

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00561-CV

Dana Dutschmann and Kevin Bierwirth, Appellants

v.

Federal National Mortgage Association, Appellee

**FROM THE COUNTY COURT AT LAW NO. 2 OF TRAVIS COUNTY
NO. C-1-CV-14-006351, HONORABLE ERIC SHEPPERD, JUDGE PRESIDING**

MEMORANDUM OPINION

Dana Dutschmann and Kevin Bierwirth appeal the trial court’s final judgment in a forcible-detainer suit awarding possession of residential real property to Federal National Mortgage Association (FNMA). As a preliminary matter, FNMA asserts that the appeal is moot because the writ of possession has been executed and neither Dutschmann nor Bierwirth remains in possession of the property or asserts a claim for current, actual possession. For the reasons set forth below, we agree and dismiss this appeal as moot.

“A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal.” *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005). “The only issue in an action for forcible detainer is the right to actual possession of the premises.” *Marshall v. Housing Auth. of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006); *see also* Tex. R. Civ. P. 510.3(e) (“The court must adjudicate the right to actual possession and not

title.”). In a forcible-detainer case, the issue of possession becomes moot if the appellant is no longer in possession of the property, unless the appellant asserts “a potentially meritorious claim of right to current, actual possession” of the property. *Marshall*, 198 S.W.3d at 786–87.

Here, the record establishes that the writ of possession was executed and the property was tendered to FNMA on August 19, 2014. Although both Bierwirth and Dutschmann assert, for various reasons, that the judgment and writ of possession were wrongfully issued and executed, these issues do not present any potentially meritorious claim of right to current, actual possession. *See Wilhelm v. Federal Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 768 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (concluding that issues relating to “issuance and execution of writs of possession and execution and the superseding of writs of possession . . . [do not] provide a potential basis for a claim by [appellant] that he is entitled to current, actual possession of the Property”).

Because appellants are no longer in possession and do not raise any potentially meritorious claim of right to current, actual possession, we dismiss this appeal as moot.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Field

Dismissed as Moot

Filed: September 21, 2016