



**IN THE  
TENTH COURT OF APPEALS**

**No. 10-19-00164-CV**

**CURTIS CAPPS, BUETTA SCOTT,  
AND RAJENA SCOTT,**

**Appellants**

**v.**

**SAMUEL RAY HINES, ET AL,**

**Appellee**

**From the 361st District Court  
Brazos County, Texas  
Trial Court No. 13-002483-CV-361**

---

---

**MEMORANDUM OPINION**

---

---

In this appeal, appellants, Curtis Capps, Buetta Scott, and Rajena Scott, challenge the trial court's order granting summary judgment in this bill-of-review proceeding in favor of appellees, Samuel Ray Hines, Robert Hines, Virginia Hines Harris, Laurretta Hines, Bonita Thompson, Vanessa Richardson Pena, Charlotte Conner (believed to be called "Charla Conners" in the first suit) (now Paschal), Roberta Richardson "Nancy" Harris, Vickie Johnson-Cole, Billy G. Hines Jr., Phillip Johnson, Deborah Harris-Wiggins

(now Crawford), Mary M. Steptoe, Donald Robinson, Charmaine Traylor, Lee Hosey, Patricia A. Johnson, Paul Edwin Hines Jr., Bernadean McKinney, Carolyn Porch, Armatha Ross, Jackie R. Johnson, Linda Johnson, Arthur and Elnora Mooring, Wendell Hosey, Debra Hosey Peters, Norma Butler, Audrey Johnson Hosey, Alberta Patterson Johnson, Tammy Hosey, Sandra Hosey, the Estate of Nettie M. Clay, Norene V. Johnson, Tommie L. Johnson, Kanetra Gail Johnson, Kaneisha Johnson, Grechal B. Johnson, Clara Gilbert, Pamela Simpson, Rufus Hills, Luke Hill, Benty Robinson, Mary Williams, the Estate of Earthly Marie Hutchinson, Hollis Kelvin Godine, Rockell Ellen Molly Jiles, Marion Cecilia Godine, Marice Ann Godine, Courtney Anese Godine, Karl Reginald Godine, Stanley J. Godine, Beverly Kay Solomon Turner, Curtis Raythiel Solomon, Annette Elaine Solomon, Lannette Solomon, Gwendolyn Solomon, the Estate of Mary Catherine Myers Shine, Ronald Kelley, Antoinette Elaine Lee Preston, Janice Farley, Lawrence Al James, Wanda Goss, Lee A. Jackson, and Linda Joyce Scott, and/or acting on behalf of all other commonly aligned persons whose rights in and to that certain 285.5-acre tract were divested in Cause No. 10-000305-CV-85, *Buetta Scott and Rajena Scott v. The Known and Unknown Heirs of Alex Scott, et al.*, in the 85th Judicial District Court of Brazos County, Texas, namely the unknown heirs of Wyatt Butler a/k/a Wiatt Butler, the unknown heirs of Nelson Constant a/k/a Nelson Constance, the unknown heirs of Peter Morgan, and the unknown heirs of Alex Scott. Because we conclude that the trial court's

summary-judgment order is not final, we grant appellees' motion to dismiss and hereby dismiss this proceeding.<sup>1</sup>

## I. BACKGROUND

At issue in this appeal is title to a certain 285.5-acre tract of land located in Brazos County, Texas, that has been the subject of numerous lawsuits in the past decade due to its complex and complicated title history. *See, e.g., Capps v. Known and Unknown Heirs of Foster*, No. 10-18-00329-CV, 2019 Tex. App. LEXIS 7422 (Tex. App.—Waco Aug. 21, 2019, pet. denied) (mem. op.) (“*Capps II*”); *Capps v. Foster*, No. 10-14-00061-CV, 2016 Tex. App. LEXIS 626 (Tex. App.—Waco Jan. 21, 2016, pet. denied) (mem. op.) (“*Capps I*”).

In *Capps I*, Capps filed suit to remove a cloud on the title to this property. *See Capps I*, 2016 Tex. App. LEXIS 626, at \*4. The Foster heirs filed an adverse-possession counterclaim. *Id.* The trial court awarded to the Foster heirs title to four tracts contained within the larger 285.5-acre tract, and we affirmed. *Id.* at \*4, \*\*20-21.

In *Capps II*, Capps challenged an order and judgment granting an injunction in favor of the Foster heirs, which granted an easement in favor of the Foster heirs to access their property and enjoined Capps from impeding the Foster heirs from using their easement to access their property. *See Capps II*, 2019 Tex. App. LEXIS 7422, at \*\*4-5. We reversed the trial court's order and judgment because the “Foster heirs' motion and

---

<sup>1</sup> Appellees have also moved for the imposition of sanctions against appellants for bringing this appeal. Though we do not condone the filing of appeals of which we lack jurisdiction, we are not inclined to impose sanctions at this time.

request for an easement approximately four years after the *Capps I* judgment was entered constituted a material change in the substantive adjudicative portion of the *Capps I* judgment and was entered after the trial court's plenary power expired." *Id.* at \*11.

In this edition of the saga, Buetta Scott and her daughter, Rajena Scott, filed suit in 2010, under Chapter 29 of the Texas Property Code, which allows a forced sale of real property as reimbursement for property taxes paid on behalf of a property owner. *See* TEX. PROP. CODE ANN. § 29.002 (West 2014). Buetta and Rajena allegedly made partial tax payments on one forty-acre tract within the larger 285.5-acre tract. Following an evidentiary hearing, the trial court signed a judgment in favor of Buetta and Rajena Scott on December 15, 2010. This judgment purported to divest the various heirs of Alex Scott, Peter Morgan, Nelson Constance, and Wiatt Butler of any ownership in the entire 285.5-acre tract and instead vested ownership in Alex Scott's heirs, Buetta and Rajena Scott. Immediately after the trial court signed the December 15, 2010 judgment, the Scotts conveyed their interest in the 285.5 acres to Capps.

Thereafter, appellees filed a bill of review, seeking to set aside the December 15, 2010 judgment. The bill was primarily based on defective service of process, as well as extrinsic fraud by the Scotts in obtaining the December 15, 2010 judgment. A series of summary-judgment motions were filed and heard on behalf of parties on both sides of

the dispute. The trial court denied appellants' summary-judgment motions and granted summary judgment on appellees' bill of review.<sup>2</sup>

Thereafter, appellants filed their notice of appeal in this matter. After appellants filed their appellants' brief, appellees filed a motion to dismiss this appeal, as well as a motion for sanctions, arguing that the trial court's order granting summary judgment as to their bill of review did not dispose of all parties and claims and, thus, is not a final, appealable order. Appellants responded to appellees' motions to dismiss and for sanctions.

## II. ANALYSIS

At the outset of our analysis, we will consider appellees' motion to dismiss. As stated above, appellees filed a bill of review, and the trial court granted summary judgment on appellees' bill of review. The result of the trial court's ruling on appellees' bill of review was to vacate the December 15, 2010 judgment so that the underlying Chapter 29 suit can be retried. *See Alaimo v. U.S. Bank Trust Nat'l Ass'n*, 551 S.W.3d 212, 216 (Tex. App.—Fort Worth 2017, no pet.); *see also Crabtree v. Crabtree*, 627 S.W.2d 486, 487 (Tex. App.—Corpus Christi 1981, no writ). Furthermore, the Texas Supreme Court has

---

<sup>2</sup> In its order granting summary judgment on appellees' bill of review, the trial court did not state that the order was intended to be a final judgment disposing of all claims and parties. This is further demonstrated by the following statements made by the trial judge at a hearing conducted on April 16, 2019:

Well, as I understand it—as I understand it, what I'm signing is a document that says, I'm granting the bill of review, the case is going back to the 85th District Court. It's not a final judgment in that case. It's a final judgment in my case, but the effect of it is—it's sort of like an appeal.

stated: “A bill of review which set[s] aside a prior judgment but does not dispose of all the issues of the case on the merits is interlocutory in nature and not a final judgment appealable to the court of appeals or the supreme court.” *Tesoro Petroleum v. Smith*, 796 S.W.2d 705, 705 (Tex. 1990) (per curiam) (citations omitted). Therefore, based on the foregoing, we conclude that the order granting summary judgment on appellees’ bill of review did not dispose of all claims and parties and, thus, is not a final, appealable order. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (noting that, unless an interlocutory appeal is expressly authorized by statute, an appellate court only has jurisdiction over an appeal taken from a final judgment); *see also Guajardo v. Conwell*, 46 S.W.3d 862, 863-64 (Tex. 2001) (stating that a judgment is final for purposes of appeal only if its either actually disposes of all claims and parties before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment). Accordingly, we grant appellees’ motion to dismiss and hereby dismiss this appeal for want of jurisdiction. Further, we deny appellees’ motion for sanctions.

JOHN E. NEILL  
Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Neill

Motion to dismiss granted; motion for sanctions denied; appeal dismissed  
Opinion delivered and filed August 5, 2020  
[CV06]

