

NO. 07-06-0289-CV  
IN THE COURT OF APPEALS  
FOR THE SEVENTH DISTRICT OF TEXAS  
AT AMARILLO  
PANEL D  
JULY 25, 2006

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WAYNE POPE AND LAURA POPE, APPELLANTS

v.

THE CITY OF TEMPLE, APPELLEE

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FROM THE 146<sup>th</sup> DISTRICT COURT OF BELL COUNTY;

NO. 203,426-B; HON. RICK MORRIS, PRESIDING

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Before QUINN, C.J., and REAVIS and CAMPBELL, JJ.

**MEMORANDUM OPINION**

Appellants Wayne Pope and Laura Pope filed their notice of appeal challenging the trial court's judgment in favor of appellees John Kiella Homes, John Kiella, individually, KAM Home Builders, KAM Family, Ltd., Kiella Management, L.C., and the City of Temple. Pending before this court is a Joint Motion to Dismiss Portion of Appeal filed by appellants and appellee the City of Temple in which they request us to "dismiss the portion of the appeal which appeals the judgment in favor of the City of Temple. The parties desire that the judgment in favor of the City of Temple become a final judgment." The moving parties

represent this request does not affect the appeal against the other appellees. TEX. R. APP. P. 42.1(b). The certificate of conference attached to the motion indicates counsel for appellee the City of Temple conferred with counsel for the remaining appellees who did not object to the City of Temple being dismissed from the appeal. Pursuant to appellants and appellee the City of Temple's request, by order of severance in cause number 07-06-0146-CV, that portion of the appeal between appellants and the City of Temple was severed into this cause to consider the motion to dismiss.

Without passing on the merits of the appeal between appellants and the City of Temple, we grant the motion and dismiss the appeal. TEX. R. APP. P. 42.1(a). That portion of the appeal between appellants and appellees John Kiella Homes, John Kiella, individually, KAM Home Builders, KAM Family, Ltd., and Kiella Management, L.C. remains pending in cause number 07-06-0146-CV and will proceed in due course. Having dismissed the appeal between appellants and the City of Temple at their request, no motion for rehearing will be entertained and our mandate will issue forthwith. Appellants and the City of Temple have agreed to bear their own costs in this appeal.

It is so ordered.

Per Curiam