

COURT OF APPEALS OF TEXAS, FIRST DISTRICT

Maryanne Phillips v. Starwood Waypoint TRS LLC

Phillips · No. 01-16-00778-CV · Decided December 22, 2016

SUMMARY

The First District Court of Appeals of Texas construed Maryanne Phillips’s motion for nonsuit as a motion to dismiss her appeal under Texas Rule of Appellate Procedure 42.1(a)(1). The court granted the motion, dismissed the appeal, and dismissed all other pending motions as moot.

CASE DETAILS

COURT	Court of Appeals of Texas, First District
WRITING FOR THE COURT	Chief Justice Radack; Justice Jennings; Justice Bland
JURISDICTION	Texas
DECIDED	December 22, 2016
DOCKET	01-16-00778-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellant moved to dismiss her appeal, styling the request as a motion for nonsuit.
PRECEDENTIAL VALUE	published
PARTIES	Maryanne Phillips v. Starwood Waypoint TRS LLC

TOPICS

[appellate procedure](#) [mootness](#) [civil procedure](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether the appellant's motion for nonsuit should be construed as a motion to dismiss the appeal.
2. Whether the appeal should be dismissed under Texas Rule of Appellate Procedure 42.1(a)(1).
3. Whether the other pending motions should be dismissed as moot.

HOLDINGS

1. A motion for nonsuit filed by the appellant was properly construed as a motion to dismiss the appeal.
2. The court granted the appellant's motion and dismissed the appeal because no other party had filed a notice of appeal, no opinion had issued, and the applicable motion and response requirements were satisfied.
3. All other pending motions were dismissed as moot following dismissal of the appeal.

FACTUAL BACKGROUND

The opinion contains no substantive facts concerning the underlying dispute. Phillips filed a motion for nonsuit in the appellate court, and no other party had filed a notice of appeal or responded to the motion.

PROCEDURAL HISTORY

Phillips appealed from the County Civil Court at Law No. 4 of Harris County, Texas. Before any other party filed a notice of appeal or the court issued an opinion, Phillips filed a motion construed as a motion to dismiss the appeal. The court granted the motion and dismissed the appeal, dismissing all other pending motions as moot.

DISPOSITION

dismissed

OPINION

PER CURIAM.

Opinion issued December 22, 2016 In The Court of Appeals For The First District of Texas NO. 01-16-00778-CV MARYANNE PHILLIPS, Appellant V. STARWOOD WAYPOINT TRS LLC, Appellee On Appeal from the County Civil Court at Law No. 4 Harris County, Texas Trial Court Cause No. 1080615 MEMORANDUM OPINION Appellant has filed a "Motion for Nonsuit" that we construe as a motion to dismiss the appeal.

See TEX. R. APP. P. 42.1(a)(1). No other party has filed a notice of appeal and no opinion has issued. See id. 42.1(c). Further, although appellant failed to include a certificate of conference in her motion, appellant's motion includes a certificate of service, more than ten days have passed since the motion was filed, and no party has responded to the motion.

See id. 10.1(a)(5), 10.3(a). Accordingly, we grant the motion and dismiss the appeal. See id. 42.1(a)(1). We dismiss all other pending motions as moot. PER CURIAM Panel consists of Chief Justice Radack and Justices Jennings and Bland. 2