

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00265-CV

Sanaz Aghaee Yazdi, Appellant

v.

Automax Automotive Group, Inc.; Steven M. Crorey; and Jerry Jorschick, Appellees

**FROM THE 345TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-09-001092, THE HONORABLE ERIC SHEPPERD, JUDGE PRESIDING**

MEMORANDUM OPINION

Sanaz Aghaee Yazdi, appearing pro se,¹ brings a restricted appeal challenging a district court's final judgment dismissing claims against her for want of prosecution and cancelling lis pendens on certain property. *See* Tex. R. Civ. P. 165a (governing dismissal for want of prosecution). Because we conclude she has no standing to appeal the disputed judgment, we dismiss this appeal for want of jurisdiction.

BACKGROUND

In 2009, Automax Automotive Group, Inc., sued Steven M. Crorey and Jerry Jorshick for declaratory relief with respect to real property that Automax had purchased from Crorey under a deed of trust held by Jorshick. Automax subsequently filed for bankruptcy

¹ We hold pro se litigants to the same standard as those represented by counsel. *United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 805 n.6 (Tex. App.—Austin 2000, pet. dism'd).

and its owner, Mohammed Assadi, filed for divorce from Yazdi. Yazdi filed a lis pendens on the disputed property in Travis County in 2010 to provide notice of her interest in the property and of the pending divorce proceedings.

In 2013, Crorey named Yazdi as a third-party defendant to this action, seeking relief from what he alleged was a fraudulently filed lis pendens. *See* Tex. Civ. Prac. & Rem. Code § 12.002(b) (establishing cause of action to obtain relief from fraudulently filed instruments). Yazdi, proceeding pro se, filed an answer and general denial and asked for attorney’s fees. She then filed a cancellation of her lis pendens with Travis County on September 18, 2013.²

In December of 2018, Crorey moved to dismiss the case for want of prosecution, noting the long pendency of the case and the fact that Automax had yet to request a trial date. *See* Tex. R. Civ. P. 165a(2) (allowing dismissal for failure to comply with accepted time standards). Automax requested a trial date and filed its jury demand later that month. It also filed a response to the motion to dismiss, arguing that Crorey had not been prejudiced in any way by Automax’s delay in litigating the matter.

The court set the motion for hearing on December 19, 2018. The day before the hearing, Automax sought and obtained another lis pendens on the property. The district court granted the motion to dismiss the day after the hearing, explaining:

² Although the cancellation is not part of the record on appeal, Crorey appended a copy to his brief and the parties do not dispute its accuracy. *See* Tex. R. Evid. 202(b) (allowing judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”); *Douglas v. Ingersoll*, No. 14-05-00666-CV, 2006 WL 2345968, at *3 (Tex. App.—Houston [14th Dist.] Aug. 15, 2006,, pet. denied) (mem. op.) (“The filing of the lis pendens is a matter of public record and is subject to judicial notice.” (citing *Ponder v. Brice & Mankoff*, 889 S.W.2d 637, 645 n.3 (Tex. App.—Houston [14th Dist.] 1994, writ denied))).

The Court finds that this case was filed April 6, 2009 by the Plaintiff The Court finds that there is been [sic] no activity by the Plaintiff in the case between October 27, 2014 and December 16, 2018. The court finds that 1,509 days have passed between those two dates with absolutely no activity and no prosecution by the Plaintiff.

Having dismissed the pending cause, the court then ordered that that both of Automax's lis pendens, "along with any other lis pendens . . . arising in connection with this lawsuit . . . "hereby are canceled and of no further effect." Yazdi filed this appeal four months later, on April 23, 2019. *See* Tex. R. App. P. 26.1(c) (allowing six months to file notice of restricted appeal), 30 (classifying as restricted an appeal in which litigant "did not participate—either in person or through counsel—in the hearing that resulted in the judgment complained of").

DISCUSSION

To obtain reversal by restricted appeal, Yazdi must establish: (1) she filed notice of appeal within six months after the judgment was signed; (2) she was party to the underlying lawsuit; (3) she did not participate in the hearing that resulted in the judgment complained of and did not timely file any post-judgment motions or requests for findings of fact or conclusions of law; and (4) error is apparent on the face of the record. *See id.* 26.1(c), 30, 44.1; *Alexander v. Lynda's Boutique*, 134 S.W.3d 845, 848 (Tex. 2004). But as a predicate matter, Crorey contends Yazdi has no standing to appeal the disputed dismissal. We agree with Crorey.

The doctrine of standing, which governs who may bring a lawsuit, implicates subject matter jurisdiction and is essential to a court's power to decide a case. *See Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 502 (Tex. 2010); *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Like the existence of subject matter jurisdiction, standing is never presumed. *See Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504,

517 n.15 (Tex. 1995); *Texas Ass'n of Bus.*, 852 S.W.2d at 445; *Concerned Cmty. Involved Dev., Inc. v. City of Houston*, 209 S.W.3d 666, 670 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). To have standing to appeal, a party must make a prima facie showing that its interests are prejudiced or adversely affected by the disputed order or judgment. *See Jack Jones Hearing Ctrs., Inc. v. State Comm. of Examiners in Fitting & Dispensing of Hearing Instruments*, 363 S.W.3d 911, 914 (Tex. App.—Austin 2012, no pet.). “Because a dismissal of a suit for want of prosecution has the same effect as if the suit had never been filed, it affects the rights of the party bringing the suit.” *Bryant v. U.S. Bank Nat. Ass'n*, No. 05-11-00121-CV, 2012 WL 4845660, at *1 (Tex. App.—Dallas Oct. 10, 2012, no pet.) (mem. op.) (citing *Shaw v. Corcoran*, 570 S.W.2d 96, 98 (Tex. App.—Austin 1978, no writ)).

Yazdi has not explained how her interests were in any way prejudiced or adversely affected by the dismissal of the suit. Her only potential claim for relief was a claim for attorney’s fees, but the action filed against her would not allow Yazdi to recover fees, even if she had prevailed and incurred any fees in the process. *See* Tex. Civ. Prac. & Rem. Code § 12.002(b) (allowing recovery of fees by plaintiff prevailing under Section 12.002 but not by defendant); *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009) (“Texas has long followed the ‘American Rule’ prohibiting fee awards unless specifically provided by contract or statute.” (citations omitted)). And Yazdi’s lis pendens, which she had filed to provide notice of the divorce proceedings, was not affected by the judgment, as she herself canceled that lis pendens through an instrument filed with Travis County in 2013.

In short, the record before us reveals that the claims dismissed by the district court’s order were brought by Automax and Crorey—not by Yazdi. Thus, it was Automax and Crorey, and not Yazdi, that were adversely affected by the dismissal of those claims. *See*

Bryant 2012 WL 4845660, at *1 (dismissing appeal where defendant attempted to challenge dismissal of claims brought against her); *Jack Jones*, 363 S.W.3d at 915 (dismissing appeal after observing “[appellant] has failed to explain, and we fail to see, how the trial court’s granting of the . . . plea to the jurisdiction has adversely affected any legally recognized interest of [appellant].”). Accordingly, because Yazdi has not made out a prima facie case that her interests were adversely affected by the final judgment rendered by the district court, she lacks standing to pursue her challenge to that judgment.

CONCLUSION

Because Yazdi has not made out a prima facie showing that her interests were prejudiced or otherwise adversely affected by the district court’s dismissal of the case, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a).

Edward Smith, Justice

Before Chief Justice Rose, Justices Triana and Smith

Dismissed for Want of Jurisdiction

Filed: June 5, 2020