

NO. 12-16-00040-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*JOHN PATMAN,
APPELLANT*

§ *APPEAL FROM THE*

V.

§ *COUNTY COURT AT LAW NO. 2*

*STATE FARM LLOYDS,
APPELLEE*

§ *DALLAS COUNTY, TEXAS*

MEMORANDUM OPINION

John Patman appeals the trial court's order assessing costs against him after he filed a notice of nonsuit of his claims against State Farm Lloyds (State Farm). In one issue, Patman argues that the trial court abused its discretion by ordering that he pay court costs to State Farm because State Farm filed its motion seeking reimbursement for court costs after Patman filed his notice of nonsuit. We affirm.

BACKGROUND

Patman filed the instant suit against State Farm on March 7, 2014, alleging State Farm was liable to him for breach of contract, violations under the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, fraud, and civil conspiracy. Following discovery the trial court rendered partial summary judgment in State Farm's favor on all but Patman's contract cause of action.

The case was set for trial on October 27, 2015, at which time the parties conferred on certain pretrial matters and argued pretrial motions. The trial was scheduled to resume on November 3, 2015.

On October 28, 2015, Patman filed a notice of nonsuit without prejudice. That same day, State Farm filed a motion to enter an order of nonsuit with prejudice and assess court costs and

expenses against Patman. The trial court conducted a hearing on State Farm’s motion on November 16, 2015. Ultimately, the trial court ordered that the case be nonsuited without prejudice and that Patman pay court costs to State Farm in the amount of \$4,505.25. This appeal followed.

MOTION FOR COURT COSTS FILED AFTER NOTICE OF NONSUIT

In his sole issue, Patman argues that the trial court abused its discretion by ordering that he pay court costs to State Farm because State Farm filed its motion seeking reimbursement for court costs after Patman filed his notice of nonsuit.

Standard of Review and Governing Law

We review a trial court’s decision to grant sanctions for abuse of discretion. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001). The test for abuse of discretion is whether the court acted without reference to any guiding rules and principles. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

“At any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may . . . take a nonsuit, which shall be entered in the minutes. Notice of the . . . nonsuit shall be served . . . on any party who has answered or who has been served with process without necessity of court order.” TEX. R. CIV. P. 162. A party has an absolute right to file a nonsuit, and a trial court is without discretion to refuse an order dismissing a case because of a nonsuit unless collateral matters remain. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010); *see Villafani v. Trejo*, 251 S.W.3d 466, 468–69 (Tex. 2008); *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997); *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 59 (Tex. 1991). A 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.’” *Joachim*, 315 S.W.3d at 862; *Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100 (Tex. 2006). It renders the merits of the nonsuited case moot. *See Villafani*, 251 S.W.3d at 469 (“One unique effect of a nonsuit is that it can vitiate certain interlocutory orders, rendering them moot and unappealable.”); *Shultz*, 195 S.W.3d at 101 (“Although [Rule 162] permits motions for costs, attorney’s fees, and sanctions to remain viable in the trial court, it does not forestall the nonsuit’s effect of rendering

the merits of the case moot.”); *Gen. Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990).

Timing of Motion Seeking Court Costs

In the instant case, the basis of Patman’s argument is the fact that State Farm’s motion for sanctions was not pending at the time he filed his notice of nonsuit, but rather, was filed subsequently. After a nonsuit, a trial court retains jurisdiction to address collateral matters, such as motions for sanctions, even when such motions are filed after the nonsuit, as well as jurisdiction over any remaining counterclaims. *Joachim*, 315 S.W.3d at 863; see *Scott & White Mem’l Hosp. v. Schexnider*, 940 S.W.2d 594, 596 (Tex. 1996) (holding that a trial court has authority to decide a motion for sanctions while it retains plenary power, even after a nonsuit is taken); see also TEX. R. CIV. P. 162 (“Any dismissal pursuant to this rule shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief or excuse the payment of all costs taxed by the clerk.”). Therefore, the fact that State Farm filed its motion for court costs after Patman filed his notice of nonsuit did not impede the trial court’s ability to award such court costs as sanctions to State Farm. See *Joachim*, 315 S.W.3d at 863; *Schexnider*, 940 S.W.2d at 596. Thus, we hold that the trial court did not abuse its discretion in awarding court costs to State Farm. Patman’s sole issue is overruled.

DISPOSITION

Having overruled Patman’s sole issue, we *affirm* the trial court’s order awarding sanctions.

GREG NEELEY
Justice

Opinion delivered June 7, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 7, 2017

NO. 12-16-00040-CV

JOHN PATMAN,
Appellant
V.
STATE FARM LLOYDS,
Appellee

Appeal from the County Court at Law No. 2
of Dallas County, Texas (Tr.Ct.No. CC-14-01094-B)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellant, **JOHN PATMAN**, for which execution may issue, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.