

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Mark Anthony Trevino v. Candice Spivey Trevino

No. 01-25-00807-CV · No. 01-25-00807-CV · Decided March 19, 2026

SUMMARY

The Court of Appeals for the First District of Texas dismissed the appeal for lack of jurisdiction after the trial court granted a new trial. Because the original judgment was set aside and no final appealable judgment remained, the court also dismissed all pending motions as moot.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Per Curiam; Justice Gunn; Justice Caughey; Justice Morgan
JURISDICTION	Court of Appeals for the First District of Texas
DECIDED	March 19, 2026
DOCKET	01-25-00807-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the trial court after the trial court granted a new trial while the appeal was pending.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Mark Anthony Trevino v. Candice Spivey Trevino

TOPICS

- appellate jurisdiction
- final judgment rule
- mootness
- appellate procedure
- divorce

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

- Whether the appellate court retained jurisdiction over an appeal after the trial court granted a new trial and set aside the original judgment.
- Whether the parties' joint motion to abate the appeal should be granted or the appeal should instead be dismissed for lack of jurisdiction.

3. Whether pending motions should be dismissed as moot after dismissal of the appeal.

HOLDINGS

1. When the trial court grants a new trial after an appeal is filed, the original judgment is set aside, leaving no final appealable judgment; the appellate court therefore lacks jurisdiction over the appeal.
2. All pending motions must be dismissed as moot after the appeal is dismissed for lack of jurisdiction.

KEY QUOTATIONS

“When a motion for new trial is granted, the original judgment is set aside and the parties may proceed without prejudice from previous proceedings.”

FACTUAL BACKGROUND

The underlying matter was a divorce case in which the trial court entered a judgment. After the appellant filed his appeal, the trial court granted a new trial under Texas Rule of Civil Procedure 329b(e), setting aside the original judgment. Because the original judgment no longer remained in effect, the appellate court concluded that no final appealable judgment existed.

PROCEDURAL HISTORY

The trial court granted a new trial after Mark Anthony Trevino filed an appeal. The parties jointly moved to abate the appeal pending the new trial, but the appellate court determined that no final appealable judgment remained and dismissed the appeal for lack of jurisdiction. The court also dismissed all pending motions as moot.

DISPOSITION

dismissed

CASES CITED

- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 195 (Tex. 2001)
- Markowitz v. Markowitz, 118 S.W.3d 82, 88 (Tex. App.—Houston [14th Dist.] 2003, pet. denied)

OPINION

PER CURIAM.

Opinion issued March 19, 2026 In The Court of Appeals For The First District of Texas NO. 01-25-00807-CV MARK ANTHONY TREVINO, Appellant V. CANDICE SPIVEY TREVINO, Appellee On Appeal from the County Court at Law No. 1 Galveston County, Texas Trial Court Case No. 23-FD-2368 MEMORANDUM OPINION The trial court granted a new trial after appellant filed this appeal.

See TEX. R. CIV. P. 329b(e). The parties jointly moved to abate this appeal pending the new trial. We told the parties that, because no final appealable judgment remained, we would instead dismiss for lack of jurisdiction. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (appellate courts generally only have jurisdiction over appeals of final judgments); see also *Markowitz v. Markowitz*, 118 S.W.3d 82, 88 (Tex.App.- Houston [14th Dist.]

2003, pet. denied) (“When a motion for new trial is granted, the original judgment is set aside and the parties may proceed without prejudice from previous proceedings.”). Neither party objected. Accordingly, we dismiss the appeal for lack of jurisdiction and dismiss all pending motions as moot. PER CURIAM Panel consists of Justices Gunn, Caughey, and Morgan.