



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

No. 07-21-00245-CV

JAMES ATKINS, APPELLANT

V.

KRISTINA LUERA, MELISSA HERNANDEZ, AND LAKIESHA LEWIS, APPELLEES

On Appeal from the 154th District Court
Lamb County, Texas
Trial Court No. DCV-20200-19, Honorable Felix Klein, Presiding

February 18, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant James Atkins, proceeding pro se, appeals from the trial court's interlocutory order granting appellees' motion to dismiss pursuant to Chapter 13 and Chapter 74 of the Civil Practice and Remedies Code. Now pending before this Court is appellees' unopposed motion to dismiss the appeal for want of jurisdiction. We grant the motion and dismiss the appeal.

In 2019, Atkins sued Luke Oaks, Kristina Luera, Melissa Hernandez, LaKiesha Lewis, and Mary Duncan, alleging they had negligently treated Atkins at the Texas Civil Commitment Center.¹ Appellees Luera, Hernandez, and Lewis subsequently moved to dismiss Atkins' claims as frivolous and because Atkins failed to serve a health care liability expert report. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 13.001(a)(2); 74.351(a), (b). On September 7, 2021, the trial court signed an order granting appellees' motion and dismissing the claims against them. Although Atkins' claims against Oaks and Duncan remained pending, Atkins' appealed the trial court's September 7 order. Appellees now move to dismiss the appeal for want of jurisdiction.

We have jurisdiction to hear an appeal from a final judgment or from an interlocutory order made immediately appealable by statute. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *Stary v. DeBord*, 967 S.W.2d 352, 352-53 (Tex. 1998) (per curiam). "[W]hen there has not been a conventional trial on the merits, an order or judgment is not final for purposes of appeal unless it actually disposes of every pending claim and party or unless it clearly and unequivocally states that it finally disposes of all claims and all parties." *Lehmann*, 39 S.W.3d at 205.

The trial court's September 7 order does not contain any finality language, nor does it dispose of all pending parties and claims. Therefore, it is not a final judgment. Furthermore, we have found no statutory authority permitting its interlocutory appeal. See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a) (identifying permissible interlocutory appeals); *Fisher v. Med. Ctr. of Plano*, No. 05-14-01441-CV, 2015 Tex. App. LEXIS 18,

¹ Atkins also sued Rachel Kingston but later nonsuited his claims against her.

at *4 (Tex. App.—Dallas Jan. 6, 2015, no pet.) (mem. op.) (finding no permissible interlocutory appeal from an order dismissing claims for failure to serve a Chapter 74 expert report); *Jones v. Tex. Dep't of Criminal Justice*, No. 07-06-00468-CV, 2008 Tex. App. LEXIS 9000, at *3-4 (Tex. App.—Amarillo Dec. 3, 2008, no pet.) (mem. op.) (dismissing interlocutory appeal from an order dismissing claims as frivolous under Chapter 13).

By letter of January 24, 2022, we notified Atkins that it did not appear from the record that a final judgment or appealable order had been issued by the trial court and directed him to show how we have jurisdiction over the appeal by February 7. To date, Atkins has not filed a response to appellees' motion to dismiss or to the Court's jurisdiction letter, or had any further communication with this Court.

Because Atkins has not presented this Court with a final judgment or appealable order, we grant appellees' motion to dismiss and dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a).

Per Curiam