

Dismissed and Opinion filed December 7, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-01330-CV

MICHAEL TODD LEACH, Appellant

V.

THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS, AND JENNIFER ELIZABETH LEACH, A.K.A. JENNIFER ELIZABETH HANCOCK, Appellees

**On Appeal from the 306th District Court
Galveston County, Texas
Trial Court Cause No. 98FD1030**

O P I N I O N

This is a restricted appeal from the trial court's dismissal of a divorce case for want of prosecution. In July 1998, the court signed a divorce decree in which the husband respondent, appellant Michael Todd Leach, defaulted. In December 1998, the court purportedly granted a Motion for New Trial on the issue of child support, filed by the Office of the Attorney General of the State of Texas ("Attorney General"). The wife petitioner, appellee Jennifer Elizabeth Leach, failed to join the Attorney General as a party to the original divorce action. The Attorney General received judgment in its favor, but never submitted an order for the trial

court to sign. Citing want of prosecution, the trial court dismissed the divorce action. In two points presented for review, appellant argues that the trial court erred in dismissing the divorce action (1) for want of prosecution by the Attorney General, (2) without providing notice and hearing to appellant.

Appellant argues that the dismissal of his divorce suit without proper notice violated his due process rights. Appellees, comprised of the Attorney General and petitioner wife, argue that we lack jurisdiction to review the dismissal order or the new trial order because the court signed them after expiration of its plenary power and, thus, without jurisdiction.

Because the timing of events is critical in this case, a time-line of relevant dates follows:

- July 29, 1998 - Trial court signed a Final Decree of Divorce;
- August 24, 1998 - Texas Attorney General timely filed a Motion for New Trial on the issues pertaining to child support;
- October 12, 1998 - Motion for New Trial overruled by operation of law (75 days after the court signed the divorce decree);
- November 11, 1998 - Court's plenary power to grant a new trial, to vacate, to modify, to correct or to reform the divorce judgment expired (30 days after the Motion for New Trial was overruled);
- December 15, 1998 - Trial court signed an order purportedly granting a new trial;
- May 21, 1999 - Trial court purportedly dismissed the divorce action.

Unless a trial court signs an order granting a motion for new trial, within 75 days after signing a final judgment, the motion is overruled by operation of law. *See* TEX. R. CIV. P. 329b(c). After a motion for new trial is overruled, the court retains plenary power "to grant a new trial or to vacate, modify, correct, or reform the judgment" for an additional 30 days. TEX. R. CIV. P. 329b(e). After the court's plenary power has expired, a judgment may not be set aside except by bill of review for sufficient cause. *See* TEX. R. CIV. P. 329b(f). An order

purporting to grant a new trial, or modify a judgment, after the court's plenary power has expired, is void. *See* TEX. R. CIV. P. 329b(f); *In re Moreno*, 4 S.W.3d 278, 281 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 549 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

In this case, the trial court signed orders purportedly granting the Attorney General's Motion for New Trial and purportedly dismissing the divorce case. However, both of these orders were signed *after* the trial court's plenary power had expired. Therefore, these orders are void. *See* TEX. R. CIV. P. 329b(f); *In re Moreno*, 4 S.W.3d at 281. An appellate court has no jurisdiction to decide the merits of an appeal from a void judgment or order. *See Mellon Serv. Co. v. Touche Ross & Co.*, 946 S.W.2d 862, 864 (Tex. App.—Houston [14th Dist.] 1997, no writ). In such an instance, the appellate court must set aside the trial court's judgment(s) and dismiss the appeal. *See id.* If an appellate court lacks jurisdiction, it lacks the power or authority to decide an appeal. *See Mellon*, 946 S.W.2d at 870 (citing *Johnson v. State*, 747 S.W.2d 568, 569 (Tex. App.—Houston [14th Dist.] 1988, no writ)). Without authority to decide an appeal, any judgment entered by an appellate court is void and has no effect. *See id.*

Because we decide that the orders dismissing the divorce action and granting a motion for new trial are void, we may not decide the merits of this appeal. Accordingly, we (1) vacate the orders granting a new trial and dismissing the divorce action and (2) dismiss this appeal for want of jurisdiction.

PER CURIAM

Judgment rendered and Opinion filed December 7, 2000.

Panel consists of Chief Justice Murphy, Justice Amidei and Justice Hudson.

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