

TEXAS COURT OF APPEALS, FOURTEENTH DISTRICT, HOUSTON

**Fleming & Associates, L.L.P. n/k/a Fleming, Nolen & Jez, L.L.P. and
George Fleming v. Charles Kirklin, Stephen Kirklin, Paul Kirklin,
and the Kirklin Law Firm, P.C.**

Nos. 14-15-00238-CV and 14-15-00369-CV · No. Nos. 14-15-00238-CV and 14-15-00369-CV · Decided
October 29, 2015

SUMMARY

The Fourteenth Court of Appeals dismissed two attempted appeals for want of jurisdiction. It held that no statute authorized an interlocutory appeal from orders granting Texas Citizens' Participation Act motions to dismiss, and that the summary-judgment order was not final because it did not dispose of all parties' claims, including claims for attorneys' fees. The opinion was issued per curiam on October 29, 2015.

CASE DETAILS

COURT	Texas Court of Appeals, Fourteenth District, Houston
WRITING FOR THE COURT	Chief Justice Frost; Justice Christopher; Justice Donovan
JURISDICTION	Texas
DECIDED	October 29, 2015
DOCKET	Nos. 14-15-00238-CV and 14-15-00369-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants attempted interlocutory appeals from orders granting Texas Citizens' Participation Act motions to dismiss and granting summary judgment. The court of appeals dismissed both appeals for want of jurisdiction.
STANDARD OF REVIEW	The court reviewed its own subject-matter jurisdiction de novo and determined whether the challenged orders were final or statutorily appealable interlocutory orders.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Fleming & Associates, L.L.P. n/k/a Fleming, Nolen & Jez, L.L.P., George Fleming v. Charles Kirklin, Stephen Kirklin, Paul Kirklin, The Kirklin Law Firm, P.C.

TOPICS

appellate jurisdiction

interlocutory appeal

final judgment rule

motions to dismiss

summary judgment

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over an interlocutory appeal from orders granting TCPA motions to dismiss under Chapter 27 of the Texas Civil Practice and Remedies Code.
2. Whether the court of appeals had jurisdiction over an appeal from a summary-judgment order that did not dispose of all parties' claims, including unresolved attorneys' fees and sanctions.

HOLDINGS

1. Texas courts of appeals lack jurisdiction over an interlocutory appeal from an order granting a TCPA motion to dismiss because no statute explicitly authorizes that appeal.
2. The court lacked jurisdiction over the summary-judgment appeal because the order did not dispose of all parties and claims, including the Jackson Parties' unresolved claims for attorneys' fees, and no statute authorized an interlocutory appeal from that order.

KEY QUOTATIONS

“Because the orders do not dispose of all parties and all claims and because no statute provides for an appeal from either of these interlocutory orders, we dismiss the appeals for want of jurisdiction.” (2)

“Nonetheless, no statute explicitly provides for an interlocutory appeal of an order that grants such a motion.” (3)

“The order does not dispose of all parties and all claims and because no statute explicitly provides for an appeal from this interlocutory order this court does not have jurisdiction over the summary judgment appeal.” (5)

FACTUAL BACKGROUND

Fleming & Associates handled claims for more than 8,000 clients in diet drug litigation. After the litigation settled, Fleming alleged that the Kirklin Parties and Jackson Parties solicited former clients to pursue civil litigation against Fleming and Fleming & Associates concerning settlement expenses. The defendants filed TCPA motions to dismiss, and the Kirklin Parties later sought traditional and no-evidence summary judgment and Rule 13 sanctions.

PROCEDURAL HISTORY

Fleming & Associates sued the Kirklin Parties and Jackson Parties concerning alleged solicitation of Fleming's former diet-drug-litigation clients. The trial court granted certain TCPA motions to dismiss, later denied a request for attorneys' fees and sanctions, and granted the Kirklin Parties' traditional and no-evidence summary-judgment

motion, while leaving claims and fee issues unresolved. Appellants appealed, and the court of appeals dismissed both matters because the orders were interlocutory and no statute authorized the appeals.

DISPOSITION

dismissed

CASES CITED

- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 195 (Tex. 2001)
- Rusk State Hosp. v. Black, 392 S.W.3d 88, 92 (Tex. 2012)
- CMH Homes v. Perez, 340 S.W.3d 444, 447 (Tex. 2011)
- Stary v. DeBord, 967 S.W.3d 352, 352-53 (Tex. 1998) (per curiam)
- Schlumberger Ltd. v. Rutherford, No. 01-14-00776-CV, 2015 WL 5026076, at *3-*8 (Tex. App.-Houston [1st Dist.] Aug. 25, 2015, no pet. h.)
- Shankles v. Gordon, No. 05-14-01444-CV, 2015 WL 3454429, at *1 (Tex. App.-Dallas June 1, 2015, no pet.) (mem. op.)
- Jardin v. Marklund, 431 S.W.3d 765, 766, 769 (Tex. App.-Houston [14th Dist.] 2014, no pet.)
- Edwards v. Kaye, 9 S.W.3d 310, 314 (Tex. App.-Houston [14th Dist.] 1999, pet. denied)
- Direct Commercial Funding, Inc. v. Beacon Hill Estates, LLC, 407 S.W.3d 398, 399-401 & n.3 (Tex. App.-Houston [14th Dist.] 2013, no pet.)
- McNally v. Guevara, 52 S.W.3d 195, 195 (Tex. 2001)