

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Hari Prasad Kalakonda and Latha Kalakonda v. Aspri Investments, LLC

Kalakonda v. Aspri Investments · No. 04-15-00340-CV · Decided June 22, 2015

SUMMARY

The Fourth Court of Appeals of Texas ordered Hari Prasad Kalakonda and Latha Kalakonda to show cause why their interlocutory appeal should not be dismissed for lack of jurisdiction. The court concluded that the notice of appeal from an order denying dissolution of a temporary injunction appeared to have been filed after the applicable deadline and the fifteen-day extension period.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
JURISDICTION	Texas
DECIDED	June 22, 2015
DOCKET	04-15-00340-CV
DISPOSITION	other
PROCEDURAL POSTURE	Accelerated interlocutory appeal from an order denying appellants' motion to dissolve a temporary injunction; the court ordered appellants to show cause why the appeal should not be dismissed for lack of jurisdiction based on an untimely notice of appeal.
PRECEDENTIAL VALUE	Published
PARTIES	Hari Prasad Kalakonda, Latha Kalakonda v. Aspri Investments, LLC

TOPICS

interlocutory appeal

appellate jurisdiction

appellate procedure

injunctions

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

Injunctions

QUESTIONS PRESENTED

1. Whether the court of appeals had jurisdiction over an accelerated interlocutory appeal when the notice of appeal and any implied motion for extension were filed after the applicable deadlines.

2. Whether the appeal should be dismissed for lack of jurisdiction or whether appellants should first be ordered to show cause.

HOLDINGS

1. In an accelerated appeal, the notice of appeal is due within twenty days after the appealable order is signed, and a motion for extension may be granted only when the notice and extension request are filed within the subsequent fifteen-day grace period.
2. A timely notice of appeal is required to invoke the jurisdiction of the court of appeals; after the applicable grace period expires, the court lacks jurisdiction to entertain the appeal.

KEY QUOTATIONS

“A timely notice of appeal is required to invoke this court’s jurisdiction.”

FACTUAL BACKGROUND

The trial court entered an order denying the appellants' motion to dissolve a temporary injunction. The appellants sought an accelerated interlocutory appeal from that order. Their notice of appeal was not timely filed, and their letter construed as a request to invoke appellate jurisdiction was filed one day after the fifteen-day grace period for seeking an extension had expired.

PROCEDURAL HISTORY

The Bexar County district court entered an April 13, 2015 order denying the Kalakondas' motion to dissolve a temporary injunction. Because an appeal from that order is accelerated, the notice of appeal was due within twenty days, with a possible fifteen-day extension period. The appellants' letter, construed as a bona fide attempt to invoke appellate jurisdiction, was filed after the extension period expired. The court therefore ordered a response explaining why the appeal should not be dismissed for lack of jurisdiction.

DISPOSITION

other

CASES CITED

- In re K.A.F., 160 S.W.3d 923, 925-927 (Tex. 2005)
- Verburgt v. Dorner, 959 S.W.2d 615, 615 (Tex. 1997)
- Sweed v. Nye, 323 S.W.3d 873 (Tex. 2010)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas June 22, 2015 No. 04-15-00340-CV Hari Prasad KALAKONDA and Latha Kalakonda, Appellants v. ASPRI INVESTMENTS, LLC, Appellee

From the 37th Judicial District Court, Bexar County, Texas Trial Court No. 2015-CI-01910 Honorable Karen H. Pozza, Judge Presiding ORDER Appellants Hari Prasad Kalakonda and Latha Kaladonda seek to appeal the trial court's April 13, 2015, order denying their motion to dissolve a temporary injunction.

See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (authorizing interlocutory appeal from order overruling motion to dissolve temporary injunction). The appeal is accelerated. See TEX. R. APP. P. 28.1(a). When an appeal is accelerated, the notice of appeal is due within twenty days after the appealable order is signed. TEX. R. APP. P. 26.1(b), 28.1(b).

The filing of a request for findings of fact or a motion for new trial does not extend the time to perfect an accelerated appeal. TEX. R. APP. P. 28.1(b); *In re K.A.F.*, 160 S.W.3d 923, 925-927 (Tex. 2005). The court may grant an extension of time to file the notice of appeal if the notice and a motion for extension of time are filed within fifteen days of the deadline for filing the notice of appeal.

TEX. R. APP. P. 26.3, 28.1(b). A motion for extension of time is necessarily implied when an appellant, acting in good faith, files a notice of appeal beyond the time allowed by Rule 26.1 but within the fifteen-day grace period provided by Rule 26.3 for filing a motion for extension of time. See *Verburgt v. Dorner*, 959 S.W.2d 615, 615 (1997) (construing the predecessor to Rule 26).

However, once the fifteen day period for granting a motion for extension of time under Rule 26.3 has passed, a party can no longer invoke the appellate court's jurisdiction. *Id.* The Kalakondas' notice of appeal from the April 13 order denying the motion to dissolve the temporary injunction was due May 4, 2015, or the notice and a motion for extension of time were due fifteen days later on May 19, 2015.

This court construed the Kalakondas' letter dated May 20, 2015, and filed May 21, 2015, to be a bona fide attempt to invoke the jurisdiction of this court. However, the letter was filed after the fifteen day period for granting a motion for extension of time under Rule 26.3 has passed. A timely notice of appeal is required to invoke this court's jurisdiction.

See *Sweed v. Nye*, 323 S.W.3d 873 (Tex. 2010). It does not appear from the record that the Kalakondas timely appealed the trial court's April 13, 2015 order. We therefore order a response due by July 7, 2015, showing cause why this appeal should not be dismissed for lack of jurisdiction. If appellants fail to satisfactorily respond within the time provided, the appeal will be dismissed.

See Tex. R. App. P. 42.3(a), (c). All deadlines in this matter are suspended until further order of the court. _____ Luz Elena D. Chapa, Justice
IN WITNESS
WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 22nd day of
June, 2015. _____ Keith E. Hottle Clerk of Court

