

COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT AT FORT WORTH

Jeffrey Polk Killian v. Angela Nicole Killian

No. 02-18-00239-CV · No. No. 02-18-00239-CV · Decided September 27, 2018

SUMMARY

The Texas Court of Appeals, Second Appellate District, dismissed Jeffrey Polk Killian's appeal for want of jurisdiction. The notice of appeal was premature because the trial court had not signed an appealable order or final judgment, and no such order was furnished by the deadline set by the appellate court.

CASE DETAILS

COURT	Court of Appeals of Texas, Second Appellate District at Fort Worth
WRITING FOR THE COURT	Bonnie Sudderth, Chief Justice; Mark T. Walker, Justice; Wade Meier, Justice
JURISDICTION	Texas
DECIDED	September 27, 2018
DOCKET	No. 02-18-00239-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the 16th District Court of Denton County after the appellant filed a notice of appeal before the trial court signed an appealable order or final judgment.
PRECEDENTIAL VALUE	Memorandum opinion; precedential status is not stated in the opinion text.
PARTIES	Jeffrey Polk Killian v. Angela Nicole Killian

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- family law

PRACTICE AREAS

- appellate procedure
- family law

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over an appeal filed before the trial court signed an appealable order or final judgment.

HOLDINGS

1. The court lacked jurisdiction because no signed appealable order or final judgment had been furnished, and it therefore dismissed the appeal for want of jurisdiction.

KEY QUOTATIONS

“Because neither party has furnished us with said order, we dismiss the appeal for want of jurisdiction.” (2)

FACTUAL BACKGROUND

The trial court clerk informed the court of appeals that the trial judge had not signed an appealable order or final judgment when Killian filed his notice of appeal. The appellate court gave the parties an opportunity to establish appellate jurisdiction by furnishing a signed appealable order, but no such order was provided.

PROCEDURAL HISTORY

Jeffrey Polk Killian filed a notice of appeal on July 27, 2018. The court of appeals notified the parties that the appeal appeared premature because the trial judge had not signed an appealable order or final judgment, and it gave them until August 16, 2018, to provide a signed order. Neither party furnished such an order, so the court dismissed the appeal for want of jurisdiction.

DISPOSITION

dismissed

OPINION

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth

No. 02-18-00239-CV _____

JEFFREY POLK KILLIAN, Appellant V. ANGELA NICOLE KILLIAN, Appellee On Appeal from the 16th District Court Denton County, Texas Trial Court No. 16-04048-16 Before Sudderth, C.J.; Walker and Meier, JJ. Opinion by Chief Justice Sudderth MEMORANDUM OPINION After Appellant Jeffrey Polk Killian filed a notice of appeal on July 27, 2018, we notified him of our concern that we lacked jurisdiction over the appeal because the trial court clerk had informed us that the trial judge had not yet signed an appealable order or a final judgment, making the notice of appeal premature.

See Tex. R. App. P. 26.1(a) (setting deadline to file notice of appeal “after the judgment is signed”), 27.1(a) (providing that in a civil case, a prematurely filed notice of appeal is effective

and deemed filed on the day of, but after, the event that begins the period for perfecting the appeal).

We gave the parties until August 16, 2018, to furnish this court with a signed copy of an appealable order and warned that we would dismiss the appeal for want of jurisdiction if no order was signed and furnished to us by that date. See Tex. R. App. P. 42.3(a) (providing for involuntary dismissal for want of jurisdiction).

Because neither party has furnished us with said order, we dismiss the appeal for want of jurisdiction. See Tex. R. App. P. 43.2(f) (providing for dismissal of appeal). /s/ Bonnie Sudderth
Bonnie Sudderth Chief Justice Delivered: September 27, 2018 2