Dismissed and Opinion filed February 1, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-01-00035-CV

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KRUEGER ENGINEERING & MANUFACTURING COMPANY, INC., Appellant

V.

ADMIRAL TRUCK SERVICES, LTD., Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 98-46490-A

M E M O R A N D U M O P I N I O N

This is an attempted appeal from a summary judgment, signed September 6, 2000. Appellee moved to sever the remaining claims and, on October 3, 2000, the trial court granted the motion by signed order on October 3, 2000. Appellant filed a motion for new trial on October 27, 2000, and filed notice of appeal on January 3, 2001, together with a motion for extension of time to file the notice of appeal. On January 12, 2001, appellee filed a motion to dismiss the appeal, claiming that the September 6, 2000, judgment was final and appealable and that appellant's notice of appeal was therefore untimely. Appellant claims that the judgment date was the date of the severance order and that its notice of appeal was merely one day late. Accordingly, to determine whether we may grant appellant's motion for extension of time

to file the notice of appeal, we must first determine whether the appealable judgment was the summary judgment order signed September 6, 2000, or the severance order signed October 3, 2000.

The summary judgment order states that it is granting the third-party defendant, Admiral Truck Services, Ltd.'s motion for summary judgment, and it expressly orders that the third-party plaintiff, Krueger Engineering & Manufacturing Company, Inc. shall take nothing by its claim against Admiral. At the end of the order is a Mother Hubbard clause, stating that all relief not expressly granted herein is expressly denied.

To be final and appealable, a summary judgment order must dispose of all parties and issues before the court. *Mafrige v. Ross*, 866 S.W.2d 590, 591 (Tex. 1993). If the order does not dispose of all issues and parties, and there is no severance of the pending parties or issues, the judgment is interlocutory and not appealable. *id*. Despite these general rules, however, the supreme court has ruled that a summary judgment must be treated as final for purposes of appeal, if the order appears to be final as evidenced by language *purporting* to dispose of all claims or parties, such as a "Mother Hubbard" clause. *See id*. at 592. Thus, an apparently interlocutory summary judgment order is final for purposes of appeal if the order contains Mother Hubbard language. *Bandera Elec. Coop., Inc. v. Gilchrist*, 946 S.W.2d 336, 337 (Tex. 1997).

This court has previously confronted a case with facts similar to the one at issue here. In *Lehmann v. Har-Con Corp.*, 988 S.W.2d 415 (Tex. App.–Houston [14th Dist.] 1999, pet. granted), summary judgment was granted on appellee's counterclaim and third-party claim. Although the judgment did not dispose of all parties or claims, the judgment did contain Mother Hubbard language. *See id*. at 416. Approximately three weeks after this order was signed, the trial court issued a severance order. *See id*. Within 30 days of the signing of the severance order, the appellant filed its notice of appeal. *See id*. This court dismissed the appeal for lack of jurisdiction because application of the *Mafrige* rule required a finding that the original summary judgment order was final, rendering appellant's notice of appeal untimely. *See id*. at 417.

Appellant acknowledges that the supreme court's decision in *Lehmann* will be determinative of the issue presented here. Because the supreme court granted petition for review in *Lehmann* in

November 1999, appellant asks that we hold our ruling in this case until the supreme court issues its opinion. We decline to do so. It is not our practice to hold decisions for an indeterminate period of time in anticipation of a ruling from the supreme court.

Accordingly, as in *Lehmann*, this court is constrained by *Mafrige* to hold that the summary judgment order in this case, with its Mother Hubbard language, purported to dispose of all parties and issues. Therefore, the September 6, 2000, summary judgment order must be treated as final and appealable for purposes of appeal, despite the trial court's subsequent severance order. Because the September 6, 2000, order was a final, appealable judgment, appellant's October 27, 2000, motion for new trial was untimely filed. Absent a timely motion for new trial, appellant's notice of appeal was due on October 6, 2000. Appellant did not file its notice of appeal until January 3, 2001. Therefore, this court is without jurisdiction to entertain this appeal.

We grant appellee's motion to dismiss and deny appellant's motion for extension of time to file its notice of appeal. The appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed February 1, 2001.
Panel consists of Justices Anderson, Fowler, and Edelman.
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