

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00070-CV

**Glenn Hegar, in his Official Capacity as Texas Comptroller of Public Accounts; and the
State of Texas, Appellants**

v.

Texas Horsemen's Partnership, LLP, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 250TH JUDICIAL DISTRICT
NO. D-1-GN-16-000078, HONORABLE KARIN CRUMP, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellee Texas Horseman's Partnership, LLP has filed a motion to dismiss this interlocutory appeal for want of jurisdiction. The Partnership informed this Court that the Partnership had filed a notice of nonsuit without prejudice in the trial court, nonsuiting all claims against appellants Glenn Hegar, in his official capacity as Texas Comptroller of Public Accounts; and the State of Texas. The Partnership attached a file-stamped copy of the notice of nonsuit to its motion to dismiss in this Court.

As part of its motion, the Partnership asked in the alternative that we remand this case to the trial court "so that the trial court can perform the ministerial duty of entering an order dismissing the case." The appellants did not respond to the Partnership's motion to dismiss, but the certificate of conference states appellants' position. Counsel for appellants informed the Partnership's counsel that the appellants are not opposed to the Partnership's request to dismiss the

appeal, but they are opposed to the Partnership's request for remand. We agree with appellants that remand to the trial court is not necessary under these circumstances.

Under the Texas Rules of Civil Procedure, “[a]t any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes.” Tex. R. Civ. P. 162. Rule 162 applies in this case because the Partnership filed its nonsuit while this matter was pending on interlocutory appeal from appellants’ pretrial plea to the jurisdiction. “Under these circumstances, the nonsuit extinguishes a case or controversy from ‘the moment the motion is filed’ or an oral motion is made in open court; the only requirement is ‘the mere filing of the motion with the clerk of the court.’” *University of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100 (Tex. 2006) (per curiam) (quoting *Shadowbrook Apts. v. Abu-Ahmad*, 783 S.W.2d 210, 211 (Tex. 1990)). A nonsuit is effective when it is filed, and it renders the merits of the case moot. *Id.* at 100-01. The trial court generally has no discretion to refuse to dismiss the suit, and its order doing so is ministerial. *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997); *Shadowbrook*, 783 S.W.2d at 211.

Accordingly, we grant the Partnership’s motion. We vacate the trial court’s order because the nonsuit has rendered the case moot, and we dismiss the case for want of jurisdiction. *See Houston Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 153, 157 (Tex. 2007).

Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Pemberton and Bourland

Vacated and Dismissed for Want of Jurisdiction

Filed: June 23, 2016