DISMISS; and Opinion Filed July 21, 2014.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-00502-CV

TARGET CORPORATION, Appellant
V.
JOHN KO, Appellee

On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-04853

MEMORANDUM OPINION

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

Pursuant to Texas Civil Practice and Remedies Code section 51.014(d) and Rule of Appellate Procedure 28.3, Target Corporation has filed a petition for permissive interlocutory appeal. We may accept an interlocutory appeal if: (1) the order being appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(d) (West Supp. 2013).

Target moved for summary judgment on the ground that it was not served with process until more than two months after the statute of limitations had run. John Ko responded that his counsel requested issuance of citation on the same date the petition was filed. His counsel acknowledged that a "clerical oversight resulted in a failure to calendar a follow-up date to determine the status of counsel's request for citation." The trial court denied Target's motion.

In its petition for permissive appeal, Target contends the controlling question of law is whether attorney error in failing to timely serve a defendant constitutes a lack of due diligence as a matter of law. The law, however, is well settled that attorney error does not constitute due diligence as a matter of law. *See Parsons v. Turley*, 109 S.W.3d 804, 808-09 (Tex. App.—Dallas 2003, pet. denied). The fact that the trial court may have erred in not granting summary judgment is not a basis for a permissive appeal. *See King-A Corp. v. Wehling*, No. 13-13-00100-CV, 2013 WL 1092209 (Tex. App.—Corpus Christi March 14, 2013, no pet.) (mem. op.) (denying permission to appeal involving same issue).

Accordingly, we conclude no substantial difference of opinion exists regarding the controlling question of law in this case, deny the petition, and dismiss the appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(d)(1); TEX. R. APP. P. 42.3(a).

/Ada Brown/
ADA BROWN
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TARGET CORPORATION, Appellant

No. 05-14-00502-CV V.

JOHN KO, Appellee

On Appeal from the 134th Judicial District Court, Dallas County, Texas.
Trial Court Cause No. DC-13-04853.
Opinion delivered by Justice Brown. Chief Justice Wright and Justice Lang-Miers, participating.

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

It is **ORDERED** that appellee JOHN KO recover his costs of this appeal from appellant TARGET CORPORATION.

Judgment entered this 21st day of July, 2014.