

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 Cieslewiczses 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 Cieslewiczses, and the Woodfins appealed to the county court at law. After a bench trial, the county court awarded possession to the Cieslewiczses. The Woodfins failed to pay the bond set by the county court, the Cieslewiczses 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.)