

**Dismiss and Opinion Filed March 4, 2016**



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

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**No. 05-15-01295-CV**

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**SHEREEF KAMEL, W.D. MASTERSON AND KILGORE & KILGORE, PLLC,  
Appellants**

**V.**

**ADVOCARE INTERNATIONAL, L.P., Appellee**

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**On Appeal from the 429th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 429-03276-2015**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Lang-Miers, and Justice Stoddart  
Opinion by Chief Justice Wright

This is an appeal from an order imposing monetary sanctions upon a party, the party's attorney and the attorney's firm. Upon review of the clerk's record in the case, it appeared that the order was not a final judgment. The Court requested that the parties provide the Court with jurisdictional briefing explaining how the Court has jurisdiction over the appeal. Both appellants and appellee responded. Because we conclude the order appellants seek to appeal is interlocutory, we dismiss the appeal for want of jurisdiction.

Appellee AdvoCare International, L.P. initiated this suit by filing a petition pursuant to rule 202 of the Texas Rules of Civil Procedure to take the pre-suit deposition of Michael Moussa, who is not a party to this appeal. The petition stated both that AdvoCare anticipated filing suit against Moussa and that it sought to investigate claims it might have against Moussa or

potential claims Moussa may have brought against AdvoCare. Moussa answered and generally denied the allegations of the petition. Subsequently, Moussa, joined by appellant Shereef Kamel, filed a counterclaim against AdvoCare suing individually and on behalf of a class they hoped to certify. In their counterclaim Moussa and Kamel asserted claims for breach of contract, quantum meruit and unjust enrichment, common law fraud, and conspiracy to commit unlawful acts. The class was never certified.

AdvoCare moved for sanctions against Kamel, his attorney—appellant Masterson, and Masterson’s firm—appellant Kilgore & Kilgore, PLLC, contending that certain allegations in the counterclaim concerning AdvoCare’s conduct toward Kamel were verifiably groundless. Following an evidentiary hearing, the trial court granted AdvoCare’s motion for sanctions and ordered Masterson to pay AdvoCare \$3,500.00. The trial court subsequently amended its sanctions order to clarify that it found Kamel, Masterson and Kilgore & Kilgore brought groundless claims against AdvoCare in bad faith and for the purpose of harassment in violation of rule 13 and that because allegations in the petition lacked evidentiary support and further investigation and discovery was not likely to produce evidentiary support, Masterson’s signature on the pleading amounted to a violation of the requirements imposed by Chapter 10 of the Texas Civil Practice & Remedies Code.

Appellants filed a notice of appeal complaining of the sanctions order and the amended sanctions order. On the same day, Moussa and Kamel nonsuited their counterclaims, including the class action claims. The clerk’s record does not include an order granting the nonsuit or an order disposing of AdvoCare’s original rule 202 petition.

This court may entertain appeals only from final judgments or interlocutory orders authorized by statute. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); TEX. R. APP. P. 28.1(a). A judgment is final and appealable if it disposes of all parties and all issues in

the case. *Lehmann*, 39 S.W.3d at 195. Without affirmative statutory authority to hear an interlocutory appeal, this Court is without jurisdiction to entertain an appeal from an interlocutory order. *Id.* A sanctions order that does not dispose of all the parties and issues is neither an appealable final judgment nor an appealable interlocutory order. *First Nat. Bank of Giddings, Tex. v. Birnbaum*, 826 S.W.2d 189, 190 (Tex. App.—Austin 1992, no writ).

Appellants argue that the amended sanctions order is final because no parties or issues remain in the case. They maintain that AdvoCare never asserted any affirmative claim for relief in the suit, the rule 202 petition has been “superseded and rendered moot” by the institution of arbitration proceedings initiated by AdvoCare against Moussa and Kamel, and their counterclaims are no longer pending because they have nonsuited the counterclaims. Although Moussa and Kamel have nonsuited their counterclaims, the trial court has not signed a written order granting the nonsuit. Without a written order of dismissal, the nonsuited claims remain pending for jurisdictional purposes and there is no final judgment in the case. *See Farmer v. Ben E. Keith Co.*, 907 S.W.2d 495, 496 (Tex. 1995) (per curiam) (“When a judgment is interlocutory because unadjudicated parties or claims remain before the court, and when one moves to have such unadjudicated claims or parties removed by severance, dismissal, or nonsuit, the appellate timetable runs from the signing of a judgment or order disposing of those claims or parties.”); *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 510 (Tex. 1999) (although notice of nonsuit filed, appellate timetable not triggered until trial court signed written order of dismissal). Because the pendency of the counterclaims precludes a determination that an appealable final order exists in this case, we do not determine whether the rule 202 petition is moot as a result of AdvoCare’s institution of arbitration proceedings against Moussa.

We dismiss the appeal for want of jurisdiction.

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/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE



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

**JUDGMENT**

SHEREEF KAMEL, W.D. MASTERSON  
AND KILGORE & KILGORE, PLLC,  
Appellants

No. 05-15-01295-CV      V.

ADVOCARE INTERNATIONAL, L.P.,  
Appellee

On Appeal from the 429th Judicial District  
Court, Collin County, Texas  
Trial Court Cause No. 429-03276-2015.  
Opinion delivered by Chief Justice Wright.  
Justices Lang-Miers and Stoddart  
participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that appellee ADVOCARE INTERNATIONAL, L.P. recover its costs of this appeal from appellants SHEREEF KAMEL, W.D. MASTERSON AND KILGORE & KILGORE, PLLC.

Judgment entered March 4, 2016.