

COURT OF APPEALS FOR THE SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

J.E. Pendleton v. X. Corp., a Delaware Corporation Headquartered
in Bastrop, Texas

No. 02-26-00261-CV · No. 02-26-00261-CV · Decided May 28, 2026

SUMMARY

The Texas Court of Appeals for the Second District dismissed J.E. Pendleton’s appeal for lack of jurisdiction. The trial court’s Rule 91a dismissal order was not a final judgment because the appellee’s claim for attorney’s fees remained unresolved, and no statute authorized an interlocutory appeal. The court also noted that neither party timely responded to its jurisdictional-warning letter.

CASE DETAILS

COURT	Court of Appeals for the Second Appellate District of Texas at Fort Worth
WRITING FOR THE COURT	Bassel, J.; Womack, J.; Wallach, J.
JURISDICTION	Court of Appeals for the Second Appellate District of Texas at Fort Worth
DECIDED	May 28, 2026
DOCKET	02-26-00261-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant attempted to appeal from a trial court order granting a Texas Rule of Civil Procedure 91a dismissal and awarding attorney's fees and costs, while leaving the amount of fees unresolved.
STANDARD OF REVIEW	De novo review of the court's appellate jurisdiction and whether the trial court's order constitutes a final judgment.
PRECEDENTIAL VALUE	Published memorandum opinion; no reporter citation appears in the source.
PARTIES	J.E. Pendleton v. X. Corp., a Delaware Corporation Headquartered in Bastrop, Texas

TOPICS

appellate jurisdiction

final judgment rule

interlocutory appeal

attorney fees

appellate procedure

PRACTICE AREAS

appellate procedure

civil procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court's Rule 91a dismissal order was a final judgment when the amount of attorney's fees remained unresolved.
2. Whether the court of appeals had jurisdiction over an interlocutory appeal from the Rule 91a dismissal order absent statutory authorization.

HOLDINGS

1. The dismissal order was not a final judgment because it left X. Corp.'s claim for attorney's fees unresolved and did not clearly and unequivocally state that it finally disposed of all claims and parties.
2. The court of appeals lacked jurisdiction because the challenged order was interlocutory and no statute authorized an interlocutory appeal from the order.

KEY QUOTATIONS

“Where, as here, a judgment is rendered without a conventional trial on the merits, the judgment “is not final unless (1) it actually disposes of every pending claim and party or (2) it clearly and unequivocally states that it finally disposes of all claims and parties, even if it does not actually do so.”” (2)

“Because the fee issue is still pending, the dismissal order is not final.” (3)

“Because the dismissal order is not a final judgment and because an interlocutory appeal of the order is not authorized by statute, we conclude that we lack jurisdiction over the appeal.” (3)

FACTUAL BACKGROUND

The trial court entered an April 23, 2026 order dismissing Pendleton's claims with prejudice under Texas Rule of Civil Procedure 91a. The order identified X. Corp. as the prevailing party and awarded costs and reasonable and necessary attorney's fees, but left the amount of fees to be determined upon a later application. The order did not expressly state that it disposed of all parties and claims.

PROCEDURAL HISTORY

The 96th District Court of Tarrant County dismissed Pendleton's claims with prejudice and stated that X. Corp. was entitled to costs and reasonable and necessary attorney's fees, with the amount to be determined upon proper application. The court of appeals notified the parties of its concern that the order was interlocutory and that it lacked jurisdiction; neither party timely responded. The court dismissed the appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Bison Bldg. Materials, Ltd. v. Aldridge, 422 S.W.3d 582, 585 (Tex. 2012) (op. on reh'g)
- DRC Constr. v. Pickle, No. 01-20-00576-CV, 2022 WL 479918, at *4 (Tex. App.—Houston [1st Dist.] Feb. 17, 2022, no pet.)
- In re Guardianship of Jones, 629 S.W.3d 921, 924 (Tex. 2021)
- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 205–06 (Tex. 2001)
- Carroll v. Metro Office Equip., Inc., No. 02-22-00087-CV, 2022 WL 1682156, at *2 (Tex. App.—Fort Worth May 26, 2022, no pet.)

OPINION

J.E. Pendleton v. X. Corp., a Delaware Corporation Headquartered in Bastrop, Texas

PER CURIAM.

In the Court of Appeals Second Appellate District of Texas at Fort Worth
_____ No. 02-26-00261-CV _____ J.E.
PENDLETON, Appellant V.

X. CORP., A DELAWARE CORPORATION HEADQUARTERED IN BASTROP,

TEXAS, Appellee On Appeal from the 96th District Court Tarrant County, Texas Trial Court No. 096-375721-26 Before Bassel, Womack, and Wallach, JJ. Per Curiam Memorandum Opinion
MEMORANDUM OPINION

Appellant J.E. Pendleton attempts to appeal from the trial court's April 23, 2026 dismissal order. See Tex. R. Civ. P. 91a. The order specifically states that Appellee is the prevailing party, that it shall recover all costs and its reasonable and necessary attorney's fees, and that the trial court will determine the amount of such fees and costs "upon proper application." Unless specifically authorized by statute, Texas appellate courts have jurisdiction only to review final judgments. *Bison Bldg. Materials, Ltd. v. Aldridge*, 422 S.W.3d 582, 585 (Tex. 2012) (op. on reh'g). Because no statute authorizes an interlocutory appeal in this case, this court has jurisdiction over this appeal only if the trial court's dismissal order is a final judgment. See *DRC Constr. v. Pickle*, No. 01-20-00576-CV, 2022 WL 479918, at *4 (Tex. App.—Houston [1st Dist.] Feb. 17, 2022, no pet.) (recognizing that "[n]o statutory or other authority allows for an interlocutory appeal from an order that grants a Rule 91a motion to dismiss but does not dispose of all pending claims"). Where, as here, a judgment is rendered without a conventional trial on the merits, the judgment "is not final unless (1) it actually disposes of every pending claim and party or (2) it clearly and unequivocally states that it finally disposes of all claims and parties, even if it does not actually do so." *In re Guardianship of Jones*, 629 S.W.3d 921, 924 (Tex. 2021); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 205–06 (Tex. 2001). The trial court's dismissal order does neither. 2 While the dismissal order disposes of all of Pendleton's claims with prejudice, Appellee's claim for

attorney's fees remains pending. See *Carroll v. Metro Office Equip., Inc.*, No. 02-22-00087-CV, 2022 WL 1682156, at *2 (Tex. App.—Fort Worth May 26, 2022, no pet.) (citing *DRC Constr.*, 2022 WL 479918, at *3–4, which recognized that a request for fees under Rule 91a is “an affirmative claim for relief” that, if left pending, can prevent a judgment from being final). Although the order purports to award Appellee attorney's fees, it does not specify the amount of fees awarded and thus fails to dispose of the claim. See *id.* (holding Rule 91a dismissal order interlocutory when dismissal order awarded attorney's fees but left amount blank). Nor does the dismissal order contain “clear and unequivocal” language of finality. Nothing in the order states that it “disposes of all parties and all claims and is appealable,” nor is there anything in the record indicating a similar intent. See *id.* (citing *Jones*, 629 S.W.3d at 924, which noted that “[t]alismanic phrases are not required or dispositive,” but that the quoted statement would leave no doubt as to the trial court's intention). Rather, the dismissal order clearly leaves an unresolved matter: the amount of fees to be awarded. See *id.* Because the fee issue is still pending, the dismissal order is not final. Accordingly, we notified the parties of our concern that we lacked jurisdiction over this appeal and warned that we would dismiss the appeal unless, by May 7, 2026, a 3 party showed grounds for continuing it. See Tex. R. App. P. 42.3(a), 44.3. Neither party timely responded to our letter. 1 Because the dismissal order is not a final judgment and because an interlocutory appeal of the order is not authorized by statute, we conclude that we lack jurisdiction over the appeal. We therefore dismiss the appeal for lack of jurisdiction. See Tex. R. App. P. 42.3(a), 43.2(f). Per Curiam Delivered: May 28, 2026 After the deadline to respond had passed, Pendleton emailed the court the 1 following: On April 29, I filed a docketing statement in 02-26-00261-CV making clear that the appeal is from a final judgment that disposes of all parties and issues. . . . I left a comment in the envelope citing *Lehmann v. Har- Con Corp.*, 39 S.W.3d 191 (Tex. 2001) (“it is a final judgment as to all claims and all parties”). Pendleton's docketing statement and the citation that he provided do not show grounds for continuing this appeal. 4