

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Jason Campbell v. Ben Luong

No. 04-16-00460-CV (Tex. App.—San Antonio Dec. 9, 2016) · No. No. 04-16-00460-CV · Decided December 9, 2016

SUMMARY

The Fourth Court of Appeals of San Antonio abated the appeal pending resolution in the trial court of Ben Luong’s claim for payment from the Texas Real Estate Recovery Trust Account. The court suspended all appellate deadlines, ordered Luong to provide periodic status reports, and stated that the appeal could be reinstated if he did not diligently pursue the claim or other circumstances required.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Patricia O. Alvarez
JURISDICTION	Texas
DECIDED	December 9, 2016
DOCKET	No. 04-16-00460-CV
DISPOSITION	other
PROCEDURAL POSTURE	During an interlocutory stage of an appeal from an amended final judgment in a real estate lawsuit, the court considered Ben Luong’s requests concerning supplementation of the appellate record and extension of the briefing deadline. The court sua sponte abated the appeal pending resolution in the trial court of Luong’s claim for payment from the Real Estate Recovery Trust Account.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Jason Campbell v. Ben Luong

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QUESTIONS PRESENTED

1. Whether Luong needed the court of appeals' permission to supplement the appellate record with an omitted item.
2. Whether the appeal should be abated pending resolution of Luong's claim for payment from the Real Estate Recovery Trust Account in the trial court.
3. What reporting and briefing procedures should govern while the appeal was abated.

HOLDINGS

1. Luong could supplement the appellate record in accordance with the Texas Rules of Appellate Procedure without obtaining permission from the court of appeals.
2. The appeal was abated pending resolution in the trial court of Luong's claim for payment from the Real Estate Recovery Trust Account.
3. Luong was required to file an initial status report within thirty days and additional written reports at least monthly thereafter, and all other appellate deadlines were suspended pending further order.

KEY QUOTATIONS

“In the interest of conserving judicial resources and minimizing the parties’ expenses in protecting their interests in this matter, and acting sua sponte, we ABATE this appeal pending the resolution of Luong’s claim for payment from the Real Estate Recovery Trust Account in the trial court.”

“Luong may supplement the appellate record in accordance with the Rules without this court’s permission.”

FACTUAL BACKGROUND

The underlying real estate lawsuit resulted in an amended final judgment awarding damages to Ben Luong. Luong also pursued payment from the Real Estate Recovery Trust Account, and the Texas Real Estate Commission indicated that it intended to relitigate the reasonableness of attorney's fees because it had not been a party when the amended judgment was signed. The related trial-court proceedings had not yet occurred and involved issues the court of appeals considered central to the appeal.

PROCEDURAL HISTORY

The Bexar County district court entered an amended order granting final judgment and awarding damages to Ben Luong. While Jason Campbell's appellate brief was still due, Luong moved to supplement the record and extend the time to file his brief because related proceedings concerning his Real Estate Recovery Trust Account claim had not yet occurred. The court of appeals held that Luong could supplement the record under the appellate rules without permission, abated the appeal pending the trial-court proceedings, suspended appellate deadlines, and ordered periodic status reports.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal was abated rather than remanded. Luong was ordered to report within thirty days and at least monthly thereafter on the status of his Real Estate Recovery Trust Account claim, including filings, trial-court actions, and decisions. The court could reinstate the appeal if Luong failed to diligently pursue a decision or if other circumstances required; after the trial court addressed the claim, the appellate court would issue an appropriate order.

CASES CITED

- Tex. Real Estate Comm’n v. Nagle, 767 S.W.2d 691, 694–95 (Tex. 1989)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas December 9, 2016 No. 04-16-00460-CV Jason CAMPBELL, Appellant/Cross-Appellee v. Ben LUONG, Appellee/ Cross-Appellant From the 408th Judicial District Court, Bexar County, Texas Trial Court No. 2014-CI-10868 Honorable Solomon Casseb, III, Judge Presiding ORDER In the underlying real estate lawsuit, the trial court’s Amended Order Granting Final Judgment awarded damages to Ben Luong, who is the appellee and cross-appellant in this appeal.

Appellant’s brief has not been filed; it is due on January 6, 2017. On December 5, 2016, Luong, who is representing himself, moved this court to allow him to supplement the record and to extend the time to file his brief.

As Luong’s motion indicates, “any party may by letter direct the trial court clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item.” See TEX. R. APP. P. 34.5. Luong may supplement the appellate record in accordance with the Rules without this court’s permission. Luong also states he has filed a claim for payment from the Real Estate Recovery Trust Account, but the Texas Real Estate Commission indicated to him “it intends to re-litigate the reasonableness of the attorney’s fees in a hearing to be setup in the trial court” because the Commission was not a party to the underlying suit when the amended judgment was signed.

See TEX. OCC. CODE ANN. §§ 1101.601,.606 (West Supp. 2016); Tex. Real Estate Comm’n v. Nagle, 767 S.W.2d 691, 694–95 (Tex. 1989). Luong asserts the trial court will hear the same issues that are central to this appeal, the proceedings have not yet taken place, and this court’s judicial resources would be conserved by extending his brief’s due date until the trial court proceedings have concluded and the appellate record has been supplemented.

In the interest of conserving judicial resources and minimizing the parties’ expenses in protecting their interests in this matter, and acting sua sponte, we ABATE this appeal pending the resolution

of Luong's claim for payment from the Real Estate Recovery Trust Account in the trial court. See TEX. OCC. CODE ANN. §§ 1101.606,.607; Nagle, 767 S.W.2d at 694–95.

We ORDER Appellee/Cross-Appellant Ben Luong to file with this court within THIRTY DAYS of the date of this order, and at least monthly thereafter, a written statement of the status of the proceedings in the trial court on his claim for payment from the Real Estate Recovery Trust Account. Each monthly report must include at a minimum the date and description of all documents filed in the trial court, the trial court's actions, if any, in response to those filings, and any decisions reached by the trial court.

If Appellee/Cross-Appellant fails to diligently pursue a decision in the matter of his claim for payment from the trust account, or if other circumstances require, this court may reinstate this appeal on this court's docket. Assuming Appellee/Cross-Appellant diligently pursues a decision from the trial court, after the trial court addresses the trust account payment claim, this court will issue an appropriate order.

If any party is opposed to this court abating this appeal as ordered, the party must file a response in writing with this court within TEN DAYS of the date of this order. All other appellate deadlines are SUSPENDED pending further order of this court. _____

Patricia O. Alvarez, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 9th day of December, 2016.

Keith E. Hottle Clerk of Court