

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG

Galen M. Cotton, Leonard J. Durante, Anita D. Durante, Timothy J.
Vogt, Emma E. Orellana, James C. Larue Jr., and Elisabeth A.
McNinch v. W. Greg Smith, Lorne D. Montgomery, Aimee K.
Montgomery, and Sandy Creek Airport, Inc.

No. 13-26-00100-CV · No. 13-26-00100-CV · Decided February 26, 2026

SUMMARY

The Thirteenth Court of Appeals of Texas denied appellants’ petition for permissive interlocutory appeal and dismissed the appeal for want of jurisdiction. The court held that the trial court’s order failed to identify a qualifying controlling question of law, explain how an immediate appeal would advance the litigation, or provide a substantive ruling on the identified legal questions.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Jaime Tijerina; Chief Justice Tijerina; Justice Peña; Justice West
JURISDICTION	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
DECIDED	February 26, 2026
DOCKET	13-26-00100-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants sought a permissive interlocutory appeal from an order concerning summary judgment, standing, and a motion for reconsideration. The court of appeals denied the petition and dismissed the appeal for want of jurisdiction.
STANDARD OF REVIEW	The court independently determined whether the requirements for accepting a permissive interlocutory appeal and appellate jurisdiction were satisfied.
PRECEDENTIAL VALUE	published

PARTIES

Galen M. Cotton, Leonard J. Durante, Anita D. Durante, Timothy J. Vogt, Emma E. Orellana, James C. Larue Jr., Elisabeth A. McNinch v. W. Greg Smith, Lorne D. Montgomery, Aimee K. Montgomery, Sandy Creek Airport, Inc.

TOPICS

interlocutory appeal

appellate jurisdiction

appellate procedure

summary judgment

standing

PRACTICE AREAS

appellate procedure

civil procedure

corporate law

QUESTIONS PRESENTED

1. Whether the trial court's order satisfied the statutory and procedural requirements for a permissive interlocutory appeal.
2. Whether the court of appeals had jurisdiction to consider purported questions of law that the trial court did not identify as questions authorized for appeal.
3. Whether appellants established entitlement to a permissive interlocutory appeal.

HOLDINGS

1. A trial court's permissive-appeal order must identify a controlling question of law on which there is substantial ground for difference of opinion, state why an immediate appeal may materially advance the litigation's ultimate termination, and make a substantive ruling on the identified question of law. The order in this case did none of those things sufficiently.
2. The court of appeals' jurisdiction in a permissive interlocutory appeal is limited to the order or portion of the order for which the trial court actually granted permission to appeal.
3. Appellants failed to establish entitlement to a permissive interlocutory appeal; the petition was denied and the appeal was dismissed for want of jurisdiction.

KEY QUOTATIONS

“our jurisdiction is limited to the order or part of the order the trial court granted permission to appeal” (at 3)

FACTUAL BACKGROUND

The underlying litigation involved Sandy Creek Airport, Inc., its bylaws, a purported offer to buy shares, and whether the plaintiffs had standing to seek declaratory relief. The trial court partially granted a motion for summary judgment and denied a motion for reconsideration concerning Galen M. Cotton's alleged failure to comply with the corporation's bylaws. The trial court also denied a request to dismiss the plaintiffs for lack of standing and attempted to authorize a permissive interlocutory appeal. The only pending claim in the trial court was for attorneys' fees.

PROCEDURAL HISTORY

The appeal was transferred from the Tenth Court of Appeals pursuant to a docket-equalization order. The trial court's order purported to authorize a permissive appeal but did not identify a controlling question of law, explain why an immediate appeal might materially advance termination of the litigation, or make a substantive ruling on an identified question of law. The Thirteenth Court of Appeals concluded that appellants had not shown entitlement to a permissive interlocutory appeal and dismissed the appeal for want of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG, 567 S.W.3d 725, 730, 732 (Tex. 2019)
- Archibald v. El Paso Orthopedic Surgery Group, P.A., No. 08-22-00091-CV, 2023 WL 2214184, at *6 (Tex. App.—El Paso Feb. 24, 2023, no pet.) (mem. op.)
- Mack v. Pittard, No. 04-24-00201-CV, 2024 WL 2836624, at *3 (Tex. App.—San Antonio June 5, 2024, no pet.) (mem. op.)
- BPX Operating Co. v. Strickhausen, 629 S.W.3d 189, 195 n.4 (Tex. 2021)

OPINION

PER CURIAM.

NUMBER 13-26-00100-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI – EDINBURG GALEN M. COTTON, LEONARD J. DURANTE, ANITA D. DURANTE, TIMOTHY J. VOGT, EMMA E. ORELLANA, JAMES C. LARUE JR., AND ELISABETH A. MCNINCH, Appellants, v. W. GREG SMITH, LORNE D. MONTGOMERY, AIMEE K. MONTGOMERY, AND SANDY CREEK AIRPORT, INC., Appellees. ON APPEAL FROM THE 12TH DISTRICT COURT OF WALKER COUNTY, TEXAS MEMORANDUM OPINION Before Chief Justice Tijerina and Justices Peña and West Memorandum Opinion by Chief Justice Tijerina¹ Appellants Galen M. Cotton, Leonard J. Durante, Anita D. Durante, Timothy J. Vogt, Emma E. Orellana, James C. Larue Jr., and Elisabeth A. McNinch have filed a petition for permissive interlocutory appeal seeking to challenge the trial court's order granting summary judgment in favor of appellees W. Greg Smith, Lorne D. Montgomery, Aimee K. Montgomery, and Sandy Creek Airport, Inc.² Generally, an order that does not dispose of all claims and all parties is interlocutory and is not an appealable order.

Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG, 567 S.W.3d 725, 730 (Tex. 2019). To be entitled to a permissive appeal from an interlocutory order that is not otherwise appealable, the requesting party must establish to the trial court that (1) the order “involves a controlling question of law as to

which there is a substantial ground for difference of opinion” and (2) allowing an immediate appeal “may advance the ultimate termination of the litigation.” TEX. CIV.

PRAC. & REM. CODE § 51.014(d); see also TEX. R. APP. P. 28.3 (setting out the requirements for permissive appeals in civil cases). If the trial court grants permission to appeal, we may accept the appeal if the appeal is warranted under the foregoing criteria. TEX. CIV. PRAC. & REM. CODE § 51.014(f); see *Sabre*, 567 S.W.3d at 732 (“Texas courts of appeals have discretion to accept or deny permissive interlocutory appeals certified under section 1 This appeal was transferred to this Court from the Tenth Court of Appeals pursuant to a docket- equalization order issued by the Supreme Court of Texas.

See TEX. GOV’T CODE § 73.001. 2 The only pending claim in the trial court is for attorneys’ fees. 2 51.014(d)...”). The trial court must identify the “controlling question of law as to which there is a substantial ground for difference of opinion” and “state why an immediate appeal may materially advance the ultimate termination of litigation.” TEX. R. CIV.

P. 168; *Archibald v. El Paso Orthopedic Surgery Group, P.A.*, No. 08-22-00091-CV, 2023 WL 2214184, at *6 (Tex. App.—El Paso Feb. 24, 2023, no pet.) (mem. op.). The trial court must also make a substantive ruling on the questions of law it identified. See *Archibald*, 2023 WL 2214184, at *6.

Here, the order states: (1) this order denying Defendants’/Counter-Plaintiffs’ request for dismissal of all Plaintiffs in this matter due to lack of standing involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may materially advance the ultimate termination of this litigation.

The Court further finds that the Court’s prior partial granting of Plaintiff’s/Counter-Defendant’s motion for summary judgment filed Oct. 18, 2024 and the denial of Defendant’s/Counter-Plaintiff’s motion for reconsideration (specifically with regard to the Court’s finding that Defendant Galen M. Cotton failed to comply with Sandy Creek Airport, Inc.’s bylaws) involve a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of this litigation.

This order does not identify a controlling question of law as to which there is a substantial ground for difference of opinion, does not state why an immediate appeal may materially advance the ultimate termination of litigation, and does not provide a substantive ruling of a question of law. See *id.* Moreover, appellants claim that the trial court gave them permission to appeal the following questions of law: “First is whether 3 Cotton satisfied the notice requirements.

Second is the threshold inquiry of whether shareholders, each of whom received notice, have standing to seek declaratory relief that Sandy Creek did not receive a valid offer to buy the

shares.” However, as shown above, the trial court did not grant permission to appeal these purported questions of law. See *Mack v. Pittard*, No. 04-24-00201-CV, 2024 WL 2836624, at *3 (Tex.

App.—San Antonio June 5, 2024, no pet.) (mem. op.) (explaining that the court “lack[ed] jurisdiction to consider this permissive appeal for at least two additional reasons. First, this court has explained that ‘our jurisdiction is limited to the order or part of the order the trial court granted permission to appeal’”); see also *BPX Operating Co. v. Strickhausen*, 629 S.W.3d 189, 195 n.4 (Tex.

2021) (declining to address the petitioner’s purported question of law regarding estoppel because “the trial court’s identification of the ‘controlling question[s] of law’ for the permissive appeal includes ratification but not estoppel”).

Having reviewed appellants’ petition and the record documents attached thereto, this Court is of the opinion that appellants have not shown entitlement to permissive interlocutory appeal. Accordingly, we deny the petition for permissive interlocutory appeal, and we dismiss the appeal for want of jurisdiction.

We further dismiss all pending motions as moot. JAIME TIJERINA Chief Justice Delivered and filed on the 26th day of February, 2026. 4