

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-01-00605-CV

Robert Barton, Appellant

v.

Bettie Buchanan, Appellee

**FROM THE COUNTY COURT AT LAW OF BASTROP COUNTY,
NO. 98-4923 HONORABLE LARRY D. WAGENBACH, JUDGE PRESIDING**

This is an appeal from the granting of a bill of review filed in a probate dispute. Bettie Buchanan, along with another, filed a lawsuit against Robert Barton and Mary Henley. On June 26, 1996, that lawsuit was dismissed for want of prosecution. However, Buchanan's attorney allegedly did not receive the court's notice setting the case for a dismissal hearing, and the county clerk failed to send notice of the signing of the judgment of dismissal. On April 28, 1998, Buchanan filed a petition for bill of review, which was tried to a jury on the issue of Buchanan's due diligence. The jury found in favor of Buchanan and the court signed a "Judgment" on July 24, 2001 granting the petition, setting aside the June 26, 1996 judgment and returning the original lawsuit to the "active docket" of the court. Robert Burton filed this appeal complaining of the July 24, 2001 "judgment."

A bill of review setting aside a prior judgment and reinstating the cause does not dispose of the merits of the case and is interlocutory and not appealable. *Jordan v. Jordan*, 907 S.W.2d 471, 471 (Tex. 1995) (per curiam); *Tesoro Petroleum v. Smith*, 796 S.W.2d 705, 705 (Tex.

1990) (per curiam); *Terrell v. Nelson Puett Mortgage Co.*, 446 S.W.2d 742, 743 (Tex. Civ. App.—Austin 1969, no writ). The July 24, 2001 “judgment” does not dispose of the merits of Buchanan’s lawsuit. We, therefore, lack jurisdiction in this matter. Accordingly, we dismiss this appeal for want of jurisdiction. Tex. R. App. P. 42.3(a).

Mack Kidd, Justice

Before Justices Kidd, Patterson and Puryear

Dismissed for Want of Jurisdiction

Filed: February 14, 2002

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