Dismissed and Opinion filed September 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00890-CV

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HENRY QUANAIM, Appellant

V.

FRASCO RESTAURANT & CATERING AND FRASCO, INC., Appellee

On Appeal from the 133rd Judicial District Court
Harris County, Texas
Trial Court Cause No. 9736097

O P I N I O N

The appellant, a personal injury plaintiff in the court below, seeks reversal of three summary judgments rendered in favor of the defendant/appellee. In a challenge to this court's appellate jurisdiction, the appellee moves for dismissal on the grounds that the appellant failed to timely perfect this appeal. We dismiss for lack of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

In November 1997, Henry Quanaim ("Quanaim"), the appellant and the plaintiff in the

suit below, sued Frasco Restaurant & Catering for injuries he sustained when he slipped and fell in the hallway of the Stouffer Renaissance Hotel, in June 1995. Quanaim, then a hotel employee, alleged that Frasco Restaurant & Catering, which had been hired to cater a wedding reception at the hotel, was negligent in permitting the floor to become hazardous and in failing to properly train and supervise its employees. Frasco Restaurant & Catering filed a verified answer denying that it was the proper party. Quanaim then joined Frasco, Inc. as a party defendant and asserted the same claims based on negligence and gross negligence. Frasco, Inc. asserted several affirmative defenses, including (1) that Quanaim's claims were barred by the two-year statute of limitations and (2) that Frasco, Inc. was an agent of Quanaim's employer (the owner of Stouffer Renaissance Hotel) for the purpose of catering the wedding, and thus was barred from bringing the suit by section 408.001(a) of the Texas Labor Code.

Frasco, Inc. filed two separate motions for summary judgment, each of which sought dismissal of the suit on independent grounds. In its first motion, filed March 18, 1998, Frasco, Inc. sought summary judgment on the grounds that it was not a possessor of the premises as a matter of law. On the same day, but in a separate motion, Frasco Restaurant & Catering moved for summary judgment on the grounds that it was not a legal entity at the time of the incident and, therefore, could not be sued. On April 15, 1998, Frasco, Inc. filed its "Second Motion for Summary Judgment," alleging that because Quanaim had sued his employer (the owner of the Stouffer Renaissance Hotel) in federal court to recover damages for the injuries made the subject of his state court suit, he was barred by the exclusive remedy provisions of the Texas Labor Code, section 408.001(a) from asserting claims against Frasco, Inc. in this suit.

The trial court did not rule on the summary judgment motions in the order they were filed, but in the course of a few weeks time the court granted each of the motions by entry of three separate orders. On May 5, 1998, the trial court granted the motion filed by Frasco Restaurant & Catering on the grounds that it was not a legal entity at the time of the incident and therefore could not be sued. On May 11, 1998, the trial court granted the "Second Motion

for Summary Judgment" disposing of Quanaim's claims against Frasco, Inc. on the grounds that they are barred by the Texas Labor Code's exclusive remedy provisions. On May 18, 1998, the trial court signed the order which Frasco, Inc. had submitted in connection with its first motion for summary judgment (based on the defense that Frasco, Inc. was not a possessor of the premises as a matter of law).

On June 17, 1998, Quanaim simultaneously filed a motion for new trial and a separate motion asking the trial court to reconsider its rulings on the summary judgment motions. In both of its June 17, 1998 motions, Quanaim set forth arguments addressing each of the grounds on which Frasco Restaurant & Catering and Frasco, Inc. (hereafter collectively referred to as "Frasco") had moved for each of the respective summary judgments. In opposing Quanaim's motion for new trial, Frasco asserted that the trial court lacked plenary jurisdiction to hear the motion because Quanaim had filed it more than thirty days after the court's May 11, 1998 order, which had disposed of all claims.[1]

After Quanaim initiated this appeal, Frasco filed a motion asking this court to dismiss the appeal for lack of jurisdiction on the grounds that Quanaim's notice of appeal was not timely filed as to two of the three orders granting summary judgment. According to Frasco, the appellate timetable was not extended, which made Quanaim's notice of appeal, filed August 3, 1998, untimely. Frasco contends that the orders the trial court entered on May 5 and 11, 1998, disposed of both defendants and all claims of the plaintiff, thus making Quanaim's motion for new trial or notice of appeal due no later than June 10, 1998. *See* TEX. R. CIV. P. 329b(a); TEX. R. APP. P. 26.1. Frasco asserts that inasmuch as Quanaim's notice of appeal was not filed until August 3, 1998, it was untimely and insufficient to confer appellate jurisdiction on this court. Quanaim responds that the three orders "are not duplicative, because they granted different motions for summary judgment which were each based on different grounds."

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[1] "The trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment within *thirty days* after the judgment is signed." TEX. R. CIV. P. 329b(d) (emphasis added).

According to Quanaim, the only consequence of the court's entry of multiple orders is that he must "address three different grounds for summary judgment on appeal." Quanaim contends that his time for filing a motion for new trial did not begin to run until the last summary judgment order was signed and therefore his motion for new trial and subsequent notice of appeal were timely filed.

On November 19, 1998, this court denied Frasco's motion to dismiss, without opinion. In its appellee's brief, Frasco urges us to reconsider our previous ruling and to dismiss the appeal for lack of jurisdiction. Upon reconsideration, we vacate our earlier order, grant Frasco's motion, and dismiss this appeal for lack of appellate jurisdiction.

DISMISSAL FOR LACK OF JURISDICTION

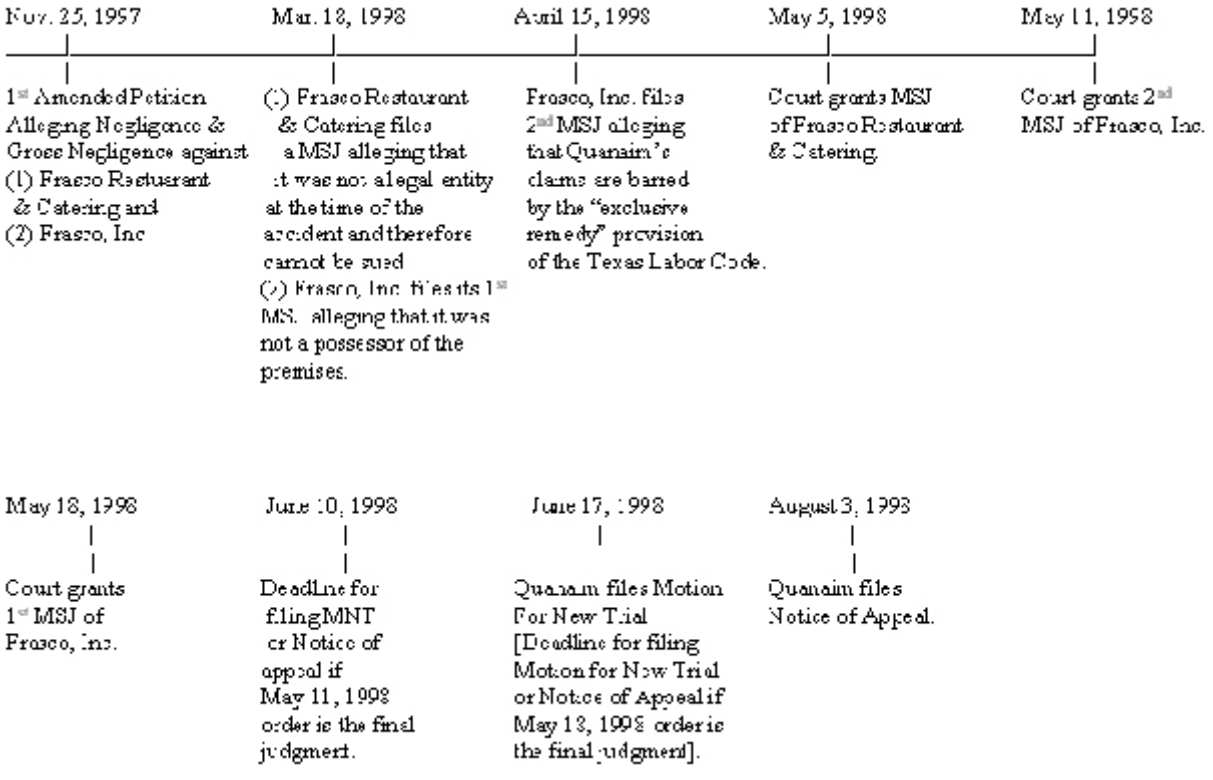
The first jurisdictional prerequisite to an appeal is the timely filing of a notice of appeal. If a notice of appeal is not timely filed, the appellate court acquires no jurisdiction over the appeal except to dismiss it. *See Midland-Guardian Co. v. Mercantile Credit Corp.*, 516 S.W.2d 246, 248 (Tex. Civ. App.—Fort Worth 1974, writ ref'd n.r.e.) (quoting *Thacker v. Thacker*, 490 S.W.2d 234, 236 (Tex. App.—Amarillo 1973, no writ)). When faced with multiple court orders disposing of claims, the appellate court, as a threshold matter, must first determine which, if any, is the final judgment. There can be only one final judgment in a lawsuit. *See* TEX. R. CIV. P. 301; *Logan v. Mullis*, 686 S.W.2d 605, 609 (Tex. 1985); *Wang v. Hsu*, 899 S.W.2d 409, 411 (Tex. App.—Houston [14th Dist.] 1995, writ denied). Thus, the first question we must decide is which of the three summary judgments the trial court entered is the final judgment.

A judgment is final and appealable when it determines the rights of all parties and disposes of all issues in a case so that no future action by the court is necessary to settle the entire controversy. *See Schlipf v. Exxon Corp.*, 644 S.W.2d 453, 455 (Tex. 1982); *Cowan v. Moreno*, 903 S.W.2d 119, 121 (Tex. App.—Austin 1995, no writ). "[T]he appellate timetable runs from the signing date of whatever order that makes a judgment final and

appealable, *i.e.* whatever *order* disposes of any parties or issues remaining before the court." *See Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995); *Martinez v. Humble Sand & Gravel, Inc.*, 875 S.W.2d 311, 313 (Tex. 1994). Ordinarily, an order granting summary judgment must expressly dispose of all parties and all issues in the case for it to be a final, appealable judgment. *See Mafrige v. Ross*, 866 S.W.2d 590, 591 (Tex. 1993). Once a summary judgment becomes a final and appealable judgment, the timetables for challenging the judgment begin to run. *See* TEX. R. CIV. P. 329b(d) (timetable for trial court to grant new trial or vacate, modify, correct, or reform the judgment); TEX. R. APP. P. 26.1 (appellate timetable). The trial court's period of plenary power over its judgment and the last day to file a motion for new trial or perfect an appeal are the same: thirty days after the date the judgment is signed. *See* TEX. R. CIV. P. 329b(a), (d); TEX. R. APP. P. 26.1.

The following timetable illustrates the operative dates for purposes of determining when the time for Quanaim to challenge the trial court's rulings began and ended:

The May 11, 1998 order, granting summary judgment based on the Texas Labor Code's exclusive remedy provision terminated the outstanding claims and rights of all parties, thus making that judgment final. Upon the trial court's signing of the May 11, 1998 order, there remained nothing for the trial court to adjudicate. Therefore, the May 11, 1998 order was the



final judgment in this case. Quanaim did not file his motion for new trial or notice of appeal until more than thirty days after the signing of the May 11, 1998 final judgment. Consequently, Quanaim did not timely perfect an appeal.

CONCLUSION

While we generally endeavor to construe procedural rules liberally when possible so that a litigant does not lose his right to appeal through the imposition of a requirement not absolutely necessary from the literal words of the rules,[2] it is not possible to do so on this record. Inasmuch as Quanaim failed to file a timely notice of appeal from the final judgment in the case, this court acquired no jurisdiction. We have no alternative but to dismiss this appeal.

The court's order of November 19, 1998 is vacated. This appeal is dismissed for lack of jurisdiction.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed September 23, 1999.

Panel consists of Justices Yates, Fowler and Frost.

Publish — TEX. R. APP. P. 47.3(b).

[2] *See Jamar v. Patterson*, 868 S.W.2d 318 (Tex. 1993).