

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Season Jennifer Weeter v. NAPA Ventures Woodbridge, LLC d/b/a Woodbridge Townhomes

Weeter · No. 02-17-00345-CV · Decided August 16, 2018

SUMMARY

The Texas Court of Appeals, Second District, dismissed a forcible-detainer appeal as moot after the judgment creditor released and discharged the judgment against the appellant. The court vacated the trial court's judgment and dismissed the case, concluding that no live controversy remained and that no exception to the mootness doctrine applied.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Elizabeth Kerr; Pittman; Birdwell
JURISDICTION	Texas
DECIDED	August 16, 2018
DOCKET	02-17-00345-CV
DISPOSITION	vacated
PROCEDURAL POSTURE	Weeter appealed a forcible-detainer judgment awarding Woodbridge possession of real property, court costs, attorney's fees, and postjudgment interest. While the appeal was pending, Woodbridge released and discharged the judgment and moved to dismiss the appeal as moot.
STANDARD OF REVIEW	Mootness is reviewed as a jurisdictional issue; the court determines whether a live controversy and legally cognizable interest in the outcome continue to exist at every stage of the proceedings.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; nonprecedential under the applicable Texas appellate-opinion designation.
PARTIES	Season Jennifer Weeter v. NAPA Ventures Woodbridge, LLC d/b/a Woodbridge Townhomes

TOPICS

mootness

appellate procedure

eviction

civil procedure

remedies

PRACTICE AREAS

civil procedure

appellate procedure

real estate

remedies

QUESTIONS PRESENTED

1. Whether Woodbridge's unconditional release of the judgment eliminated the live controversy and rendered the appeal moot.
2. Whether the supersedeas-bond issue also became moot after Woodbridge released the underlying judgment.
3. Whether either the capable-of-repetition-yet-evading-review or collateral-consequences exception to mootness applied.

HOLDINGS

1. Woodbridge's express cancellation, release, and discharge of the judgment eliminated any live controversy because Woodbridge could no longer enforce the judgment; the appeal was therefore moot.
2. The issue concerning the amount of the supersedeas bond was also moot because the underlying judgment had been released.
3. Neither the capable-of-repetition-yet-evading-review exception nor the collateral-consequences exception applied.

KEY QUOTATIONS

"If a controversy ceases to exist—the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome"—the case becomes moot." (at 2)

"An unconditional release of judgment operates as a total relinquishment of all rights of the judgment creditor in the judgment. It is a complete discharge of the debt created by the judgment and a complete surrender of the judgment creditor's rights in the judgment." (at 3)

FACTUAL BACKGROUND

Woodbridge obtained a forcible-detainer judgment against Weeter for possession of the subject premises, court costs, attorney's fees, and postjudgment interest. Weeter appealed, challenging the sufficiency of the evidence, the admission of testimony, and the amount of the supersedeas bond. While the appeal was pending, Woodbridge expressly canceled, released, and discharged its judgment and all rights in it.

PROCEDURAL HISTORY

The County Court at Law No. 1 of Tarrant County entered judgment for Woodbridge on August 25, 2017, awarding possession, costs, \$600 in attorney's fees, and postjudgment interest. The trial court later set a supersedeas bond at \$700 per month. During the appeal, Woodbridge filed an unconditional release of the judgment, and the court of appeals granted Woodbridge's motion, vacated the trial-court judgment, and dismissed the case as moot.

DISPOSITION

vacated

CASES CITED

- Marshall v. Hous. Auth. of San Antonio, 198 S.W.3d 782, 785 (Tex. 2006)
- Bd. of Adjustment of San Antonio v. Wende, 92 S.W.3d 424, 427 (Tex. 2002)
- Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001)
- Murphy v. Hunt, 455 U.S. 478, 481, 102 S. Ct. 1181, 1183 (1982)
- Reule v. RLZ Invs., 411 S.W.3d 31, 32-33 (Tex. App.—Houston [14th Dist.] 2013, no pet.)
- Meeker v. Tarrant Cty. Coll. Dist., 317 S.W.3d 754, 759, 763 (Tex. App.—Fort Worth 2010, pet. denied)
- Wilhelm v. Fed. Nat’l Mortg. Ass’n, 349 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, no pet.)
- Rapp v. Mandell & Wright, P.C., 123 S.W.3d 431, 435 (Tex. App.—Houston [1st Dist.] 2003, pet. denied)
- Gen. Land Office of Tex. v. OXY U.S.A., Inc., 789 S.W.2d 569, 571 (Tex. 1990)

OPINION

Season Jennifer Weeter v. NAPA Ventures Woodbridge, LLC D/B/A Woodbridge Townhomes
PER CURIAM.

COURT OF APPEALS

SECOND DISTRICT OF TEXAS

FORT WORTH

NO. 02-17-00345-CV

SEASON JENNIFER WEETER APPELLANT

V.

NAPA VENTURES WOODBRIDGE, APPELLEE

LLC D/B/A WOODBRIDGE

TOWNHOMES

FROM COUNTY COURT AT LAW NO. 1 OF TARRANT COUNTY

TRIAL COURT NO. 2017-004166-1

MEMORANDUM OPINION 1

In this forcible-detainer case, Season Jennifer Weeter appeals from the trial court’s judgment awarding NAPA Ventures Woodbridge, LLC d/b/a Woodbridge Townhomes possession of real property, court costs, attorney’s fees, and postjudgment interest. After the trial court signed the judgment, Weeter 1 See Tex. R. App. P. 47.4. moved the trial court to set a supersedeas bond. The trial court granted the motion and set the supersedeas amount at \$700 per month. In her brief, Weeter argues that the evidence was insufficient to support the forcible-detainer judgment, that the trial court abused its discretion by allowing a witness who lacked “direct knowledge” to testify for Woodbridge, and that the supersedeas amount is too high. After Weeter filed her appellate brief,

Woodbridge released her from the judgment: WHEREAS on the 25th day of August, 2017, Plaintiff NAPA Ventures Woodbridge, LLC d/b/a Woodbridge Townhomes (“Judgment Creditor”), recovered judgment against Season Jennifer Weeter (“Judgment Debtor”) . . . for possession of the subject premises, . . . costs of court, and \$600 in attorney’s fees, plus 5% post-judgment interest, compounded annually, and whereas Woodbridge wishes to release its judgment. NOW, THEREFORE, NAPA Ventures Woodbridge, LLC d/b/a Woodbridge Townhomes, the legal holder and owner of said judgment, has this day canceled, released and discharged, and by these presents does cancel, release and discharge unto the said Jennifer Season Weeter [sic], her successors, executors, administrators, representatives, heirs, or assigns, all the right, title, interest and estate in and to said judgment, which Woodbridge have or may have therein. Because Woodbridge has released its judgment, it contends that a controversy no longer exists between it and Weeter and has moved to dismiss this appeal “based on the mootness of the underlying case.” 2 2 Woodbridge filed a copy of the “Release of Judgment” with the trial-court clerk. Woodbridge’s motion has been pending in this court for more than ten 2 The only issue in a forcible-detainer case is the right to actual possession of the subject property. Tex. R. Civ. P. 510.3(e); *Marshall v. Hous. Auth. of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006). A controversy must exist between the parties at every stage of the legal proceedings, including the appeal. *Bd. of Adjustment of San Antonio v. Wende*, 92 S.W.3d 424, 427 (Tex. 2002). “If a controversy ceases to exist—‘the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome’—the case becomes moot.” *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 1183 (1982)). A case is moot when a judgment cannot have a practical effect on an existing controversy. *Reule v. RLZ Invs.*, 411 S.W.3d 31, 32 (Tex. App.—Houston [14th Dist.] 2013, no pet.); see *Meeker v. Tarrant Cty. Coll. Dist.*, 317 S.W.3d 754, 759 (Tex. App.—Fort Worth 2010, pet. denied). When a case becomes moot on appeal, we must set aside the judgment and dismiss the case. See *Marshall*, 198 S.W.3d at 785; *Reule*, 411 S.W.3d at 32; *Meeker*, 317 S.W.3d at 759, 763; see also Tex. R. App. P. 43.2(e) (permitting an appellate court to “vacate the trial court’s judgment and dismiss the case”). Woodbridge has expressly canceled, released, and discharged its right to enforce the judgment from which Weeter appeals. A live controversy therefore no days, and Weeter has not responded or objected to the motion. See Tex. R. App. P. 10.3(a). 3 longer exists, and the case is rendered moot. 3 See *Reule*, 411 S.W.3d at 32; see also *Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (concluding that because appeal was moot, issue regarding supersedeas-bond amount was also moot); *Rapp v. Mandell & Wright, P.C.*, 123 S.W.3d 431, 435 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (“An unconditional release of judgment operates as a total relinquishment of all rights of the judgment creditor in the judgment. It is a complete discharge of the debt created by the judgment and a complete surrender of the judgment creditor’s rights in the judgment.”). We therefore grant Woodbridge’s motion to dismiss, vacate the trial court’s judgment, and dismiss the case as moot. See Tex. R. App. P. 43.2(e); *Reule*, 411 S.W.3d at 33. 3 There are two recognized

exceptions to the mootness doctrine: (1) the capable-of-repetition-yet-evading-review exception and (2) the collateral- consequences exception. *Gen. Land Office of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990). The former exception is rare, and to invoke it, a party must establish that the challenged act is of such short duration that the party cannot obtain review before the issue becomes moot and that there is a reasonable expectation that the party could be subjected to the same action again. See *Williams*, 52 S.W.3d at 184. The latter requires that a party show that the judgment resulted in a concrete disadvantage that will persist even if the judgment were vacated. See *Marshall*, 198 S.W.3d at 789. Neither exception applies here. 4 /s/ Elizabeth Kerr
ELIZABETH KERR

JUSTICE

PANEL: KERR, PITTMAN, and BIRDWELL, JJ. DELIVERED: August 16, 2018 5