

DISMISS and Opinion Filed August 1, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-23-00416-CV

TIM SCHOENBAUER, Appellant

V.

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE
TRUSTEE FOR NEW CENTURY HOME EQUITY LOAN TRUST 2004-1,
Appellee**

**On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-22-15993**

MEMORANDUM OPINION

Before Justices Nowell, Goldstein, and Breedlove
Opinion by Justice Breedlove

We questioned our jurisdiction over this appeal of the trial court's order of nonsuit dismissing appellee's claims against appellant because it appeared to be moot. We directed appellant to file a letter brief addressing our concern.

A plaintiff may take a non-suit at any time before it has introduced all of its evidence. *See* TEX. R. CIV. P. 162. When there are no pending counterclaims, the effect of a nonsuit of all of a plaintiff's claims is to render the case moot. *See Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010). Appellate courts

lack jurisdiction to decide moot controversies. *See Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999).

Although appellant's arguments in his letter brief are difficult to discern, he argues, in part, that the order of nonsuit was improper because he had counterclaims pending. Counterclaims are subject to the payment of a mandatory filing fee. No right to be heard on counterclaims exists until the fee is paid and the filing is complete. *See Jamar v. Patterson*, 868 S.W.2d 318, 319 (Tex. 1993); *In re C.A.S.*, 128 S.W.3d 681, 686 (Tex. App.—Dallas 2003, no pet.). Because the record before the Court reflects that appellant did not pay the required mandatory filing fee, the order of nonsuit of all of appellee's claims against appellant rendered the case moot.

Because a controversy no longer exists between appellant and appellee, we dismiss the appeal for want of jurisdiction. *See Nat'l Collegiate Athletic Ass'n*, 1 S.W.3d at 86; TEX. R. APP. P. 42.3(a).

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/Maricela Breedlove/
MARICELA BREEDLOVE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

TIM SCHOENBAUER, Appellant

No. 05-23-00416-CV V.

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS
INDENTURE TRUSTEE FOR NEW
CENTURY HOME EQUITY LOAN
TRUST 2004-1, Appellee

On Appeal from the 193rd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-22-15993.
Opinion delivered by Justice
Breedlove. Justices Nowell and
Goldstein participating.

In accordance with this Court's opinion of this date, the appeal is
DISMISSED.

It is **ORDERED** that appellee DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS INDENTURE TRUSTEE FOR NEW CENTURY HOME
EQUITY LOAN TRUST 2004-1 recover its costs of this appeal from appellant TIM
SCHOENBAUER.

Judgment entered this 1st day of August, 2023.