**Dismissed and Memorandum Opinion filed February 2, 2017.**



In The

# 𝔉𝔬𝔲𝔯𝔱𝔢𝔢𝔫𝔱𝔥 ℭ𝔬𝔲𝔯𝔱 𝔬𝔣 𝔄𝔭𝔭𝔢𝔞𝔩𝔰

## NO. 14-16-00818-CV

## IN THE MATTER OF THE VEIT JOHNNES BRIMER AND NATALIA ERSHOVA BRIMER

**On Appeal from the 245th District Court**
**Harris County, Texas**
**Trial Court Cause No. 2016-01507**

## M E M O R A N D U M   O P I N I O N

This is an appeal from a judgment signed July 12, 2016. Appellant Natalia Ershova Brimer timely filed a motion for new trial on August 8, 2016. On October 13, 2016, appellant filed an amended motion for new trial. The trial court held a hearing on the motion on October 14, 2016, and signed an order granting a new trial on October 26, 2016.

Appellant's original motion for new trial was overruled by operation of law on September 26, 2016. Tex. R. Civ. P. 329b(c) (if motion for new trial is not determined by written order signed within 75 days after the judgment was signed,

it shall be considered overruled by operation of law on expiration of that period). The trial court retained plenary power to grant a new trial for 30 days after the last timely-filed motion for new trial was overruled. Tex. R. Civ. P. 329b(e). Thirty days after September 26, 2016, is October 26, 2016, the day the trial court signed the order granting a new trial.

Because a new trial was granted while the trial court had plenary power, the July 12, 2016 judgment has been vacated. *In re E.C.*, 431 S.W.3d 812, 815–16 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding [mand. denied]) ("Granting a new trial has the legal effect of vacating the original judgment and returning the case to the trial docket as though there had been no previous trial or hearing."). Therefore, there is no appealable judgment and we lack jurisdiction to consider this appeal. *See* Tex. R. App. P. 25.1(b); *Stelly v. Citibank (South Dakota) N.A.*, No. 14-07-00601-CV, 2008 WL 2066571, *1 (Tex. App.—Houston [14th Dist.] May 15, 2008, no pet.).

Accordingly, the appeal is dismissed.


PER CURIAM


Panel consists of Justices Christopher, Jamison, and Donovan.