

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-12-00296-CV**

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**Cesar Sotelo, Appellant**

**v.**

**Federal Home Loan Mortgage Corporation, Appellee**

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**FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY  
NO. C-1-CV-12-002999, HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

In this forcible-detainer action, Cesar Sotelo, an occupant of the property at issue, appeals from the trial court's judgment of possession in favor of appellee Federal Home Loan Mortgage Corporation. On July 10, 2012, Federal Home filed a motion to dismiss Sotelo's appeal as moot, asserting that Sotelo had failed to file a supersedeas bond, that a writ of possession had issued, and that Federal Home had taken possession of the subject property on or around May 16, 2012. *See* Tex. Prop. Code Ann. § 24.007 (West, Supp. 2012).

"The only issue in an action for forcible detainer is the right to actual possession of the premises, and the merits of title shall not be adjudicated." *Wilhelm v. Fannie Mae*, 349 S.W.3d 766, 768 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (citing Tex. R. Civ. P. 746; *Marshall v. Housing Auth. of City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006)). Although the failure to supersede a forcible-detainer judgment does not divest a defendant of his right to appeal when

the defendant is no longer in possession of the premises, an appeal from the judgment in that case is moot unless the defendant asserts a “potentially meritorious claim of right to current, actual possession.” *Marshall*, 198 S.W.3d at 787; *Wilhelm*, 349 S.W.3d at 768.

In response to Federal Home’s motion to dismiss and its factual assertions regarding possession of the property, we requested a response from Sotelo by July 23, 2012. Sotelo has not filed a response. Absent any assertion of a potentially meritorious claim of right to current, actual possession, we grant Federal Home’s motion and dismiss Sotelo’s appeal as moot. *See Marshall*, 198 S.W.3d at 787; *Wilhelm*, 349 S.W.3d at 768.

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Bob Pemberton, Justice

Before Justices Puryear, Pemberton and Henson

Dismissed as Moot

Filed: August 16, 2012