

Opinion issued May 3, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00065-CV

THE OFFICE OF THE ATTORNEY GENERAL, Appellant

V.

**ANTHONY LEWIS; PRINCOR FINANCIAL SERVICES CORPORATION;
PRINCIPAL LIFE INSURANCE COMPANY; ENERGY TRANSFER
PARTNERS GP, L.P.; AND M.A.L., Appellees**

**On Appeal from the 308th District Court
Harris County, Texas
Trial Court Case No. 2000-08653**

MEMORANDUM OPINION

Appellant, The Office of the Attorney General (“OAG”), appealed from the trial court’s interlocutory order, signed on January 5, 2016, granting a temporary injunction in favor of appellee, Anthony Lewis, in this child support proceeding. *See* TEX. R. APP. P. 26.1(b). On February 18, 2016, this Court granted the OAG’s motion

to stay the entry of a final judgment pending disposition of this interlocutory appeal, but the OAG did not seek a stay of the trial set for February 23, 2016, or any other trial court proceeding. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4), (b) (West Supp. 2015); TEX. R. APP. P. 29.5(b).

On March 16, 2016, the trial court granted the motion for partial non-suit of appellee, Anthony Lewis, to dismiss with prejudice all of Lewis's claims against appellees Princor Financial Services Corporation, Principal Life Insurance Company, and Energy Transfer Partners GP, L.P. Similarly, on March 23, 2016, the trial court granted Lewis's motion for non-suit to dismiss with prejudice all of Lewis's claims against the OAG and appellee, M.A.L.

On March 30, 2016, Lewis filed a motion to dismiss this appeal for want of jurisdiction in this Court. *See* TEX. R. APP. P. 42.3(a). Lewis asserts that the temporary injunction was dissolved once the underlying lawsuit was dismissed after the trial court granted Lewis's motions for non-suit. He asserts that, although a non-suit does not affect any pending claims, counterclaims, or cross-claims by defendants or other parties, here there are no other pending claims filed by other parties. Thus, Lewis contends that this appeal is moot because there is no longer an issue in controversy. More than ten days have passed and the OAG has not responded to the motion to dismiss. *See* TEX. R. APP. P. 10.3(a).

The “fact that a temporary injunction has been issued does not prevent the plaintiff from taking a non-suit.” *Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990) (internal quotation marks and citation omitted); *see also* TEX. R. CIV. P. 162. “As a consequence of the trial court’s granting the nonsuit, the temporary injunction ceased to exist and the appeal became moot.” *OXY U.S.A., Inc.*, 789 S.W.2d at 571 (citation omitted); *see also RSL–3B–IL, Ltd. v. The Prudential Ins. Co. of Am.*, No. 01-13-00933-CV, 2014 WL 3107663, at *3 (Tex. App.—Houston [1st Dist.] July 8, 2014, pet. dismiss’d) (“A nonsuit renders the merits of the nonsuited case moot.”) (internal quotation marks and citation omitted). The trial court’s order granting the motions for non-suit, which vacated the temporary injunction on appeal, “is not precluded by Rule 29.5 of the Texas Rules of Appellate Procedure.” *BP Amoco P.L.C. v. Rowan Cos., Inc.*, No. 14-01-00199-CV, 2001 WL 726322, at *1 (Tex. App.—Houston [14th Dist.] June 28, 2001, pet. dismiss’d by agr.) (granting appellees’ motion to dismiss appeal for lack of jurisdiction after trial court granted appellees’ motion for nonsuit, which vacated interlocutory order on appeal) (citing, *inter alia*, TEX. R. APP. P. 29.5 (permitting trial court to issue order dissolving interlocutory order being appealed)).

Generally, this Court has civil appellate jurisdiction over final judgments or interlocutory orders specifically authorized as appealable by statute. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.012, 51.014(a)(1)–(12) (West Supp. 2015);

Lehmann v. Har-Con Corp., 39 S.W.3d 191, 195 (Tex. 2001). However, after the trial court granted Lewis’s motions for non-suit, the temporary injunction dissolved, and there is no appealable final judgment or interlocutory order. *See, e.g., Zapata v. Clear Creek Indep. Sch. Dist.*, No. 01-15-00346-CV, 2015 WL 7737626, at *1 (Tex. App.—Houston [1st Dist.] Dec. 1, 2015, no pet.) (granting joint motion to dismiss appeal for want of jurisdiction after trial court vacated final judgment on appeal). “Appellate courts are prohibited from deciding moot controversies.” *Nat’l Collegiate Athletic Ass’n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999). Mootness deprives this Court of jurisdiction. *See Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000). Thus, we must dismiss this case because we lack jurisdiction over the OAG’s appeal after the non-suits were granted. *See RSL–3B–IL, Ltd.*, 2014 WL 3107663, at *3.

CONCLUSION

Accordingly, we lift this Court’s stay issued on February 18, 2016, grant Lewis’s motion, and dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any other pending motions as moot.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Keyes and Higley.