

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-02-00096-CV**

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**Tana Oil and Gas Corporation, Appellant**

**v.**

**Richard G. Cernosek, CER-MOR-LEB, a General Partnership and  
Garth C. Bates, Appellees**

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**FROM THE DISTRICT COURT OF FAYETTE COUNTY, 155TH JUDICIAL DISTRICT  
NO. 96V-138, HONORABLE DANIEL R. BECK, JUDGE PRESIDING**

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On January 20, 2002, the district court granted a motion submitted by Richard G. Cernosek, CER-MOR-LEB, a general partnership, and Garth C. Bates, appellees, requesting a modification of the original class certification order signed in this cause which additionally denied a motion submitted by appellant Tana Oil and Gas Corporation to decertify the class. Tana filed this appeal and a motion to stay the district court proceedings pending the resolution of this appeal. Appellees subsequently filed a motion to dismiss for want of jurisdiction. Appellees contend that this appeal is an attempted second appeal from the modification of a class certification order that was previously affirmed by this Court. *See Tana Oil and Gas Corp. v. Bates*, 978 S.W.2d 735 (Tex. App.—Austin 1998, no pet.). Citing *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352 (Tex. 2000), appellees contend that the modification order makes no fundamental change in the class certification order, and therefore, this is an improper interlocutory appeal. *See id.* at 356. We agree and therefore dismiss this appeal for want of jurisdiction.

As we have not yet ruled on appellant's motion to stay the district court proceedings pending the resolution of this appeal and having dismissed this appeal for want of jurisdiction, we also dismiss the motion to stay.

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Justice Mack Kidd

Before Justices Kidd, Patterson and Puryear

Dismissed for Want of Jurisdiction

Filed: April 11, 2002

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