

FOURTH COURT OF APPEALS OF TEXAS

Douglas Crouse and April Marble v. Kenton Place Apartments

No. 04-22-00392-CV · No. No. 04-22-00392-CV · Decided November 30, 2022

SUMMARY

The Fourth Court of Appeals of San Antonio dismissed an appeal from a forcible detainer judgment for lack of jurisdiction. Because the appellants did not file a supersedeas bond, lost possession after execution of a writ of possession, and failed to respond to the court’s order, the court dismissed the appeal as moot.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
WRITING FOR THE COURT	Per Curiam; Irene Rios, Justice; Beth Watkins, Justice; Liza A. Rodriguez, Justice
JURISDICTION	Texas
DECIDED	November 30, 2022
DOCKET	No. 04-22-00392-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a county court at law judgment awarding possession of real property to Kenton Place Apartments in a forcible detainer action.
PRECEDENTIAL VALUE	Memorandum opinion; precedential status not expressly stated in the opinion text.
PARTIES	Douglas Crouse, April Marble v. Kenton Place Apartments

TOPICS

- mootness
- appellate jurisdiction
- eviction
- landlord tenant
- appellate procedure

PRACTICE AREAS

- appellate procedure
- landlord-tenant
- real estate
- civil procedure

QUESTIONS PRESENTED

- Whether the appeal from the forcible detainer judgment was moot and subject to dismissal for lack of jurisdiction after appellants failed to supersede the judgment and lost possession of the property.

HOLDINGS

1. Because appellants failed to file a supersedeas bond, lost possession pursuant to an executed writ of possession, and did not establish either a timely and clear intent to appeal or a potentially meritorious claim to current, actual possession, the appeal was moot and had to be dismissed for lack of jurisdiction.

KEY QUOTATIONS

“If a forcible detainer defendant fails to supersede the judgment and loses possession of the property, the appeal is moot unless the defendant: (1) timely and clearly expressed his or her intent to appeal; and (2) asserted “a potentially meritorious claim of right to current, actual possession of the [property].””

“The only issue in a forcible detainer action is the right to actual possession of the property.”

FACTUAL BACKGROUND

The trial court awarded Kenton Place Apartments possession of real property in a forcible detainer action. Appellants did not supersede the judgment by filing the required bond, and the county clerk issued and executed a writ of possession on August 8, 2022. After the appellate court requested a response explaining why the appeal should not be dismissed, appellants did not respond.

PROCEDURAL HISTORY

The County Court at Law No. 10 of Bexar County signed a judgment awarding possession to Kenton Place Apartments on July 1, 2022. Appellants did not file a supersedeas bond, a writ of possession was issued and executed on August 8, 2022, and the court of appeals ordered appellants to explain why the appeal should not be dismissed for lack of jurisdiction. Appellants did not respond, and the court dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Marshall v. Hous. Auth. of the City of San Antonio, 198 S.W.3d 782 (Tex. 2006)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-22-00392-CV Douglas CROUSE and April Marble, Appellants v. KENTON PLACE APARTMENTS, Appellee From the County Court at Law No. 10, Bexar County, Texas Trial Court No. 2022CV01554 Honorable J. Frank Davis, Judge Presiding PER CURIAM Sitting: Irene Rios, Justice Beth Watkins, Justice Liza A. Rodriguez, Justice Delivered and Filed: November 30, 2022 DISMISSED FOR LACK OF JURISDICTION Appellants attempt to appeal the trial court’s judgment awarding possession of real property to Kenton Place Apartments.

The trial court signed the judgment on July 1, 2022. The only issue in a forcible detainer action is the right to actual possession of the property. TEX. R. CIV. P. 510.3(e); *Marshall v. Hous. Auth. of the City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006); see also TEX. PROP. CODE ANN. §§ 24.001–.002. A judgment of possession in such an action determines only the right to immediate possession and is not a final determination of whether an eviction is wrongful.

Marshall, 198 S.W.3d at 787. When a forcible detainer 04-22-00392-CV defendant fails to file a supersedeas bond in the amount set by the county court, the judgment may be enforced and a writ of possession may be executed, evicting the defendant from the property. See TEX. PROP. CODE ANN. § 24.007; TEX. R. CIV. P. 510.13; *Marshall*, 198 S.W.3d at 786. If a forcible detainer defendant fails to supersede the judgment and loses possession of the property, the appeal is moot unless the defendant: (1) timely and clearly expressed his or her intent to appeal; and (2) asserted “a potentially meritorious claim of right to current, actual possession of the [property].” *Marshall*, 198 S.W.3d at 786–87.

A review of the clerk’s record indicates appellants did not file a supersedeas bond. The clerk’s record also shows a writ of possession was issued by the county clerk and the writ was executed on August 8, 2022. Therefore, on September 23, 2022, we ordered appellants to file a written response on or before October 24, 2022, explaining why this appeal should not be dismissed for lack of jurisdiction.

1 To date, appellants have not responded to our order. Accordingly, we dismiss this appeal for lack of jurisdiction. See TEX. R. APP. P. 42.3(a), (c). PER CURIAM 1 Our order was returned to the court as undeliverable to the mailing address provided by the appellants. Our clerk’s office sent an email, to the email address provided by the appellants, requesting the appellants provide a proper mailing address to send the order.

The appellants have not responded. -2-