

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Sheila Olbrei and Richard Olbrei v. Victoria Coman aka Victoria Lemay aka Victoria Lane

No. 04-18-00552-CV (Tex. App.—San Antonio Oct. 31, 2018) (mem. op.) · No. No. 04-18-00552-CV · Decided October 31, 2018

SUMMARY

The Fourth Court of Appeals of Texas considered an appeal from a forcible detainer judgment awarding possession of residential property to Sheila and Richard Olbrei. Because Victoria Coman had been removed from the property, had not posted a supersedeas bond, and did not establish a potentially meritorious right to current possession, the court held that the appeal was moot. The court vacated the trial court’s judgment.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Per Curiam; Sandee Bryan Marion, Chief Justice; Karen Angelini, Justice; Marialyn Barnard, Justice
JURISDICTION	Texas
DECIDED	October 31, 2018
DOCKET	No. 04-18-00552-CV
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a county court at law judgment in a forcible detainer action awarding possession of residential property to the appellees.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; nonprecedential
PARTIES	Victoria Coman aka Victoria Lemay aka Victoria Lane v. Sheila Olbrei, Richard Olbrei

TOPICS

eviction mootness appellate procedure remedies civil procedure

PRACTICE AREAS

civil procedure appellate procedure real estate remedies

QUESTIONS PRESENTED

1. Whether Coman’s appeal from the forcible detainer judgment remained a live controversy after she was removed from the property and failed to supersede the judgment.
2. Whether the trial court’s judgment should be vacated because the appeal became moot.

HOLDINGS

1. An appeal from a forcible detainer judgment is moot when the appellant is no longer in possession, has not superseded the judgment, and fails to show a potentially meritorious claim of right to current, actual possession, even if the appellant timely and clearly expressed an intent to appeal.
2. When an appeal becomes moot and appellate review on the merits is precluded, the appellate court must vacate the underlying trial court judgment.

KEY QUOTATIONS

“When a tenant is no longer in possession of the property and has not superseded the judgment of possession, her appeal is moot unless: (1) she timely and clearly expressed an intent to exercise the right of appeal, and (2) appellate relief is not futile.” (-1-)

“Appellate relief is not futile if the tenant holds and asserts “a potentially meritorious claim of right to current, actual possession” of the property.” (-1-)

“Therefore, this appeal is moot, and we must vacate the trial court’s judgment.” (-1-)

FACTUAL BACKGROUND

The dispute concerned possession of a residential property in Schertz, Texas, in a forcible detainer action based on nonpayment of rent into the court registry. The trial court awarded possession to the Olbreis and set a \$5,000 supersedeas bond. Coman did not post the bond, and the writ of possession was executed, removing her from the property. In response to the appellate court’s mootness inquiry, Coman stated that she had never leased or rented the property and did not assert a legal basis for current possession.

PROCEDURAL HISTORY

Olbrei initiated a forcible detainer action in justice court, which entered a judgment of eviction on June 5, 2018. Coman appealed to the County Court at Law No. 1 of Guadalupe County, where the court entered a final judgment for forcible eviction and detainer and authorized a writ of possession. The writ was executed on August 9, 2018, and Coman appealed without posting a supersedeas bond. After the court of appeals ordered Coman to show why the appeal was not moot, she asserted that she had never leased or rented the property but identified no basis for a current right of possession.

DISPOSITION

vacated

CASES CITED

- Marshall v. Hous. Auth. of San Antonio, 198 S.W.3d 782, 787–88 (Tex. 2006)
- Devilbiss v. Burch, No. 04-16-00711-CV, 2018 WL 2418476, at *2 (Tex. App.—San Antonio May 30, 2018, no pet. h.) (mem. op.)

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