

Dismissed and Opinion filed June 15, 2000.



In The

Fourteenth Court of Appeals

NO. 14-00-00504-CV

STEVE STONE, Appellant

V.

ACCENT TEMPORARIES, INC., Appellee

**On Appeal from the 189th District Court
Harris County, Texas
Trial Court Cause No. 99-28824**

O P I N I O N

This is an attempted appeal from a default judgment signed October 2, 1999, which Steve Stone, appellant, contends was made final by a notice of nonsuit filed March 23, 2000. Stone filed a notice of appeal on April 25, 2000. We hold there is no final judgment and dismiss the appeal for want of jurisdiction.

Accent Temporaries, Inc. brought suit against Stone Machinery Movers Inc. and Steve Stone, individually. On October 2, 1999, the trial court entered a default judgment in favor of Accent Temporaries against Stone Machinery and Stone. Stone Machinery and Stone

claimed they did not receive notice of the judgment until December 14, 1999, and thus, filed a motion for new trial on December 30, 1999. *See* TEX. R. CIV. P. 306(a)(4). On January 31, 2000, the trial court entered an order vacating the default judgment and granting a new trial as to Stone Machinery alone. The judgment against Stone, individually, was not vacated nor was his motion for new trial granted.

On March 23, 2000, Accent Temporaries filed a motion for nonsuit as to Stone Machinery. Based on this filing, Stone, apparently believing the judgment against him was now final, filed a notice of appeal.

Generally, plaintiffs have the right under rule 162 of the Texas Rules of Civil Procedure to take a nonsuit at any time until they have introduced all evidence other than rebuttal evidence. *See In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997). Such a nonsuit may have the effect of vitiating earlier interlocutory orders and of precluding further action by the trial court, with some notable exceptions. *See id.* However, the signing of an order dismissing a case, not the filing of a notice of nonsuit, is the starting point for determining when a trial court's plenary power expires. *See id.* Appellate timetables do not run from the date a nonsuit is filed, but rather from the date the trial court signs an order of dismissal. *See id.*; *Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995); *Goodchild v. Bombardier-Rotax GMBH Motorenfabrik*, 979 S.W.2d 1, 6 (Tex. App.–Houston [14th Dist.] 1998, pet. denied).

In this case, the trial court did not sign either an order granting the nonsuit or a judgment memorializing the nonsuit. Accordingly, the default judgment entered against Stone, individually, is not final. We have no jurisdiction to hear an appeal from a judgment that is not final, unless there is specific statutory authority permitting an appeal before final judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.012 (Vernon 1997).

On January May 26, 2000, notification was transmitted to all parties of the Court's intent to dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). Appellant filed no response.

Accordingly, because we find there is not final judgment from which Stone may appeal, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed on June 15, 2000.

Panel consists of Justices Amidei, Anderson and Frost

Do Not Publish — *See* TEX. R. APP. P. 47.3(b).