

TEXAS COURT OF APPEALS, THIRD DISTRICT AT AUSTIN

**Arlene Bunch and Rick Toledo as Conservator for Darlene Toledo
Magner v. Darrell W. Goen and Alice C. Goen, Trustees of the Goen
Family Trust Dated April 13, 2006; Robert C. Dean and Teresa K.
Dean, Trustees of the Dean Family Trust Dated September 6, 2006;
Chester A. Hipple and Cynthia A. Hipple, as TTEE U/D/T 1/23/07;
and Delbert M. Goen, Trustee of the Delbert M. Goen Living Trust
Dated August 16, 2006; Each as to Undivided 25% Interest**

Bunch v. Goen · No. 03-25-00614-CV · Decided March 13, 2026

SUMMARY

The Texas Court of Appeals for the Third District abated the appeal for thirty days after determining that the trial court’s judgment was not final and directing that a supplemental clerk’s record be filed. The court also ordered Rick Toledo, or any other party seeking to continue the appeal, to explain the court’s jurisdiction and why filings made by Toledo on behalf of Darlene Toledo Magner should not be stricken because he did not appear to be an attorney or a party.

CASE DETAILS

COURT	Texas Court of Appeals, Third District at Austin
WRITING FOR THE COURT	Per curiam; Chief Justice Byrne; Justice Crump; Justice Ellis
JURISDICTION	Texas Court of Appeals, Third District at Austin
DECIDED	March 13, 2026
DOCKET	03-25-00614-CV
DISPOSITION	abated
PROCEDURAL POSTURE	The court acted on its own motion after previously dismissing the appeal for lack of jurisdiction because the trial-court judgment was not final. It abated the appeal for thirty days to permit filing of a supplemental clerk's record containing a final judgment and ordered a response concerning the apparent unauthorized representation of an appellant by a nonattorney.
PRECEDENTIAL VALUE	Published

PARTIES

Arlene Bunch and Rick Toledo as Conservator for Darlene Toledo
Magner v. Darrell W. Goen and Alice C. Goen, Trustees of the Goen
Family Trust Dated April 13, 2006, Robert C. Dean and Teresa K.
Dean, Trustees of the Dean Family Trust Dated September 6, 2006,
Chester A. Hipple and Cynthia A. Hipple, as TTEE U/D/T 1/23/07,
Delbert M. Goen, Trustee of the Delbert M. Goen Living Trust Dated
August 16, 2006

TOPICS

appellate jurisdiction

final judgment rule

appellate procedure

trusts

guardianship procedure

PRACTICE AREAS

appellate procedure

civil procedure

trusts

guardianships

QUESTIONS PRESENTED

1. Whether the appeal should be abated to allow the trial court to render or supply a final judgment when the existing judgment is not final and appealable.
2. Whether a nonattorney who is not a party may file appellate documents on behalf of another party.
3. Whether the court should require a response explaining the basis for appellate jurisdiction and why the appellants' filings should not be struck.

HOLDINGS

1. When the record shows that the trial-court judgment is not final and appealable, the court of appeals may abate the appeal to permit the trial court to render a final judgment rather than immediately dismissing the appeal.
2. A nonattorney may not represent another party in an appeal, and a notice of appeal filed by a nonattorney on behalf of that party is ineffective to perfect the party's appeal.

KEY QUOTATIONS

“Rule 7 of the Texas Rules of Civil Procedure allows a person to represent himself or herself pro se only to litigate rights on his or her own behalf, not to litigate rights in a representative capacity.” (Order and memorandum opinion)

“Therefore, a notice of appeal filed by a nonattorney is ineffective to perfect an appeal by the party the nonattorney purports to represent.” (Order and memorandum opinion)

FACTUAL BACKGROUND

The trial court's judgment was not final, creating a jurisdictional defect in the appeal. Rick Toledo filed the notice of appeal, appellants' brief, and motion for rehearing on behalf of Darlene Toledo Magner, although the appellate record did not indicate that Toledo was an attorney or a party to the case.

PROCEDURAL HISTORY

The appeal arose from the 433rd District Court of Comal County. On December 16, 2025, the court of appeals dismissed the case after determining that the trial-court judgment was not final. Following appellants' motion for rehearing and appellees' reply, the court abated the appeal for thirty days and required a supplemental clerk's record containing a final judgment. The court also ordered Rick Toledo, or any other party seeking to continue the appeal, to explain the court's jurisdiction and why the appellants' brief and motion for rehearing should not be struck because Toledo appeared not to be an attorney or a party.

DISPOSITION

abated

REMAND INSTRUCTIONS

The court did not remand the case to the trial court. It abated the appeal for thirty days and ordered that a supplemental clerk's record containing a final judgment be filed. It also ordered Rick Toledo, or any other party wishing to continue the appeal, to file within thirty days a response explaining the basis for jurisdiction and why the appellants' brief and motion for rehearing should not be struck.

CASES CITED

- McNally v. Guevara, 52 S.W.3d 195, 196 (Tex. 2002) (per curiam)
- Kaminetzky v. Newman, No. 01-10-01113-CV, 2011 WL 6938536, at *2 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, no pet.) (mem. op.)
- Kunstoplast of Am., Inc. v. Formosa Plastics Corp., U.S.A., 937 S.W.2d 455, 456 (Tex. 1996)
- Jimison v. Mann, 957 S.W.2d 860, 861 (Tex. App.—Amarillo 1997, order) (per curiam)
- In re Guetersloh, 326 S.W.3d 737, 740 (Tex. App.—Amarillo 2010, orig. proceeding)
- Rodriguez v. Marcus, 484 S.W.3d 656, 658 (Tex. App.—El Paso 2016, no pet.)

OPINION

Arlene Bunch and Rick Toledo as Conservator for Darlene Toledo Wagner v. Darrell W. Goen and Alice C. Goen, Trustees of the Goen Family Trust Dated April 13, 2006; Robert C. Dean and Teresa K. Dean, Trustees of the Dean Family Trust Dated September 6, 2006; Chester A. Hipple and Cynthia A. Hipple, as TTEE U/D/T 1/23/07; And Delbert M. Goen, Trustee of the Delbert M. Goen Living Trust Dated August 16, 2006; Each as to Undivided 25% Interest

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-25-00614-CV

Arlene Bunch and Rick Toledo as Conservator for Darlene Toledo Wagner, Appellants v. Darrell W. Goen and Alice C. Goen, Trustees of the Goen Family Trust Dated April 13, 2006; Robert C. Dean and Teresa K. Dean, Trustees of the Dean Family Trust Dated September 6, 2006; Chester A.

Hipple and Cynthia A. Hipple, as TTEE U/D/T 1/23/07; and Delbert M. Goen, Trustee of the Delbert M. Goen Living Trust Dated August 16, 2006; Each as to Undivided 25% Interest, Appellees

FROM THE 433RD DISTRICT COURT OF COMAL COUNTY

NO. C2024-1920D, THE HONORABLE DIB WALDRIP, JUDGE PRESIDING

ORDER AND MEMORANDUM OPINION

PER CURIAM

This case is before the Court on its own motion. On December 16, 2025, we dismissed this case for lack of jurisdiction after discovering that the trial court's judgment was not final. Appellants filed a motion for rehearing and appellees filed a reply in support of the motion for rehearing. On our own motion, we abate this case for thirty days. See *McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2002) (per curiam) (concluding that judgment was not final and appealable and reversing to court of appeals to determine "whether to abate the appeal to permit the trial court to render a final judgment" or "to dismiss the appeal for want of jurisdiction"). A supplemental clerk's record containing a final judgment should be filed in this Court within that thirty-day period. However, we note that another jurisdictional defect appears on the face of this record. Rule 7 of the Texas Rules of Civil Procedure allows a person to represent himself or herself pro se only to litigate rights on his or her own behalf, not to litigate rights in a representative capacity. *Tex. R. Civ. P. 7*; *Kamietzky v. Newman*, No. 01-10-01113-CV, 2011 WL 6938536, at *2 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, no pet.) (mem. op.) (concluding appellant could not represent pro se two corporate defendants as assignee of corporations); see also *Kunstoplast of Am., Inc. v. Formosa Plastics Corp., U.S.A.*, 937 S.W.2d 455, 456 (Tex. 1996) (although corporate officer could perform "specific ministerial task of depositing cash with a clerk in lieu of a cost bond," nonlawyer may not represent corporation in court). According to Texas law, only a licensed attorney is allowed to represent other parties. See *Tex. Gov't Code §§ 81.101-.102* (prohibiting practice of law in Texas unless person is member of state bar); *id.* §§ 83.001-.006 (prohibiting unlicensed persons from practicing law without a license); see also *Jimison v. Mann*, 957 S.W.2d 860, 861 (Tex. App.—Amarillo 1997, order) (per curiam) (striking documents filed by layperson having no authority to file them on behalf of another). The Texas Legislature has defined the practice of law to include, among other things, "the preparation of a pleading or other document incident to an action." *Tex. Gov't Code § 81.101(a)*. Consequently, if a nonattorney files documents on behalf of a party in an appeal, this amounts to the unauthorized practice of law. See *In re Guetersloh*, 326 S.W.3d 737, 740 (Tex. App.—Amarillo 2010, orig. proceeding) (concluding nonattorney's appearance in trial court on behalf of trust amounted to unauthorized practice of law). Therefore, a notice of appeal filed by a nonattorney is ineffective to perfect an appeal by the party the nonattorney purports to represent. See *Rodriguez v. Marcus*, 484 S.W.3d 656, 658 (Tex. App.—El Paso 2016, no pet.). Rick Toledo filed a notice of appeal, the appellants' brief, and the motion for rehearing on behalf of Darlene Toledo Magner. However, it does not appear that appellant Rick Toledo is either an

attorney or a party to the case. Accordingly, we order appellant Rick Toledo, or any other party desiring to continue the appeal, to file a response explaining how this Court may exercise jurisdiction over this appeal and why it should not strike appellants' brief and motion for rehearing. This response must be filed with the Clerk of this Court within thirty days of the date of this order. Failure to do so may result in dismissal of Rick Toledo and/or Darlene Toledo Magner from this appeal and/or the Court striking appellants' brief and motion for rehearing. See Tex. R. App. P. 42.3(a); Jimison, 957 S.W.2d at 861. It is ordered on March 13, 2026. Before Chief Justice Byrne, Justices Crump and Ellis Abated Filed: March 13, 2026