

**Dismissed and Memorandum Opinion filed May 18, 2017.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-17-00221-CV**

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**TOMMY LAYTON SCHMITT, Appellant**

**V.**

**PETRA ULRIKE SCHMITT, Appellee**

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**On Appeal from the 308th District Court  
Harris County, Texas  
Trial Court Cause No. 2016-22377**

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**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 December 21, 2016. Appellant timely filed a motion for new trial. The motion for new trial was overruled by operation of law on March 6, 2017. *See* Tex. R. Civ. P. 329b(c) (stating that if motion for new trial “is not determined by written order signed within seventy-five 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 thirty days after the last timely-filed motion for new trial was

overruled. Tex. R. Civ. P. 329b(e). Thirty days after March 6, 2017, is April 5, 2017. The trial court signed an order granting a new trial on March 21, 2017.

Because a new trial was granted while the trial court had plenary power, the December 21, 2016 judgment has been vacated. *See 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.).

On April 21, 2017, notification was transmitted to all parties of the court’s intention to dismiss the appeal for want of jurisdiction unless on or before May 2, 2017, appellant filed a response demonstrating grounds for continuing the appeal. *See* Tex. R. App. P. 42.3(a). No response was filed.

The appeal is dismissed.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Jamison and Busby.