Dismissed and Opinion filed April 19, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00505-CV

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TERESA LYNNE MAHARAJ & MICHAEL MAHARAJ, Appellants

V.

GEORGE FOX MATHIS, Appellee

On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 92-023387

O P I N I O N

Appellants, Teresa Lynne Maharaj and Michael Maharaj, appeal the award of attorney's fees incurred incident to a protective order issued against them. Their only contention on appeal is that the trial court erred in awarding attorney's fees to appellee, George Fox Mathis, because there was no evidence, or in the alternative, insufficient evidence, to support the trial court's recitation that "family violence has occurred", which, in August 1997, was the only basis upon which attorney's fees could be awarded on a protective order. We dismiss the appeal for want of jurisdiction.

Teresa Lynne Maharaj and George Fox Mathis were formerly married and have one minor child; they were divorced on September 30, 1994. On August 4, 1997, Mathis requested a modification of the trial court's order regarding custody and requested (1) sole managing conservatorship of the child and (2) a modification of child support. Thereafter, Mathis alleged that on August 8, 1997, he was injured in a physical altercation with Teresa and Michael Maharaj when they forcibly entered his office and took possession of the child. Mathis subsequently sought a protective order. On August 15, 1997, Teresa and Michael Maharaj signed and submitted to the court an agreed Protective Order, which recited that appellants were not admitting to having committed family violence. The court signed the order the same day. In a separate order, the court awarded Mathis attorney fees incurred in connection with obtaining the protective order. The Order for Payment of Fees and Expenses was entered and signed by the court on August 29, 1997. The order recites: "the Court finds that family violence has occurred and that Teresa Lynne Maharaj and Michael Maharaj have committed family violence." On November 26, 1997, appellants filed their notice of appeal from the order awarding attorney's fees. This Court dismissed appellants' original appeal for want of jurisdiction. *Maharaj & Maharaj v. Mathis*, No. 14-97-01239-CV (Tex. App.—Houston [14th Dist.] March 4, 1999, no pet.) (not designated for publication). We held that protective orders were interlocutory in nature, and absent an express grant of jurisdiction by the legislature, we had no jurisdiction to review such interlocutory orders. *Id*.

On August 15, 1998, the protective order expired by its own terms. On February 11, 1999, the trial court rendered an agreed order, disposing of appellee's suit to modify the parent-child relationship. On March 15, 1999, appellants filed a motion to modify, correct, or reform the order for payment of fees and expenses, and a motion for a new trial on the order, as part of the final judgment. The trial court overruled appellants' motions. On May 12, 1999, appellants gave notice of appeal from the judgment in the suit affecting the parent-child relationship (SAPCR).

As stated in the original *Maharaj* opinion, our appellate jurisdiction is limited to final judgments and interlocutory orders deemed appealable by the legislature. *Normand v. Fox*,

940 S.W.2d 401, 402 (Tex. App.—Waco 1997, no writ). During the effective period of a protective order entered under chapter 71 of the Texas Family Code, the trial court retains the power and jurisdiction to modify the protective order either by removing items included or including items not previously contained in the order. *See* TEX. FAM. CODE ANN. § 71.14 (Vernon 1996). The trial court's statutorily mandated modification power precludes the protective order from becoming a final, appealable order. *Normand*, 940 S.W.2d at 403. Because the protective order is not a final judgment, it is an interlocutory order. *Id*. at 404. Moreover, we have no jurisdiction to review such an interlocutory order. *Id*.

We recognize there is a split of authority on this issue; other courts addressing the issue of the appealability of a protective order issued pursuant to chapter 71 have reached a contrary conclusion. *See Striedel v. Striedel*, 15 S.W.3d 163, 164-65 (Tex. App.—Corpus Christi 2000, no pet.); *In Re Cummings*, 13 S.W.3d 472, 474-75 (Tex. App.—Corpus Christi 2000, no pet.); *James v. Hubbard*, 985 S.W.2d 516, 517 (Tex. App.—San Antonio 1998, no pet.). The *Striedel*, *Cummings*, and *Hubbard* opinions likened chapter 71 protective orders to permanent injunctions which dispose of all issues and parties, and thus hold that chapter 71 protective orders are appealable as final judgments. *Striedel*, 15 S.W.3d at 164-65; *Cummings*, 13 S.W.3d at 474-75; *Hubbard*, 985 S.W.2d at 517. Nevertheless, we find the volatility and fluidity of the underlying circumstances necessitating a protective order as recognized by section 71.14 precludes any finality of such an order. *Striedel*, 15 S.W.3d at 168 (Yanez, J., dissenting). Thus, any appeal of a chapter 71 protective order would constitute an interlocutory appeal; to permit the parties to appeal from a protective order via an interlocutory appeal would overstep our jurisdiction and effectively negate section 51.014 of the Texas Civil Practice and Remedies Code.[1]

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[1] TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 enumerates which interlocutory orders are appealable:

> (a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:
>
> (1) appoints a receiver or trustee;

(continued...)

Further, appellants attempt to appeal the substance of the protective order as though it were part of the final judgment rendered in appellee's SAPCR suit on February 11, 1999. However, the protective order expired on August 15, 1998. Upon the protective order's expiration, the justiciable controversy between the parties ceased to exist. *See Normand*, 940 S.W.2d at 404 n.4. Moreover, while appellants contend in their brief that the focus of their appeal is the award of attorneys fees, counsel conceded at oral argument that their true concern was the trial court's incorporation of a finding of family violence in the order awarding attorneys fees. This is consistent with counsel's position at the hearing on appellants' Motion to Modify, Correct or Reform "Order for Payment of Fees and Expense", or in the Alternative, a Motion for New Trial Thereon. During the hearing, appellants' counsel stated that his objection concerned the finding that appellants had committed family violence, not the award of attorney fees. In fact, counsel acknowledged that Mathis was entitled to the award of attorney fees, thus waiving any further objection to the award of attorney fees. *See City of Port Isabel v. Shiba*, 976 S.W.2d 856, 860-61 (Tex. App.—Corpus Christi 1998, pet. denied).

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[1] (...continued)

> (2) overrules a motion to vacate an order that appoints a receiver or trustee;
> (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
> (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
> (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
> (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article 1, Section 8, of the Texas Constitution, or Chapter 73;
> (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code; or
> (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001.

TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 (Vernon Supp. 2000).

Appellants are attempting to relitigate an issue previously decided by this Court in their putative appeal from the imposition of the protective order, i.e., whether this Court has jurisdiction to entertain such an appeal. Because the protective order is not a final appealable order, we again dismiss the appeal for want of jurisdiction.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Senior Chief Justice Murphy, Former Justice Amidei, and Justice Hudson.*

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

* Senior Chief Justice Paul C. Murphy and Former Justice Maurice Amidei sitting by assignment.