



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-15-00107-CV

GARY MARTINO, Appellant

V.

JANINE LAUREN, Appellee

On Appeal from the 102nd District Court
Red River County, Texas
Trial Court No. CV03291

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

Gary Martino appeals from the trial court's September 21, 2015, "Order of Reinstatement Nunc Pro Tunc." By letter of February 1, 2016, we notified Martino that it appeared we lacked jurisdiction over this appeal because the order appealed from is neither a final judgment nor an appealable order. We afforded Martino ten days to demonstrate proper grounds for our retention of the appeal. We received a tardy response from Martino on February 22, 2016, in which Martino contends that the September 21 order is void. We agree.

On January 6, 2014, Janine Lauren appealed a judgment entered in the case of *Janine Lauren v. Gary Martino*—district court cause number CV03291—from the Justice Court, Precinct 1, of Red River County to the 102nd Judicial District Court of Red River County. When Lauren failed to pay the costs of appeal, as required by Rule 143a of the Texas Rules of Civil Procedure, the Red River County District Clerk returned the case to the justice court, i.e., the court of original jurisdiction, on March 3, 2014, and the justice court's judgment became final. *See* TEX. R. CIV. P. 143a.

On August 5, 2015, well over a year after the justice court's judgment had become final, Lauren filed a "Motion For Order Of Reinstatement Nunc Pro Tunc" in cause number CV03291 in the 102nd Judicial District Court. On September 21, 2015, the 102nd Judicial District Court issued an order reinstating Lauren's appeal on that court's docket. Although the order was captioned "Order of Reinstatement Nunc Pro Tunc," the order was not a true nunc pro tunc order.¹

¹A civil judgment of a justice court may be appealed to the district court (in a county which has no county court at law), and upon the perfection of such an appeal the district court hears the case de novo. Here, however, the case never proceeded to trial at the district court level, but was returned to the justice court pursuant to Rule 143a for

The caption notwithstanding, the trial court was without power to enter its September 21, 2015, order.

“A trial court retains plenary power over its judgment until that judgment becomes final.” *In re Sheppard*, 193 S.W.3d 181, 186 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (citing *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993)). “It is well-settled that an order signed after the trial court’s plenary power has expired is void.” *Id.* Based on the record before us, district court cause number CV03291 was returned to the justice court on March 3, 2014, as required by Rule 143a of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 143a. Here, the district court never had plenary jurisdiction because by failing to perfect the appeal from the justice court, Lauren never invoked the district court’s jurisdiction to begin with. Consequently, any orders entered by the district court after that time, including the September 21, 2015, order reinstating the case in the district court, were void.

Our jurisdiction, as an appellate court, is constitutional and statutory in nature. *See* TEX. CONST. art. V, § 6; TEX. GOV’T CODE ANN. § 22.220 (West Supp. 2015). Unless we are granted specific authority over an appeal from a particular type of order, we have jurisdiction only over appeals from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). It is clear under Texas law that an appellate court lacks jurisdiction to consider the merits of an appeal from a void order, such as the order from which Martino attempts to appeal in this case. *See Freedom Commc’n, Inc. v. Coronado*, 372 S.W.3d 621, 624 (Tex. 2012) (holding that because

nonpayment of fees. Thirty days later, the justice court judgment became final. Consequently, the district court never entered a final judgment which could be corrected by a judgment nunc pro tunc. *See* TEX. R. CIV. P. 143a.

trial judge was disqualified, order denying summary judgment was void, and because order denying summary judgment was void, court of appeals had no jurisdiction to consider whether order denying summary judgment was meritorious). Consequently, because the district court had no jurisdiction over this case, the district court's Order of Reinstatement Nunc Pro Tunc was void. Because the district court's order was void, we lack appellate jurisdiction to consider whether the trial court's order was meretorious.

Accordingly, we dismiss the appeal for want of jurisdiction.

Ralph K. Burgess
Justice

Date Submitted: March 15, 2016
Date Decided: March 16, 2016