



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00473-CV

**AMARILLO II ENTERPRISES, LLC D/B/A AMARILLO CENTER FOR SKILLED CARE;
CREATIVE SOLUTIONS IN HEALTHCARE, INC.; PAULA FLORES; AND TODD
GUDGELL, APPELLANT**

V.

THOMAS SAMES, M.D., APPELLEE

On Appeal from the 181st District Court
Potter County, Texas
Trial Court No. 105779-B, Honorable John B. Board, Presiding

April 5, 2017

MEMORANDUM OPINION

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

Appellants, Amarillo II Enterprises, LLC d/b/a Amarillo Center for Skilled Care, Creative Solutions in Healthcare, Inc., Paula Flores, and Todd Gudgell, (collectively "Amarillo"), perfected their appeal of the trial court's order signed December 20, 2016, by which it denied Amarillo's motion for stay pending arbitration. Having concluded that the pending appeal has become moot, we dismiss it.

Background

In the December 20th order, the trial court concluded that it lacked jurisdiction to grant Amarillo's motion for stay. As previously mentioned, the controversy had involved arbitration and whether the Texas Rule of Civil Procedure 202 action initiated by Thomas Sames against Amarillo was subject to arbitration. The trial court's December 20th order resulted in both the current appeal and a related mandamus proceeding.

We addressed the mandamus proceeding first. This resulted in our ordering the trial court to (1) vacate its December 20th order and (2) "determine whether the parties executed an enforceable arbitration clause encompassing the issues to be asserted in the anticipated suit of [appellee Thomas] Sames as explained in his live Rule 202 pleading." See *In re Amarillo II Enterps.*, No. 07-17-00005-CV, 2017 Tex. App. LEXIS 1000, at *8–9 (Tex. App.—Amarillo Feb. 3, 2017, orig. proceeding) (mem. op.).

The trial court timely complied with this Court's directive, vacated its order, considered the arbitration issue, and signed an order on February 27, 2017, in which it granted Amarillo's motion to stay. In light of the trial court's compliance with our directive in *In re Amarillo II Enterprises* and its attendant vacation of its prior order, we came to question the viability of Amarillo's pending appeal. That is, we wondered whether the appeal had been rendered moot and asked the parties to address that in writing. They did and agreed that the appeal was moot.

The appeal being moot, we have no jurisdiction to consider it. See *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999) (observing that we cannot decide a moot controversy); *City of Dallas v. Woodfield*, 305 S.W.3d 412, 416

(Tex. App.—Dallas 2010, no pet.) (doing the same). Therefore, it is dismissed for want of jurisdiction. See TEX. R. APP. P. 42.3(a), (c).

Brian Quinn
Chief Justice