

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS  
CHRISTI-EDINBURG**

**Esteban Hurtado, et al. v. Maria De Jesus Gamez, et al.**

Hurtado v. Gamez · No. 13-10-00158-CV · Decided February 3, 2011

**SUMMARY**

The Texas Thirteenth Court of Appeals dismissed the appeal for want of jurisdiction. The court held that orders denying a plea in abatement and striking a plea in intervention were not final, appealable orders, and no statutory exception applied. The court granted the appellees' motions to dismiss and dismissed the related motions as moot.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Court of Appeals of Texas, Thirteenth District, Corpus Christi-Edinburg                                                                                                                                                                                                                                                                                                                                              |
| <b>WRITING FOR THE COURT</b> | Per Curiam; Chief Justice Valdez; Justice Rodriguez; Justice Benavides                                                                                                                                                                                                                                                                                                                                               |
| <b>JURISDICTION</b>          | Texas                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>DECIDED</b>               | February 3, 2011                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>DOCKET</b>                | 13-10-00158-CV                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>DISPOSITION</b>           | dismissed                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>PROCEDURAL POSTURE</b>    | Appellants attempted to appeal orders denying their plea in abatement and granting a motion to strike their plea in intervention. Appellees moved to dismiss for lack of appellate jurisdiction because the orders were neither final judgments nor statutorily authorized interlocutory orders.                                                                                                                     |
| <b>STANDARD OF REVIEW</b>    | The court reviewed the clerk's record and the jurisdictional question de novo as a matter of appellate jurisdiction.                                                                                                                                                                                                                                                                                                 |
| <b>PRECEDENTIAL VALUE</b>    | published                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>PARTIES</b>               | Esteban Hurtado, Gerardo Hurtado, San Juanita Davila, Cristela Hurtado, individually and as next friend of Juan Luis Huerta III, Misael Alejandro Huerta, and Britney Anaid Huerta, Cristela Hurtado, as administratrix of the estate of Alma Rosa Huerta v. Maria De Jesus Gamez, individually and as heir of Juan Jose Gamez, deceased, and as next friend of Juan Jose Gamez, Jr., Carlissa Monique Gamez, Adrian |

## TOPICS

appellate jurisdiction

interlocutory appeal

appellate procedure

civil procedure

## PRACTICE AREAS

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the orders denying the plea in abatement and striking the plea in intervention were final, appealable orders.
2. Whether the court of appeals had jurisdiction over the attempted appeal in the absence of a final judgment or statutory authorization for an interlocutory appeal.

## HOLDINGS

1. The court of appeals lacked jurisdiction because the orders were not final judgments and were not statutorily authorized interlocutory orders.

## KEY QUOTATIONS

“*The appeal is DISMISSED FOR WANT OF JURISDICTION.*” (at 2-3)

## FACTUAL BACKGROUND

Appellants sought review of orders denying a plea in abatement and striking a plea in intervention in ongoing trial-court proceedings. No final judgment had been rendered, and the court identified no statutory authorization or applicable exception permitting an interlocutory appeal from the orders.

## PROCEDURAL HISTORY

The 398th District Court of Hidalgo County signed orders on March 29, 2010, denying appellants' plea in abatement and striking their plea in intervention. Appellants attempted to appeal those orders, and the appellees moved to dismiss. The court of appeals granted the motions and dismissed the appeal for want of jurisdiction.

## DISPOSITION

dismissed

## CASES CITED

- *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)

- Metromedia Long Distance, Inc. v. Hughes, 810 S.W.2d 494, 499 (Tex. App.—San Antonio 1991, writ denied)

## OPINION

PER CURIAM.

NUMBER 13-10-00158-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS  
CORPUS CHRISTI - EDINBURG

ESTEBAN  
HURTADO, ET AL., Appellants, v. MARIA DE JESUS GAMEZ, ET AL., Appellees.

On appeal from the  
398th District Court of Hidalgo County, Texas.

## MEMORANDUM

OPINION Before Chief Justice Valdez and Justices Rodriguez and Benavides Memorandum Opinion Per Curiam Appellants, Esteban Hurtado, Gerardo Hurtado, San Juanita Davila, and Cristela Hurtado, individually and as next friend of Juan Luis Huerta III, Misael Alejandro Huerta, and Britney Anaïd Huerta, and Cristela Hurtado as administratrix of the estate of Alma Rosa Huerta, attempted to perfect an appeal from orders signed on March 29, 2010, denying their plea in abatement and granting a motion to strike their plea in intervention.

This cause is before the Court on the clerk's record, appellants' brief, and various motions as further described herein. On August 2, 2010, appellees, Maria De Jesus Gamez, individually and as heir of Juan Jose Gamez, deceased, and as next friend of Juan Jose Gamez, Jr., and Carlissa Monique Gamez ("Gamez") filed a motion to dismiss the appeal for want of jurisdiction on grounds there is no final or appealable judgment.

That same day, these appellees also filed a motion to stay briefing pending ruling on their motion to dismiss the appeal. On August 10, 2010, appellee, Adrian Garcia d/b/a Magnum Force Security ("Magnum") also filed a motion to dismiss the appeal on grounds that neither order subject to appeal is a final judgment, nor are appeals from these orders authorized by statute.

That same day, this appellee further filed a motion to stay briefing pending ruling on his motion to dismiss the appeal. On August 13, 2010, Magnum also filed a motion for extension of time to file his brief. On August 16, 2010, appellee, First Mercury Insurance Company (incorrectly named as "First Mercury Insurance Services, Inc.) filed a motion to dismiss on grounds that no final judgment had been rendered and that it was not a party in the proceedings before the trial court.

That same day, this appellee also filed a motion to stay briefing pending a ruling on its motion to dismiss the appeal. On August 19, 2010, appellants filed responses to the Gamez motion to dismiss and motion to stay briefing and Magnum's motion to dismiss and stay briefing. Upon review of

the documents before the Court, it appears that the orders from which this appeal was taken were not final, appealable orders.

In terms of appellate jurisdiction, appellate courts only have jurisdiction to review final judgments and certain 2 interlocutory orders identified by statute. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). When a trial court strikes a plea in intervention, the order generally cannot be appealed until after the trial court renders a final judgment in the case.

*Metromedia Long Distance, Inc. v. Hughes*, 810 S.W.2d 494, 499 (Tex. App.–San Antonio 1991, writ denied). This case fails to present any circumstance which would require the application of an exception to this rule. The Court, having considered the clerk's record, appellant's brief, the motions and responses, is of the opinion that the appeal should be dismissed for want of jurisdiction.

See *id.* Accordingly, we GRANT the three motions to dismiss filed by appellees. We DISMISS AS MOOT the three motions to stay briefing filed by and we likewise DISMISS AS MOOT the motion for extension of time to file a brief filed by First Mercury Insurance Company.

The appeal is DISMISSED FOR WANT OF JURISDICTION. PER CURIAM Delivered and filed the 3rd day of February, 2011. 3