

Opinion issued November 30, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00156-CV

OB HOSPITALIST GROUP, INC., Appellant
V.
STEVEN I. ROCKMAN M.D., Appellee

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Case No. 2020-59786

MEMORANDUM OPINION

Steven I. Rockman sued Ob Hospitalist Group, Inc., (Ob Inc.) and other defendants for defamation. Ob Inc. then filed a special appearance. The trial court signed an order denying the special appearance, and Ob Inc. filed this interlocutory appeal of the denial.

Ob Inc., along with all the other defendants, had also filed in the trial court a motion to dismiss Rockman's defamation claims pursuant to the Texas Citizens Participation Act (TCPA). *See* TEX. CIV. PRAC. & REM. CODE §§ 27.001–.011. After the trial court conducted a hearing on the TCPA motions, Ob Inc. filed, in this Court, a motion to stay this appeal of the special-appearance ruling. Ob Inc. informed us that the trial court had indicated at the hearing that it would sign orders granting the defendants' TCPA motions to dismiss Rockman's claims.

In its motion to stay the appeal, Ob Inc. also stated that if the trial court signed a final order of dismissal, then this interlocutory appeal would be rendered moot. Ob Inc. further stated that if Rockman appealed the final judgment of dismissal, then Ob Inc. would pursue its appeal of the denial of its special appearance as a cross-appeal in Rockman's appeal from the final judgment.

On June 24, 2021—while this interlocutory appeal was pending—the trial court signed orders granting the TCPA motions to dismiss, resulting in a final judgment in the defendants' favor. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (explaining that judgment is final for purposes of appeal if it disposes of all pending parties and claims in record). On July 14, 2021, Rockman filed a notice of appeal of the June 24 final judgment, which is docketed in this Court as appellate cause number 01-21-00383-CV.

On August 24, 2021, we denied Ob Inc.’s motion to stay this appeal. But we also notified the parties that because final judgment had been rendered in the trial court, we would dismiss this interlocutory appeal unless the parties informed us of a reason that it should not be dismissed. We stated that the trial court’s rendition of the final judgment rendered the instant interlocutory appeal procedurally moot because the order denying Ob Inc.’s special appearance had merged into the final judgment. *See Elec. Reliability Council of Tx., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 635 (Tex. 2021) (recognizing that final judgment can moot pending interlocutory appeal “even when the final judgment does not moot the substantive issue the interlocutory appeal”); *Bonsmara Nat. Beef Co. v. Hart of Tex. Cattle Feeders*, 603 S.W.3d 385, 390 (Tex. 2020) (“When a trial court renders a final judgment, the court’s interlocutory orders merge into the judgment and may be challenged by appealing that judgment.”); *Chen v. Razberi Techs., Inc.*, No. 05-19-01551-CV, 2020 WL 6390507, at *2 (Tex. App.—Dallas Nov. 2, 2020, pet. filed) (mem. op.) (holding that trial court’s entry of final summary judgment in plaintiff’s favor mooted defendant’s pending interlocutory appeal from prior order denying defendant’s special appearance because prior order merged into final judgment); *Henry v. Flintrock Feeders, Ltd.*, No. 07-04-0224-CV, 2005 WL 1320121, at *1–2 (Tex. App.—Amarillo June 1, 2005, no pet.) (mem. op.) (holding that final summary judgment rendered moot interlocutory

appeal challenging denial of special appearance); *Tex. Dep't of Public Safety v. Alexander*, No. 03-04-00439-CV, 2005 WL 8147253, at *1 (Tex. App.—Austin Apr. 14, 2005, no pet.) (mem. op.) (determining that interlocutory appeal from order denying plea to jurisdiction was mooted by final judgment on merits).

Rockman did not respond to our notice of intent to dismiss, but Ob Inc. did respond, agreeing that this appeal should be dismissed as moot. Ob Inc. also stated,

Transfer of the notice of appeal, clerk's record, reporter's record, and briefs from this appeal into the Final Judgment Appeal [appellate cause number 01-21-00383-CV] will allow Ob Inc. to raise lack of personal jurisdiction as a ground for affirmance of the dismissal of all claims against it, without the necessity of the parties re-briefing that issue, which has been fully briefed in this appeal.

Because of the accelerated nature of an appeal from a trial court's order dismissing a legal action under the TCPA, transferring the briefs and the record into the appeal from the final judgment is the best course of action to aid in an expedited disposition of all parties' issues. *See* TEX. R. CIV. P. 27.008(b) (“An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under [TCPA] Section 27.003”[.]).

We hold that, because final judgment has been rendered in the underlying proceedings, the instant interlocutory appeal of the trial court's order denying Ob Inc.'s special appearance is procedurally moot. *See Elec. Reliability Council of Tx.*, 619 S.W.3d at 635–36; *Chen*, 2020 WL 6390507, at *2; *Henry*, 2005 WL

1320121, at *1–2. Accordingly, we dismiss this appeal as moot. We instruct the Clerk of this Court to transfer the notice of appeal, clerk’s record, reporter’s record, and the parties’ briefs in this appellate cause to the appeal in appellate cause number 01-21-00383-CV. *See Scott L. Ortho Corp. P.C. v. Marshall*, No. 03-19-00575-CV, 2019 WL 6693770, at *1 (Tex. App.—Austin Dec. 6, 2019, no pet.) (mem. op.) (dismissing interlocutory appeal brought by defendant as moot after final judgment rendered against plaintiff and instructing appellate clerk of court to transfer record from interlocutory appeal to appeal from final judgment rendered against plaintiff).

PER CURIAM

Panel consists of Justices Hightower, Countiss, and Guerra