

COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

**Melanie Pfenninger, Individually and as Next Friend of Kyle Thome
v. Harvest Family Ent., L.P. d/b/a Hawaiian Falls Waterparks; CNL
Income Properties, Inc. and CNL Income Garland, L.P.**

No. 05-13-00555-CV · No. No. 05-13-00555-CV · Decided July 23, 2013

SUMMARY

The Fifth District Court of Appeals of Texas at Dallas granted the appellant’s voluntary motion to dismiss the appeal under Texas Rule of Appellate Procedure 42.1(a)(1). The court dismissed the appeal and ordered the appellees to recover any appellate costs from the appellant.

CASE DETAILS

COURT	Court of Appeals for the Fifth District of Texas at Dallas
WRITING FOR THE COURT	David Evans; Justice Lang; Justice Myers
JURISDICTION	Texas
DECIDED	July 23, 2013
DOCKET	No. 05-13-00555-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant voluntarily moved to dismiss her appeal, and the Court of Appeals granted the motion and dismissed the appeal.
PRECEDENTIAL VALUE	published memorandum opinion
PARTIES	Melanie Pfenninger, individually and as next friend of Kyle Thome v. Harvest Family Ent., L.P. d/b/a Hawaiian Falls Waterparks, CNL Income Properties, Inc., CNL Income Garland, L.P.

TOPICS

appellate procedure

civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the court should grant appellant's voluntary motion to dismiss the appeal.

HOLDINGS

1. The court granted appellant's voluntary motion to dismiss the appeal and dismissed the appeal.

FACTUAL BACKGROUND

The opinion contains no substantive factual findings concerning the underlying dispute. It addresses only appellant's voluntary motion to dismiss the pending appeal.

PROCEDURAL HISTORY

The appeal was taken from the County Court at Law No. 5 of Dallas County, Texas, in trial court cause number CC-10-06195-E. While the appeal was pending, appellant filed a voluntary motion to dismiss on July 12, 2013. The court granted the motion, dismissed the appeal, and awarded appellees their appellate costs, if any.

DISPOSITION

dismissed

OPINION

PER CURIAM.

DISMISS; Opinion Filed July 23, 2013. In The Court of Appeals Fifth District of Texas at Dallas No. 05-13-00555-CV MELANIE PFENNINGER, INDIVIDUALLY AND AS NEXT FRIEND OF KYLE THOME, Appellant V. HARVEST FAMILY ENT., L.P. D/B/A HAWAIIAN FALLS WATERPARKS; CNL INCOME PROPERTIES, INC. AND CNL INCOME GARLAND, L.P., Appellees On Appeal from the County Court at Law No. 5 Dallas County, Texas Trial Court Cause No. CC-10-06195-E MEMORANDUM OPINION Before Justices Lang, Myers, and Evans Opinion by Justice Evans The Court has before it appellant's July 12, 2013 voluntary motion to dismiss appeal.

See TEX. R. APP. P. 42.1(a)(1). We grant the motion and dismiss the appeal. See id. 43.2(f). /David Evans/ DAVID EVANS JUSTICE 130555F.P05 Court of Appeals Fifth District of Texas at Dallas JUDGMENT MELANIE PFENNINGER, On Appeal from the County Court at Law INDIVIDUALLY AND AS NEXT FRIEND No. 5, Dallas County, Texas OF KYLE THOME, Appellant Trial Court Cause No. CC-10-06195-E.

Opinion delivered by Justice Evans. No. 05-13-00555-CV V. Justices Lang and Myers participating. HARVEST FAMILY ENT., L.P. D/B/A HAWAIIAN FALLS WATERPARKS; CNL INCOME PROPERTIES, INC. AND CNL INCOME GARLAND, L.P., Appellees In accordance with this Court's opinion of this date, we DISMISS the appeal.

We ORDER that appellees Harvest Family Ent., L.P. d/b/a Hawaiian Falls Waterparks; CNL Income Properties, Inc. and CNL Income Garland, L.P. recover their costs, if any, of this appeal from appellant Melanie Pfenninger, Individually and as Next Friend of Kyle Thome. Judgment entered this 23rd day of July, 2013. /David Evans/ DAVID EVANS JUSTICE –2–