

McNally appealed but also moved to dismiss his own appeal on the ground that the judgment was not final because it did not dispose of the defendants' claim for attorney fees. The defendants argued to the court of appeals that they had abandoned their claim for attorney fees by not including it in their motion for summary judgment. A divided court of appeals agreed with the defendants, noting that the award of costs also indicated finality. 989 S.W.2d 380 (Tex. App.—Austin 1999). The court affirmed the trial court's judgment.

We agree with the dissenting Justice in the court of appeals that a party's omission of one of his claims from a motion for summary judgment does not waive the claim because a party can always move for partial summary judgment, TEX. R. CIV. P. 166a(e), and thus there can be no presumption that a motion for summary judgment addresses all of the movant's claims. See *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W.2d 677, 678-679 (Tex. 1990). Nothing in the trial court's judgment, other than its award of costs to the defendants, suggests that it intended to deny the defendants' claim for attorney fees. The award of costs, by itself, does not make the judgment final. *Lehmann v. Har-Con Corp.*, ___ S.W.3d ___ (Tex. 2000).

Because the judgment does not appear final on its face, and because it did not dispose of the defendants' claim for attorney fees, it was not an appealable judgment. Accordingly, without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the judgment of the court of appeals and remand the case to that court to determine whether to abate the appeal to permit the trial court to render a final judgment, TEX. R. APP. P. 27.2, or to dismiss the appeal for want of jurisdiction.

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