

NO. 12-11-00249-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

DALE S. WHEELER, DON M. WHEELER, § APPEAL FROM THE 7TH
GREGORY KENNEDY, JASON
BAKER AND AMBER BAKER,
APPELLANTS

V.

C & L INVESTMENT CO., INC., § JUDICIAL DISTRICT COURT
TYLER LAND COMPANY, JOHN
FOWLER “JACK” HAYS, REGINALD
WAYNE “REGGIE” HAYS d/b/a HAYS
REAL ESTATE, WILLIAM R. COFFEY,
AND TIM COFFEY,
APPELLEES § SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Dale S. Wheeler, Don M. Wheeler, Gregory Kennedy, Jason Baker, and Amber Baker, Appellants, appeal the trial court’s summary judgment in favor of C & L Investment Co., Inc., Tyler Land Company, John Fowler “Jack” Hays, Reginald Wayne “Reggie” Hays d/b/a Hays Real Estate, William R. Coffey, and Tim Coffey, Appellees. Appellants raise one issue on appeal. Because Appellants attempt to appeal an interlocutory order of the trial court, we dismiss the appeal for want of jurisdiction.

BACKGROUND

Don and Dale Wheeler purchased a tract of land in Smith County, Texas, from Tyler Land Company. Reggie Hays was the real estate agent involved in the transaction, and C & L Investment Co., Inc., financed the transaction. The Coffeys own adjoining land that affects the water distribution to the Wheelers’ land.

After the transaction was completed, the Wheelers were unhappy with several aspects of the property and the contract and believed they had been misled. They filed suit against Appellees alleging claims of common law fraud and civil conspiracy, fraud in a real estate transaction, breach of express and implied warranties, breach of contract, and conversion. The other appellants, Kennedy and the Bakers, were similarly situated to the Wheelers, and thus, brought the same claims against Appellees. Appellees answered and asserted a counterclaim that Appellants brought suit in bad faith and in violation of Texas Rule of Civil Procedure 13. *See* TEX. R. CIV. P. 13.

Appellees then filed a no evidence motion for summary judgment as to all of Appellants' claims. The motion was set by submission, without a hearing. Appellants, acting pro se, never responded to Appellees' motion. The trial court granted the motion with a notation that "[a]ll relief not expressly granted herein is denied." This appeal followed.

JURISDICTION

We must independently determine whether we have jurisdiction over an appeal, even if, as here, no party contests jurisdiction. *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004) (per curiam); *Tex. La Fiesta Auto Sales, LLC v. Belk*, 349 S.W.3d 872, 878 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Generally, an appeal may be taken only from a final judgment. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *see also Ogletree v. Mathews*, 262 S.W.3d 316, 319 n.1 (Tex. 2007) (unless statute specifically authorizes an interlocutory appeal, appellate courts have jurisdiction only over final judgments). A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record. *Lehmann*, 39 S.W.3d at 195.

We presume that a trial court's post-trial judgment is final. *In re Burlington Coat Factory Warehouse of McAllen, Inc.*, 167 S.W.3d 827, 829 (Tex. 2005) (orig. proceeding). There is no presumption of finality following a summary judgment. *Id.* Instead, a summary judgment is presumed to dispose of only those issues expressly presented to the trial court, not all issues in the case. *City of Beaumont v. Guillory*, 751 S.W.2d 491, 492 (Tex. 1988) (per curiam). While a notation that "all relief not expressly granted herein is denied" indicates that a post-trial judgment is final, it does not establish the finality of a summary judgment. *See Lehmann*, 39 S.W.3d at 203-04.

The trial court's order granting summary judgment does not specifically address Appellees' counterclaims for damages. It therefore does not dispose of all pending claims in the record. *See id.* at 195. Further, the order does not include unequivocal language that indicates finality. Accordingly, the order granting Appellees' motion for summary judgment is interlocutory, and we have no jurisdiction over this appeal. *See Burlington Coat Factory*, 167 S.W.3d at 830.

DISPOSITION

We *dismiss* the appeal for *want of jurisdiction*.

BRIAN HOYLE
Justice

Opinion delivered May 16, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

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