

No. 08-24-00353-CV

IN THE EIGHTH COURT OF APPEALS
EL PASO, TEXAS

FILED IN
8th COURT OF APPEALS
EL PASO, TEXAS
1/31/2025 8:15:51 AM
ELIZABETH G. FLORES
Clerk

NATIONSTAR MORTGAGE, LLC,

Appellant,

v.

RALPH MIRANDA AND SAUL ALFONSO PAZ,

Appellees.

On Appeal from the 171st Judicial District Court, El Paso, Texas
No. 2024DCV0506

APPELLEES' MOTION TO DISMISS FOR LACK OF JURISDICTION

Pursuant to Texas Rule of Appellate Procedure 42.3, Appellees ask the Court to dismiss this appeal for lack of jurisdiction.

A. INTRODUCTION

1. Appellant is NationStar Mortgage, LLC (NationStar Mortgage). Appellees are Ralph Miranda and Saul Alfonzo Paz.
2. The 171st District Court of El Paso County, Texas, signed the interlocutory “Judgment Granting Permanent Injunction” in favor of Appellees and against Appellant on April 29, 2024, in the underlying case, *Ralph Miranda and Saul*

Alfonso Paz, Plaintiffs v. NationStar Mortgage, LLC and Beverly Mitrisin, Defendants, Cause No. 2024DCV0506.

B. ARGUMENT AND AUTHORITIES

3. The Court has the authority under Texas Rule of Appellate Procedure 42.3(a) to dismiss an appeal for lack of jurisdiction.
4. The Court should dismiss this appeal because the judgment being appealed is a nonappealable interlocutory order. *City of Hous. v. Kilburn*, 849 S.W.2d 810, 811 (Tex. 1993).
5. Appellees, as plaintiffs, sued Appellant NationStar Mortgage and Beverly Mitrisin asserting causes of action for a declaratory judgment and injunctive relief and a claim for their reasonable attorney’s fees and costs. CR 8-14.
6. The “Judgment Granting Permanent Injunction” is not a final judgment. CR 34-35. This interlocutory judgment does not dispose of Appellees’ lawsuit claim for declaratory judgment or Appellees’ claim for reasonable attorney’s fees and the interlocutory judgment does not state with “unmistakable clarity” that it is a final judgment disposing of all parties and all claims.¹ *See Farm Bur. Cty. Mut. Ins. v. Rogers*, 455 S.W.3d 161, 163-164 (Tex. 2015); *McNally v. Guevara*, 52 S.W.3d 195, 195-196 (Tex. 2001)(per curiam)(dismissing

¹ In fact, in its Docketing Statement filed with the Court on page 6, Appellant NationStar Mortgage states, in part, “Court granted permanent injunction...*without resolving all claims in case.*” (emphasis supplied).

appeal for lack of jurisdiction because summary judgment did not dispose of a defendants' claim for attorney's fees under the Uniform Declaratory Judgments Act). The interlocutory judgment fails the test for finality.

7. Further, in the interlocutory judgment, the trial court specifically states that it was only hearing "Plaintiffs' request for Injunctive Relief" and was only ruling that "Plaintiffs are entitled to the relief requested." CR 34. When it is clear that the judgment is partial because of its language and because a claim is still pending, the judgment is interlocutory and cannot be appealed. *See In re Burlington Coat Factory Whs.*, 167 S.W.3d 827, 830 (Tex. 2015)("a default judgment that fails to dispose of all claim can be final only if 'intent to finally dispose of the case' is unequivocally expressed in the words of the order itself. [citation omitted].")
8. The interlocutory judgment is a post-answer default judgment for failure of Appellants to appear at the temporary injunction hearing. CR 34-35. There is no presumption that this default judgment is final and appealable. *Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009); *Strut Cam Dimensions, Inc. v. Sutton*, 896 S.W.2d 799, 800-801 (Tex. App.—Corpus Christi 1994, writ denied).
9. A restricted appeal may only be taken from a final judgment. See Tex. Civ. Pac. & Rem. Code §51.013; Tex. R. App. P. 30 ("Statutes pertaining to writ

of error appeals to the court of appeals apply equally to restricted appeals); *Manning v. Dallas Indep. Sch. Dist.*, No. 08-20-00210-CV, 2021 WL 365915, at *2 (Tex. App.—El Paso 2021, no pet.)(mem. op.)(dismissing restricted appeal for lack of jurisdiction because no restricted appeals are authorized from interlocutory orders); *see also Federated Mut. Ins. Co., Inc. v. Davenport*, 85 S.W.3d 837, 838 (Tex. App.—Waco 2002, no pet.)(dismissing restricted appeal of interlocutory order for lack of jurisdiction and ruling that characterizing the order as a temporary injunction did not salvage appeal because Appellants did not timely file their Notice of Appeal under Section 51.014(a)(4) of the Texas Civil Practice and Remedies Code).

C. CONCLUSION


Appellant's restricted appeal is not from a final judgment and the Court lack jurisdiction to hear it. The interlocutory judgment does not contain language of finality, does not dispose of all claims and was expressly limited to granting injunctive relief requested.

D. PRAYER

For these reasons, Appellees ask the Court to grant this motion and dismiss the appeal and grant Appellees judgment for costs. Appellees request such other relief the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify by my signature below that I conferred with Shelley Hopkins, Appellant's counsel of record, on January 31, 2025, and counsel is opposed to this motion.

_____
Ken Slavin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent to all counsel of record via the Court's electronic filing system on this 31st day of January, 2025, as follows:

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Status as of 2/3/2025 8:10 AM MST

Associated Case Party: Ralph Miranda

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