DISMISSED; Opinion Filed May 27, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00650-CV

SARAH BUCKLEW, Appellant
V.
THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CIT HOME EQUITY LOAN TRUST 2003-1, Appellee

On Appeal from the County Court at Law No. 3
Dallas County, Texas
Trial Court Cause No. CC-19-01018-C

MEMORANDUM OPINION

Before Justices Schenck, Molberg, and Nowell
Opinion by Justice Schenck

Sarah Bucklew appeals from a judgment of possession in a forcible detainer suit. Bucklew argues, among other things, that the trial court erred in issuing a writ of possession during the pendency of this appeal. Appellee The Bank of New York Mellon ("the Bank") responds that this appeal should be dismissed as moot because Bucklew is no longer in possession of the Property. We dismiss the appeal for lack of jurisdiction. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

JURISDICTION

As a preliminary matter, we address the Bank's assertion that this controversy is moot as it affects our jurisdiction over this appeal. Appellate courts are prohibited from deciding moot controversies. *See Daftary v. Prestonwood Mkt. Square, Ltd.*, 399 S.W.3d 708, 711 (Tex. App.—Dallas 2013, pet. denied). A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. *See id.*

A forcible detainer action is a procedure to determine the right to immediate possession of real property where there was no unlawful entry. *Williams v. Bank of New York Mellon*, 315 S.W.3d 925, 926 (Tex. App.—Dallas 2010, no pet.). The only issue in a forcible detainer action is which party has the right to immediate possession of the property. *Id.*at 927. If a supersedeas bond in the amount set by the trial court is not filed, the judgment in a forcible-detainer action may be enforced and a writ of possession may be executed evicting the defendant from the premises in question. *See* TEX. PROP. CODE ANN. § 24.007. In this case, Bucklew did not file a supersedeas bond, and the Bank obtained possession of the Property under a writ of possession.

If a defendant in a forcible-detainer action is no longer in possession of the premises, then an appeal from the forcible-detainer judgment is moot unless the defendant asserts a potentially meritorious claim of right to current, actual

possession of the Property. *See Marshall v. Hous. Auth. of City of San Antonio*, 198 S.W.3d 782, 786–87 (Tex. 2006).

Bucklew raises three complaints regarding when the writ was issued and its form, as well as whether her affidavit of inability to pay relieved her of any obligation to file a supersedeas bond. Bucklew complains the writ was wrongfully issued by the trial court after she filed her notice of appeal and after the clerk's record was filed in this case. But, as noted above, because she did not file a supersedeas bond, the writ was lawfully executed. *See* TEX. PROP. CODE ANN. § 24.007.

Bucklew contends her affidavit of inability to pay filed with the trial court meant that she did not have to file a supersedeas bond. However, we have previously held that "[a] defendant's indigence does not relieve him of the obligation to file a supersedeas bond." *See Morse v. Fed. Nat'l Mortgage Ass'n*, No. 05-18-00999-CV, 2018 WL 4784585, at *1 (Tex. App.—Dallas Oct. 4, 2018, no pet.) (mem. op. on motion to review supersedeas bond).

As for her complaints regarding the form of the writ, Bucklew refers to an appendix containing a copy of the writ that is not included in the appellate record. Because we cannot consider documents not formally included in the record on

appeal, this last complaint is waived. *See Bertrand v. Bertrand*, 449 S.W.3d 856, 863 n.8 (Tex. App.—Dallas 2014, no pet.).[1]

CONCLUSION

Because Bucklew is no longer in possession of the Property and fails to assert a potentially meritorious claim of right to current, actual possession of the Property, we conclude this appeal is moot. Accordingly, we dismiss this appeal for lack of jurisdiction.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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[1] Even if the writ were properly included in the record, Bucklew's complaint regarding the writ is meritless. She complains the writ does not contain the required date and time the writ will be executed. The property code requires the writ:

> shall order the officer executing the writ to post a written warning of at least 8 ½ by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted . . . .

See TEX. PROP. CODE ANN. § 24.0061(d)(1). Thus, it is the warning, not the writ itself, that is required to state the date and time the writ will be executed.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SARAH BUCKLEW, Appellant	On Appeal from the County Court at Law No. 3, Dallas County, Texas
No. 05-19-00650-CV V.	Trial Court Cause No. CC-19-01018-C.
THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CIT HOME EQUITY LOAN TRUST 2003-1, Appellee	Opinion delivered by Justice Schenck. Justices Molberg and Nowell participating.

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

It is **ORDERED** that appellee THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CIT HOME EQUITY LOAN TRUST 2003-1 recover its costs of this appeal from appellant SARAH BUCKLEW.

Judgment entered this 27th day of May, 2020.