

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG**

Cynthia V. Bolinger v. Maria Guadalupe Contreras

No. 13-21-00151-CV · No. 13-21-00151-CV · Decided August 5, 2021

SUMMARY

The Texas Thirteenth Court of Appeals held that an appeal from a forcible detainer judgment was moot because the appellant was no longer in possession of the property and had not shown a potentially meritorious claim to current, actual possession. The court vacated the trial court’s judgment and dismissed the case for want of jurisdiction.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Clarissa Silva; Chief Justice Contreras; Justice Benavides; Justice Silva
JURISDICTION	Texas
DECIDED	August 5, 2021
DOCKET	13-21-00151-CV
DISPOSITION	vacated
PROCEDURAL POSTURE	Bolinger appealed a county court judgment awarding Contreras possession in a forcible detainer action. During the appeal, Contreras informed the appellate court that Bolinger had vacated the premises, and Bolinger failed to respond to the court's jurisdictional inquiry.
STANDARD OF REVIEW	Whether a plaintiff's claims have become moot is a question of law reviewed de novo. Appellate courts also have a duty to consider their jurisdiction sua sponte.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; precedential status is not stated in the opinion text.
PARTIES	Cynthia V. Bolinger v. Maria Guadalupe Contreras

TOPICS

eviction

landlord tenant

mootness

appellate jurisdiction

writ of certiorari

PRACTICE AREAS

Civil procedure

Appellate procedure

Landlord-tenant law

Eviction and forcible detainer

QUESTIONS PRESENTED

1. Whether the appeal from the forcible detainer judgment became moot when Bolinger no longer possessed the property and failed to assert a potentially meritorious claim to current, actual possession.
2. Whether the appellate court was required to vacate the trial court's judgment and dismiss the case for want of jurisdiction after determining that the appeal was moot.

HOLDINGS

1. An appeal from a forcible detainer judgment is moot when the defendant is no longer in possession of the property and does not assert a potentially meritorious claim of right to current, actual possession.
2. When a case becomes moot during an appeal, the appellate court must vacate the trial court's judgment and dismiss the case for want of jurisdiction.

KEY QUOTATIONS

"The only issue in an action for forcible detainer is the right to actual possession of the premises." (at 4)

"Accordingly, we must vacate the trial court's judgment and dismiss the case for want of jurisdiction." (at 7)

"One purpose of vacating the underlying judgment if a case becomes moot during appeal is to prevent prejudice to the rights of parties when appellate review of a judgment on its merits is precluded." (at 7)

FACTUAL BACKGROUND

Bolinger was evicted from certain real property after a justice court entered judgment in Contreras's favor. The county court dismissed Bolinger's appeal from the justice court and granted Contreras a writ of possession, finding that Bolinger's affidavit of inability to pay did not satisfy statutory requirements and that she had not paid court-ordered rent. During the appeal to the court of appeals, Contreras informed the court that Bolinger had vacated the property and was no longer in possession. Bolinger did not dispute that fact or assert a potentially meritorious right to current, actual possession.

PROCEDURAL HISTORY

A justice court entered a judgment of eviction against Bolinger on March 9, 2021. Bolinger appealed to the County Court of Law No. 3 of Cameron County, which dismissed the cause and granted Contreras a writ of possession. Bolinger appealed to the Thirteenth Court of Appeals and sought an emergency stay, but Contreras reported that Bolinger had already vacated the property. After the appellate court requested confirmation of a potentially meritorious claim to current, actual possession, Bolinger did not respond.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court's judgment was vacated, and the appeal was dismissed for want of jurisdiction. No remand instructions were given.

CASES CITED

- In re J.J.R.S., No. 20-0175, 2021 WL 2273722, at *11 (Tex. June 4, 2021)
- State ex rel. Best v. Harper, 562 S.W.3d 1, 7 (Tex. 2018)
- Glassdoor, Inc. v. Andra Grp., LP, 575 S.W.3d 523, 527 (Tex. 2019)
- Nat'l Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)
- Alanis v. Wells Fargo Bank Nat'l Ass'n, 616 S.W.3d 1, 5 (Tex. App.—San Antonio 2020, pet. denied)
- Marshall v. Hous. Auth. of San Antonio, 198 S.W.3d 782, 785, 787-88 (Tex. 2006)
- Abraham v. Victory Apartments, 578 S.W.3d 659, 662 (Tex. App.—Houston [14th Dist.] 2019, no pet.)
- Quezada v. KGMH Prop. Invs., LLC, No. 13-19-00478-CV, 2020 WL 3396601, at *1-*2 (Tex. App.—Corpus Christi—Edinburg June 18, 2020, no pet.)
- Anthony v. Seaside Rentals, No. 13-17-00178-CV, 2019 WL 303037, at *2 (Tex. App.—Corpus Christi—Edinburg Jan. 24, 2019, no pet.)
- Bennett v. Cochran, 96 S.W.3d 227, 229-30 (Tex. 2002) (per curiam)
- Gallagher v. Fire Ins. Exch., 950 S.W.2d 370, 371 (Tex. 1997)
- Heckendorn v. First Mortg. Co., LLC, No. 13-12-00451-CV, 2013 WL 5593520, at *4 (Tex. App.—Corpus Christi—Edinburg July 29, 2013, no pet.)
- Retledge v. Santana, No. 04-19-00343-CV, 2021 WL 2118370, at *2 (Tex. App.—San Antonio May 26, 2021, no pet.)
- Magcobar N. Am. v. Grasso Oilfield Servs., 736 S.W.2d 787, 797 (Tex. App.—Corpus Christi—Edinburg 1987), writ diss'd, 754 S.W.2d 646 (Tex. 1988)
- Caruso v. Young, No. 13-16-00376-CV, 2017 WL 3634057, at *3 (Tex. App.—Corpus Christi—Edinburg Aug. 1, 2017, pet. denied)
- Cholick v. TSPC Bros., LLC, No. 13-17-00622-CV, 2018 WL 1325795, at *1 (Tex. App.—Corpus Christi—Edinburg Mar. 15, 2018, no pet.)