

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Edwards & Associates, Tim Edwards v. Azleway, Inc. and Gary Duke

Edwards & Associates · No. 02-16-00357-CV · Decided November 23, 2016

SUMMARY

The Texas Court of Appeals, Second District, dismissed the appeal as moot. The trial court had granted the appellants' motion for new trial while it retained plenary jurisdiction, eliminating the effect of the summary judgment order from which the appeal was taken.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Meier, J.; Gabriel, J.; Sudderth, J.
JURISDICTION	Texas
DECIDED	November 23, 2016
DOCKET	02-16-00357-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed the trial court's order granting defendants' motion for summary judgment. While the appeal was pending, the trial court granted appellants' motion for new trial, and the appellate court dismissed the appeal as moot on its own motion after neither party showed grounds for continuing it.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Edwards & Associates, Tim Edwards v. Azleway, Inc., Gary Duke

TOPICS

mootness

appellate procedure

motion for new trial

summary judgment

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court's order granting a new trial rendered the pending appeal from the prior summary-judgment order moot.

HOLDINGS

1. A trial court's timely order granting a new trial while it retains plenary jurisdiction renders an appeal from the superseded summary-judgment order moot.

FACTUAL BACKGROUND

The appeal concerned a trial court order granting defendants' motion for summary judgment. Before the appellate court resolved the appeal, the trial court granted the appellants' motion for new trial while it still had plenary jurisdiction over the case.

PROCEDURAL HISTORY

The trial court entered an order granting defendants' motion for summary judgment on July 28, 2016. Appellants timely appealed, but the trial court granted appellants' motion for new trial on September 28, 2016, while it retained plenary jurisdiction. The appellate court notified the parties that the new-trial order appeared to render the appeal moot; after neither party responded, the court dismissed the appeal as moot.

DISPOSITION

dismissed

OPINION

PER CURIAM.

COURT OF APPEALS SECOND DISTRICT OF TEXAS FORT WORTH NO. 02-16-00357-CV EDWARDS & ASSOCIATES, TIM APPELLANTS EDWARDS V. AZLEWAY, INC. AND GARY DUKE APPELLEES FROM THE 17TH DISTRICT COURT OF TARRANT COUNTY TRIAL COURT NO. 017-281397-15 MEMORANDUM OPINION¹ AND JUDGMENT Appellants filed a timely notice of appeal from the trial court's July 28, 2016 "Order Granting Defendants' Motion for Summary Judgment." The trial court subsequently granted appellants' motion for new trial on September 28, 2016, while it still had plenary jurisdiction over the case.

See Tex. R. Civ. P. 329b(e). ¹ See Tex. R. App. P. 47.4. On October 3, 2016, we informed the parties that it appeared the trial court's granting of the motion for new trial rendered this appeal moot and that the appeal would be dismissed as moot unless, on or before October 13, 2016, any party desiring to continue the appeal filed a response showing grounds for continuing the appeal.

Neither party filed a response. Accordingly, on this court's own motion, we dismiss the appeal as moot. See Tex. R. App. P. 42.3(a), 43.2(f). PER CURIAM PANEL: MEIER, GABRIEL, and SUDDERTH, JJ. DELIVERED: November 23, 2016 ²