

DISMISS and Opinion Filed January 21, 2022



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

No. 05-21-01154-CV

**THEODIS LYONS, III, Appellant
V.
SERIES 104 OF VALENI, LLC AND SEAMUS JOKIEL, Appellees**

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-21-03472-E**

MEMORANDUM OPINION

Before Justices Pedersen, III, Goldstein, and Smith
Opinion by Justice Goldstein

This is an appeal from the trial court's judgment in a forcible detainer suit awarding possession of property to appellees. Before the Court is appellees' January 7, 2022 motion to dismiss the appeal. Appellees assert we should dismiss the appeal as it is now moot because appellant has vacated the property. Appellees also request damages for a frivolous appeal. *See* TEX. R. APP. P. 45. Appellant did not file a response to appellees' motion.

The issue in a forcible detainer suit is the right to actual possession of the premises. Once a tenant has vacated or been evicted from the property, no justiciable controversy exists, and the appeal is moot. *See Olley v. HVM, L.L.C.*, 449 S.W.3d

572, 576–77 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). When an appeal has become moot, an appellate court must vacate the trial court’s judgment and dismiss the case. *See Marshall v. Housing Auth. of City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006).

Appellant is no longer in possession of the property and this appeal is now moot. Accordingly, we grant appellees’ motion, vacate the trial court’s judgment of possession, and dismiss the case. *See id.* We deny appellee’s request for sanctions for frivolous appeal.

/Bonnie Lee Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

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

JUDGMENT

THEODIS LYONS, III, Appellant

No. 05-21-01154-CV V.

SERIES 104 OF VALENI, LLC
AND SEAMUS JOKIEL, Appellees

On Appeal from the County Court at
Law No. 5, Dallas County, Texas
Trial Court Cause No. CC-21-03472-
E.

Opinion delivered by Justice
Goldstein. Justices Pedersen, III and
Smith participating.

In accordance with this Court's opinion of this date, the trial court's September 20, 2021 judgment is **VACATED** and the case is **DISMISSED**.

It is **ORDERED** that appellees SERIES 104 OF VALENI, LLC AND SEAMUS JOKIEL recover their costs of this appeal from appellant THEODIS LYONS, III.

Judgment entered January 21, 2022