

DISMISS and Opinion Filed April 23, 2021



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

No. 05-21-00009-CV

**M.A. BLOCK INVESTMENT COMPANY, Appellant
V.
WHITTEN 20AC LLC AND JOHN W. WHITTEN, Appellees**

**On Appeal from the 196th Judicial District Court
Hunt County, Texas
Trial Court Cause No. 88907**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Garcia
Opinion by Justice Garcia

Before the Court is appellees' April 12, 2021 motion to dismiss the appeal and cross-appeal. In the motion, appellees ask the Court to dismiss because the trial court's order which is the subject of these appeals has been vacated. A supplemental clerk's record with the trial court's April 9, 2021 order was filed the same day as the motion. Appellant did not file a response to the motion. *See* TEX. R. APP. P. 10.3(a).

A review of the record shows appellant filed a timely notice of appeal following the trial court's December 30, 2020 order granting appellees' motion for summary judgment. On January 28, 2021, appellees filed a motion to amend and/or

modify the judgment, and thereafter, filed a cross-appeal. On April 9, 2021, the trial court granted appellees' motion and vacated the December 30, 2020 order. Because the trial court vacated the order which was the basis for these appeals, there is no final judgment, and these appeals are moot. *See Cooper v. City of Plano*, 05-12-01445-CV, 2013 WL 3974099, at *1 (Tex. App. —Dallas Aug. 2, 2013, pet. denied) (mem. op.) (when complained-of order was vacated by trial court, underlying cause remains pending and no final judgment or appealable order exists to invoke appellate court's jurisdiction).

We grant the motion and dismiss the appeal and cross-appeal.

/Dennise Garcia/
DENNISE GARCIA
JUSTICE

210009F.P05



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

JUDGMENT

M.A. BLOCK INVESTMENT
COMPANY, Appellant

No. 05-21-00009-CV V.

WHITTEN 20AC LLC AND JOHN
W. WHITTEN, Appellees

On Appeal from the 196th Judicial
District Court, Hunt County, Texas
Trial Court Cause No. 88907.

Opinion delivered by Justice Garcia.
Justices Myers and Partida-Kipness
participating.

In accordance with this Court's opinion of this date, the appeal is
DISMISSED.

It is **ORDERED** that appellees WHITTEN 20AC LLC AND JOHN W.
WHITTEN recover their costs, if any, of this appeal from appellant M.A. BLOCK
INVESTMENT COMPANY.

Judgment entered April 23, 2021