



NUMBER 13-20-00222-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN THE GUARDIANSHIP OF LEON R. BERNSEN, SR.,
AN INCAPACITATED PERSON**

**On appeal from the County Court at Law No. 5
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes and Tijerina
Memorandum Opinion by Justice Tijerina**

Ford + Bergner LLP, Don D. Ford III, and Kenneth A. Krohn (collectively “the movants”) attempt to appeal the trial court’s nonruling on their motion to dismiss under the Texas Citizens Participation Act (TCPA), or, alternatively, the trial court’s denial¹ of

¹ The trial court’s order states: “IT IS THEREFORE ORDRED [sic] that—in as much as there is no party that has filed the Motion to Dismiss—that there is no reason for this court to rule on the Motion to Dismiss; alternatively, IT IS ORDERED that the Motion to Dismiss is DENIED.”

their motion. See TEX. CIV. PRAC. & REM. CODE ANN. § 27.003 (“If a legal action is based on or is in response to a party’s exercise of [a protected right], that party may file a motion to dismiss the legal action.”). We dismiss the appeal. See TEX. R. APP. P. 43.2.

On January 13, 2020, Lynn and Lea Bernsen Brown (the Bernsens) filed a “Motion to Disqualify Ford + Bergner LLP, Motion to Refer Ford + Bergner LLP to State Bar of Texas for Discipline, and Motion to Forfeit Fees” (Bernsen motion). The movants filed a motion to dismiss the Bernsen motion under the TCPA.

On April 29, 2020, the movants attempted to appeal the trial court’s order, which stated that each movant was “not a ‘party’ to the underlying guardianship proceeding.”² In addition, the order also stated: (1) the movants admitted that “they are not parties to the underlying proceeding” in their Special Appearance; (2) none of the movants had a legal right under the TCPA to file a motion to dismiss; (3) the Bernsen motion is not a “legal action” subject to dismissal under the TCPA; (4) the movants’ motion to dismiss the Bernsen motion “is **frivolous and solely intended to delay.**”

On May 6, 2020, we notified the movants that their notice of appeal was defective for failure to comply with rule of appellate procedure 25.1. See TEX. R. APP. P. 25.1 (providing that only a party may file a notice of appeal); *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 723 (Tex. 2006) (providing that only parties of record may appeal a trial court’s judgment). We further notified the movants that unless they cured the defect or

² The movants represent Stephen Livingston who appeals the following cases, which are currently pending before us on appeal: (1) 13-19-00592-CV, the trial court’s November 2019 order appointing Clay R. Hoblit as temporary guardian of Leon’s person and estate; (2) 13-20-00016-CV, the trial court’s order invalidating Stephen’s appointment as permanent guardian of Leon’s estate from Harris County; (3) 13-20-00106-CV, the trial court’s January 2020 order re-appointing Hoblit as temporary guardian of Leon’s person and estate.

before May 17, 2020, this appeal would be dismissed. The movants have not cured the defect.

Therefore, this appeal is dismissed for failure to comply with Texas Rules of Appellate Procedure 25.1. We accordingly DISMISS the appeal without addressing the merits.³

JAIME TIJERINA,
Justice

Delivered and filed the
21st day of May, 2020.

³ On April 29, 2020, the movants filed an emergency motion for stay. We hereby DENY the motion. Finally, having examined and fully considered the Bernsen's motion for sanctions and the movants' response thereto, we conclude that the motion is hereby DENIED.