

**Motion to Dismiss Granted; Motion for Sanctions Denied; and Majority and Concurring Opinions filed July 26, 2011.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-10-00385-CV**

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**JEFFREY LONDON, Appellant**

**V.**

**LETICIA LONDON, Appellee**

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**On Appeal from the 308th District Court  
Harris County, Texas  
Trial Court Cause No. 1995-51934**

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**MAJORITY OPINION**

This appeal is one of three proceedings arising from Jeffrey London's attempts to obtain payment of a judgment from the proceeds of the debtor's voluntary sale of her homestead. Debtor Leticia London argues that we lack jurisdiction over this appeal, and she asks that we dismiss this appeal and sanction Jeffrey. Although we deny the motion for sanctions, we agree that we lack jurisdiction over this proceeding. Accordingly, we dismiss this appeal.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The parties have been before this court several times since their divorce in 1995. *See London v. London*, 94 S.W.3d 139 (Tex. App.—Houston [14th Dist.] 2002, no pet.)

(“*London I*”); *London v. London*, 192 S.W.3d 6 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (“*London II*”); *In re London*, No. 14-10-00517-CV, 2010 WL 2367229 (Tex. App.—Houston [14th Dist.] June 15, 2010, orig. proceeding) (mem. op., per curiam) (“*London III*”); *London v. London*, Nos. 14-09-01045-CV and 14-09-01063-CV, 2011 WL 1856079 (Tex. App.—Houston [14th Dist.] May 17, 2011, no pet. h.) (“*London IV*”). The facts are well known to the parties, and those relevant to our disposition of this appeal are recounted in *London IV*. See *London IV*, 2011 WL 1856079, at \*1–2.

In brief, Jeffrey has an unpaid judgment against his former wife, Leticia. In 2009, he learned that Leticia was attempting to sell the homestead she acquired after their divorce and she had specified that the title company was to pay part of the proceeds to the creditors she identified in the closing statement. On June 17, 2009, he applied to the trial court for an order appointing a receiver and requiring Leticia to deliver the proceeds from the sale to the receiver for payment to Jeffrey. *Id.*, 2011 WL 1856079, at \*1. The trial court granted the application to appoint a receiver to whom Leticia was ordered to deliver her homestead-sale proceeds. The trial court did not, however, order the proceeds disbursed to Jeffrey, and similarly denied Leticia’s request to disburse the sale proceeds to her. *Id.*, 2011 WL 1856079, at \*1–2. The trial court instead permitted the receiver to pay a small amount of the proceeds directly to Leticia’s creditors to satisfy a portion of her past-due bills. *Id.*, 2011 WL 1856079, at \*2.

Leticia challenged the trial court’s rulings through an appeal and a petition for writ of mandamus. *Id.* We consolidated those proceedings, reversed the trial court’s order appointing a receiver, and remanded the case. *Id.*, 2011 WL 1856079, at \*1–2.

While Leticia’s appeal and original proceeding were pending, however, Jeffrey again attempted to reach Leticia’s homestead-sale proceeds. Two months after Leticia sold her home, Jeffrey filed a motion asking the trial court to disburse the sales proceeds to him. The trial court denied the motion, and Jeffrey filed this appeal. In response, Leticia filed a motion to dismiss and for sanctions in this court, arguing that Jeffrey was pursuing an unauthorized interlocutory appeal.

## II. MOTION FOR DISMISSAL

Texas appellate courts generally have no jurisdiction to hear an appeal over an interlocutory order unless the appeal is authorized by statute. *Ogletree v. Matthews*, 262 S.W.3d 316, 319 n.1 (Tex. 2007) (citing *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992)). Nevertheless, orders that “resolve discrete issues in connection with any receivership are appealable.” *Huston v. Fed. Deposit Ins. Corp.*, 800 S.W.2d 845, 847 (Tex. 1990) (op. on reh’g). Thus, Jeffrey argued in the trial court that by ordering all of the remaining proceeds disbursed to him, the trial court could resolve Leticia’s challenge to its earlier orders appointing a receiver and requiring her to turn over the proceeds from the sale of her home.

But the trial court did not order the proceeds disbursed to Jeffrey. Because the trial court denied Jeffrey’s motion, nothing changed. Thus, the denial of Jeffrey’s motion for disbursement is not an appealable resolution of a discrete issue in connection with a receivership.<sup>1</sup> *Cf. Johnson v. Ameriquest Mortgage Co.*, No. 14-04-00121-CV, 2004 WL 1066750, at \*1 (Tex. App.—Houston [14th Dist.] May 13, 2004, no pet.) (mem. op., per curiam) (order setting aside an order to disburse excess proceeds from a foreclosure sale is a non-appealable interlocutory order); *Nelson v. Lubbock Cent. Appraisal Dist.*, No. 07-02-0349-CV, 2003 WL 1987959, at \*2 (Tex. App.—Amarillo Apr. 30, 2003, no pet.) (mem. op.) (order denying request to disburse part of the proceeds of a foreclosure sale is a non-appealable interlocutory order).

In response to the motion to dismiss, Jeffrey argues that in asking the trial court to order all of the money held by the receiver to be disbursed to him, he sought further relief under the turnover statute. He contends that the trial court’s order therefore is an appealable denial of turnover relief. We agree that Jeffrey sought relief under the turnover statute, but he did not request further relief; he requested the same relief he sought in his original application for a turnover order.

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<sup>1</sup> We express no opinion as to whether the order would have been appealable if the trial court had granted the requested relief.

In the motion he filed in February 2010, he asked that the court-appointed receiver disburse Leticia’s homestead-sale proceeds to him; he made the same request in his application for turnover relief in June 2009. In support of his 2010 motion, he presented the same argument he presented in 2009, i.e., that Leticia waived the statutory exemption over homestead-sale proceeds. On December 1, 2009, the trial court partially granted his request for turnover relief, appointed a receiver, and ordered that if Leticia sold her home, she must turn over the proceeds to the receiver. In addition, the trial court ordered that anyone seeking disbursement of the funds must file a motion and provide notice to both Leticia and Jeffrey. The trial court further recited in the judgment, “All relief not expressly granted by this Final Judgment with respect to the granting of turnover relief and the appointment of a receiver is hereby denied.” Thus, Jeffrey previously sought the same relief—turnover of Leticia’s homestead-sale proceeds to a receiver, followed by the receiver’s disbursement of those proceeds to him—and the trial court denied that request in December 2009. Leticia timely appealed the order, but Jeffrey did not.

We conclude that Jeffrey’s motion for disbursement was, in effect, a motion for reconsideration of the trial court’s refusal to grant his earlier request for the same relief. It is now too late for Jeffrey to appeal that ruling, and we decline to treat the trial court’s second denial of the same request as an independently appealable order. If a litigant could restart the deadline to appeal the denial of a turnover order by seeking the same relief against the same party in the same court for the same reasons and obtaining the same result, then the appellate filing deadline would be meaningless. *Cf. Bahar v. Lyon Fin. Servs., Inc.*, 330 S.W.3d 379, 387 (Tex. App.—Austin 2010, pet. denied) (holding that where a litigant failed to timely appeal a turnover order, the appellate court lacks jurisdiction to review those portions of an amended turnover order that were present in the earlier order).

In sum, we agree with Jeffrey that he sought turnover relief, but we agree with Leticia that we lack jurisdiction over this appeal. We accordingly grant her motion to dismiss.

### III. MOTION FOR SANCTIONS

If an appeal is frivolous, the appellate court may award the prevailing party just damages. TEX. R. APP. P. 45. To determine if an appeal is frivolous, we review the record from the viewpoint of the advocate and decide whether there were reasonable grounds to believe the case could be reversed. *Glassman v. Goodfriend*, No. 14-09-00522-CV, 2011 WL 2150225, at \*8 (Tex. App.—Houston [14th Dist.] June 2, 2011, pet. filed) (en banc). Because the question of whether there were reasonable grounds for such a belief is an objective one, an appeal can be frivolous even absent bad faith. *Id.*, 2011 WL 2150225, at \*7. After reviewing the record from the viewpoint of Jeffrey’s counsel, we conclude that there were reasonable grounds to believe that this court could reverse the trial court’s order. We accordingly deny Leticia’s motion for sanctions.

/s/ Tracy Christopher  
Justice

Panel consists of Chief Justice Hedges and Justices Frost and Christopher (Frost, J., concurring).