

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AT AUSTIN

**Derrick Woodfin and Shawn Johnson-Woodfin v. Alicia Cieslewicz  
and Randall Cieslewicz**

No. 03-21-00639-CV · No. No. 03-21-00639-CV · Decided August 12, 2022

SUMMARY

The Texas Court of Appeals, Third District, dismissed an appeal from a forcible-detainer judgment for lack of jurisdiction because the appellants no longer possessed the property and could not establish a potentially meritorious right to current possession. The court held that the lease had expired no later than September 30, 2021, even assuming the appellants' claim that sixty days' notice was required. The court therefore concluded that the appeal was moot.

CASE DETAILS

|                       |                                                                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Third District, at Austin                                                                                                                                                                                     |
| WRITING FOR THE COURT | Chari L. Kelly; Justices Goodwin; Baker; Kelly                                                                                                                                                                                           |
| JURISDICTION          | Texas                                                                                                                                                                                                                                    |
| DECIDED               | August 12, 2022                                                                                                                                                                                                                          |
| DOCKET                | No. 03-21-00639-CV                                                                                                                                                                                                                       |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Appeal from a county court at law judgment awarding possession of residential property to the landlords in a forcible-detainer action; appellees moved to dismiss the appeal as moot after obtaining and executing a writ of possession. |
| STANDARD OF REVIEW    | The court reviewed its subject-matter jurisdiction de novo in determining whether the appeal presented a live controversy.                                                                                                               |
| PRECEDENTIAL VALUE    | Memorandum opinion; precedential status is not independently verified from the provided text.                                                                                                                                            |
| PARTIES               | Derrick Woodfin, Shawn Johnson-Woodfin v. Alicia Cieslewicz, Randall Cieslewicz                                                                                                                                                          |

TOPICS

mootness

appellate jurisdiction

eviction

landlord tenant

civil procedure

## PRACTICE AREAS

civil procedure

appellate procedure

landlord-tenant law

real estate

## QUESTIONS PRESENTED

1. Whether the appeal from the forcible-detainer judgment was moot after the Woodfins lost actual possession of the property.
2. Whether the Woodfins could demonstrate a potentially meritorious claim of right to current, actual possession based on their challenges to the notice to vacate and alleged sixty-day notice agreement.

## HOLDINGS

1. When an appellant no longer has actual possession of property subject to a forcible-detainer judgment, the possession issue is moot unless the appellant holds and asserts a potentially meritorious claim of right to current, actual possession.
2. The court could not reach the Woodfins's challenges to the notice to vacate because, even assuming the eviction was wrongful or that sixty days' notice was required, the lease had expired and the Woodfins could not establish a current right to possession.

## KEY QUOTATIONS

*“The forcible-detainer action was created by the legislature as a speedy, simple, and inexpensive procedure for obtaining immediate possession of property when there is no unlawful entry” (at 2)*

*“Although the failure to supersede a forcible-detainer judgment does not divest an appellant of the right to appeal the judgment, when the appellant no longer has actual possession of the property, the issue of possession in that case is moot unless the appellant holds and asserts a potentially meritorious claim of right to current, actual possession.” (at 3)*

*“Because the Woodfins no longer have actual possession of the Property and they cannot demonstrate a potentially meritorious claim of right to current, actual possession of the Property, this appeal has become moot.” (at 4)*

## FACTUAL BACKGROUND

The Woodfins leased residential property from the Cieslewiczses under a lease that initially ran through March 31, 2021, then automatically renewed month to month absent timely termination notice. After the Woodfins failed to pay July rent, Randall Cieslewicz sent written notice terminating the lease and directing them to vacate. The Woodfins refused, and the Cieslewiczses obtained possession through a forcible-detainer judgment and an executed writ of possession after the Woodfins failed to pay the required bond. The lease would have expired no later than August 31, 2021, or September 30, 2021 even assuming the Woodfins's asserted sixty-day notice requirement.

## PROCEDURAL HISTORY

The Cieslewiczes filed a forcible-detainer action in justice court after the Woodfins failed to vacate following a notice to vacate. The justice court awarded possession to the Cieslewiczes, and the Woodfins appealed to the county court at law. After a bench trial, the county court awarded possession to the Cieslewiczes. The Woodfins failed to pay the bond set by the county court, the Cieslewiczes obtained and executed a writ of possession, and the appellate court dismissed the appeal for lack of jurisdiction because the Woodfins no longer possessed the property and had no potentially meritorious claim to current possession.

## DISPOSITION

dismissed

## CASES CITED

- Sissom v. Equity Tr. Co., No. 03-20-00154-CV, 2021 Tex. App. LEXIS 5952, at \*2 (Tex. App.—Austin July 27, 2021, no pet.) (mem. op.)
- Williams v. Bank of N.Y. Mellon, 315 S.W.3d 925, 926 (Tex. App.—Dallas 2010, no pet.)
- Marshall v. Housing Auth. of San Antonio, 198 S.W.3d 782, 787-88 (Tex. 2006)
- Coinmach Corp. v. Aspenwood Apt. Corp., 417 S.W.3d 909, 919 (Tex. 2013)
- Briones v. Brazos Bend Villa Apts., 438 S.W.3d 808, 812 (Tex. App.—Houston [14th Dist.] 2014, no pet.)
- National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)
- Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001)
- Allen-Mercer v. Roscoe Props., No. 03-15-00674-CV, 2016 Tex. App. LEXIS 9247, at \*5 (Tex. App.—Austin Aug. 25, 2016, no pet.) (mem. op.)

## OPINION

### PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN NO. 03-21-00639-CV Derrick Woodfin and Shawn Johnson-Woodfin, Appellants v. Alicia Cieslewicz and Randall Cieslewicz, Appellees FROM COUNTY COURT AT LAW NO. 1 OF WILLIAMSON COUNTY NO. 21-1354-CC1, THE HONORABLE BRANDY HALLFORD, JUDGE PRESIDING  
MEMORANDUM OPINION Appellants Derrick Woodfin and Shawn Johnson-Woodfin (the Woodfins) appeal the county court at law's judgment of possession, awarding appellees Alicia Cieslewicz and Randall Cieslewicz possession of certain residential property in Williamson County (the Property).

The Cieslewiczes assert that because the Woodfins are no longer in possession of the Property and have not asserted a potentially meritorious claim for current possession, this appeal is moot. We agree. BACKGROUND On March 20, 2020, the Woodfins executed a lease (the Lease) for the Property, which is owned by the Cieslewiczes.

The Lease provided for an initial term of twelve months, expiring on March 31, 2021, and stated that when the initial lease term expired, the tenancy would automatically renew on a month-to-month basis “unless the landlord or tenant provides the other party written notice of termination” thirty days before the expiration date.

In addition, the Lease stated that if the tenant “fails to timely pay all amounts due under this lease..., landlord may terminate tenant’s right to occupy the Property by providing tenant with at least one day written notice to vacate.” On July 19, 2021, Randall Cieslewicz sent a “Notice to Vacate” to the Woodfins.

The written notice informed the Woodfins that the Lease was terminated due to their failure to pay July rent and instructed them to vacate the property by Friday, July 23, 2021. After the Woodfins refused to vacate, the Cieslewiczes filed a forcible-detainer suit in justice court. See Tex. Prop. Code §§ 24.002,.004.

The justice court signed a judgment of possession in favor of the Cieslewiczes, and the Woodfins appealed to county court. See Tex. R. Civ. P. 510.10. Following a bench trial, the county court signed a judgment awarding possession of the property to the Cieslewiczes. This appeal followed. See Tex. Prop. Code § 24.007.

The Cieslewiczes have moved to dismiss this appeal, asserting that it is moot because the Woodfins are no longer in possession of the Property. The Cieslewiczes point out, and the record shows, that after rendering judgment, the county court set bond at \$5,850.

The Woodfins failed to pay the bond, and consequently, the Cieslewiczes requested and obtained a writ of possession. When the writ was executed, the Cieslewiczes took possession of the Property. In response, the Woodfins do not deny that they are no longer in possession of the Property. Instead, they assert that their issues on appeal are not moot because they are “challeng[ing] the errors made by the trial court when rendering [its] decision to grant possession to appellees.” In part, the Woodfins argue that (1) the Notice to Vacate was invalid because, under the Texas Property Code, the Cieslewiczes were required to separately send notice that 2 they were terminating the Lease before sending notice to vacate, and (2) the Cieslewiczes orally agreed that they would give sixty days’ notice before exercising their option to terminate the Lease, which they did not do.

ANALYSIS The forcible-detainer action was created by the legislature as a speedy, simple, and inexpensive procedure for obtaining immediate possession of property when there is no unlawful entry, *Sissom v. Equity Tr. Co.*, No. 03-20-00154-CV, 2021 Tex. App. LEXIS 5952, at \*2 (Tex. App.—Austin July 27, 2021, no pet.) (mem. op.); *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926 (Tex.

App.—Dallas 2010, no pet.), and the only issue in the action is the right to actual possession of the property, *Marshall v. Housing Auth. of San Antonio*, 198 S.W.3d 782, 787-88 (Tex. 2006). The forcible-detainer judgment is “not a final determination of whether the eviction is wrongful” or whether the tenant’s continued possession is a trespass. *Coinmach Corp. v. Aspenwood Apt.*

*Corp.*, 417 S.W.3d 909, 919 (Tex. 2013). Appellate courts lack jurisdiction to decide moot controversies and render advisory opinions. *Briones v. Brazos Bend Villa Apts.*, 438 S.W.3d 808, 812 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citing *National Collegiate Athletic Ass’n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999)). A case becomes moot if, during any stage of the proceedings, a controversy ceases to exist between the parties.

See *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). Although the failure to supersede a forcible-detainer judgment does not divest an appellant of the right to appeal the judgment, when the appellant no longer has actual possession of the property, the issue of possession in that case is moot unless the appellant holds and asserts a potentially meritorious claim of right to current, actual possession.

*Marshall*, 198 S.W.3d. at 787. The 3 issue of whether an appellant who has vacated the property can demonstrate a “right to current, actual possession” often turns on whether the lease term has expired before or during the appeal. See *id.* (explaining that lease term had expired and appellant presented “no basis for claiming a right to possession after that date”); see also *Allen-Mercer v. Roscoe Props.*, No. 03-15-00674- CV, 2016 Tex. App.

LEXIS 9247, at \*5 (Tex. App.—Austin Aug. 25, 2016, no pet.) (mem. op.) (concluding that lease had expired by its own terms and tenant made “no argument, that even if meritorious could form the basis of a claim to possession after this date”).

Here, there is no dispute that neither the Woodfins nor the Cieslewiczses notified the other that they were terminating the Lease thirty days before March 31, 2021, when the initial Lease term expired. Consequently, the Lease automatically renewed on a month-to-month basis.

The Lease states that if it is automatically renewed it will continue to renew on a month-to-month basis until either party provides written notice of termination to the other party and the notice of termination will be effective... on the last day of the month following the month in which the notice is given.

The undisputed evidence shows that on July 19, 2021, the Cieslewiczses notified the Woodfins in writing that they were terminating the Lease, which both parties had the right to do under the Lease, even without reason.

Under the provision above, that termination was effective August 31, 2021. Consequently, even assuming that the eviction was wrongful, as the Woodfins contend, the Lease expired on August

31, 2021. In addition, even if sixty days' notice was required, as the Woodfins suggest, the Lease expired on September 30, 2021.

Because the Woodfins no longer have actual possession of the Property and they cannot demonstrate a potentially meritorious claim of right to current, actual possession of the Property, this appeal has become moot. 4 CONCLUSION We dismiss this appeal for lack of jurisdiction. See Tex. R. App. P. 42.3(a). \_\_\_\_\_ Chari L. Kelly, Justice Before Justices Goodwin, Baker and Kelly Dismissed for Want of Jurisdiction Filed: August 12, 2022 5