Affirmed and Opinion filed March 8, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00656-CV

C. E. HODDE and M. R. MEJEAN
d/b/a LIBERTY CLASSIC MOTOR SPORTS, Appellants

V.

DANIEL PORTANOVA, FRANK TESLA,
and ULTIMATE RIDE, L.L.C., Appellees

On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 98-29498

O P I N I O N

C. E. Hodde and M. R. Mejean d/b/a Liberty Classic Motor Sports appeal a summary judgment granted in favor of Daniel Portanova, Frank Tesla, and Ultimate Ride, L.L.C.[1] We

---

[1] In addition to these appellees, appellants' brief also lists Herm Roseman, Robert Dick, Kraig Kavanagh, and Ultra Acquisition Corp. d/b/a Ultra Cycles, d/b/a Bikers Dream as appellees. Of these, Kraig Kavanagh and Ultra Acquisition Corp. were listed as defendants in appellants' original petition but did not file motions for summary judgment. Similarly, Herm Roseman and Robert Dick were added by appellants' third amended petition after the summary judgment order was signed. The trial court's judgment that "Plaintiffs take nothing by their action" leaves some uncertainty as to against which defendants appellants take nothing. However, because the discrepancy regarding the status of the various defendants as appellees is not material to our disposition of the matters

affirm.

Finality of Summary Judgment Order

Appellees contend, among other things, that this court does not have jurisdiction to entertain this appeal because the summary judgment order (the "order") is not final and appealable. To be final and appealable, an order granting a motion for summary judgment must either actually dispose of all parties and claims then before the trial court or state with unmistakable clarity that it is a final judgment as to all claims and parties. *Lehmann v. Har-Con*, 44 Tex. Sup. Ct. J. 364, 364, 375 (Feb. 1, 2001). For example, if a defendant moves for summary judgment on only one of four claims asserted by the plaintiff, but the trial court renders judgment that the plaintiff take nothing on all claims asserted, the judgment is final, albeit erroneous. *Id.* at 371. Similarly, language that the plaintiff take nothing by his claims in the case shows finality if there are no other claims by other parties. *Id.* at 375.

In this case, the pertinent language of the order states it is "ORDERED that Defendants Daniel Portanova, Frank Tesla and Ultimate Ride, L.L.C.'s Motion for Summary Judgment is GRANTED and that Plaintiffs *take nothing by their action*." (emphasis added). Although two additional defendants, Kraig Kavanagh and Ultra Acquisition Corp. ("Ultra"), were named in appellants' petition, the record does not reflect that the claims against those defendants were severed or disposed of. In that there were no claims in this case by any plaintiffs other than appellants and that the order's language, "take nothing by their action" is equivalent to the language Lehman uses to illustrate finality, we conclude that the judgment is final *for purposes of appeal*.[2] Accordingly, we overrule appellees' motion to dismiss this case for lack of jurisdiction and turn our attention to appllants' contentions.

---

raised by appellants, we do not address it.

[2] To the extent the judgment is not, in fact, final for failing to dispose of any remaining claims against Kavanagh and Ultra, no error has been assigned to that discrepancy in this appeal. Accordingly, we do not address it further.

Merits of Appeal

The first ten and final six paragraphs of appellants' brief state:[3]

Now Comes, C.E. HODDE and M.R. MEJEAN Plaintiff's pleading for a fair and just right to a Trial to plead their case, reasons as follows:

1.01 Plaintiff's Attorney from the very beginning did not handle the case as he was instructed, and paid for conversion by Ultimate Ride and Ultra Cycles, Plaintiff's were charged for work that was never done. See Exhibit "1".

1.02 Plaintiff's Attorney did not follow District Court of Harris County Scheduling Order, he did not notify his clients of any such order, Nor did he see fit to supply his clients with said order. See Exhibit "2".

1.03 The Courts did not supply Plaintiff's with a copy of District Court of Harris County Scheduling Order, Plaintiff C.E.HODDE found out about said order on May 26, 1999 when he reviewed the file, after Default Judgment had been signed by the Judge! Without proper cause.

2.01 Due to the Courts releasing Plaintiff's counsel on January 12, 1999 without even having a hearing on the matter, even though the Plaintiff's had filled their objection to the Motion to Withdraw as Counsel dated December 21, 1998.

3.01 This case has never been set for settlement in any way, without any suggestions for Alternative Dispute Resolution by Arbitration as required by Court Procedure.

4.01 Defendant's asked for a JUry Trial on May 3, 1999 and paid the fees, Plaintiff's agreed with a Jury Trial because they also wanted a Jury Trial.

5.01 Plaintiff's C.E. HODDE attended the Scheduled Conference for Jury Trial on May 26, 1999, after (waiting 30 minutes) of which the Judge, the Defendant's and the Defendant's Counsel did not appear. Mr. HODDE then met with the Court Coordinator Gloria Martinez set the Trial Date for June 7, 1999.

5.02 Plaintiff' C.E. HODDE then managed to find the file in Sharon Thompson (the Court Clerk) office after persistent inquiry. Then with copies requested did Mr. HODDE find the Scheduling Order.

---

[3] We have not attempted to denote errors in spelling, grammar, and the like in the quoted portion of appellants' brief because they are too numerous and of no consequence to our disposition.

> 6.01 Plaintiff's received a postcard from the Court on May 29, 1999, the date on the postcard was May 27, 1999, notifying the Plaintiff's that a Final Judgment Order had already been signed on May 24, 1999.
>
> . . . .
>
> 8.01 We the Plaintiff's C.E. HODDE and M.R. MEJEAN were never notified by our Counsel, by the Defendant's Counsel nor by the Defendant's, nor were we notified by the Courts in Brazos County or the Courts of Harris County until we received this first notification card dated January 12, 1999.[4]
>
> 9.01 We feel that most of these proceedings were totally unjust and we feel we have not been allowed to prosecute and defend nor put our case on against all Defendant's as should be the goal of this Court.
>
> 10.01 We attended a Mediation Ordered by the Appeals process, however due to the Judge signing a unjust Summary Judgment Order the Defendant's, the Defendant's Counsel and even the Mediator automatically considered them to have won the case and the appeal.
>
> 11.01 The original suit was to be filed under conversion and fraud and this has not been corrected and should have been allowed to be filed.
>
> 12.01 The State of Texas Licensing Department of Transportation Judge has thrown out this complaint by defendant and ruled against them with prejudice.
>
> We the Plaintiff's are asking the Court for a Hearing and for the Courts to Continue this case so that all parties involved have the opportunity to have a fair chance of a just Trial.

Apart from the bare allegations in appellants' brief, there is no evidence in the record to support any of the foregoing contentions. More importantly, however, even if they are taken as true, these paragraphs provide us no legal authority or argument to demonstrate that any of the contentions constitute grounds for reversal of the trial court's summary judgment. Therefore, they are overruled.

---

[4] At oral argument, Hodde's recollection was that this paragraph refers to notice of the transfer of the case from Brazos County to Harris County. However, we find nothing in the record to support this contention.

With regard to paragraphs 6.02, 6.03, and 6.04, we understand appellants to complain that they did not have notice or actual knowledge of the hearing on May 24, 1999, at which the trial court signed the order granting appellees' motion for summary judgment:

> 6.02 The Courts evidently had a hearing of some sorts on May 24, 1999, of which Plaintiff's had no knowledge of. At which time the Judge did not have nor could not have had sufficient grounds to sign a Judgment Order.
>
> 6.03 We the Plaintiff's assume that the Judge, Defendant's and the Defendant's Counsel had the hearing without Legially notifying the Plaintiff's of (which they had the right to attend) said hearing.
>
> 6.04 Plaintiff's assume that the Judge, Defendant's and Defendant's Counsel all colaborated, agreed and the Final Judgment Order was signed without Plaintiff's knowledge.

If notice of a hearing is properly addressed and mailed, postage prepaid, a presumption arises that the notice was received by the addressee. TEX. R. CIV. P. 21a; *Thomas v. Ray*, 889 S.W.2d 237, 238 (Tex. 1994). A certificate of service of a party or attorney is prima facie evidence raising this presumption. TEX. R. CIV. P. 21a; *Huffine v. Tomball Hosp. Auth.*, 979 S.W.2d 795, 799 (Tex. App.—Houston [14th Dist.] 1998, no pet.). This presumption may be rebutted by proof of nonreceipt, but in the absence of any such proof, the presumption has the force of a rule of law. *Thomas*, 889 S.W.2d at 238.

In this case, appellees' attorney signed and attached a proper certificate of service to the notice of hearing of the summary judgment,[5] and appellants presented no evidence showing non-receipt.[6] Under these circumstances, appellants fail to demonstrate that they did not have notice or knowledge of the hearing, and paragraphs 6.02, 6.03, and 6.04 are overruled.

---

5 Hodde acknowledged during oral argument that the address to which the summary judgment materials were sent was correct.

6 *See Rios v. Texas Bank*, 948 S.W.2d 30, 33 (Tex. App.—Houston [14th Dist.] 1997, no writ) (holding that a party who has no notice of a summary judgment hearing may contest the lack of notice by post-trial motion).

Finally, paragraph 7.01 contends that appellants should have been given time to gather evidence from various states that was necessary for prosecution and defense of the case. Because appellants failed to file affidavits in the trial court establishing a need for more time to gather any such evidence,[7] this paragraph is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed March 8, 2001.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do not publish — TEX. R. APP. P. 47.3(b).

---

[7] *See* TEX. R. CIV. P. 166a(g) ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may . . . order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is just.").