Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00311-CV

Ernest **BUSTOS**,
Appellant

v.

ENCINO PARK HOMEOWNERS ASSOCIATION,
Appellee

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-CI-18828
Honorable Laura Salinas, Judge Presiding[1]

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 24, 2020

DISMISSED FOR LACK OF JURISDICTION

Appellant Ernest Bustos ("Bustos") appeals the trial court's order conditionally granting his motion for new trial and subsequent order denying as moot his motion to vacate the prior order. Because there is no final, appealable judgment in this case and no statute authorizes an interlocutory appeal from these orders, we dismiss this appeal for lack of jurisdiction.

[1] The Honorable Laura Salinas signed the first order conditionally granting appellant's motion for new trial. The Honorable Angelica Jimenez signed the second order denying as moot appellant's motion to vacate the prior order.

Background

Bustos owns real property in the Encino Park neighborhood in San Antonio. Appellee Encino Park Homeowners Association ("the HOA") initiated this suit against Bustos, alleging breach and anticipatory breach of restrictive covenants authorizing the HOA to levy assessments against Bustos's real property and seeking judicial foreclosure to recover allegedly unpaid assessments, late fees, interest, and costs associated with collection, including attorney's fees. Bustos, representing himself pro se, answered the HOA's suit and asserted counterclaims and third-party claims against the HOA and Spectrum Association Management, LP ("Spectrum") for alleged violations of the Deceptive Trade Practices Act, the Fair Debt Collection Practices Act, and the federal mail fraud statute.

The HOA moved for traditional summary judgment on its claims. After Bustos did not respond to the motion for summary judgment or appear at the hearing, the trial court entered a default final judgment dated February 12, 2019. The default final judgment granted summary judgment in favor of the HOA on all of its claims against Bustos, denied "all other relief not expressly granted herein," and "ORDERED, ADJUDGED, AND DECREED that this order disposes of all claims and parties and therefore is, in all things, FINAL and APPEALABLE" (emphases in original).

On February 27, 2019, Bustos filed a motion to vacate the summary judgment and for new trial, alleging he "did not receive notice of the hearing for summary [j]udgment." On April 2, 2019, the HOA and Spectrum jointly filed a motion for no-evidence summary judgment on Bustos's claims.

On April 11, 2019, the trial court held a hearing on Bustos's motion for new trial, at which counsel for the HOA demonstrated it served notice of the motion for summary judgment on Bustos at his home address via certified mail, but the pleading was returned as undelivered. At the

conclusion of the hearing, the trial court signed an order granting the motion for new trial "in part, conditioned upon [Bustos] first paying [the HOA] the sum of $2,500.00 for reimbursement of [the HOA's] reasonable and necessary attorney's fees and costs within ten (10) days from the date of this order."

On April 18, 2019, Bustos filed an "Amended Motion for Judicial Review of [*sic*] Pursuant to Section 51.903 of the Texas Government Code and Motion to Vacate the Court's April 11, 2019 Order." On May 13, 2019, the trial court heard Bustos's motions and the HOA's and Spectrum's joint motion for no-evidence summary judgment. At the hearing, Bustos admitted under oath that he did not make the attorney's fees payment upon which the April 11 order was conditioned. In response, counsel for the HOA and Spectrum argued the default final judgment remained in effect and, because more than thirty days had elapsed since it was signed, the trial court lacked plenary power to consider Bustos's motions. At the conclusion of the hearing, the trial court signed an order denying all three pending motions as "moot, because the court no longer has plenary jurisdiction."

Bustos filed a motion to vacate the May 13 order and another motion for new trial. Following a hearing, the trial court denied both motions in an order dated June 4, 2019. The June 4 order found Bustos failed to make the attorney's fees payment ordered on April 11, 2019 and held: "[T]he original Final Summary Judgment entered on February 12, 2019 is in effect." Bustos filed a notice of appeal from the April 11 and May 13 orders.

Discussion

Although Bustos's pro se appellate brief does not identify any issues on appeal, the prayer of the brief asks this court to: (1) vacate the April 11 order to pay the HOA's attorney's fees; (2) "[f]ind the cause of action meritless and feverous [*sic*] in violation of Sec. 9.001(3)(A) and Sec. 9.012"; (3) hold the trial court "abused its discretion by awarding inequitable and unjust

attorney['s] fees" in the April 11 order; (4) hold the trial court "abused its discretion by dismissing [Bustos's] Motions" in the May 13 order; and (5) hold the HOA's and Spectrum's trial counsel violated Texas Disciplinary Rule of Professional Conduct 1.04. In response, the HOA argues: (1) the trial court did not err in conditioning the April 11 order upon payment of attorney's fees and denying Bustos's subsequent motions after he failed to make payment; and (2) this court should deny Bustos's request to find trial counsel violated Rule 1.04. Spectrum did not file an appellate brief and is not a named party to this appeal.

Although the parties do not raise the issue, we must determine whether we have jurisdiction over this appeal. *See M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004) ("Neither party argues to this Court that the summary judgment was not a final, appealable order. Nevertheless, we are obligated to review *sua sponte* issues affecting jurisdiction."). Generally, unless authorized by statute, appeal may be taken only from a final judgment. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). "A judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record, except as necessary to carry out the decree." *Id.* "Because the law does not require that a final judgment be in any particular form, whether a judicial decree is a final judgment must be determined from its language and the record in the case." *Id.*

Here, the default final judgment contains a Mother Hubbard clause stating: "It is . . . ORDERED, ADJUDGED, AND DECREED that this order disposes of all claims and parties and therefore is, in all things, FINAL and APPEALABLE" (emphases in original). Although this language indicates the trial court intended to render a final, appealable judgment, the face of the record clearly demonstrates the default judgment did not dispose of all claims and parties. The default judgment neither addressed nor disposed of Bustos's counterclaims and third-party claims against the HOA and Spectrum. Indeed, the HOA and Spectrum did not move for no-evidence summary judgment on those claims until after the trial court signed the default final judgment, and

the trial court denied the motion for no-evidence summary judgment as moot. Because Bustos's claims remain unresolved, there is no final, appealable judgment in this case, and no statute authorizes interlocutory appeal from the April 11 and May 13 orders. Accordingly, we must dismiss this appeal for lack of jurisdiction. *See id.*

Conclusion

In light of the record and for the reasons stated above, we dismiss this appeal for lack of jurisdiction.

Sandee Bryan Marion, Chief Justice