

DISMISS; and Opinion Filed August 2, 2013.



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

No. 05-12-01445-CV

JAY COOPER AND TERESA WARD COOPER, Appellants

V.

CITY OF PLANO, TEXAS, Appellee

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-03084-2011**

MEMORANDUM OPINION

**Before Justices O’Neill, Francis, and Fillmore
Opinion by Justice O’Neill**

This is an appeal from the trial court’s order of dismissal for want of prosecution. Two months after the dismissal, the trial court reinstated the case on its docket. *See* TEX. R. CIV. P. 165a(3). Because the case was reinstated and remained pending on the trial court’s docket, we questioned our jurisdiction over the appeal and directed appellants to file a letter brief addressing our concern. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (subject to a few mostly statutory exceptions, an appeal may be taken only from a final judgment, where no parties and claims remain); *see also Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992) (“Interlocutory orders may be appealed only if permitted by statute.” (citations omitted)). Appellants responded, arguing we should not dismiss the appeal for want of jurisdiction because, “although they no longer have to appeal from the dismissal . . . this case falls under recognized exceptions to the mootness doctrine.” *See Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 162

(Tex. 2012) (“A case becomes moot if, since the time of filing . . . the issues presented are no longer ‘live’ . . .”); *State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980) (recognizing two exceptions: “capability of repetition yet evading review” and “collateral consequences”).

We disagree the issue is one of mootness such that the “recognized exceptions to the mootness doctrine apply.” While the complained-of order was effectively vacated by the trial court, and to that extent no “live issue” remains, the underlying cause remains pending and no final judgment or appealable order exists that invokes our jurisdiction. *See Lehmann*, 39 S.W. 3d at 195; *Anglin*, 842 S.W.2d at 272. Accordingly, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Michael J. O'Neill/
MICHAEL J. O'NEILL
JUSTICE

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

JUDGMENT

JAY COOPER AND TERESA WARD
COOPER, Appellants

No. 05-12-01445-CV V.

CITY OF PLANO, TEXAS, Appellee

On Appeal from the 296th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 296-03084-2011.
Opinion delivered by Justice O'Neill.
Justices Francis and Fillmore participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

We **ORDER** that appellee City of Plano, Texas recover its costs of this appeal from appellants Jay Cooper and Teresa Ward Cooper.

Judgment entered this 2nd day of August, 2013.

/Michael J. O'Neill/

MICHAEL J. O'NEILL

JUSTICE