Dismissed and Opinion filed June 28, 2001.

In The

Fourteenth Court of Appeals

NO. 14-01-00199-CV

BP AMOCO P.L.C.; AMOCO CORPORATION; AMERADA HESS LIMITED; AMERADA HESS CORP.; ENTERPRISE OIL, P.L.C.; BP EXPLORATION OPERATING COMPANY, LTD.; BP AMERICA, INC.; and AMOCO PRODUCTION COMPANY, Appellants

V.

ROWAN COMPANIES, INC. and LeTOURNEAU, INC., Appellees

On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 99-02626

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

This is an attempted interlocutory appeal from an order denying appellants' motion for partial summary judgment, signed February 14, 2001. Appellants filed a notice of appeal, and a notice of stay pending interlocutory appeal, stating that the interlocutory appeal was authorized because of their free speech defense to appellees' business disparagement claim. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(6) (Vernon Supp. 2001).

On March 30, 2001, the trial court granted appellees' amended motion for nonsuit with prejudice of their business disparagement claim. This order also vacated the February 14, 2001, order denying appellants' motion for partial summary judgment that is the subject of this appeal. *See* TEX. R. APP. P. 29.5 (permitting the trial court to issue an order dissolving the interlocutory order being appealed).

On May 2, 2001, appellees filed a motion to dismiss this appeal for want of jurisdiction. Appellees assert the appeal has been rendered moot because the order being appealed has been vacated. *See State v. Ruiz Wholesale Co.*, 901 S.W.2d 772, 778 (Tex. App.—Austin 1995, no writ) (dismissing appeal rendered moot after injunction dissolved). In addition, appellees have abandoned the business disparagement claims defended on first amendment grounds, which formed the basis of this court's jurisdiction. *See General Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571-72 (Tex. 1990) (dismissing after nonsuit rendered interlocutory appeal moot); *City of Austin v. LS. Ranch, Ltd.*, 970 S.W.2d 750, 755 (Tex. App.—Austin 1998, no pet.) (dismissing interlocutory appeal for mootness when live controversy no longer existed due to further proceedings in the trial court).

Appellants filed a response to the motion to dismiss, asserting the appeal is not moot because appellees have not abandoned their tortious interference claims, which are closely related to the business disparagement claim. Appellants argue that an interlocutory appeal under section 51.014(a)(6) may include all issues decided by the summary judgment order, and the appeal is not limited to the constitutional and statutory privileges protecting free speech. *See, e.g., American Broadcasting Co. v. Gill*, 6 S.W.3d 19, 26-27 (Tex. App.—San Antonio 1999, pet. denied). We reject this argument in this instance because the trial court has vacated the interlocutory order being appealed.

We also reject appellants' argument that the trial court had no authority to vacate the order. *See* TEX. R. APP. P. 29.5 (stating trial court may not make an order during pendency of interlocutory appeal interfering with appellate court's jurisdiction or effectiveness of relief sought on appeal). Appellees had an absolute right to take a

nonsuit of their business disparagement claim. *See, e.g., BHP Petroleum Co., Inc. v. Millard*, 800 S.W.2d 838, 841 (Tex. 1990). For this reason, we conclude the order vacating the order denying summary judgment, which effectively eliminates review of the first amendment defenses to the disparagement claim, is not precluded by Rule 29.5 of the Texas Rules of Appellate Procedure. Even if we were to conclude the trial court should not also have vacated its ruling on the tortious interference claims, which we need not reach in our disposition of this matter, reinstatement of that part of the order would not vest this court with jurisdiction. Appellants did not allege first amendment defenses to the tortious interference claims. Therefore, the denial of a partial summary judgment on appellees' tortious interference claims is not an appealable interlocutory order. In the absence of an appealable interlocutory order, we must conclude this court lacks jurisdiction to consider the appeal.

Accordingly, appellees' motion is granted and the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed June 28, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[1]

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

[1] Senior Chief Justice Paul C. Murphy sitting by assignment.