IN THE
TENTH COURT OF APPEALS

No. 10-16-00051-CV

MATTHEW S. BOVEE,

Appellant

v.

HOUSTON PRESS LLP, MARGARET DOWNING, DIANNA WRAY, PETER RYAN, DALLAS OBSERVER, LLP, KXAN, DAWN DENNY, PATRICK WILLIAMS, MEDIA GENERAL INC., VOICE MEDIA GROUP, DOES 1 THROUGH 5, AND JANE DOE,

Appellees

From the 249th District Court
Johnson County, Texas
Trial Court No. DC-C201500272

MEMORANDUM OPINION

Matthew S. Bovee appeals the trial court's Order Granting Media Defendants' Motions to Dismiss Pursuant to Chapters 14 and 27 of the Texas Civil Practice &

Remedies Code and Final Judgment, Order Denying Plaintiff's Motion to Allow § 27.006(b) Discovery, and Order Denying Plaintiff's Motion for Continuance, all signed on December 7, 2015. By letter dated February 23, 2016, the Clerk of this Court notified Bovee that his appeal was subject to dismissal because the notice of appeal, filed on February 10, 2016, appeared untimely and if timely, because the orders complained of were interlocutory.

Bovee responded and asserted that his notice of appeal was timely because he timely filed a request for findings of fact and conclusions of law and a motion for new trial.

Assuming the notice of appeal is timely, the next question is whether the orders complained of are final and therefore, appealable. Bovee asserts in his response that the order granting the "Media Defendants'"[1] motions to dismiss is a final judgment because of language in the order stating it is final and because it contains a Mother Hubbard clause.

A judgment issued without a conventional trial is final for purposes of appeal "*if and only if* either [1] it *actually* disposes of all claims and parties then before the court, regardless of its language, or [2] it states with unmistakable clarity that it is a final judgment as to *all claims and all parties*." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192-193 (Tex. 2001) (emphasis added). *See also Farm Bureau Cnty. Mut. Ins. Co. v. Rogers*, 455

[1] The "Media Defendants" consists of two groups of defendants, television and press, which each filed motions to dismiss pursuant to the same statutes.

S.W.3d 161, 163 (Tex. 2015). An order does not dispose of all claims and all parties merely because it is entitled 'final,' or because the word 'final' appears elsewhere in the order, or even because it awards costs. *Lehmann,* 39 S.W.3d at 205. "Rather, there must be some other clear indication that the trial court intended the order to completely dispose of the entire case." *Id*. Even the inclusion of a Mother Hubbard clause in an order, such as "all relief not granted is denied," does not indicate that a judgment rendered without a conventional trial is final for purposes of appeal. *Id*. at 203-204; *See also Farm Bureau*, 455 S.W.3d at 163.

In this case, the title of the order granting the motions to dismiss includes the phrase "Final Judgment." Language included at the end of the dismissal order further states, "THIS IS A FINAL JUDGMENT." The order also contains a Mother Hubbard clause which states, "ALL RELIEF NOT EXPRESSLY GRANTED HEREIN IS DENIED." However, none of this language renders the order final for purposes of appeal. It is clear from the face of the order that it does not dispose of Bovee's claims against all the parties he sued. The order expressly provides that Bovee take nothing on his claims against the "Media Defendants." However, Bovee also had claims against Voice Media Group, Does 1 through V, and Jane Doe. The order does not dispose of the claims against those particular defendants. While Voice Media Group had been included in one of the motions to dismiss, it was not specifically referenced as a "Media Defendant" in the order granting a dismissal. Further, Voice Media Group had a special appearance

pending that does not appear to have been disposed. Additionally, although we have no indication whether Does I through V were served with or answered Bovee's petition, Jane Doe was still clearly part of Bovee's action because she filed a motion to transfer venue. On the same day as the trial court granted the motions to dismiss at issue in this appeal, the trial court granted Jane Doe's motion to transfer venue. The order transfers "this civil action" to Harris County. It does not reference only the claims filed against Jane Doe; which is thus, another indicator that the order of dismissal is not a final judgment, is premature, and must await the disposition of the claims against the remaining parties. Even Bovee recognized in his response to this Court that after the dismissal, claims remained pending which addressed a "severable incident;" not that those claims were, in fact, severed.[2]

After reviewing the order granting the Media Defendants' motions to dismiss, the order meets neither of the tests for finality set out by the opinion in *Lehmann*: it does not actually dispose of all parties and claims and it does not state with unmistakable clarity that it was final as to all parties and claims. Accordingly, we find the trial court's Order Granting Media Defendants' Motions to Dismiss Pursuant to Chapters 14 and 27 of the Texas Civil Practice & Remedies Code and Final Judgment is not a final judgment subject to appeal.

[2] Generally, "the severance of an interlocutory judgment into a separate cause makes it final." *Diversified Fin. Sys., Inc. v. Hill, Heard, O'Neal, Gilstrap & Goetz, P.C.*, 63 S.W.3d 795, 795 (Tex. 2001).

For the same reasons, the Order Denying Plaintiff's Motion to Allow § 27.006(b) Discovery and Order Denying Plaintiff's Motion for Continuance are likewise not final and appealable.

Accordingly, this appeal is dismissed for want of jurisdiction.

Absent a specific exemption, the Clerk of the Court must collect filing fees at the time a document is presented for filing. TEX. R. APP. P. 12.1(b); Appendix to TEX. R. APP. P., Order Regarding Fees (Amended Aug. 28, 2007, eff. Sept. 1, 2007). S*ee also* TEX. R. APP. P. 5; 10TH TEX. APP. (WACO) LOC. R. 5; TEX. GOV'T CODE ANN. §§ 51.207(b); 51.208; § 51.941(a) (West 2013). Under these circumstances, we suspend the rule and order the Clerk to write off all unpaid filing fees in this case. TEX. R. APP. P. 2. The write-off of the fees from the accounts receivable of the Court in no way eliminates or reduces the fees owed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Appeal dismissed
Opinion delivered and filed March 31, 2016
[CV06]