

DISMISS and Opinion Filed August 21, 2019



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00478-CV

**KERRVILLE FITNESS PROPERTY, LLC, J. HOUSER CONSTRUCTION, INC., AND
JOSH HOUSER D/B/A HOUSER CONSTRUCTION, Appellants**

V.

**PE SERVICES, LLC, LANDRY ARCHITECTS, AND
FABRISTRUCTURE, INC., Appellees**

**On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-05761**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Whitehill, and Justice Nowell
Opinion by Justice Whitehill

Kerrville Fitness Property, LLC, J. Houser Construction, Inc., and Josh Houser d/b/a Houser Construction (collectively “Kerrville”) appeal from the trial court’s August 17, 2017 order granting summary judgment. Kerrville originally appealed from this order in 2017. *See Kerrville Fitness Prop., LLC, et al. v. PE Servs., LLC, et al.*, No. 05-17-01317-CV, 2019 WL 1324122, at *1-2 (Tex. App.—Dallas March 25, 2019, no pet. h.) (mem. op.) (“prior appeal”). This Court dismissed the prior appeal for want of jurisdiction because the trial court had not signed an order of non-suit as to certain pending claims. *Id.* at *1-2.¹

¹ On the same date, this Court dismissed as duplicative the second appeal filed of the same trial court order. *See Kerrville Fitness Prop., LLC, et al. v. PE Servs., LLC, et al.*, No. 05-17-01317-CV, 2019 WL 1323965 (Tex. App.—Dallas March 25, 2019, no pet.) (mem. op.)

On March 27, 2019, two days after this Court’s opinion in the prior appeal issued, the trial court signed an order of non-suit and Kerrville and appellee Landry Architects filed timely motions for rehearing. Additionally, with motions for rehearing in the prior appeal pending, appellants filed a new notice of appeal on April 25th that was docketed as this appeal. In the notice of appeal, Kerrville asserts the August 17th order is now final because of the non-suit order. Four days later, Kerrville filed a motion to consolidate this appeal with the prior appeal. In that motion, Kerrville explains that it filed the new notice of appeal “out of an abundance of caution so that the merits of this case may be reviewed in the event the Court disagrees with the parties that the order of non-suit resolved the jurisdictional issue in [the prior appeal].”

On July 15, 2019, this Court in the prior appeal denied Kerrville’s motion for rehearing.² In that order, this Court held that the March 27, 2019 non-suit order did not make the August 17, 2017 interlocutory order granting summary judgment final. Rather, this Court held “the claims disposed of in the August 17, 2017 interlocutory order granting summary judgment were reinstated making the March 27, 2019 order of non-suit an interlocutory order over which we do not have jurisdiction.”

Because this Court has determined in the prior appeal that we lack jurisdiction over the appealed order even after the trial court signed the order of non-suit, we necessarily conclude we lack jurisdiction over this duplicative appeal. Accordingly, we dismiss this appeal and all

² On August 5, 2019, the panel in the prior appeal denied appellee Landry Architects’ motion for rehearing and appellees’ joint unopposed motion for extension of time to file further motion for rehearing.

pending motions for want of jurisdiction.

/Bill Whitehill/
BILL WHITEHILL
JUSTICE

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

JUDGMENT

KERRVILLE FITNESS PROPERTY,
LLC, J. HOUSER CONSTRUCTION,
INC., AND JOSH HOUSER D/B/A
HOUSER CONSTRUCTION, Appellants

No. 05-19-00478-CV V.

PE SERVICES, LLC,
LANDRY ARCHITECTS, AND
FABRISTRUTURE, INC., Appellees

On Appeal from the 134th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-14-05761.
Opinion delivered by Justice Whitehill.
Chief Justice Burns and Justice Nowell
participating.

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

It is **ORDERED** that appellees PE SERVICES, LLC, LANDRY ARCHITECTS, AND FABRISTRUTURE, INC. recover their costs of this appeal from appellants KERRVILLE FITNESS PROPERTY, LLC, J. HOUSER CONSTRUCTION, INC., AND JOSH HOUSER D/B/A HOUSER CONSTRUCTION.

Judgment entered August 21, 2019