

NO. 12-16-00189-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***GRADY L. MUHAMMAD A/K/A
GRADY L. CHOICE,
APPELLANT***

§ ***APPEAL FROM THE***

V.

§ ***COUNTY COURT AT LAW NO. 2***

***PLAINS PIPELINE, L.P., A TEXAS
LIMITED PARTNERSHIP,
APPELLEE***

§ ***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Grady L. Muhammad a/k/a Grady L. Choice complains of a condemnation proceeding involving easement rights granted to Plains Pipeline, L.P. for the construction and operation of a pipeline through and across real property located in Smith County, Texas. In two issues, Muhammad appeals the trial court's final judgment of condemnation. We dismiss the appeal for want of jurisdiction.

BACKGROUND

On December 15, 2015, Plains filed a petition in condemnation action against Muhammad seeking easement rights to real property located in Smith County, Texas. On January 14, 2016, the trial court appointed three disinterested real property owners residing in Smith County to serve as special commissioners and assess damages by reason of the acquisition through eminent domain. On March 3, the special commissioners held a hearing to assess the damages at which Muhammad appeared in person. The special commissioners awarded \$3,191 in damages.¹ The award was filed with the court on March 18. No party objected to the award.

¹ The record indicates there were several identified interest holders in the real property made the subject of this condemnation. Of the identified interest holders, Plains settled with all but five prior to filing its petition, thus the total amount set by the special commissioners was to be divided among the remaining five interest holders. Muhammad is the only interest holder to appeal the trial court's final judgment.

On April 29, Plains filed a motion for judgment in the absence of objections. On June 2, the court held a hearing at which it entered a judgment of condemnation adopting the special commissioner's recommendation of \$3,191 in damages. This appeal followed.²

JURISDICTION

An eminent domain proceeding is not within the general jurisdiction of the court; any power to act is special and depends upon the eminent domain statute. *In re Energy Transfer Fuel, LP*, 250 S.W.3d 178, 180-181 (Tex. App.—Tyler 2008, orig. proceeding); *see also Gulf Energy Pipeline Co. v. Garcia*, 884 S.W.2d 821, 822 (Tex. App.—San Antonio 1994, orig. proceeding). The initial filing of the petition and commissioner's hearing is an administrative proceeding that converts into a normal pending cause only when objections to the commissioners' award are filed. *In re Energy Transfer Fuel, LP*, 250 S.W.3d at 181. The law allows for a party dissatisfied with the special commissioner's award a certain amount of time to file objections. *Musquiz v. Harris Cty. Flood Control Dist.*, 31 S.W.3d 664, 666-67 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

Specifically, the property code provides the following:

A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

TEX. PROP. CODE ANN. § 21.018(a) (West 2014). If no party to the condemnation proceeding files timely objections to the special commissioner's findings, then the court having jurisdiction shall adopt the commissioners' findings as the judgment of the court. *See In re Energy Transfer Fuel, LP*, 250 S.W.3d at 181; TEX. PROP. CODE ANN. § 21.061 (West 2014). Absent objections

² Plains argues that Muhammad's notice of appeal was untimely because it was filed more than thirty days after the judgment was signed. *See* TEX. R. APP. P. 26.1. The record indicates the court signed the judgment on June 2, 2016, making the deadline to file a notice of appeal July 2. However, Muhammad's notice of appeal was not filed until July 5. We take judicial notice that July 2, 2016 was a Saturday, and the following Monday July 4, 2016 was a legal holiday. Accordingly, Muhammad's notice was timely filed. *See Burkam v. Ward*, 336 S.W.2d 452, 453 (Tex. Civ. App.—Texarkana 1960, no writ) (the court took judicial notice of the calendar and that October 17, 1959 was a Saturday and that November 16, 1959, was a Monday, and that neither of these days was a legal holiday); *see also* TEX. R. APP. P. 4.1 ("the last of the period is included, but if that day is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday").

from either party, the trial court’s function is ministerial; it lacks jurisdiction to do anything except render judgment based upon the commissioners’ award. *In re Energy Transfer Fuel, LP*, 250 S.W.3d at 181.

No appeal can be taken when the trial court renders judgment based on an award to which neither party filed objections, because it is the judgment of the special tribunal. *Rose v. State*, 497 S.W.2d 444, 445 (Tex. 1973) (holding that such a judgment is ministerial and is not a judgment in a civil suit, because the proceedings did not reach the stage of “a case in court”); *see also Ford v. Dallas Indep. Sch. Dist.*, No. 05-04-01714-CV, 2005 WL 1552647, at *1 (Tex. App.—Dallas July 5, 2005, no pet.) (mem. op.) (dismissing appeal, in part, for want of jurisdiction when no timely objections were made to commissioners’ award); *see also Restitution Revival v. Waco Indep. Sch. Dist.*, No. 10-02-00248-CV, 2003 WL 22359189 at *1 (Tex. App.—Waco Oct. 15, 2003, pet. denied) (mem. op.) (“It is well settled that a judgment which a court renders on the basis of an award to which there have been no objections is the judgment of a special tribunal and is not, therefore, a judgment from which an appeal will lie[.]”); *Musquiz*, 31 S.W.3d at 667.

In this case, the record demonstrates that neither party filed objections to the special commissioners’ award.³ Accordingly, because no objections were made to the commissioners’ award, we have no jurisdiction to consider this appeal. *See Rose*, 497 S.W.2d at 445; *see also Ford*, 2005 WL 1552647, at *1; *see also Restitution Revival*, 2003 WL 22359189 at *1.

DISPOSITION

Because this Court lacks jurisdiction to consider Muhammad’s appeal, we *dismiss* the appeal for *want of jurisdiction*.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 21, 2017.

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

(PUBLISH)

³ A pro se litigant, such as Muhammad, is held to the same standards as licensed attorneys and must comply with all applicable rules of procedure. *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso, 2007, no pet.). But for this rule, pro se litigants would benefit from an unfair advantage over those parties who are represented by counsel. *Id.*



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 21, 2017

NO. 12-16-00189-CV

GRADY L. MUHAMMAD A/K/A GRADY L. CHOICE,

Appellant

V.

PLAINS PIPELINE, L.P., A TEXAS LIMITED PARTNERSHIP,

Appellee

Appeal from the County Court at Law No 2
of Smith County, Texas (Tr.Ct.No. 64,930-A)

THIS CAUSE came to be heard on the appellate record; and the same being considered, it is the opinion of this court that this court is without jurisdiction of the appeal, and that the appeal should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by this court that this appeal be, and the same is, hereby **dismissed for want of jurisdiction**; and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.

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