

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-06-00628-CV

Brent Warner, Appellant

v.

Stephanie Warner, Appellee

**FROM THE COUNTY COURT AT LAW NO. 4 OF TRAVIS COUNTY
NO. C-1-CV-06-004092, HONORABLE ORLINDA NARANJO, JUDGE PRESIDING**

ORDER

PER CURIAM

Appellant Brent Warner filed his notice of appeal, complaining of the county court at law's granting of a protective order in favor of appellee Stephanie Warner. The State, by and through the Travis County Attorney's Office, which assisted Stephanie Warner in obtaining the protective order, has filed a motion to dismiss for want of jurisdiction. The State argues that we should dismiss this appeal under section 81.009 of the family code, pointing to evidence that approximately a week after the application for a protective order was filed and about one month before the protective order was granted, Stephanie Warner initiated a divorce proceeding in district court.

Section 81.009 of the family code provides that a protective order rendered under chapter 4, subtitle B of the family code "may be appealed." Tex. Fam. Code Ann. § 81.009(a) (West

Supp. 2006). However, a protective order “rendered against a party in a suit for dissolution of a marriage may not be appealed until the time the final decree of dissolution of the marriage becomes a final, appealable order.”¹ *Id.* § 81.009(b). The State argues that we should read section 81.009 to bar the appeal from a protective order rendered against a party involved in a suit for divorce in another court. We disagree.

By the language used in section 81.009, the legislature evidenced an intent to allow the appeal of protective orders rendered outside the divorce context. *See id.* § 81.009(a). We decline the State’s invitation to read the statute more broadly to provide that a protective order rendered by one court cannot be appealed if it is rendered against a party involved in a divorce proceeding in another court. Such a holding would leave open the possibility that a protective order rendered in favor of one person against someone involved in a divorce proceeding against a third party would not be appealable until the conclusion of the unrelated divorce proceeding. Instead, we read section 81.009 to bar the appeal of a protective order that is issued in or made part of a divorce proceeding.

In this case, the county court at law rendered a protective order entirely separate from the divorce proceeding, which is pending in district court. The protective order before us, heard by a different court than the one considering the divorce, was a final disposition of all of the parties and issues presented in that proceeding before the county court at law. *See B.C. v. Rhodes*, 116 S.W.3d 878, 882 (Tex. App.—Austin 2003, no pet.) (decided before enactment of section 81.009 and holding, “It is the disposition of the parties and the issues—not the retention of jurisdiction—that

¹ Section 81.009 similarly bars the appeal of a protective order rendered against a party in a suit affecting the parent-child relationship, but that exception is not before us in this cause. *See* Tex. Fam. Code Ann. § 81.009(c) (West Supp. 2006).

determines the finality of an order. . . . Because the protective order in this case disposed of all the parties and issues, we overrule the State’s motion to dismiss and address the merits of the case.”). We note that in *Bilyeu v. Bilyeu*, which involved a similar situation in which a protective order was issued by one court while a divorce was pending in another, we held that a protective order “rendered during the pendency of the parties’ divorce is not a final judgment for purposes of appeal.” 86 S.W.3d 278, 281-82 (Tex. App.—Austin 2002, no pet.). However, *Bilyeu* was decided before the legislature, through its 2005 enactment of section 81.009, declared that protective orders rendered under the family code are appealable, subject to two very specific exceptions. *See id.* at 280-82 (noting that “the Texas Supreme Court has yet to declare that protective orders are final judgments for purposes of appellate jurisdiction” and “the legislature has not designated protective orders as appealable interlocutory orders”). The law having changed since *Bilyeu*, we are not bound by its holding.

We hold that section 81.009(b) does not bar appellant’s appeal from the protective order rendered by the county court at law while a separate divorce proceeding is pending in district court. We overrule the State’s motion to dismiss the appeal for lack of jurisdiction. We grant appellant’s motion for an extension of time to file his notice of appeal. Appellant is ordered to request and make arrangements to pay for the clerk’s and the reporter’s records. The record is due within 60 days of the date of this order.

It is ordered March 7, 2007.

Before Chief Justice Law, Justices Puryear and Henson

Filed: March 7, 2007

