

Abatement Order filed January 4, 2016.



In The

Fourteenth Court of Appeals

NO. 14-14-00666-CV

MARK THUESEN, Appellant

V.

**AMERISURE INSURANCE COMPANY, SWAMPLOT INDUSTRIES
L.L.C., LAURENCE DAVID ALBERT, BETH ANNE BRINSDON, DOYLE
RAIZNER, L. L. P., MICHAEL PATRICK DOYLE, AND JEFFREY LEWIS
RAIZNER, Appellees**

**On Appeal from the 151st District Court
Harris County, Texas
Trial Court Cause No. No. 2012-49262**

ABATEMENT ORDER

The appellate record reflects the following:

- On April 18, 2014, in Cause No. 2014-07537, in the 152nd Judicial District Court of Harris County, Texas, Defendants Michael Patrick Doyle, Jeffrey Lewis Raizner, and Doyle Raizner L.L.P. (hereinafter collectively the

“Doyle Parties”) filed a motion to dismiss under Texas Rule of Civil Procedure 91a.

- On May 8, 2014, Cause No. 2014-07537, in the 152nd Judicial District Court of Harris County was consolidated into Cause No. 2012-49262, in the 151st Judicial District Court of Harris County.
- On May 23, 2014, the trial court granted the Doyle Parties’ motion to dismiss, dismissed some of the claims filed by Plaintiff Mark Thuesen against the Doyle Parties, and ordered Thuesen to pay the Doyle Parties reasonable and necessary attorney’s fees and costs pursuant to Rule 91a.7 of the Texas Rule of Civil Procedure, stating that the trial court would determine the amount of the reasonable and necessary attorney’s fees and costs at a subsequent evidentiary hearing.

Though the record reflects that Thuesen later nonsuited all of his claims against all parties, the record does not reflect that the trial court ever disposed of the Doyle Parties’ request for attorney’s fees and costs under Rule 91a, either by awarding the Doyle Parties reasonable and necessary attorney’s fees and costs under Rule 91a or by dismissing this request or signing an order recognizing the nonsuit or withdrawal of this request by the Doyle Parties.

Our appellate record does not contain a nonsuit, dismissal, severance, or disposition of the Doyle Parties’ request for reasonable and necessary attorney’s fees and costs under Rule 91a. Our appellate record does not contain an order or judgment in which the trial court stated with unmistakable clarity that it was rendering a final judgment. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192, 200 (Tex. 2001). It appears from our appellate record that there may not be a final judgment in the trial court.

Texas Rule of Appellate Procedure 27.2 provides as follows:

The appellate court may allow an appealed order that is not final to be modified so as to be made final and may allow the modified order and all proceedings relating to it to be included in a supplemental record.

Tex. R. App. P. 27.2.

We order the case abated and remanded to the trial court for a period of ten days so that either (1) a supplemental clerk's record may be filed showing that the Doyle Parties' request for reasonable and necessary attorney's fees and costs under Rule 91a already has been nonsuited, dismissed, severed, or otherwise disposed of in a way that would create a final judgment; or (2) a supplemental clerk's record may be filed showing that, while this appeal was abated pursuant to this order, the Doyle Parties' request for reasonable and necessary attorney's fees and costs under Rule 91a was nonsuited, dismissed, severed, or otherwise disposed of in a way that would create a final judgment. In either event, a supplemental record shall be filed with the clerk of this court on or before January 14, 2016.

The appeal is abated, treated as a closed case, and removed from this court's active docket. The appeal will be reinstated on this court's active docket when the supplemental record is filed in this court. The court will also consider an appropriate motion to reinstate the appeal filed by either party, or the court may reinstate the appeal on its own motion. It is the responsibility of any party seeking reinstatement to request a hearing date from the trial court and to schedule a hearing, if a hearing is required, in compliance with this court's order. If the parties do not request a hearing, the court coordinator of the trial court shall set a hearing date and notify the parties of such date.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Jamison and Busby.