IN THE SUPREME COURT OF TEXAS

NO. 03–0831

YUSUF SULTAN, D/B/A U.S. CARPET AND FLOORS, PETITIONER

v.

SAVIO MATHEW, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Argued September 30, 2004

CHIEF JUSTICE JEFFERSON delivered the opinion of the Court, in which JUSTICE O'NEILL, JUSTICE GREEN, JUSTICE JOHNSON, JUSTICE SIMMONS[1] (assigned) and JUSTICE GAULTNEY[2] (assigned) join.

JUSTICE HECHT filed a dissenting opinion, in which JUSTICE WAINWRIGHT and JUSTICE MEDINA join.

In this case we determine whether courts of appeals have jurisdiction to hear appeals from judgments of county courts or county courts at law following a de novo appeal from a small claims court. The Harris County Civil Court at Law No. 2 rendered a default judgment against Yusuf Sultan ("Sultan") d/b/a U.S. Carpet and Floors after Sultan failed to appear for trial. Sultan appealed to the

[1] Hon. Rebecca Simmons, Justice, the Court of Appeals for the Fourth District, sitting by commission of Hon. Rick Perry, Governor of Texas, pursuant to Section 22.005 of the Texas Government Code.

[2] Hon. David Gaultney, Justice, the Court of Appeals for the Ninth District, sitting by commission of Hon. Rick Perry, Governor of Texas, pursuant to Section 22.005 of the Texas Government Code.

Fourteenth Court of Appeals, which dismissed Sultan's appeal for want of jurisdiction based on section 28.053(d) of the Texas Government Code.[3] ___ S.W.3d ___. Because we agree that courts of appeals do not have jurisdiction over cases originally filed in small claims court, we affirm the court of appeals' judgment.

I
Background

Savio Mathew ("Mathew") sued Sultan in small claims court for damages resulting from the installation of a laminate floor in Mathew's home. The small claims court awarded Mathew $4000, and Sultan filed an appeal for a de novo trial in the Harris County Civil Court at Law No. 2. *See* TEX. GOV'T CODE §§ 28.052(a), 28.053(b). A trial was set and notice was sent to Sultan; however, because Sultan allegedly did not receive the trial notice, he did not appear. Consequently, the county court rendered a default judgment against him. Sultan appealed to the court of appeals. Citing section 28.053(d) of the Texas Government Code, the court of appeals concluded that it did not have jurisdiction and dismissed the appeal. __ S.W.3d __. We granted Sultan's petition for review to determine whether courts of appeals have jurisdiction over judgments of county courts or county courts at law following a de novo appeal from a small claims court. 47 Tex. Sup. Ct. J. 417 (Apr. 12, 2004).

II
Discussion

[3] The statute provides that a "[j]udgment of the county court or county court at law on the appeal [from the small claims court] is *final*." TEX. GOV'T CODE § 28.053(d) (emphasis added).

A party dissatisfied with a small claims court judgment may appeal to the county court or county court at law for a de novo trial if the amount in controversy exceeds $20. TEX. GOV'T CODE §§ 28.052(a), 28.053(b). The Texas Government Code provides that a "[j]udgment of the county court or county court at law on the appeal [from the small claims court] is final." *Id.* § 28.053(d) (emphasis added). The question here is whether the word "final" in section 28.053(d) means final and appealable or final and not appealable.

Before 1998, several courts held that a county court's or county court at law's judgment on de novo appeal from a small claims court could be appealed to the court of appeals. *See, e.g., Galil Moving & Storage, Inc. v. McGregor*, 928 S.W.2d 172 (Tex. App.—San Antonio 1996, no pet.)*; Sablatura v. Ellis*, 753 S.W.2d 521, 522-23 (Tex. App.—Houston [1st Dist.] 1988, no pet.); *see also* Alan Wright et al., *Appellate Practice and Procedure*, 54 SMU L. REV. 1093, 1119 (2001). In 1998, however, the First Court of Appeals held that the word "final" in section 28.053(d) meant "that there is no further appeal beyond the county court or county court at law." *Davis v. Covert*, 983 S.W.2d 301, 302 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd w.o.j.) (overruling *Sablatura*, 753 S.W.2d 521). The *Davis* holding has since been followed by most Texas courts of appeals. *See*, *e.g.*, *Oropeza v. Valdez*, 53 S.W.3d 410, 412 (Tex. App.—San Antonio 2001, no pet.)*; Woodlands Plumbing Co. v. Rodgers*, 47 S.W.3d 146, 148 (Tex. App.—Texarkana 2001, pet. denied); *Howell Aviation Servs. v. Aerial Ads, Inc.*, 29 S.W.3d 321, 323 (Tex. App.—Dallas 2000, no pet.); *Williamson v. A-1 Elec. Auto Serv.*, 28 S.W.3d 731, 731-32 (Tex. App.—Corpus Christi 2000, pet. dism'd w.o.j.); *Lederman v. Rowe*, 3 S.W.3d 254, 256 (Tex. App.—Waco 1999, no pet.); *Gaskill v. Sneaky Enters., Inc.*, 997 S.W.2d 296, 297 (Tex. App.—Fort Worth 1999, pet. denied);

Automania, L.L.C. v. May, No. 03-03-00592-CV, 2004 WL 852275 (Tex. App.—Austin April 22, 2004, no pet.) (mem. op.); *Martin v. Vaughan,* No. 11-02-00133-CV, 2003 WL 22741155 (Tex. App.—Eastland Nov. 20, 2003, no pet.) (mem. op.); *Townsend v. Accidental Injury Treatment Ctr.*, No. 07-99-0073-CV, 2000 WL 157900 (Tex. App.—Amarillo Feb. 9, 2000, no pet.) (not designated for publication).

Although we have never specifically addressed the finality language in section 28.053(d), we have twice considered similar language in other statutes. In *Seale v. McCallum*, 287 S.W. 45 (Tex. 1926), we held that a statute declaring that the district court's judgment on an election contest was "final" precluded appellate review of election contests by the courts of civil appeals. We stated:

> The election contest was instituted and tried under the provisions of Revised Statutes (1925), art. 3152, which, while providing for a contest of primary elections, declared that the decision of the district court or judge trying the contest should be "final as to all district, county precinct, or municipal offices." The plain purpose of the clause quoted was to deny appellate jurisdiction to the Courts of Civil Appeals over contested elections of the character here involved.

Id. at 45.

In *Mobil Oil Corp. v. Matagorda County Drainage Dist. No. 3*, 597 S.W.2d 910 (Tex. 1980), we reached the opposite conclusion. In that case, we reviewed section 56.082 of the Texas Water Code, which gives the commissioners court exclusive jurisdiction over certain proceedings relating to drainage districts and provides that the commissioners court's judgment on such issues "is final." *Id.* at 911 (construing TEX. WATER CODE § 56.082). We concluded that "[t]he legislature did not intend by using the term 'final' in section 56.082 to prevent all review of commissioners court

orders," and we therefore held that commissioners court orders annexing territory for drainage districts were subject to review by the district court. *Id.*

While both *Mobil Oil* and *Seale* are instructive in that they address similar language, neither case offers direct insight into the Legislature's intent in using the word "final" in section 28.053(d). When construing a statute, "[o]ur primary objective . . . is to ascertain and give effect to the Legislature's intent." *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004). To discern that intent, we consider the objective the law seeks to obtain and the consequences of a particular construction. TEX. GOV'T CODE § 311.023(1), (5); *see also City of Sunset Valley*, 146 S.W.3d at 642. We must consider the statute as a whole and give meaning to the language that is consistent with its other provisions. *City of Sunset Valley*, 146 S.W.3d at 642. Applying these principles, we conclude that by declaring in section 28.053(d) that the "judgment of the county court or county court at law is final," the Legislature intended to prohibit appeals to the courts of appeals.

The Legislature created the small claims court to provide an affordable and expedient procedure for litigating claims involving relatively small amounts of money.[4] *See* Act of May 27, 1953, 53rd Leg., R.S., ch. 309, § 17, 1953 Tex. Gen. Laws 778, 780 (creating small claims court and noting "[t]he fact that many citizens of the State of Texas are now in effect denied justice because of the present expense and delay of litigation when their claims involve small sums of money; and the further fact that the discouragement of litigation based on financial ability is contrary to the public policy of this State"); *see also* O. L. Sanders, Jr., *The Small Claims Court*, 1 S. TEX. L.J. 80,

[4] The small claims court's jurisdictional limit is $5000. *See* TEX. GOV'T CODE § 28.003(a).

85-86 (1954) ("Viewing the Small Claims Court Act as a whole, it must be concluded that the main object and purpose of the law was to place justice within the reach of many Texas citizens, who were previously denied such relief because the litigation expense and delay overshadowed their small claim."). This basic purpose is reflected in almost every aspect of small claims court procedure. For example, the institution of a small claims action requires little more than completing a one-page form. *See* TEX. GOV'T CODE § 28.012(b). The hearing is "informal, with the sole objective being to dispense speedy justice between the parties." *Id.* § 28.033(d). On appeal, the county court must dispose of the claim "with all convenient speed." *Id.* § 28.053(a). When construing section 28.053(d) in the context of other small claims court provisions, all of which underscore the Legislature's basic goal of providing a simplified and inexpensive court procedure, it is reasonable to conclude that in section 28.053(d), the Legislature intended to forgo the added time and expense which inevitably accompany an appeal to the court of appeals.[5]

In *Mobil Oil*, we rejected Matagorda County's contention that the word "final" in section 56.082 of the Texas Water Code meant "not reviewable," reasoning that the Legislature did not intend to prevent *all* review of commissioners court orders annexing territory to drainage districts. *See Mobil Oil Corp.*, 597 S.W.2d at 911. Here, however, we note that section 28.053(d) incorporates a form of appellate review. The Legislature has specifically provided that a dissatisfied party can obtain review of a small claims court judgment by appealing to the county court or county court at

[5] For example, appealing to a county court requires only that the appellant file an appeal bond and a notice of appeal. *See* TEX. GOV'T CODE § 28.052(b); TEX. R. CIV. P. 571. Appeals to the courts of appeals are much more involved and require that the appellant, among other things, pay for the production of the clerk's and reporter's records. TEX. R. APP. P. 35.3. Additionally, both parties must submit formal briefs. TEX. R. APP. P. 38.1, 38.2.

law for a de novo trial. *See* TEX. GOV'T CODE §§ 28.052(a), 28.053(b). Thus, in section 28.053(d) the Legislature intended not to prevent all review of a small claims court judgment, but rather to limit the extent of review and thereby minimize the "expense and delay of litigation." *See* Act of May 27, 1953, 53rd Leg., R.S., ch. 309, § 17, 1953 Tex. Gen. Laws 778, 780.

Sultan contends that because a "final judgment" is required for an appeal, we cannot interpret the word "final" in section 28.053(d) as prohibiting review by the court of appeals. In *Mobil Oil*, we reasoned that "[a] judgment, though final, may yet be one that is reviewable. It is the finality which makes a judgment a subject for review." 597 S.W.2d at 911. Granted, under "the general rule, . . . an appeal may be taken only from a final judgment." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). But "the term 'final,' as applied to judgments, has more than one meaning." *Street v. Honorable Second Court of Appeals,* 756 S.W.2d 299, 301 (Tex. 1988). Indeed:

> The term 'final judgment' applies differently in different contexts. A judgment is 'final' for purposes of appellate jurisdiction if it disposes of all issues and parties in a case. The term 'final judgment' is also used with reference to the time when trial or appellate court power to alter the judgment ends, or when the judgment becomes operative for the purposes of res judicata.

Id. (citing *McWilliams v. McWilliams*, 531 S.W.2d 392, 393-94 (Tex. Civ. App.—Houston [14th Dist.] 1975, no writ)).

Interpreting "final" in section 28.053(d) to mean "final for purposes of appeal to the court of appeals" would construe the statute to mean that every judgment by a county court concerning a small claims matter is appealable. This interpretation ignores interlocutory judgments. To be final for purposes of appeal, a judgment must dispose of all issues and parties in a case. *Id.* at 301. Such a fact-specific determination is made on a case-by-case basis. *See Lehmann*, 39 S.W.3d at 195

(noting that "whether a judicial decree is a final judgment must be determined from its language and the record in the case."). There are many instances in which a "judgment" is interlocutory and not appealable to the court of appeals. *See, e.g., Parking Co. of Am. v. Wilson,* 58 S.W.3d 742, 742 (Tex. 2001) (partial summary judgment that did not dispose of all claims was "clearly interlocutory"); *Webb v. Jorns*, 488 S.W.2d 407, 408-09 (Tex. 1973) (order dismissing hospital from suit was interlocutory where trial court did not sever cause against hospital); *Warren v. Walter,* 414 S.W.2d 423, 423 (Tex. 1967) (judgment setting aside default judgment and granting new trial was interlocutory); *Office Employees Int'l Union Local 277 v. S.W. Drug Corp.*, 391 S.W.2d 404, 406 (Tex. 1965) (order authorizing depositions was interlocutory); *Citizens Nat'l Bank of Beaumont v. Callaway*, 597 S.W.2d 465, 466 (Tex. Civ. App.—Beaumont 1980, writ ref'd) (order compelling arbitration was interlocutory). Therefore, we read section 28.053(d) to mean that a final judgment from the county court is not appealable.

Furthermore, to construe section 28.053(d) to mean "final and appealable" would be redundant. Absent section 28.053(d), an appeal to the court of appeals would be allowed in small claims cases where the amount in controversy exceeds $100. *See* TEX. GOV'T CODE § 22.220(a) (granting courts of appeals jurisdiction over cases in which "the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds $100, exclusive of interest and costs"); TEX. CIV. PRAC. & REM. CODE § 51.012 (allowing appeals to the courts of appeals in civil cases where "the judgment or amount in controversy exceeds $100, exclusive of interest and costs"). Thus, to allow the county court's judgment in a small claims case to be appealed to the courts of appeals, the Legislature need not specifically declare that the judgment of

the county court is final and appealable. We must avoid, when possible, treating statutory language as surplusage. *Cont'l Cas. Ins. Co. v. Functional Restoration Assocs.*, 19 S.W.3d 393, 402 (Tex. 2000). Our interpretation is also guided by the principle that a specific statute controls over a more general one. *Columbia Hosp. Corp. v. Moore*, 92 S.W.3d 470, 473 (Tex. 2002). Here, section 28.053, which applies only to civil cases originating in small claims court, controls over section 22.220, which applies to "*all* civil cases." TEX. GOV'T CODE §§ 28.053(a), 22.220(a) (emphasis added).

Sultan also argues that to deny him the opportunity to appeal to the courts of appeals violates the Texas Constitution's open courts provision. *See* TEX. CONST. art. I, § 13. We disagree. Under the Texas Constitution, the courts of appeals have jurisdiction over "all cases of which the District Courts or County Courts have original or appellate jurisdiction, *under such restrictions and regulations as may be prescribed by law*." *Id*. art. V, § 6 (emphasis added). As we stated in *Seale v. McCallum*, 287 S.W. 45, 47 (Tex. 1926), "the principle is fixed that the Legislature has the power to limit the right of appeal . . . ." By declaring in section 28.053(d) that the judgment of the county court or county court at law on an appeal from the small claims court is "final," the Legislature exercised its constitutional power to restrict the jurisdiction of the courts of appeals.[6]

Finally, we recognize that there is a difference between the justice court and small claims court with respect to a party's ability to appeal to the court of appeals. Under section 28.003(a) of

[6] Although Sultan bases his argument on the Texas Constitution, we also note that the United States Constitution does not guarantee the right to an appeal. *See Doleac v. Michalson*, 264 F.3d 470, 492-93 (5th Cir. 2001) (holding that there is no due process right to appellate review); *Able v. Bacarisse*, 131 F.3d 1141, 1143 (5th Cir. 1998) (noting that "the right to appeal is a statutory right, not a constitutional right").

the Texas Government Code, small claims courts have concurrent jurisdiction with the justice courts in actions involving amounts not exceeding $5000. TEX. GOV'T CODE § 28.003(a). Nonetheless, there is no statute restricting the right to appeal to the courts of appeals in cases originating in justice courts. A few courts of appeals have reasoned that, given this jurisdictional overlap, it is illogical for the Legislature to allow appeals to the courts of appeals for claims initiated in a justice court, but not for claims initiated in a small claims court. *See*, *e.g.*, *Davis v. Covert*, 983 S.W.2d 301, 303 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd w.o.j.); *Howell Aviation Servs. v. Aerial Ads, Inc.*, 29 S.W.3d 321, 323 (Tex. App.—Dallas 2000, no pet.).

We do not agree that the difference is illogical. To the contrary, it would seem illogical for the Legislature to have created the small claims court if the small claims court was intended to be identical in all respects to the justice court. As we have mentioned, in creating the small claims court, the Legislature sought to provide an accessible and affordable forum for litigation. The limitation on appeals is merely one of several measures intended to facilitate this goal. Even if the difference between the justice court and small claims court were illogical, "the problem [would be] one for legislative, not judicial solution." *State v. Jackson*, 376 S.W.2d 341, 346 (Tex. 1964); *see also Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931, 934 (Tex. 1996) ("The wisdom or expediency of a law is for the Legislature to determine, not this Court.").

III
Conclusion

We hold that under section 28.053(d) of the Texas Government Code, the courts of appeals lack jurisdiction over cases originally filed in the small claims court. Accordingly, we affirm the

judgment of the court of appeals dismissing Sultan's appeal for want of jurisdiction. *See* TEX. R. APP. P. 60.2(a).

_____
Wallace B. Jefferson
Chief Justice

OPINION DELIVERED: November 18, 2005