



NUMBER 13-19-00478-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

DIANA M. QUEZADA,

Appellant,

v.

KGMH PROPERTY INVESTMENTS, LLC,

Appellee.

**On appeal from the County Court at Law No. 7
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa**

In this forcible detainer action, appellant Diana M. Quezada appeals the trial court's judgment awarding appellee KGMH Property Investments, LLC (KGMH) possession of certain real property. In one issue, Quezada argues that the trial court erred in denying her a jury trial. We vacate the trial court's judgment and dismiss the case as moot.

I. BACKGROUND

KGMH filed a forcible detainer action in justice court seeking to evict Quezada from a residential property located in Alamo, Texas. See TEX. PROP. CODE ANN. § 24.002 (“Forcible Detainer”); TEX. R. CIV. P. 510.1–.13. The justice court entered judgment in favor of KGMH and granted it possession of the property. Quezada appealed to the County Court at Law No. 7, of Hidalgo County (the trial court) for a trial de novo. See TEX. R. CIV. P. 510.9–.10. When the case was called for a bench trial, Quezada’s counsel, who previously filed a jury demand, objected to the case’s removal from the jury docket. The trial court noted that the parties had agreed to setting the case for a bench trial, and it overruled Quezada’s objection.

Mirna Lozoya, a representative of KGMH, testified that KGMH purchased the property from Carriage Mortgage Services, L.L.C. (Carriage) after Carriage foreclosed on the property. The trial court admitted a copy of a warranty deed depicting KGMH as the owner of the property. Lozoya testified that she posted a notice to vacate on the front door of the property. See TEX. PROP. CODE ANN. § 24.005 (“Notice to Vacate Prior to Filing Eviction Suit”). She stated that Quezada has not yet vacated the property.

Quezada presented no evidence or argument concerning her right to possess the property.

The trial court signed a final judgment awarding possession of the property to KGMH. Without superseding the judgment, Quezada filed the instant appeal.

II. MOOTNESS

Quezada argues that the trial court erred in denying her a jury trial. She prays that

this Court remand the case for a new trial. KGMH responds that the issue of possession is now moot because Quezada did not supersede the judgment, she is no longer in possession of the property, and she claims no right of current possession. We agree with KGMH.

A. Standard of Review & Applicable Law

Appellate courts lack jurisdiction to decide moot controversies and render advisory opinions. *See Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999); *Briones v. Brazos Bend Villa Apartments*, 438 S.W.3d 808, 812 (Tex. App.—Houston [14th Dist.] 2014, no pet.). A case becomes moot if at any stage there ceases to be an actual controversy between the parties. *Nat'l Collegiate Athletic Ass'n*, 1 S.W.3d at 86. Whether a plaintiff's claims have become moot is a question of law that we review de novo. *Growden v. Good Shepherd Health Sys.*, 550 S.W.3d 716, 722 (Tex. App.—Texarkana 2018, no pet.).

The only issue in an action for forcible detainer is the right to actual possession of the premises. *See Marshall v. Housing Auth. of City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006). If a supersedeas bond in the amount set by the county court is not filed, the judgment in a forcible detainer action may be enforced and a writ of possession may be executed, evicting the defendant from the property. *See* TEX. PROP. CODE ANN. § 24.007; TEX. R. CIV. P. 510.13; *Marshall*, 198 S.W.3d at 786. The failure to supersede the judgment, standing alone, does not deny an appellant the right to appeal. *See Marshall*, 198 S.W.3d at 786–87. But such a failure may render the appeal moot. *Id.* at 787. If a forcible detainer defendant fails to supersede the judgment and loses possession of the

property, then the appeal is moot unless the appellate relief requested is not futile, i.e., “so long as [the appellant] held and asserted a potentially meritorious claim of right to current, actual possession of the [property].” *Id.*

B. Analysis

Here, a writ of possession was issued and executed, and Quezada is no longer in possession of the property. To determine if Quezada’s appeal is moot, thereby divesting this court of jurisdiction over her appeal, we must examine her appellate claims to determine whether she provides a basis for claiming a right to current, actual possession of the property. *See, e.g., Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 768 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Quezada’s appellate arguments focus solely on her contention that the trial court improperly denied her a jury trial. Quezada “presents no basis for claiming a right of possession.” *Marshall*, 198 S.W.3d at 787. Therefore, we conclude that the issue of possession is moot. *See id.*; *see also Garcia v. Green Tree Servicing LLC*, No. 13-13-00694-CV, 2014 WL 1465037, at *3 (Tex. App.—Corpus Christi—Edinburg Apr. 10, 2014, no pet.) (mem. op.). Accordingly, we must vacate the trial court’s judgment and dismiss the case. *See TEX. R. APP. P. 43.2(e); Glassdoor, Inc. v. Andra Grp., LP*, 575 S.W.3d 523, 527 (Tex. 2019) (“If a case becomes moot, the court must vacate all previously issued orders and judgments and dismiss the case for want of jurisdiction.”); *Marshall*, 198 S.W.3d at 788 (“One purpose of vacating the underlying judgment if a case becomes moot during appeal is to prevent prejudice to the rights of parties when appellate review of a judgment on its merits is precluded.”).

III. CONCLUSION

We vacate the trial court's judgment and dismiss the case as moot.

LETICIA HINOJOSA
Justice

Delivered and filed the
18th day of June, 2020.