



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00808-CV

PERIDOT JOINT VENTURE, Millennium Exploration Company, LLC and Richard Monroy,
Appellants

v.

RPH CAPITAL PARTNERS, L.P.,
Appellee

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-CI-17142
Honorable Antonia Arteaga, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Irene Rios, Justice

Delivered and Filed: May 2, 2018

APPEAL DISMISSED AS MOOT

This is a restricted appeal in which appellants Peridot Joint Venture, Millennium Exploration Company, LLC, and Richard Monroy (collectively, “Peridot”) challenge a default judgment rendered against them and in favor of appellee RPH Capital Partners, LP (“RPH”) on December 14, 2015. It is undisputed that Peridot failed to file either a motion for new trial or a notice of appeal. However — prior to the filing of this restricted appeal — Peridot filed an original petition for bill of review in the trial court, arguing it did not receive a copy of the December 14, 2015 default judgment. It further contended it was deprived of its due process right to notice of a

trial, and therefore, the default judgment rendered against it should be reversed. Thereafter, Peridot filed a motion for summary judgment on its bill of review, and after a hearing, the trial court granted Peridot's summary judgment, vacating the December 14, 2015 default judgment.

On June 30, 2016, RPH filed a petition for writ of mandamus, requesting this court to vacate the summary judgment order and reinstate the December 14, 2015 default judgment. On December 6, 2016, we conditionally granted RPH's request for mandamus relief and directed the trial court to vacate its summary judgment on the bill of review and reinstate the December 14, 2015 default judgment. *See In re RPH Capital Partners, LP*, No. 04-16-00424-CV, 2016 WL 7119036, at *5 (Tex. App.—San Antonio Dec. 7, 2016), *opinion withdrawn and superseded on reh'g*, No. 04-16-00424-CV, 2017 WL 2561562 (Tex. App.—San Antonio June 14, 2017, mandamus denied). One week later, Peridot filed this restricted appeal, challenging the reinstated December 14, 2015 default judgment.

Thereafter, on June 14, 2017 — during the pendency of this restricted appeal — this court withdrew its opinion and order from the original proceeding dated December 6, 2016 and substituted a new opinion and order, ultimately denying RPH's request for mandamus relief. *See In re RPH Capital Partners, LP*, 2017 WL 2561562, at *3. RPH then filed a petition for writ of mandamus in the Texas Supreme Court on August 25, 2017. As a result, because the crux of this restricted appeal centered on whether the December 14, 2015 default judgment was valid and enforceable, we abated this cause on September 15, 2017 pending final resolution of any action relating to the original proceeding.

On March 19, 2018, Peridot filed a letter in this court, stating the Texas Supreme Court denied RPH's petition for writ of mandamus on January 26, 2018 and the time period for filing a rehearing has expired. Accordingly, based on this court's opinion and order dated June 14, 2017, the underlying December 14, 2015 default judgment was vacated by the trial court's summary

judgment in favor of Peridot. A judgment that has been vacated has no legal effect and is not susceptible to appeal. *Pringle v. Moon*, 158 S.W.3d 607, 610-11 (Tex. App.—Fort Worth 2005, no pet.) (citing *Ferguson v. Naylor*, 860 S.W.2d 123, 127 (Tex. App.—Amarillo 1993, writ denied)). Therefore, because the underlying judgment Peridot sought to challenge in this restricted appeal had been vacated, it appeared this restricted appeal had been rendered moot. *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012) (holding case is moot when issues presented are no longer live controversies).

Based on the foregoing, we ordered our previous abatement lifted and reinstated this appeal on this court's active docket. We further ordered Peridot to file a written response on or before May 29, 2018, showing cause why this cause should not be dismissed as moot. On April 18, 2018, Peridot filed a response and motion to dismiss, agreeing the matter is moot and requesting the matter to be dismissed as moot. In its motion, Peridot states RPH does not oppose its request for dismissal.

Accordingly, we grant Peridot's motion to dismiss and dismiss this appeal as moot. We also dismiss all other pending motions as moot.

PER CURIAM