justice