

**DISMISS and Opinion Filed July 10, 2020**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-19-01019-CV**

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**PHYLLIS SLICKER, Appellant  
V.  
LESLIE G. MARTIN, P.C., Appellee**

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**On Appeal from the 330th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DF-11-15742**

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**MEMORANDUM OPINION**

Before Chief Justice Burns, Justice Whitehill, and Justice Molberg  
Opinion by Chief Justice Burns

This is an appeal from the trial court's August 29, 2019 order directing appellant to turn over just under \$105,000 in funds she was ordered to deposit in the registry of the trial court to appellee, her former attorney, as partial payment for outstanding attorney's fees.<sup>1</sup> The order, which we stayed, was signed while a post-divorce enforcement proceeding brought by appellant against her ex-husband was pending and before appellee, who moved for the turnover order after intervening in

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<sup>1</sup> Appellant was ordered to deposit a total of \$129,453.72 into the registry of the court.

the enforcement proceeding to recover the outstanding fees, had obtained a judgment against appellant.

A turnover order that acts as a mandatory injunction is generally appealable. *See Alexander Dubose Jefferson & Townsend LLP v. Chevron Chem. Co., L.P.*, 540 S.W.3d 577, 586-87 (Tex. 2018) (per curiam). However, we questioned our jurisdiction over the appeal after a supplemental clerk’s record was filed containing a copy of the trial court’s final judgment disposing of the remaining claims. The judgment was signed after appellant had filed her brief on the merits challenging the propriety of the pre-judgment turnover order. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 31.002 (providing for turnover order as means for judgment creditor to reach non-exempt assets of judgment debtor in satisfaction of judgment); *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 227 (Tex. 1991) (“Texas courts do not apply the turnover statute to non-judgment debtors.”). The judgment ordered appellant take nothing by her claims, found an enforceable fee contract existed between appellant and appellee, found appellant had breached the contract, and awarded appellee actual damages and attorney’s fees in the amount of \$164,237.19.<sup>2</sup>

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<sup>2</sup> The amount of actual damages awarded consisted of the \$105,000 in outstanding fees at the time the turnover order was signed as well as additional outstanding fees. Appellant appealed the final judgment, and that appeal is docketed as appellate cause number 05-19-01553-CV and remains pending. Appellant, however, did not supersede the judgment. On appellee’s motion, the trial court recently released the funds in the registry of the court as partial satisfaction of the judgment.

At our request, the parties filed letter briefs addressing our concern, in part, that the final judgment awarding appellee damages for appellant’s breach of the fee contract had mooted the appeal.<sup>3</sup> *See Trulock v. City of Duncanville*, 277 S.W.3d 920, 923-24, 929 (Tex. App.—Dallas 2009, no pet.) (case on appeal is moot, and must be dismissed for want of jurisdiction, if no live controversy exists between parties). Neither party disputes we lack jurisdiction in light of the final judgment.<sup>4</sup>

When an appeal becomes moot, it must be dismissed. *See id.* at 923, 929. Accordingly, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Robert D. Burns, III/  
ROBERT D. BURNS, III  
CHIEF JUSTICE

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<sup>3</sup> We also expressed concern that, on the facts before us, the turnover order was not appealable because it was signed before disposition of all pending claims. *See Alexander Dubose*, 540 S.W.3d at 582 (“turnover orders necessarily follow an underlying final judgment”); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (judgment is final and appealable if it disposes of all claims and parties).

<sup>4</sup> Appellant asserts that the propriety of the August 2019 turnover order is not the only “controversy” in this appeal that has become moot. Seeking to suspend enforcement of the turnover order pending appeal, appellant filed a “cash deposit in lieu of bond,” designating the cash in the court’s registry as the deposit. *See* TEX. R. APP. P. 24.1(a)(3). Appellant argues whether those funds could be used to satisfy the final judgment is another “controversy” in this appeal, but because those funds have already been released, that issue appears moot. We question whether that issue is a “controversy” in this appeal or would be a “controversy” in an appeal from the order releasing the funds in the court’s registry to satisfy the judgment. That order, however, was not appealed.



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

PHYLLIS SLICKER, Appellant

No. 05-19-01019-CV      V.

LESLIE G. MARTIN, P.C., Appellee

On Appeal from the 330th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DF-11-15742.  
Opinion delivered by Chief Justice  
Burns, Justices Whitehill and  
Molberg participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellee Leslie G. Martin, P.C. recover its costs of this appeal from appellant Phyllis Slicker.

Judgment entered July 10, 2020.