

DISMISS; and Opinion Filed June 10, 2013.



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

No. 05-13-00317-CV

MICHAEL A. RUFF AND FROST BANK, N.A., Appellants

V.

SUZANN RUFF, Appellee

**On Appeal from the Probate Court No. 1
Dallas County, Texas
Trial Court Cause No. PR-11-2825-1**

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Lang-Miers and Lewis
Opinion by Justice Lang-Miers

Before the Court is appellee Suzann Ruff's motion to dismiss the appeal. Appellee asserts the appeal should be dismissed because the complained-of order is an unappealable interlocutory order. We agree and dismiss.

An interlocutory order, that is, an order that does not dispose of all claims and parties, is not appealable unless authorized by statute. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992). The order appellants Michael A. Ruff and Frost Bank, N.A. challenge in this appeal (1) granted appellee's motion to stay arbitration, (2) denied Michael's motion to stay proceedings, and (3) recited that the trial court would conduct a hearing "pursuant to subchapter B of chapter 171 of the Texas Civil Practice and Remedies Code . . . to determine whether to grant or deny [appellants'] motions to compel arbitration." Subchapter B of civil practice and

remedies code chapter 171 governs proceedings to compel or stay arbitration under the Texas Arbitration Act (“TAA”). *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 171.021-026 (West 2011).

Arguing in response to appellee’s motion that the complained-of order is appealable, appellants rely not only on chapter 171 but also on civil practice and remedies code section 51.016 and title 9, section 16 of the United States Code, both of which govern appeals of orders under the Federal Arbitration Act (“FAA”). *See id.* § 51.016 (West Supp. 2012) (providing party may appeal interlocutory order in matter subject to FAA under “same circumstances” appeal from federal district court’s order would be permitted by 9 U.S.C. § 16). Appellants argue the portion of the order granting the stay of arbitration is appealable pursuant to section 171.098, and the order granting the application to stay the proceedings is appealable pursuant to section 51.016 and title 9, section 16. *See* 9 U.S.C. § 16(a)(1)(A); TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.016, 171.098(a)(2).

Appellants correctly note that section 171.098 authorizes an appeal from an order staying arbitration and section 51.016 and title 9, section 16 authorizes an appeal from an order denying a stay of the proceedings. *See* 9 U.S.C. § 16(a)(1)(A); TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.016, 171.098(a)(2). However, before an appeal under these sections is authorized, a final determination that the suit is or is not referable to arbitration is required. *See* 9 U.S.C. § 16(a)(1)(A) (requiring, pursuant to 9 U.S.C. § 3, that the trial court “be satisfied” that issue is referable to arbitration); TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(2) (requiring showing, under section 171.023, that no agreement to arbitrate exists). Here, although the order grants the motion to stay arbitration and denies the motion to stay proceedings, it also specifically recites that a hearing will be conducted to determine whether to grant appellants’ motion to compel arbitration. The trial court’s language, stating a hearing will be held, reflects that the case remains pending and a hearing on the motion will be conducted at a subsequent time.

Because the trial court has not yet determined whether the parties must arbitrate, the complained-of order is not appealable. Accordingly, we grant appellee's motion and dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Elizabeth Lang-Miers/

ELIZABETH LANG-MIERS
JUSTICE

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

JUDGMENT

MICHAEL A. RUFF AND FROST BANK,
N.A., Appellants

No. 05-13-00317-CV V.

SUZANN RUFF, Appellee

On Appeal from the Probate Court No. 1,
Dallas County, Texas

Trial Court Cause No. PR-11-2825.

Opinion delivered by Justice Lang-Miers.
Chief Justice Wright and Justice Lewis
participating.

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

We **ORDER** that appellee Suzann Ruff recover her costs, if any, of this appeal from
appellants Michael A. Ruff and Frost Bank, N.A.

Judgment entered this 10th day of June, 2013.

/Elizabeth Lang-Miers/

ELIZABETH LANG-MIERS

JUSTICE