



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

No. 07-15-00366-CV

MATTHEW CHRISTISEN, APPELLANT

V.

GENE L. GOERTZEN AND NANCY L. GOERTZEN, APPELLEE

On Appeal from the 170th District Court
McLennan County, Texas
Trial Court No. 2014-4300-4, Honorable Jim Meyer, Presiding

January 21, 2016

DISMISSAL

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Matthew Christisen appealed from an order granting a partial summary judgment in favor of the appellees, Gene L. Goertzen and Nancy L. Goertzen. The latter had sued for a declaratory judgment and requested attorney's fees and court costs, among other things. In their appellate brief, they now assert that we lack jurisdiction over the appeal. We agree and dismiss.

An order issued without a conventional trial on the merits is final for purposes of appeal if either it 1) actually disposes of all claims and parties then before the court or

2) clearly and unequivocally states that it is a final judgment as to all claims and parties. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192-93 (Tex. 2001). As previously mentioned, the Goertzens sought both a declaratory judgment, court costs, and attorney's fees. In granting their motion for summary judgment, the trial court began its order with the following verbiage:

CAME ON TO BE CONSIDERED Motions for Summary Judgment filed by [the Goertzens] and [Christisen] in the above entitled and numbered cause, after due notice, and the Court having considered same is of the opinion that the Partial Summary Judgment is appropriate and should be granted, it is, accordingly ORDERED, that [the Goertzens'] Motion for Summary Judgment is GRANTED in part.

At the end of the order appeared a standard "mother hubbard clause" stating that "[a]ll other relief not expressly granted is herein DENIED." (Emphasis in original). While the latter phrase suggests that all claims for relief were addressed, the trial court's statement that the summary judgment was granted "in part" suggests that other matters remain pending. More importantly, nothing in the decree mentions the Goertzens' request for attorney's fees to which they may be entitled under the Declaratory Judgment Act. See TEX. CIV. PRAC. & REM. CODE ANN. § 37.009 (West 2015). Nor does the order purport to address the issue of court costs or Christisen's motion for summary judgment.

As we recently held, a judgment that fails to dispose of a claim for attorney's fees or that otherwise fails to appear final on its face is not final. *Tomlinson v. Miami Bancshares, Inc.*, No. 07-14-00321-CV, 2014 Tex. App. LEXIS 10540, at *1 (Tex. App.—Amarillo September 19, 2014, no pet.), *citing McNally v. Guevara*, 52 S.W.3d 195 (Tex. 2002); *accord, Farm Bureau Cty. Mut. Ins. v. Rogers*, 455 S.W.3d 161, 164 (Tex. 2015). And, while the order at bar may contain a "mother hubbard clause," that

alone does not render the decree final. *Farm Bureau Cty. Mut. Ins. v. Rogers*, 455 S.W.3d at 164.

Because the motion for summary judgment were granted "in part" and the demand for attorney's fees and court costs was not mentioned in the allegedly final order, we conclude that the order does not dispose of all claims for relief. Thus, it is not final, and we lack jurisdiction over the appeal. Consequently, the appeal is dismissed for want of jurisdiction.

Per Curiam