

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

Chelsea L. Davis v. McKool Smith, P.C.

No. 05-13-01744-CV · No. 05-13-01744-CV · Decided May 14, 2014

SUMMARY

The Fifth District Court of Appeals of Texas dismissed the appeal for lack of jurisdiction because the challenged consolidation and implied stay orders were neither final judgments nor appealable interlocutory orders. The court ordered McKool Smith, P.C. to recover its appellate costs from Chelsea L. Davis.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Elizabeth Lang-Miers; Bridges; Francis; Lang-Miers
JURISDICTION	Texas
DECIDED	May 14, 2014
DOCKET	05-13-01744-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant appealed orders transferring and consolidating the action and an alleged implied order staying the action. The court questioned its appellate jurisdiction and, after appellant failed to respond, dismissed the appeal for lack of jurisdiction.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and appealability.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Chelsea L. Davis v. McKool Smith, P.C.

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Commercial litigation

QUESTIONS PRESENTED

1. Whether the appellate court had jurisdiction over an appeal from an order transferring and consolidating the case with another case.
2. Whether the alleged implied order staying the action was a final judgment or otherwise appealable interlocutory order.
3. Whether the appeal should be dismissed for lack of appellate jurisdiction.

HOLDINGS

1. Neither the order transferring and consolidating the cases nor the alleged implied order staying the action constituted a final judgment or an otherwise appealable interlocutory order.
2. The appeal must be dismissed because the court lacked jurisdiction over an appeal from a nonfinal and nonappealable order.

KEY QUOTATIONS

“Generally, this Court has jurisdiction only over appeals from final judgments.” (at 2)

“A final judgment is one that disposes of all pending parties and claims.” (at 2)

“Moreover, an order consolidating separate lawsuits is a non-appealable interlocutory order.” (at 2)

FACTUAL BACKGROUND

The trial court entered an order transferring and consolidating the action with a case in the 254th Judicial District Court of Dallas County. Davis also challenged an alleged implied order staying the action for purposes unrelated to a motion to seal. The appellate record did not include a final judgment or another appealable order, and Davis did not respond to the appellate court's jurisdictional letter.

PROCEDURAL HISTORY

The matter originated in the 298th Judicial District Court of Dallas County, Texas, under trial court cause number DC-13-12834-M. Davis filed notices of appeal challenging an order transferring and consolidating the case with another case and an alleged implied stay order. The court determined that neither order was a final judgment or otherwise appealable interlocutory order and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)
- *Carter v. Sun City Towing & Recovery, L.P.*, 225 S.W.3d 161, 162 (Tex. App.—El Paso 2005, no pet.)

OPINION

PER CURIAM.

DISMISS; and Opinion Filed May 14, 2014. S In The Court of Appeals Fifth District of Texas at Dallas No. 05-13-01744-CV CHELSEA L. DAVIS, Appellant V. MCKOOL SMITH, P.C., Appellee On Appeal from the 298th Judicial District Court Dallas County, Texas Trial Court Cause No. DC-13-12834-M MEMORANDUM OPINION Before Justices Bridges, Francis, and Lang-Miers Opinion by Justice Lang-Miers In a letter dated April 8, 2014, we questioned our jurisdiction over this appeal because there did not appear to be an appealable order.

We instructed appellant to file a letter brief within ten days addressing our jurisdictional concern. As of today's date, appellant has not responded. Generally, this Court has jurisdiction only over appeals from final judgments. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). A final judgment is one that disposes of all pending parties and claims.

See *id.* The record before this Court includes two notices of appeal and one amended notice of appeal. In one notice of appeal and the amended notice of appeal, appellant states that she is appealing the trial court's order transferring the case and consolidating it with a case in the 254th Judicial District Court of Dallas County, Texas.

In the other notice of appeal, appellant states that she is appealing the "implied order to stay this action for all purposes other than matters relating to the motion to seal by canceling the sealing hearing..." Neither the order of consolidation nor the "implied order" constitutes a final judgment. See *Lehmann*, 39 S.W.3d at 195.

Moreover, an order consolidating separate lawsuits is a non-appealable interlocutory order. See *Carter v. Sun City Towing & Recovery, L.P.*, 225 S.W.3d 161, 162 (Tex. App.—El Paso 2005, no pet.). Because appellant is not appealing from a final judgment or otherwise appealable interlocutory order, this Court lacks jurisdiction.

For this reason, we dismiss this appeal. See TEX. R. APP. P. 42.3(a). /Elizabeth Lang-Miers/ ELIZABETH LANG-MIERS JUSTICE 131744F.P05 -2- S Court of Appeals Fifth District of Texas at Dallas JUDGMENT CHELSEA L. DAVIS, Appellant On Appeal from the 298th Judicial District Court, Dallas County, Texas. No. 05-13-01744-CV V. Trial Court Cause No. DC-13-12834-M. Opinion delivered by Justice Lang-Miers.

MCKOOL SMITH, P.C., Appellee Justices Bridges and Francis, participating. In accordance with this Court's opinion of this date, the appeal is DISMISSED. It is ORDERED that appellee, MCKOOL SMITH, P.C., recover its costs of this appeal from appellant, CHELSEA L. DAVIS. Judgment entered this 14th day of May, 2014. /Elizabeth Lang-Miers/ ELIZABETH LANG-MIERS JUSTICE -3-