

**Affirmed and Memorandum Opinion and Memorandum Concurring Opinion
filed August 16, 2022.**



In The

Fourteenth Court of Appeals

NO. 14-21-00339-CV

AMELIA COLVIN, Appellant

V.

**ARK-LA-TEX FINANCIAL SERVICES, LLC D/B/A BENCHMARK
MORTGAGE, AND DEUTSCHE BANK TRUST COMPANY, Appellees**

**On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Cause No. 67142**

MEMORANDUM CONCURRING OPINION

I concur in the court's judgment and lament the numerous procedural problems with the presentation of this appeal that make it impossible to resolve most or all of this appeal on the merits.

On appeal both the parties and this court assume that the trial court's final judgment was signed on May 20, 2021.¹ The notice of appeal was filed on June 21, 2021. However, the trial court called the case for trial after the filing of the notice of appeal and plaintiff/appellant Amelia Colvin did not appear. In an order signed June 28, 2021, the trial court dismissed the case for want of prosecution:

On the 14th day of June, 2021 the above styled case was called for trial or dismissal on the trial docket, and both sides having been properly notified through their attorneys of record, and Plaintiff having failed to appear on this date for trial, and Defendant having appeared in person through their attorney of record Melissa Gutierrez, the Court is of the opinion and finds that this case should be dismissed for want of prosecution.

It is accordingly ORDERED, ADJUDGED and DECREED that the above styled case be dismissed, and costs to be assessed against the Plaintiff for which let execution issue.

There is no discussion by either the parties or this court concerning the effect of this dismissal order or whether it was signed outside of the trial court's plenary power and, therefore, void. Perhaps there was a motion that extended plenary power, but it does not appear to be in the clerk's record and the court has not inquired about the matter.

In any event, the court's judgment affirming the judgment of the trial court is correct, even though this procedural disposition of a hotly contested lawsuit will hardly seem like justice to the plaintiff. However, recalling the famous exchange between Judge Learned Hand and Associate Justice Oliver Wendell Holmes Jr., our job is to play the according to the rules.

¹ The notice of appeal mistakenly refers to date of the final judgment as May 21, 2021.

I concur in the court's judgment.

/s/ Charles A. Spain
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Spain (Christopher, C.J., majority).