

Dismiss and Opinion Filed April 13, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00761-CV

**NELLY SUAREZ GARCIA, Appellant
V.
LORRIE SEMLER, Appellee**

**On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-04494**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Garcia
Opinion by Justice Partida-Kipness

This is an appeal from the trial court’s order granting appellee’s motion to dismiss the underlying suit under the Texas Citizens’ Participation Act (“TCPA” or “Act”), awarding appellee costs and attorney’s fees as mandated by the Act for successfully defending against the suit, but leaving the amount of costs and fees to be determined by subsequent order. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.003, 27.005, 27.009. Because the order is an unappealable interlocutory order, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

Interlocutory orders that do not dispose of all parties and claims, such as the order at issue here, may be appealed only if permitted by statute or rule. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). Although orders *denying* a TCPA motion to dismiss are appealable, no statute or rule authorizes an appeal from an interlocutory order *granting* a TCPA motion to dismiss. *Fleming & Assocs. v. Kirklin*, 479 S.W.3d 458, 460 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (per curiam). Accordingly, we questioned our jurisdiction over the appeal and directed the parties to file letter briefs addressing our concern.

In her letter brief, appellant does not dispute an appeal from an interlocutory order granting a TCPA motion to dismiss is not authorized by statute but asserts the appeal is proper under the Austin Court of Appeals' decision in *Eureka Holdings Acquisitions, L.P. v. Marshall Apartments*, 597 S.W.3d 921 (Tex. App.—Austin 2020, pet. denied). There, the trial court signed an order that granted appellant Eureka's TCPA motion to dismiss as to one of multiple claims brought by appellee, denied it as to the other claims, and noted Eureka was entitled to attorney's fees and sanctions as to the dismissed claim in an amount to be determined at a later date. *Eureka Holdings*, 597 S.W.3d at 923. Eureka sought to challenge the portion denying its motion, but instead of appealing from that order, appealed from the subsequent order setting the amount of fees and sanctions awarded. *Id.* Because the appealable order was the order partially denying the TCPA motion, not the order on fees from which Eureka appealed, the Austin court dismissed the appeal for want of

jurisdiction. *Id.* at 924-25. In so doing, the court rejected Eureka’s argument that, since the order partially denying the motion left the amount of fees and sanctions pending, the time to appeal was triggered by the order that set the amount. *Id.* at 924.

Appellant asserts *Eureka Holdings* “creates a trap for the unwary[.]” Appellant appears to argue that because the appealable order in *Eureka Holdings* was the order partially denying the motion, orders granting a TCPA motion to dismiss should also be immediately appealed even if the issue of attorney’s fees remains pending. As appellee notes in her jurisdictional letter brief, however, Eureka sought to appeal the *denial*, not the granting, of its motion to dismiss. Resolution of the issue of attorney’s fees and sanctions was not necessary to trigger appellate deadlines there because the order denying the motion to dismiss was appealable as an interlocutory order. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(12).

Recognizing her argument might fail, appellant asks in the alternative that we abate the appeal to allow the trial court to determine the amount of fees and costs to which appellee is entitled. We decline to do so.

Because the appealed order here is not appealable, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

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/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

NELLY SUAREZ GARCIA,
Appellant

No. 05-20-00761-CV V.

LORRIE SEMLER, Appellee

On Appeal from the 14th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-04494.
Opinion delivered by Justice Partida-
Kipness, Justices Myers and Garcia
participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee Lorrie Semler recover her costs, if any, of this appeal from appellant Nelly Suarez Garcia.

Judgment entered this 13th day of April, 2021.