**Opinion issued November 10, 2011.**

**In The**

# Court of Appeals

**For The**

# First District of Texas

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**NO. 01-11-00240-CV**

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**TRANSAMERICA LIFE INSURANCE COMPANY AND TRANSAMERICA ANNUITY SERVICE CORPORATION, Appellants**

**V.**

**RAPID SETTLEMENTS, LTD., Appellee**

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**On Appeal from the County Civil Court at Law No. 3**
**Harris County, Texas**
**Trial Court Case No. 892591**

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## MEMORANDUM OPINION

Appellants, Transamerica Life Insurance Company and Transamerica Annuity Service Corporation (collectively, "Transamerica"), challenge the trial court's denial of their post-judgment motion for offset.

We dismiss for lack of jurisdiction.

## Background

In 2007, Rapid Settlements, Ltd. ("Rapid")[1] filed a petition to confirm an arbitration award settling its dispute with Jerry Green, a Florida resident who had transferred to Rapid some annuity payments owed by Transamerica. *See Rapid Settlements, Ltd. v. Green*, 294 S.W.3d 701, 703–04 (Tex. App.—Houston [1st Dist.] 2009, no pet.) ("the *Green* case"). Transamerica intervened, filed a motion for summary judgment asking the trial court to vacate the award, and sought attorney's fees. *See id.* at 704. On April 10, 2008, the trial court entered judgment in the *Green* case in favor of Transamerica and awarded it $30,000 in attorney's fees, plus an additional $10,000 in attorney's fees, conditioned on a successful appeal. This Court subsequently affirmed the judgment of the trial court. *See id.* at 704, 708.

In January 2007, in a separate proceeding ("the *Taplette* case"), a California Superior Court approved the transfer of a $75,000 annuity payment owed to Kelly Taplette, payable by Transamerica, to Rapid ("the Taplette annuity"). The Taplette annuity payment from Transamerica to Rapid was due December 10, 2010.

In January 2011, after the Taplette annuity payment was due, Transamerica moved the trial court in the *Green* case "to determine the amount of judgment and

[1] Rapid subsequently changed its name to Liquidated Marketing, Ltd.

permit offset." In relevant part, Transamerica requested that the trial court allow it to "offset, withhold and retain the amount of the judgment now owed in this case from the $75,000 lump sum payment due under the California order" to Rapid. It argued, in support of its motion, that the amount due to it by Rapid under the judgment in the *Green* case amounted, with interest, to $44,944, and it asked the court to offset that amount against the amount it owed to Rapid for the Taplette annuity payment.

Rapid responded to this motion, arguing that it no longer owned the Taplette annuity and had not owned it since 2008. It also argued that there was no mutuality in the judgments that would permit offset, that the *Taplette* case involved exempt property that could not be seized to satisfy a judgment, and that laches barred Transamerica's effort to enforce the April 2008 judgment. In support of its contention that it no longer owned the Taplette annuity, Rapid attached the affidavits of Harold H. Levine, the former controller of Rapid; Stewart A. Feldman, the corporate representative and legal counsel for FinServ Casualty Corporation—the creditor to whom Rapid claimed that it had transferred the Taplette annuity; and John Craddock, the legal counsel for Rapid; and it attached a

UCC Financing Statement. The trial court denied Transamerica's motion for offset. Transamerica filed this appeal and a related mandamus.[2]

**Analysis**

Generally, appeals may only be taken from final judgments. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Furthermore, orders made for the purpose of enforcing or carrying into effect an already-entered judgment generally are not final judgments or decrees and cannot be appealed as such. *See, e.g.*, *Wagner v. Warnasch*, 295 S.W.2d 890, 893 (Tex. 1956); *Bahar v. Lyon Fin. Servs., Inc.*, 330 S.W.3d 379, 385 (Tex. App.—Austin 2010, pet. denied) (citing *Schultz v. Fifth Judicial Dist. Court of Appeals*, 810 S.W.2d 738, 740 (Tex. 1991), *abrogated on other ground by In re Sheshtawy*, 154 S.W.3d 114, 124–25 (Tex. 2004)); *Kennedy v. Hudnall*, 249 S.W.3d 520, 523 (Tex. App.—Texarkana 2008, no pet.). For anything other than what could properly be characterized as a final judgment, mandamus is the proper form to obtain review of a trial court's post-judgment orders. *In re Amaya*, 34 S.W.3d 354, 356 (Tex. App.—Waco 2001, no pet.); *see also Collier Servs. Corp. v. Salinas*, 812 S.W.2d 372, 374 (Tex. App.—Corpus Christi 1991, orig. proceeding) (analyzing appealability of post-judgment discovery orders).

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[2] The petition for writ of mandamus, *In re Transamerica Occidental Life Insurance Co. and Transamerica Annuity Service Corp.*, cause number 01-11-00306-CV, filed April 22, 2011, is addressed in a separate opinion.

However, some post-judgment orders are appealable. *See Shultz*, 810 S.W.2d at 740 (holding that turnover order that resolved property rights and acted "in the nature of a mandatory injunction" was appealable); *see also Bahar*, 330 S.W.3d at 385 (noting that appellate courts have jurisdiction over trial court orders "that resolve[] a discrete issue in connection with any receivership" and over post-judgment appointment of receiver when appointment was made pursuant to turnover statute); *Amaya*, 34 S.W.3d at 356 (holding that post-judgment discovery order was properly reviewable by mandamus). Thus, we look to the substance of the order to determine whether it is appealable. *Kennedy*, 249 S.W.3d at 523 (citing *Wagner*, 295 S.W.2d at 892 (looking to nature of post-judgment relief granted in order over relief actually requested in motion)); *cf. Swanson v. Cmty. State Bank*, 12 S.W.3d 163, 165 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (holding that trial court cannot circumvent interlocutory appeal merely by label it attached to order and that substance of order determines whether it is appealable). If we conclude that we do not have jurisdiction, we can only dismiss the appeal. *Kilroy v. Kilroy*, 137 S.W.3d 780, 783 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

Here, the trial court's order denied Transamerica's motion to allow offset of payment of an annuity owed in the *Taplette* case by funds owed to it under the judgment in this case, the *Green* case. Thus, the order does not act in the nature of

a mandatory injunction, but is rather an order made under the trial court's authority to enforce an already-entered judgment. *See Wagner*, 295 S.W.2d at 893; *Kennedy*, 249 S.W.3d at 523; *see also State Office of Risk Mgmt. v. Berdan*, 335 S.W.3d 421, 428 (Tex. App.—Corpus Christi 2011, pet. filed) (holding that trial court's order to enforce award of attorney's fees did not "act in the nature of a mandatory injunction" and thus, was not appealable). Accordingly, the order is not appealable, and we lack jurisdiction to consider this appeal.

**Conclusion**

We dismiss the appeal for lack of jurisdiction.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Higley, and Massengale.