

No. 14-20-00358-CV

**IN THE FOURTEENTH COURT OF APPEALS
HOUSTON TEXAS**

The State of Texas
Intervenor-Defendant – Appellant
v.
Texas Democratic Party, et al.
Plaintiffs – Appellees
&
Zachary Price, et al.
Intervenor-Plaintiffs – Appellees

On Appeal from the District Court of Travis County, 201st Judicial District
Cause No. D-1-GN-20-001610, Hon. Tim Sulak, Presiding.

**APPELLEES' UNOPPOSED JOINT MOTION TO DISMISS APPEAL
FOR LACK OF JURISDICTION**

To the Honorable Justices of the Fourteenth Court of Appeals:

Appellees, Texas Democratic Party et al. and Zachary Price et al., under the authority of Texas Rules of Appellate Procedure 10.1 and 42.3, move the Court to dismiss the pending appeal for want of jurisdiction due to the absence of a case or controversy.

1. On June 09, 2020, Appellees nonsuited all of their claims against Defendant Dana DeBeauvoir, in her official capacity as Travis County Clerk, and

Intervenor-Defendant/Appellant The State of Texas. A copy of Appellee's Notice of Nonsuit is attached as Exhibit A. Appellees' nonsuit followed the Texas Supreme Court decision in *In re State of Texas*, No. 20-0394, 2020 WL 2759629 (Tex. May 27, 2020).

2. 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. "Under Texas law, parties have an absolute right to nonsuit their own claims for relief at any time during the litigation until they have introduced all evidence other than rebuttal evidence at trial." *Villafani v. Trejo*, 251 S.W.3d 466, 468-69 (Tex. 2008).

3. Rule 162 applies in this case because Appellees have filed their nonsuit while this matter is pending on interlocutory appeal from the trial court's grant of Appellee's motion for a temporary injunction and Defendants' pretrial plea to the jurisdiction. *See Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100 (Tex. 2006) (holding that plaintiff's nonsuit of claims against defendant asserting sovereign immunity was effective upon filing and mooted the case or controversy between the parties, even though nonsuit was taken after defendant had filed an interlocutory appeal). As in this case, the appellee in *Shultz* filed a nonsuit while the appellant's interlocutory appeal from the denial of

its plea to the jurisdiction was pending in the court of appeals. *Id.* at 100. Thereafter, the appellee filed a motion to dismiss the appellant’s interlocutory appeal for want of jurisdiction, which the court of appeals denied. *Id.* The Supreme Court “conclude[d] that the nonsuit deprived the court of appeals of jurisdiction. . . .” *Id.* “Accordingly, without hearing oral argument, [the Supreme Court] grant[ed] the petition for review, vacate[d] the court of appeals’ order, and dismiss[ed] the appeal for want of jurisdiction.” *Id.* at 101.

4. Similarly, a nonsuit also moots a temporary injunction, because the temporary injunction ceases to exist upon nonsuit. *Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990) (“In this case, the trial court had jurisdiction over the underlying case and correctly granted the nonsuit, irrespective of the fact that an appeal had been perfected. As a consequence of the trial court's granting the nonsuit, the temporary injunction ceased to exist and the appeal became moot.”).

5. Supreme Court precedent therefore compels dismissal here. “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.’” *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862–63 (Tex. 2010) (quoting *Shultz*, 195 S.W.3d at 100). When, as here, “a claim is timely nonsuited, the controversy as to that claim is extinguished, the merits become

moot, and jurisdiction as to the claim is lost.” *City of Dallas v. Albert*, 354 S.W.3d 368, 375 (Tex. 2011); *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.”).

6. “While the date on which the trial court signs an order dismissing the suit is the ‘starting point for determining when a trial court's plenary power expires,’ a nonsuit is effective when it is filed.” *Shultz*, 195 S.W.3d at 100 (quoting *In re Bennett*, 960 S.W.2d 35, 38 (Tex.1997)). Likewise, “[a]lthough [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.” *Id.* “Even the automatic stay of section 51.014(b) of the Texas Civil Practice and Remedies Code that arises from the filing of a notice of appeal from the denial of a plea to the jurisdiction does not defeat the immediate effect of a nonsuit at the moment the notice of nonsuit was filed.” *Bush, Trustee for the Found. Sch. Fund v. Hines*, No. 10-19-00340-CV, 2019 WL 6769624, at *1 (Tex. App.—Waco Dec. 11, 2019, no pet. h.).

7. Because Appellees have nonsuited all of their claims against all the Defendants/Appellants, there is no live controversy for the Court to decide, and this Court lacks jurisdiction over the pending interlocutory appeal. *Shultz*, 195 S.W.3d at 100-01. “Appellate courts are prohibited from deciding moot controversies

because the separation-of-powers article prohibits advisory opinions on abstract questions of law.” *Klein v. Hernandez*, 315 S.W.3d 1, 3 (Tex. 2010). Accordingly, the Court should grant Appellee’s unopposed motion and dismiss the appeal for want of jurisdiction. *See Shultz*, 195 S.W.3d at 100-01; *see also Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012) (“If a case is or becomes moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction.”); *Olley v. Raamco Tx. Properties*, No. 01-11- 00321-CV, 2013 WL 1087729, at *1 (Tex. App.—Houston [1st Dist.] Mar. 14, 2013, no pet.) (dismissing appeal for lack of jurisdiction following nonsuit).

8. Appellant State of Texas does not oppose the dismissal of this appeal in light of Plaintiffs/Appellees non-suit of their claims.

PRAYER

Appellees ask this Court to dismiss the Appellants’ interlocutory appeal for want of jurisdiction.

Respectfully submitted,

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** Pro hac vice application forthcoming

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CERTIFICATE OF CONFERENCE

By email communication with Defendant/Appellant's Counsel Lanora Pettit on June 09, 2020, Appellant has stated that it is unopposed to this Motion.

/s/ Joaquin Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that on June 09, 2020, a true and correct copy of the foregoing document was served electronically upon Lanora Pettit, attorney for Appellant.

/s/ Joaquin Gonzalez

Exhibit A

Plaintiffs' Notice of Nonsuit

Velva L. Price
District Clerk
Travis County
D-1-GN-20-001610
Alexus Rodriguez

No. D-1-GN-20-001610

TEXAS DEMOCRATIC PARTY, et. al	§	IN THE DISTRICT COURT
	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
and	§	
	§	
ZACHARY PRICE, LEAGUE OF	§	
WOMEN VOTERS OF TEXAS,	§	
LEAGUE OF WOMEN VOTERS	§	
AUSTIN AREA, MOVE TEXAS	§	
ACTION FUND, WORKERS DEFENSE	§	
ACTION FUND,	§	TRAVIS COUNTY, TEXAS
	§	
	§	
<i>Intervenor-Plaintiffs,</i>	§	
	§	
v.	§	
	§	
DANA DEBEAUVOIR	§	
	§	
<i>Defendant,</i>	§	
	§	
and	§	
	§	
STATE OF TEXAS	§	
	§	
<i>Intervenor-Defendant.</i>	§	201st JUDICIAL DISTRICT

Plaintiffs’ and Intervenor-Plaintiffs’ Notice of Non-Suit

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiffs, TEXAS DEMOCRATIC PARTY, AND GILBERTO HINOJOSA, IN HIS CAPACITY AS CHAIRMAN OF THE TEXAS DEMOCRATIC PARTY, JOSEPH DANIEL CASCINO AND SHANDA MARIE SANSING, (hereinafter referred to as Plaintiffs) and ZACHARY PRICE, LEAGUE OF WOMEN VOTERS OF TEXAS, LEAGUE OF WOMEN

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** Pro hac vice application on file

***ATTORNEYS FOR INTERVENOR-
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing response has been sent via the Court's electronic filing system to all counsel of record on June 9, 2020.

/s/ Chad W. Dunn _____
Chad W. Dunn

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Associated Case Party: Zachary Price

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Associated Case Party: League of Women Voters of Texas

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Associated Case Party: MOVE Texas Action Fund

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Associated Case Party: Workers Defense Action Fund

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