



NUMBER 13-16-00223-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

SHAHIN ZARAIENH,

APPELLANT,

v.

DALE & KLEIN, L.L.P., KATIE PEARSON KLEIN,
AND FERNANDO MANCIAS,

APPELLEES.

On appeal from the 92nd District Court
of Hidalgo County, Texas.

**MEMORANDUM OPINION
ON MOTION FOR REHEARING**

**Before Chief Justice Valdez and Justices Garza and Longoria
Memorandum Opinion Per Curiam**

On July 7, 2016, this Court dismissed this appeal for want of jurisdiction. See *Zaraienh v. Dale & Klein, L.L.P.*, No. 13-16-00223-CV, 2016 WL ___, at *_ (Tex. App.—Corpus Christi July 7, 2016, no pet. h.) (mem. op., per curiam). Appellant Shahin

Zaraieyh has now filed a motion for rehearing and to abate the appeal. After examining and fully considering the issues raised in this motions, we deny the motions, withdraw our prior opinion and judgment, and issue this opinion and a new judgment in their stead.

Appellant, Shahin Zaraieyh, filed a notice of appeal of a final judgment rendered on March 18, 2016 in an attorney's fee case involving appellees Dale & Klein, L.P., Katie Pearson Klein, and Fernando Mancias. However, on May 31, 2016, the trial court signed an order granting a motion for new trial filed by Dale & Klein, L.L.P. On June 8, 2016, appellee Katie Pierson Klein filed an opposed motion to dismiss this appeal for want of jurisdiction because, in light of the trial court's new trial order, there is no final judgment subject to appeal in this case. On July 5, 2016, appellant filed a response to the motion to dismiss contending that the new trial order does not grant a new trial as to the entire case and this Court should abate the appeal to allow the trial court to entertain motions for severance and for appellant to complete and file a petition for writ of mandamus regarding the new trial order.

In terms of appellate jurisdiction, appellate courts only have jurisdiction to review final judgments and certain interlocutory orders identified by statute. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). An order granting a new trial is an unappealable, interlocutory order. *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993) (per curiam). An order granting a new trial is not subject to review either by direct appeal from that order, or, as in the instant case, from a final judgment rendered after further proceedings in the trial court. *Cummins v. Paisan Constr. Co.*, 682 S.W.2d 235, 235–36 (Tex. 1984) (per curiam).

The Court, having examined and fully considered the motion to dismiss and the response thereto, is of the opinion that we lack jurisdiction over this appeal because there is no final appealable judgment. Accordingly, we GRANT the opposed motion to dismiss and we DISMISS the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a).

PER CURIAM

Delivered and filed the
4th day of August, 2016.