



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

No. 07-22-00038-CV

**DUKE-KELLER OUTDOOR ADVERTISING, INC.
AND TEXAS NACK ENTERPRISES, L.L.C.
D/B/A KELLER OUTDOOR ADVERTISING, APPELLANTS**

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the County Court at Law Number 3
Lubbock County, Texas
Trial Court No. 2019-822,472; Honorable Benjamin A. Webb, Presiding

March 4, 2022

MEMORANDUM OPINION

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

Appellants Duke-Keller Outdoor Advertising, Inc. and Texas NaCK Enterprises, L.L.C. d/b/a Keller Outdoor Advertising appeal from the trial court's *Judgment of Court in Absence of Objection*. Because the trial court has granted a new trial, we dismiss the appeal for want of jurisdiction.

Appellee, the State of Texas, filed a petition for condemnation against the owners of certain real property in Lubbock County for highway purposes. On November 8, 2021, the trial court signed the *Judgment of Court in Absence of Objection*, condemning the property and adopting the damages award assessed by the appointed special commissioners. See TEX. PROP. CODE ANN. §§ 21.014, 21.061. Appellants timely filed a motion for new trial on December 7, 2021. See TEX. R. CIV. P. 329b(a). The motion was denied by operation of law on January 24, 2022. See *id.* at 4, 329b(c). However, the trial court signed an order granting a new trial on February 4, 2022, before the expiration of its plenary power. See *id.* at 329(e). That day, Appellants filed a notice of appeal from the judgment. See TEX. PROP. CODE ANN. § 21.063.

We have jurisdiction to hear an appeal from a final judgment or from an interlocutory order made immediately appealable by statute. See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *Stary v. DeBord*, 967 S.W.2d 352, 352-53 (Tex. 1998) (per curiam). When a trial court grants a new trial, the existing judgment is vacated and the case is returned to the trial court's docket as though there had been no previous trial or hearing. *Markowitz v. Markowitz*, 118 S.W.3d 82, 88 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

By letter of February 8, 2022, we notified Appellants that it does not appear we have jurisdiction over the appeal because the trial court granted a new trial, vacating the final judgment. See *In re K.F.*, No. 07-08-00102-CV, 2008 Tex. App. LEXIS 2068, at *2 (Tex. App.—Amarillo Mar. 19, 2008, no pet.) (mem. op.) (“An order granting new trial deprives an appellate court of jurisdiction over the appeal.”). We directed Appellants to

show how we have jurisdiction over the appeal by February 22, 2022. Appellants have not filed a response to the court's jurisdictional inquiry to date.

Because Appellants have not presented this court with a final judgment or appealable order, we dismiss the appeal for want of jurisdiction. See TEX. R. APP. P. 42.3(a).

Per Curiam