

Dismissed; Opinion Filed August 28, 2017.



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

No. 05-17-00961-CV

BRIAN E. VODICKA, Appellant

V.

MICHAEL B. TOBOLOWSKY, Appellee

**On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-08135**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Francis, and Justice Stoddart
Opinion by Justice Stoddart

In this appeal, Brian E. Vodicka challenges the trial court's order sustaining the contest to his affidavit of indigence. Vodicka filed the affidavit seeking to appeal without prepayment of costs an order granting Michael B. Tobolowsky's petition for presuit depositions of two individuals he did not anticipate suing. *See* TEX. R. CIV. P. 202. The appeal of the order granting Tobolowsky's petition is docketed as appellate cause number 05-17-00740-CV. On Vodicka's unopposed motion, we have dismissed that appeal by opinion issued this date. The dismissal of that appeal renders this appeal moot. *See VE Corp. v. Ernst & Young*, 860 S.W.3d 83, 84 (Tex. 1993) (per curiam) ("Generally, an appeal is moot when the court's action on the merits cannot affect the rights of the parties."). Accordingly, we dismiss the appeal. *See* TEX. R.

APP. P. 42.3(a); *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999)

(“Appellate courts are prohibited from deciding moot controversies.”).

/Craig Stoddart/

CRAIG STODDART
JUSTICE

170961F.P05



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

JUDGMENT

BRIAN E. VODICKA, Appellant

No. 05-17-00961-CV V.

MICHAEL B. TOBOLOWSKY, Appellee

On Appeal from the 14th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-15-08135.
Opinion delivered by Justice Stoddart. Chief
Justice Wright and Justice Francis
participating.

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

Judgment entered this 28th day of August, 2017.