Dismissed and Opinion filed February 28, 2002.

In The

Fourteenth Court of Appeals

NO. 14-01-01045-CV

WELLNESS PROVIDER MANAGEMENT, L.L.C., Appellant

V.

LAWRENCE M. KAGAN, TRUSTEE and BRAD KAGAN, Appellees

On Appeal from the 80th District Court
Harris County, Texas
Trial Court Cause No. 01-04570

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

This is an attempted appeal from a an order granting appellees' motion for summary judgment, signed September 17, 2001. Appellant filed a notice of appeal on November 1, 2001, along with a motion to extend time to file the notice of appeal, which this Court granted. *See* TEX. R. APP. P. 26.3. As grounds for its extension request, appellant asserted that it did not consider the summary judgement order a final, appealable judgment. Appellant asserted it filed the notice of appeal out of an abundance of caution, citing *Lehmann v. Har-Con Corporation*, 39 S.W.3d 191, 196 (Tex. 2001) ("A party who is uncertain whether a judgment is final must err on the side of appealing or risk losing the right to appeal.").

Appellant argued the trial court's order did not dispose of the counterclaim filed by Lawrence M. Kagan, Trustee. In addition, appellant asserted that the order did not dispose of its claims against two defendants who were added to the litigation after the summary judgment motion was filed, but before the order was signed.

On December 6, 2001, appellant filed an unopposed motion to abate the appeal, seeking to have the trial court clarify its intent as to the finality of its order of September 17, 2001. *See Lehmann*, 39 S.W.3d at 206. When a trial court intends the order to be a final, appealable judgment, the order should actually dispose of every pending claim and party or state "with unmistakable clarity that it is a final judgment as to all claims and all parties." *Id.* at 205.

On January 17, 2002, this Court granted appellant's motion to abate the appeal. *See* TEX. R. APP. P. 27.2. We ordered the trial court to make findings of fact and conclusions of law clarifying its intent as to the finality of the September 17, 2001 order. On February 18, 2002, the trial court conducted a hearing pursuant to our abatement order, and made findings of fact and conclusions of law. On February 19, 2002, a supplemental clerk's record containing the trial court's findings was filed with the clerk of this Court.

The trial court's conclusions of law stated as follows:

> 1 The Order granting summary judgment dated September 17, 2001, is interlocutory.
>
> 2. The claims of Plaintiff against Kagan and B. Kagan, which were not on file on August 1, 2001, were not resolved by the prior summary judgment Order.
>
> 3. The claims against Kagan-Edelman Capital Fund, Inc. and Commercial Property Advisors, Inc. were not resolved by summary judgment.

Unless an interlocutory appeal is permitted by statute, this Court has jurisdiction only over a final judgment that disposes of all issues and parties. *See Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). Because the trial court has determined it intended the

summary judgment order signed September 17, 2001, to be interlocutory, and the order did not dispose of all parties and claims, we have no jurisdiction over the appeal.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed February 28, 2002.
Panel consists of Chief Justice Brister and Justices Anderson and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).