

Dismissed and Memorandum Opinion filed June 4, 2020.



In The

Fourteenth Court of Appeals

NO. 14-18-00676-CV

PETRA MUELLER, Appellant

V.

NORBERT MUELLER, Appellee

**On Appeal from the 250th District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-16-003688**

MEMORANDUM OPINION

Appellant, Petra Mueller, appeals the grant of a partial summary judgment in favor of appellee, Norbert Mueller. We dismiss.¹

Petra and Norbert married in 1969; they divorced in 1976. Petra and Norbert

¹ The Supreme Court of Texas transferred this case from the Third Court of Appeals to our court. *See* Tex. Gov't Code Ann. § 73.001. In cases transferred by the high court from one court of appeals to another, the transferee court must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court. Tex. R. App. P. 41.3.

married again in 1980; they divorced on October 27, 2004.

In August 2016, Norbert filed an original petition for declaratory judgment. He alleged that pursuant to the 2004 divorce decree, he was required to pay Petra \$52,000. Norbert further alleged that he made the \$52,000 payment to Petra in 2004, but that Petra is disputing the payment and is demanding an additional payment of \$52,000. Norbert requested a declaratory judgment that (1) “this \$52,000.00 payment has been made in full”; and (2) “any action for breach of contract/breach of divorce decree brought by Defendant is barred by any applicable statute of limitations.”

Petra denied Norbert’s allegations and filed a counterclaim for declaratory judgment. In her live “Amended Answer[,] Fourth Amended Counterclaim and Request for Declaratory Judgment” filed in August 2017, Petra asserted claims for fraud, misrepresentation, and breach of fiduciary duty. She admitted Norbert paid her \$52,000 after the divorce and made further allegations.

At the same time, Petra also filed “Defendant, Counter-Plaintiff’s Response to Plaintiff’s Traditional & No-Evidence Motion for Summary Judgment.” It is unclear why Petra filed a summary judgment response before Norbert even filed a summary judgment motion. Nonetheless, Petra argued in her response that the trial court should deny Norbert’s summary judgment motion because (1) “there has been no adequate time for discovery”; (2) Norbert failed to prove his affirmative defenses of statute of limitations, laches, and res judicata because her counterclaims were “revived” when she filed them “within thirty days of the date of service, as provided for under 16.069 of the Texas Civil Practices and Remedies Code”; and (3) she “has produced sufficient evidence to raise a fact issue on all elements of each cause of action.”

Over two months later in October 2017, Norbert filed his original answer

generally denying Petra's allegations and asserting affirmative defenses of statute of limitations, laches, accord and satisfaction, and res judicata. On the same day, Norbert filed his "Traditional Motion for Traditional Summary Judgment and 'No-Evidence' Motion for Summary Judgment." His motion was bare-bones; he asked for summary judgment on Petra's counterclaims, among other things; and he attached no evidence to his summary judgment motion.

In December 2017, the trial court signed an order granting Norbert's "traditional motion for partial summary judgment."

Petra filed a motion for new trial in January 2018, which was overruled by operation of law. She filed a motion to sever her counterclaims in May 2018, because the trial court "dismiss[ed]" her counterclaims when it granted Norbert's traditional summary judgment motion. The trial court signed an order granting Petra's motion to sever on June 25, 2018. Norbert's declaratory judgment claim remained in the original cause number. The original cause number is D-1-GN-16-003688, and the severed cause number is D-1-GN-18-003153. Petra filed a notice of appeal in the original cause number instead of the severed cause number.

In early March 2020, this Court issued an order informing Petra that her notice of appeal was defective because it failed to reflect the correct trial court cause number. *See* Tex. R. App. P. 25.1(d)(1). We stated that an incorrect trial court cause number on the notice of appeal does not defeat the jurisdiction of the court of appeals if the instrument is a "bona fide attempt" to invoke appellate court jurisdiction. *See City of San Antonio v. Rodriguez*, 828 S.W.2d 417, 418 (Tex. 1992). We also stated that an appellant should be given an opportunity to amend a defective perfecting instrument before the court of appeals may dismiss an appeal. *See Grand Prairie Indep. Sch. Dist. v. S. Parts Imports, Inc.*, 813 S.W.2d 499, 500 (Tex. 1991). In accordance therewith, we gave Petra the opportunity to amend her defective notice

of appeal; we ordered Petra to file an amended notice of appeal reflecting the correct trial court cause number on or before March 20, 2020. We informed Petra that if she did not comply with our order, we would consider dismissal of the appeal. She failed to file an amended notice of appeal as ordered.

In April, we gave Petra a second opportunity. We issued another order directing her to file an amended notice of appeal reflecting the correct trial court cause number on or before May 8, 2020. We also warned Petra that if she did not comply with our order, we would dismiss her appeal. *See* Tex. R. App. P. 25.1(b).

Petra had two opportunities and over two months to cure her defective notice of appeal and comply with Rule 25.1(d)(1) as ordered, which requires that a notice of appeal must “state the case’s trial court number.” *See id.* 25.1(d)(1). Petra again failed to comply with this Court’s orders. Accordingly, we dismiss Petra’s appeal for failure to comply with a notice from this Court. *See id.* 25.1(b), 42.3(c); *see also* *Martinez v. State Farm Lloyds*, No. 13-15-00448-CV, 2016 WL 824607, at *1 (Tex. App.—Corpus Christi Jan. 7, 2016, no pet.) (mem. op.).

/s/ Meagan Hassan

Meagan Hassan
Justice

Panel consists of Chief Justice Frost and Justices Wise and Hassan.