

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00023-CV

Wells Fargo Bank, N.A., Appellant

v.

**Express Limousines, Inc. n/k/a Groovy Automotive I, Inc., and Charles Delmonico,
Appellees**

**FROM THE 53RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-15-001520, THE HONORABLE DON R. BURGESS, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Wells Fargo Bank, N.A. has filed a motion to dismiss this appeal. Appellees have filed a notice of opposition to the motion to dismiss appeal. They explain that the trial court's order at issue in this appeal is an order granting a motion to dismiss for want of prosecution without prejudice. Appellees believe that the statute of limitations has expired as to Wells Fargo's claims in the underlying proceeding making the order granting the dismissal effectively with prejudice. Because Wells Fargo has filed a subsequent suit based on the same claims, appellees argue that they "cannot agree to the Motion to Dismiss as such could be construed or argued to be an admission the Order is not prejudicial in effect."

Appellees, however, have not requested affirmative relief in this appeal. *See* Tex. R. App. P. 42.1(a) (authorizing appellate court to dismiss appeal on motion of appellant "unless disposition would prevent a party from seeking relief to which it would otherwise be entitled");

Devoll v. Depaz, No. 03-12-00668-CV, 2013 Tex. App. LEXIS 6767, at *1–2 (Tex. App.—Austin June 4, 2013, no pet.) (mem. op.) (granting appellant’s opposed motion to dismiss appeal, observing that appellee had not requested affirmative relief, and explaining that appellee had not cited, and court had not found, authority “which would support the contention that a party who prevailed at trial has a right to have the correctness of that judgment determined by an appellate court”). We grant appellant’s motion and dismiss the appeal.

Melissa Goodwin, Justice

Before Justices Goodwin, Baker, and Triana

Dismissed on Appellant’s Motion

Filed: February 6, 2019