Dismissed and Opinion filed November 2, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00804-CV

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BOBBY ADAM, ET AL., Appellants

V.

AMOCO OIL COMPANY, AMOCO CHEMICAL COMPANY, KEN MAYHALL, AND MICHAEL POEHL, Appellees

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On Appeal from the 122nd District Court
Galveston County, Texas
Trial Court Cause No. 94CV0434

O P I N I O N

This is an appeal from a summary judgment against the personal injury claims of plaintiffs Bobby Adams, et al. In one order, the trial court granted defendants' Motion for Summary Judgment and Motion for Dismissal for Want of Prosecution. In five points of error, appellants assert that the trial court (1) erroneously granted summary judgment, (2) misapplied the Supreme Court's standards for review of summary judgment, (3) erroneously dismissed the case with prejudice, (4) abused its discretion by denying appellant's motion to reinstate, and (5) imposed unfair sanctions on appellants. For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

BACKGROUND

Appellants' first amended petition alleged that Amoco's Texas City refinery released contaminants into the air on six occasions, causing personal injury and property damages. In March 1998, Amoco filed a combined no-evidence motion for summary judgment and motion to dismiss for want of prosecution. The no-evidence motion stated that there was no evidence that Amoco's refinery caused personal injury to appellants. Appellants did not attach any evidence to their response and expressly abandoned their personal injury claims. On August 20, 1998, the trial court granted Amoco's motion and dismissed all personal injury claims.

Despite the interlocutory nature of the August 1998 summary judgment, appellants filed a notice of appeal on June 29, 1998, and a first amended notice on September 16, 1998.[1] The summary judgment became final on November 25, 1998, when the trial court severed appellants' personal injury claims.

On November 3, 1998, Amoco filed a no-evidence motion for summary judgment on the property damage claims asserted by the minor appellants. Appellants filed no response to the motion.

On November 23, 1998, Amoco filed two no-evidence motions for summary judgment. Amoco directed one motion at the property damage claims of plaintiffs who did not reside near Amoco's refinery. A second motion was directed at all other property damage claims. On June 4, 1999, the trial court granted Amoco's motions for summary judgment as to all the property damages claims. Appellants filed a notice of appeal on June 30, 1999.

DISCUSSION

Before we reach the merits of this case, we must first determine whether we have jurisdiction over this appeal. *See, e.g., Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Jurisdiction of a court is never presumed, and if the record does not affirmatively demonstrate the appellate court's jurisdiction, the appeal must be dismissed. *See El-Kareh v. Texas Alcoholic*

[1] Texas law provides for a prematurely filed notice of appeal pursuant to Texas Rule of Appellate Procedure 27.1 (a).

Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.–Houston [14th Dist.] 1994, no writ). The notice of appeal in this case indicates that this is an appeal of the June 1999 summary judgment. However, the points of error in this appeal relate to the August 1998 summary judgment and motion to dismiss. Appellants expressly abandoned their personal injury claims in their response to the August 1998 motion for summary judgment. The August 1998 summary judgment was severed, and hence became a separate action, on November 25, 1998. By his own admission, counsel for appellants concedes that appellants abandoned the appeal from the August 1998 summary judgment. This court has jurisdiction to hear the appeal arising from the June 1999 summary judgment, not from the abandoned appeal of the August 1998 summary judgment. Accordingly, we dismiss the appeal for lack of jurisdiction.

Even if we were to assume, *arguendo*, that these points of error somehow applied to the June 1999 summary judgment, any such error is waived because nothing in the record reflects the substance of appellants' response to the no-evidence motions or that they even filed a response to the motions for summary judgment. Thus, appellants have failed to meet their burden of presenting a record sufficient to show error. *See Murphy v. Cintas Corp.*, 923 S.W.2d 663, 667 (Tex. App.–Tyler 1996, writ denied); *Chapman v. City of Houston*, 839 S.W.2d 95, 100 (Tex. App.–Houston [14th Dist.] 1992, writ denied) (Without a sufficient record, it must be presumed on appeal that the movant submitted sufficient summary judgment evidence to support the trial court's judgment.).

For the reasons stated above, we dismiss this appeal for lack of jurisdiction.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed November 2, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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