



NUMBER 13-19-00234-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**JUDITH ANN NEUSE AND ALL OCCUPANTS
OF 2115 ICHABOD LN, EDINBURG, TEXAS 78539,**

Appellants,

V.

**NATIONSTAR MORTGAGE, LLC,
DBA CHAMPION MORTGAGE COMPANY,**

Appellee.

**On appeal from the County Court at Law No. 8
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Hinojosa, and Perkes
Memorandum Opinion by Justice Perkes**

Appellant Russell Glenn Neuse, proceeding pro se, attempted to perfect an appeal from a September 14, 2017 judgment for possession of property and a May 8, 2019 writ of possession. We dismiss the attempted appeal for want of jurisdiction.

After receipt and review of Neuse's notice of appeal, the Clerk of the Court noted that it appeared that the order from which this appeal was taken was not a final appealable order. On May 24, 2019, the Clerk of this Court notified Neuse of this defect so that steps could be taken to correct the defect, if it could be done. See TEX. R. APP. P. 37.1, 42.3. Neuse was advised that, if the defect was not corrected within ten days from the date of receipt of this notice, the appeal would be dismissed for want of jurisdiction. Neuse did not file a response to this Court's notice.

On June 20, 2019, appellee Nationstar Mortgage, LLC d/b/a Champion Mortgage Company (Nationstar), filed a motion to dismiss the appeal on grounds that the September 14, 2017 judgment has already been appealed and the May 8, 2019 writ of possession is neither a final appealable order nor an interlocutory order that is subject to appeal. See *Neuse v. Nationstar Mortgage, LLC*, No. 13-17-00508-CV, 2018 WL 5093293, at *1 (Tex. App.—Corpus Christi Oct. 18, 2018, pet. denied) (mem. op.) (dismissing the appeal for want of prosecution). Neuse filed a response to Nationstar's motion to dismiss contending that this Court's dismissal of the previous appeal does not constitute res judicata barring the current appeal. Nationstar has further filed a reply in support of its motion to dismiss the appeal, arguing generally that Neuse has failed to show grounds to continue the appeal.

Generally, an appeal may only be taken from a final judgment. See *City of Watauga v. Gordon*, 434 S.W.3d 586, 588 (Tex. 2014); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Further, appellate courts have jurisdiction to consider appeals of interlocutory orders only if a statute explicitly provides for such an appeal.

Tex. A & M Univ. Sys. v. Koseoglu, 233 S.W.3d 835, 840 (Tex. 2007); see *City of Watauga*, 434 S.W.3d at 588. Where an appellate court lacks jurisdiction, it must dismiss the appeal. *Kilroy v. Kilroy*, 137 S.W.3d 780, 783 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

When a final judgment exists, a subsequent order that has no effect except to enforce provisions of the judgment does not qualify as another final judgment subject to appeal. *McFadin v. Broadway Coffeehouse, LLC*, 539 S.W.3d 278, 284 (Tex. 2018); *Wagner v. Warnasch*, 295 S.W.2d 890, 893 (Tex. 1956). If a post judgment order imposes obligations in addition to or in excess of those in the judgment, an appeal from the post judgment order is permissible, provided the order disposes of all pending issues and parties. *McFadin*, 539 S.W.3d at 284. In this regard, an order for a writ of possession is neither a final judgment nor an appealable interlocutory order. See TEX. R. CIV. P. 510 (addressing eviction cases); see also *Henderson v. EverBank*, No. 01-17-00061-CV, 2018 WL 708539, at *1 (Tex. App.—Houston [1st Dist.] Feb. 6, 2018, no pet.) (mem. op.) (dismissing an appeal from a post-judgment order for a writ of possession); *LaFontaine v. Hendricks Prop. Mgmt.*, No. 04-11-00044-CV, 2011 WL 1158399, at * 1 (Tex. App.—San Antonio Mar. 30, 2011, no pet.) (mem. op.) (holding that a writ of possession is neither a final judgment nor an appealable interlocutory order).

The Court, having considered Nationstar's motion to dismiss, is of the opinion that it has merit and should be granted. The final judgment in this matter has already been appealed and the writ of possession is neither a final judgment nor subject to interlocutory

appeal. Accordingly, the Court grants Nationstar's motion to dismiss and dismisses the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a),(c).

GREGORY T. PERKES
Justice

Delivered and filed the
25th day of July, 2019.