

**COURT OF APPEALS OF TEXAS, FOURTH COURT OF APPEALS DISTRICT,
SAN ANTONIO**

Ronald Mensch v. State Farm Fire & Casualty Company

Mensch · No. 04-15-00159-CV · Decided June 26, 2015

SUMMARY

This document is an appellant's motion to dismiss an appeal pending in the Fourth Court of Appeals District of Texas at San Antonio. Ronald Mensch argues that the issues in the appeal had already been resolved in a related proceeding and that dismissal would avoid the need to file a frivolous brief. The document includes a proposed order dismissing the appeal with costs borne by the party incurring them.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth Court of Appeals District, San Antonio
JURISDICTION	Texas
DECIDED	June 26, 2015
DOCKET	04-15-00159-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant moved to dismiss his appeal after a prior related appellate decision became final and resolved the issues presented in this appeal. The Court of Appeals granted the motion and dismissed the appeal, ordering each party to bear its own costs.
PRECEDENTIAL VALUE	No reporter citation or precedential designation appears in the document.
PARTIES	Ronald Mensch v. State Farm Fire & Casualty Company

TOPICS

appellate procedure insurance civil procedure

PRACTICE AREAS

appellate procedure civil procedure workers' compensation insurance

QUESTIONS PRESENTED

1. Whether the appellant's motion to dismiss should be granted after a related appellate decision became final and resolved the issues in the appeal.

FACTUAL BACKGROUND

Mensch sought workers' compensation benefits from State Farm based on a 1980 injury. The dispute concerned whether Mensch had exhausted administrative remedies before pursuing judicial relief. After the related appellate decision ordering dismissal became final, Mensch concluded that the issues in this appeal had already been resolved.

PROCEDURAL HISTORY

Mensch sued State Farm, the workers' compensation carrier for his employer, seeking benefits arising from a 1980 injury. After the trial court denied State Farm's plea to the jurisdiction, State Farm pursued a mandamus proceeding, and the Texas Department of Insurance pursued a related interlocutory appeal. The Court of Appeals reversed and rendered a dismissal in the related appeal, the Texas Supreme Court denied review, and the mandate issued. Mensch then moved to dismiss this separate appeal because the prior decision had become final and resolved all issues in the case.

DISPOSITION

dismissed

OPINION

PER CURIAM.

ACCEPTED 04-15-00159-CV FOURTH COURT OF APPEALS SAN ANTONIO, TEXAS 6/26/2015 4:02:39 PM KEITH HOTTLE CLERK NO. 04-15-00159-CV FILED IN 4th COURT OF APPEALS IN THE COURT OF APPEALS SAN ANTONIO, TEXAS FOURTH COURT OF APPEALS DISTRICT 06/26/2015 4:02:39 PM SAN ANTONIO, TEXAS KEITH E. HOTTLE Clerk RONALD MENSCH APPELLANT VS. STATE FARM FIRE & CAS. CO. APPELLEE APPELLANT'S MOTION TO DISMISS TO THE HONORABLE COURT OF APPEALS: Now comes Appellant Ronald Mensch, and files this his Motion to Dismiss, and in support thereof would respectfully show as follows: I. BACKGROUND Ronald Mensch (hereafter "Mensch") initially sued State Farm Fire & Casualty Company (hereafter "State Farm"), the workers' compensation 1 carrier for Mensch's employer making claim for benefits arising out of a 1980 injury.

After over four years of litigation in the District Court of Bexar County Mensch further sued the Texas Department of Insurance—Division of Workers' Compensation (hereafter "the DWC"). Both the DWC and State Farm filed pleas to the jurisdiction claiming that Mensch had failed to exhaust his administrative remedies.

The trial court denied both pleas. The DWC appealed in Cause No. 04-14-00449-CV, styled “Texas Department of Insurance—Division of Workers’ Compensation vs. Ronald Mensch”(hereafter “Mensch I”). At the same time the DWC filed its interlocutory appeal State Farm filed an original proceeding petitioning this Court for a writ of mandamus to order Judge Nellermoe to grant its plea to the jurisdiction in Cause No.04-14-00519-CV, In re State Farm Fire & Casualty Company.

(Hereafter “Mensch II”). While Mensch II was pending Judge Nellermoe retired. On January 14, 2015 this Court issued an opinion in Mensch I which reversed and rendered a dismissal. 2 On January 27, 2015 This Court ordered Judge Nellermoe’s successor, Hon. Stephani Walsh, to be substituted as the respondent in Mensch II and abated the proceeding until such time as Judge Walsh could reconsider the plea to the jurisdiction.

CR 248–249. On March 2, 2015 Mensch filed a Petition for Review to the Texas Supreme Court seeking a review of this Court’s January 14, 2015 opinion in Mensch I. Upon reconsideration of State Farm’s plea to the jurisdiction Judge Walsh signed an order granting the plea and dismissing the case on March 5, 2015. CR 250–251. This Court then dismissed the petition for writ of mandamus in Mensch II on March 11, 2015.

CR 252. Mensch filed his notice of appeal of Judge Walsh’s dismissal order on March 23, 2015, leading to the instant appeal (hereafter “Mensch III”). The Supreme Court denied the petition for review of Mensch I without issuing an opinion on April 24, 2015.

The mandate on Mensch I issued from this Court on June 9, 2015. Mensch’s brief in this cause is due on July 3, 2015. 3 II. Because Mensch had not obtained a ruling from the Texas Supreme Court on Mensch I at the time of Judge Walsh’s dismissal of State Farm he had no choice but to appeal Mensch III, the instant case.

However, now that this Court’s holding has become final all of the issues in Mensch III have already been decided by the January 14, 2015 opinion in Mensch I. In order to avoid filing a frivolous brief Appellant moves the Court to dismiss this appeal with the costs to be borne by the party incurring same. III. Appellant prays that for the reasons listed above this Court dismiss this appeal with the costs to be borne by the party incurring same and for any further relief to which Appellant may show himself entitled.

4 Respectfully submitted, Law Offices of Miller & Bicklein 8207 Callaghan Road, Suite 250 San Antonio, Texas 78230 (210) 366-2400 (210) 366-4791 Fax By: _____

Kevin B. Miller State Bar No. 14094500 Mark A. Cevallos State Bar No. 24038810 Attorneys for Appellant 5 Certificate of Service By my signature, I hereby certify that a true and correct copy of the above and foregoing Motion to Dismiss was served pursuant to TRAP 9.5 on this the 26th day of June, 2015 to: Jana Richard Mark Lindow Lindow Stephens Treat, LLP 700 N. St. Mary’s St.,

Suite 1700 San Antonio, Texas 78205 (210) 227-2200 (210) 227-4602 fax ATTORNEYS FOR APPELLEE By: e-Filing _____ Mark A. Cevallos 6 NO. 04-15-00159-CV IN THE COURT OF APPEALS FOURTH COURT OF APPEALS DISTRICT SAN ANTONIO, TEXAS RONALD MENSCH APPELLANT VS. STATE FARM FIRE & CAS.

CO. APPELLEE ORDER OF DISMISSAL CAME ON TO BE HEARD, this the _____ day of _____, 2015, Appellant's Motion to Dismiss, and after considering same, this Court finds that this Motion should be GRANTED. It is, therefore: ORDERED, ADJUDGED and DECREED that this Appeal is DISMISSED. IT IS FURTHER ORDERED that all costs be borne by the party incurring same.

Signed this the _____ day of _____, 2015. _____
JUDGE PRESIDING 7