Dismissed and Opinion filed May 17, 2001.

In The

Fourteenth Court of Appeals

———————————

NO. 14-01-00363-CV

———————————

YOLANDA MENDOZA, INDIVIDUALLY , AS EXECUTRIX OF THE ESTATE OF MARIA VICTORIA ROMERO, AND ON BEHALF OF CARLOS ROMERO, MARY JAN RAMIREZ, RICARDO ROMERO, GEORGE ROMERO, AND ALBERT ROMERO AS HEIRS OF MARIA VICTORIA ROMERO, DECEASED; YOLANDA MENDOZA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT ROMERO, SR., DECEASED, AND AS NEXT FRIEND OF THERESA ANN ROMERO AND ROBERT ROMERO, JR., AND VERONICA ROMERO, MINOR CHILDREN; AND OSCAR MADRID, INDIVIDUALLY AND AS NEXT FRIEND AND ON BEHALF OF LISA MADRID, A MINOR CHILD, AS HEIRS OF LAURA MADRID, DECEASED, Appellants

V.

THE CITY OF HOUSTON, Appellee

On Appeal from the 125th District Court
Harris County, Texas
Trial Court Cause No. 96-58070

O P I N I O N

Following a jury trial, the trial court entered judgment in favor of appellee, the City of Houston ("the City"). Appellant appealed. On April 10, 2001, the City filed a motion

to dismiss the appeal for want of jurisdiction. We grant the City's motion and dismiss the appeal for want of jurisdiction.

Houston police officer Oden Belmarez attempted to stop a vehicle for running a stop sign. The officer activated his emergency lights, but the driver of the vehicle, Arturo Medina, refused to stop. After radioing the vehicle's description and license plate number to police dispatch, Officer Belmarez learned the vehicle was stolen. The officer continued to pursue the vehicle. During the pursuit, the stolen vehicle entered an intersection and struck another vehicle, killing the three occupants.

Appellants filed a wrongful death suit against the City, among others, based on the incident. In its answer to appellants' final petition, the City asserted a contribution claim against Arturo Medina, the driver of the stolen vehicle. Specifically, the answer states that "[i]n the unlikely event that Defendant, City of Houston, is found liable for any damages, Defendant, City of Houston, specifically reserves the right of contribution and/or recovery from . . . . Third-Party Defendant, ARTURO MEDINA."

After a jury trial, the jury returned a verdict in which it determined the accident was proximately caused solely by the negligence of the driver of the stolen vehicle, Arturo Medina. The jury found no liability on the part of Officer Belmarez, the City's employee. Based on the jury's verdict, the City moved for judgment. The trial court entered a take nothing judgment in favor of the City on October 30, 2000.

On December 20, 2000, the City filed a motion to non-suit its third-party claim for contribution against Arturo Medina. According to the City's motion to dismiss, this was done only because Medina filed a motion for severance claiming the October 30, 2000, judgment was not final. The non-suit was signed the same day.

Appellants, apparently believing the judgment was not final until the signing of the non-suit on December 20, 2000, did not file their motion for new trial until January 18, 2001, more than 30 days after October 20, 2000. The notice of appeal was not filed until March 5, 2001.

On April 10, 2001, the City filed a motion to dismiss for want of jurisdiction. In the motion, the City contends the judgment signed by the trial court on October 30, 2000, was a final judgment. Based on this contention, the City claims the motion for new trial was untimely and did not extend time to file the notice of appeal. Thus, the City argues, the notice of appeal was untimely and this Court must dismiss the appeal for want of jurisdiction. On April 20, 2001, appellants filed a response to the City's motion to dismiss. In the response, appellants contend that the judgment signed October 30, 2000, was not final because it did not dispose of the City's claim for contribution against Medina. Appellants argue the judgment was not final until the trial court signed the City's non-suit on December 20, 2000. Thus, they contend, their motion for new trial and notice of appeal are timely.

The determination of whether an appeal from a judgment in a conventional case tried on it merits is final for appeal purposes was simplified in *North East Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893 (Tex. 1966).[1] In *Aldridge*, the supreme court held:

> When a judgment not intrinsically interlocutory in character is rendered and entered in a case regularly set for a conventional trial on the merits . . . it will be presumed for appeal purposes that the Court intended to, and did, dispose of all parties legally before it and all issues made by the pleadings between such parties.

Id. at 897-98. The supreme court reiterated this holding in *Martinez v. Humble Sand & Gravel, Inc.*, 875 S.W.2d 311, 312 (Tex. 1994), when it stated: "After a conventional trial on the merits, even absent clear language, the appellate court may draw the inference the

---

[1] The City asks that we rely on language from the Texas Supreme Court's recent opinion in *Lehmann v. Har-Con Corp*., 39 S.W.3d 191 (Tex. 2001), to determine the finality of the trial court's October 30, 2000, judgment. The issue in *Lehmann*, however, concerned the finality of *summary judgments*, not judgments after a conventional trial on the merits. We recognize that the majority in *Lehmann* cited numerous conventional trial cases in its analysis and by doing so implicated the finality of all judgments. *Id.* at 214 (Baker, J., concurring). Nevertheless, we decline to explicitly extend *Lehmann* to judgments following conventional trial on the merits where such an extension is unnecessary to the disposition of this appeal.

judgment was meant to be final." Thus, it is not essential that the judgment in express terms specifically dispose of each issue in order to be final; rather, the inference that the judgment does dispose of a particular issues follows as a necessary implication. *See Rosedale Partner, Ltd. v. 131st Judicial Dist. Court, Bexar County*, 869 S.W.2d 643, 647 (Tex. App.—San Antonio 1994, no writ) (citing *David v. McCray Refrigerator Sales Corp.*, 136 Tex. 296, 150 S.W.2d 377, 378 (1941)). In other words, issues and parties may be disposed of expressly or by necessary implication. *Herrera v. Wembley Inv. Co.*, 12 S.W.3d 83, 88 (Tex. App.—Dallas 1998) (citing *Aldridge*, 400 S.W.2d at 895), *rev'd on other grounds*, 11 S.W.3d 924 (Tex. 1999).

A claim of contribution is derivative of another pending claim. *See Shoemake v. Fogel, Ltd.*, 826 S.W.2d 933, 935 (Tex. 1992); *Atchison v. Weingarten Realty Mgmt. Co.*, 916 S.W.2d 74, 76 (Tex. App.—Houston [1st Dist.] 1996, no writ). Thus, according to its answer and as a matter of law, the City's claim for contribution against Medina exists only as derivative claim of appellant's primary cause of action. *See id.* Accordingly, when the jury found no negligence by the officer and the trial court entered judgment in favor of the City, the trial court, by necessary implication, disposed of the City's contribution claim against Medina. It was unnecessary for Medina to file a severance or for the City of file a motion for non-suit because the judgment signed October 30, 2000, disposed of all parties and issues pending before the court. Moreover, any ruling by the trial court on the motions was void because the trial court's plenary power expired on November 29, 2000, thirty days after the date the judgment was signed.

Because the October 30, 2000, judgment was a final judgment, appellants were required to file a motion for new trial within thirty days of that date to extend their time to file a notice of appeal. *See* TEX. R. CIV. P. 329b(a) (stating that motion for new trial must be filed prior to or within thirty days after final judgment is signed); TEX. R. APP. P. 26.1 (a)(1) (stating that time to file notice of appeal is extended to ninety days after judgment is signed if timely motion for new trial is filed). In this case, appellants did not file their motion for new trial until January 18, 2001, eighty days after the final judgment was

signed. Because the motion for new trial was untimely, it did not extend the time for filing of the notice of appeal and appellants were required to file their notice within thirty days of the date of the final judgment, i.e., on or before November 29, 2000. *See* TEX. R. APP. P. 26.1 (stating that notice of appeal must be filed within thirty days after judgment is signed if no motion for new trial, motion to modify, motion to reinstate, or proper request for findings of fact and conclusions of law is timely filed). Appellants, however, did not file their notice of appeal until March 5, 2001, more than one hundred and twenty days after the final judgment was signed. Thus, the notice of appeal was untimely. *See id.*

Because the judgment signed October 30, 2000, disposed of the City's claim for contribution by necessary implication, it was final. Appellants' notice of appeal was untimely. Accordingly, we grant the City's motion and dismiss the appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed May 17, 20001
Panel consists of Justices Anderson, Hudson, and Seymore.
Do Not Publish — TEX. R. APP. P. 47.3(b).