



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

UNION PACIFIC RAILROAD
COMPANY,

§

No. 08-15-00329-CV

Appellant,

§

Appeal from the

v.

§

County Court at Law No. 5

MERLINDA VIGIL, INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
ESTATE OF ANDREW PHILLIP
VIGIL,

§

of El Paso County, Texas

§

(TC#2015DCV2273)

§

Appellee.

§

MEMORANDUM OPINION

Appellant, Union Pacific Railroad Company has filed a motion to vacate the trial court's order denying its special appearance and to dismiss the appeal as moot. Appellee, Merlinda Vigil, Individually and as Administrator of the Estate of Andrew Phillip Vigil, is unopposed to the motion.

Vigil filed suit against Union Pacific after her husband was fatally injured in New Mexico. Union Pacific filed a special appearance, and alternatively, moved to transfer the case to Harris County. The trial court denied the special appearance, but granted Union Pacific's request to transfer venue to Harris County. Union Pacific timely filed notice of appeal from the denial of its special appearance. Vigil subsequently filed a notice of nonsuit.

In its motion, Union Pacific asserts that we should vacate the order denying its special

appearance and dismiss the appeal as moot because a nonsuit, as a general rule, vitiates prior interlocutory orders. *See Le v. Kilpatrick*, 112 S.W.3d 631, 633 (Tex.App.--Tyler 2003, no pet.) (citing *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997)). A nonsuit does not vitiate a venue determination or a decision on the merits such as a partial summary judgment, but an order denying a special appearance is vitiated when the plaintiff takes a nonsuit. *See Le*, 112 S.W.3d at 633-34. Accordingly, we grant the motion, vacate the trial court's order denying the special appearance, and dismiss the interlocutory appeal as moot. *See Le*, 112 S.W.3d at 635.

STEVEN L. HUGHES, Justice

December 18, 2015

Before McClure, C.J., Rodriguez, and Hughes, JJ.