

DISMISS and Opinion Filed August 17, 2020



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

No. 05-19-00909-CV

IN THE INTEREST OF O.M. AND M.M., CHILDREN

**On Appeal from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-53875-2018**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Pedersen, III, and Justice Evans
Opinion by Chief Justice Burns¹

The trial court finalized appellee Husband's and appellant Wife's divorce on March 18, 2019. Husband moved for appointment of receiver under Chapter 9 of the Texas Family Code after Wife failed to comply with certain terms of the decree, including her refusal to list a McKinney rental property and the marital residence for a fair market value. The trial court signed an order appointing receiver on July 19, 2019.

¹ The Honorable David L. Bridges, Justice, participated in the submission of this case; however, he did not participate in the issuance of this opinion due to his death on July 25, 2020. Chief Justice Robert Burns has substituted for Justice Bridges after reviewing the briefs and the record before the Court.

On August 1, 2019, Wife filed this interlocutory appeal raising five issues: (1) the trial court denied her Due Process by issuing the order without a hearing; (2) the court acted arbitrarily and unreasonably in appointing a receiver; (3) the appointment of a receiver modified the decree; (4) the powers granted to the receiver exceeded those that could be exercised in the absence of a receivership; and (5) the receiver failed to exercise ordinary care and prudence and should be terminated. We dismiss the appeal as moot.

Wife's opening brief indicated the properties at issue in this appeal were sold on July 26, 2019 and August 23, 2019, respectively. Generally, when a party appeals an order appointing a receiver and the property has been sold, the appeal of the order becomes moot. *See, e.g., Bass v. Bass*, No. 05-15-01362-CV, 2016 WL 1703007 at *1 (Tex. App.—Dallas April 27, 2016, pet. denied). The Court sent a letter on May 7, 2020, requesting supplemental briefing addressing whether the appeal is moot.²

After requesting one extension, Wife filed supplemental briefing. She spent the majority of her supplemental briefing rearguing the issues raised in her initial brief. She dedicated only the last three pages, with citation to two cases, arguing her appeal is not moot.

To the extent she cites the dissenting opinion in *Estate Land Co. v. Wiese*, 546 S.W.3d 322 (Tex. App.—Houston [14th Dist.] 2017, pet. denied), we are not bound

² Husband did not file an appellee brief; however, he responded to the Court's request for supplemental briefing from Wife.

by a dissenting opinion. *See Canadian River Mun. Water Auth. v. Hayhook, Ltd.*, 469 S.W.3d 301, 303 (Tex. App.—Amarillo 2015, pet. denied). Rather, the *Wiese* majority followed well-established law that a case “becomes moot if a controversy ceases to exist at any stage of the proceedings, including the appeal.” *Id.* at 326 (citing *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005) (original proceeding)). The property at issue in that case was sold; therefore, the appellate court dismissed the appeal as moot without addressing the issues raised. *Id.*

We reach the same conclusion under these facts. The conveyance of the properties moots this appeal. *See, e.g., Mitchell v. Turbine Res. Unlimited, Inc.*, 523 S.W.3d 189, 195–96 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (order authorizing receiver to sell vehicle became moot when vehicle sold); *see also Bass*, 2016 WL 1703007 at *1.

We likewise reject Wife’s reliance on *Lee v. Lee*, 528 S.W.3d 201 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) in which the appellate court concluded live controversies existed after the closing of a settlement agreement because attainable relief such as refunds or recession of a promissory note were still available. *Id.* at 209–10. In that case, because the settlement resulted in conveyance of property from the husband to Legacy Trust Company, N.A., in its capacity as the trust’s receiver, the court determined these transactions could be reversed if the wife prevailed on appeal. *Id.* at 210.

Here, the record contains no information regarding the buyers of the properties; therefore, unlike *Lee*, nothing indicates the property transactions can be reversed. Thus, we cannot say “the evidence before us does not indicate that anything has been done that cannot be undone.” *Id.* at 210.

Wife contends her arguments on appeal are “more than just the sale of the house” because she challenges whether the receiver “violated a duty of care, duty of loyalty or any other oath he/she took in selling the property pursuant to the Order in question.” We disagree these issues can be addressed. Any opinion issued on the propriety of the underlying proceeding or the receiver’s actions would constitute an impermissible advisory opinion. *See Thompson v. Ricardo*, 269 S.W.3d 100, 103 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

We recognize Wife filed a motion for order for interlocutory appeal on controlling question of law on July 24, 2019 (file stamped July 29, 2019) as to whether the trial court violated Texas Family Code section 9.007(b) and asked the trial court to stay any further proceedings pending disposition of the appeal. *See* TEX. FAM. CODE ANN. § 9.007(b) (order amending, modifying, or altering a final divorce decree is beyond the power of the court and unenforceable). However, after filing the motion, she sat idle and did nothing further, such as demand a hearing or ruling from the trial court or file a motion for emergency stay in this Court, to stop the sale of the rental property two days later on July 26, 2019. Rather, per the decree, she participated in the closing and signed the necessary documents. Although she

filed a notice of appeal in this Court on August 1, 2019, she again did nothing to stay the sale of the marital property on August 23, 2019.

Because Wife did not seek an emergency stay or otherwise suspend enforcement of the trial court's order, the sale of the properties were completed, and, as such, the appeal from the order appointing a receiver is moot. *See Wiese*, 546 S.W.3d at 326; *Bass*, 2016 WL 1703007, at *1. Accordingly, we dismiss Wife's appeal. *See* TEX. R. APP. P. 42.3(a).

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

190909F.P05



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

JUDGMENT

IN THE INTEREST OF O.M. AND
M.M., CHILDREN

No. 05-19-00909-CV

On Appeal from the 429th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 429-53875-
2018.

Opinion delivered by Chief Justice
Burns. Justices Pedersen, III and
Evans participating.

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

It is **ORDERED** that appellee Oscar Millan recover his costs of this appeal
from appellant Magdalena Millan.

Judgment entered August 17, 2020