

REVERSE and REMAND; Opinion issued August 23, 2012

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

No. 05-11-01042-CV

INWOOD ON THE PARK APARTMENTS, Appellant

V.

**STEPHANIE MORRIS AND ALL OCCUPANTS OF 5720 FOREST PARK ROAD, APT.
4107, DALLAS, TEXAS 75235, Appellees**

**On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-10-01060-A**

MEMORANDUM OPINION

**Before Justices FitzGerald, Murphy, and Fillmore
Opinion By Justice Murphy**

Inwood on the Park Apartments appeals the trial court's summary judgment dismissing as moot its claim for rentals and attorney's fees in Stephanie Morris's appeal from the justice court's forcible-detainer judgment. Specifically, Inwood contends in a single issue that the county court erred in granting summary judgment because the court retained jurisdiction to consider Inwood's claims for rentals and attorney's fees after it filed a non-suit as to "possession only." We reverse the trial court's summary judgment and remand for further proceedings.

BACKGROUND

Inwood filed a petition for forcible detainer in the justice court seeking possession of the

apartment Morris leased from Inwood, as well as attorney's fees through "appeal to the Supreme Court and costs." Inwood alleged that Morris breached her lease when her guest "created a substantial disturbance in the parking lot of the apartment complex . . . [including] public indecency, behaving in a loud and obnoxious manner, and disturbing the rights, comfort and safety of residents and/or employees of the complex." The justice court rendered judgment on the jury's verdict in favor of Inwood, awarding Inwood possession of the apartment and attorney's fees. Morris immediately filed a notice of appeal to the county court and vacated the apartment. About a month later, Inwood filed a notice of non-suit in the county court as to "possession only," expressly reserving "any other claims, including suit for damages, attorneys' fees and costs of court." The trial court signed an order granting the non-suit and ordered the case "dismissed only as to [Inwood's] claim of possession without prejudice."

Within a couple of days of Inwood filing its notice of non-suit as to its possession claim, Morris filed a motion for summary judgment seeking dismissal of Inwood's suit. She argued as grounds for the motion that Inwood's action for forcible detainer had been "superseded and mooted" because Inwood had regained possession of the apartment. Inwood then amended its petition, which already included a claim for attorney's fees; it added claims for damages pursuant to rule 752 of the Texas Rules of Civil Procedure, including loss of rentals during the pendency of the county-court appeal and attorney's fees.

Morris thereafter filed an amended motion for summary judgment, again claiming mootness, and adding that dismissal was appropriate because Inwood's claim for attorney's fees did not survive. She argued that attorney's fees are not a separate cause of action and that Inwood did not comply with section 24.006(a) of the Texas Property Code. Inwood responded to Morris's amended summary-judgment motion and the same day filed its second amended petition. In addition to its

claim for damages and attorney’s fees, it reasserted its “claim for possession (as indicated necessary or determined necessary by [the county court].”

In its summary-judgment response, Inwood argued that rule 738 of the Texas Rules of Civil Procedure allows joinder of an action for damages with a forcible detainer. Inwood also attached a copy of the lease with Morris and cited rule 752 as providing expressly for recovery of damages on appeal, including loss of rentals and attorney’s fees in both the justice and county courts. Inwood argued based on these rules and its rights under the lease that the entire controversy was not moot and Morris was not entitled to judgment as a matter of law. The trial court granted Morris’s amended motion for summary judgment “in all respects,” and Inwood appeals that order.

DISCUSSION

Legal Standards and Applicable Law

We review summary judgments under well-established standards. See TEX. R. CIV. P. 166a; *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985) (traditional motions under rule 166a(c)). We review the trial court’s summary judgment de novo to determine whether Morris’s right to prevail is established as a matter of law. *Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 175 (Tex. App.—Dallas 2000, pet. denied).

A forcible-detainer action is a special proceeding and as such is governed by applicable statutes and rules. *Haginas v. Malbis Mem’l Found.*, 354 S.W.2d. 368, 371 (Tex. 1962). Justice courts have original jurisdiction over forcible-detainer suits. *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 433 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (op. on reh’g). Any party dissatisfied with a justice-court judgment may appeal to the county court. *Id.* at 433–34. On appeal, the county court exercises appellate jurisdiction. That jurisdiction is generally confined to the limits of the justice court with the exception of

certain specific damages. *Id.* at 434. For example, a suit for rent may be joined with an action for forcible detainer, as long as the claim for rent falls within the justice court's jurisdiction. TEX. R. CIV. P. 752. And, in a trial de novo on appeal to the county court, an appellee is permitted to plead, prove, and recover damages, if any, suffered for defending possession of the premises during the pendency of the appeal. *Id.* Damages include loss of rents during the appeal's pendency and reasonable attorney's fees in the justice and county courts; the prevailing party in the county court may also recover costs. *Id.*

Courts are prohibited from deciding moot controversies. *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 2006). A justiciable controversy between the parties must exist at every stage of the legal proceedings, including the appeal, or the case is moot. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). When, as here, possession changes hands and there is no basis for a claim of right to possession, the issue of possession becomes moot. *Marshall v. Hous. Auth. of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006). Although the issue of possession may become moot, the entire case only becomes moot if a controversy ceases to exist or the parties lack a legally cognizable interest in the outcome. *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005). A dispute over attorney's fees is a live controversy and may prevent an appeal from being moot. *Id.* Likewise, a dispute regarding damages is a live controversy and may prevent a case from becoming moot. *Perez ex rel. Perex v. Blue Cross Blue Shield of Tex., Inc.*, 127 S.W.3d 826, 830 (Tex. App.—Austin 2003, pet. denied) (case not moot even though appellant obtained insurance from another carrier because court could issue injunction prohibiting denial of health insurance coverage and appellant had live claim for actual damages).

Application of Law to Facts

Inwood contends in its sole issue that the county court's summary judgment was in error because the court retained jurisdiction to consider Inwood's claims for rentals and attorney's fees. Morris responds that the entire case was mooted when Inwood non-suited its claim for possession and further, that Inwood lacked the authority to sue for forcible detainer. After reviewing the record in the context of the applicable law, we agree with Inwood's contention.

Morris appealed the justice court's award of possession and attorney's fees. In that de novo appeal to the county court, Inwood amended its pleadings, as expressly allowed by statute, to add a claim for damages that included loss of rent during the appeal and attorney's fees. *See* TEX. R. CIV. P. 752. While the issue of possession became moot when Morris vacated the apartment, the entire case did not become moot. Inwood's claim for attorney's fees was a live controversy. When Inwood then amended its pleadings and added a claim for lost rental prior to the county court's ruling on Morris's summary-judgment motion, that claim too presented a live controversy. Because Inwood had live claims, the trial court erred in granting summary judgment based on mootness.

Morris also asserts that Inwood was not entitled to attorney's fees because Inwood did not comply with section 24.006(a) of the property code. Section 24.006 of the Texas Property Code authorizes a landlord who prevails in a forcible-detainer action to recover reasonable attorney's fees from the tenant if the landlord provides the tenant notice under subsection (a) or if a written lease entitles the landlord to recover attorney's fees. *See* TEX. PROP. CODE ANN. § 24.006(b) (West 2000). Paragraph 32 of the parties' lease provides, among other things, that "a prevailing party may recover reasonable attorney's fees and all other litigation costs from the non-prevailing party." Pursuant to the lease, Inwood provided a contractual basis for an award of attorney's fees as allowed under section 24.006, and the trial court erred by granting summary judgment against Inwood on its claim

for attorney's fees.

Morris claims finally that Inwood was not authorized to file the forcible-detainer action because it is not the owner of the apartments. When, as here, a landlord-tenant relationship exists, that relationship forms an independent basis on which the trial court can determine the right to immediate possession without determining the property owner or other title issues. *See Rice v. Pinney*, 51 S.W.3d 705, 711 (Tex. App.—Dallas 2001, no pet.). The summary judgment evidence shows the landlord-tenant relationship between Inwood and Morris, and we therefore conclude Morris's contention lacks merit. The trial court erred in concluding otherwise.

We sustain Inwood's sole issue, reverse the trial court's summary judgment, and remand for further proceedings.

MARY MURPHY
JUSTICE

111042F.P05

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

JUDGMENT

INWOOD ON THE PARK APARTMENTS,
Appellant

No. 05-11-01042-CV V.

STEPHANIE MORRIS AND ALL
OCCUPANTS OF 5720 FOREST PARK
ROAD, APT. 4107, DALLAS, TEXAS
75235, Appellees

Appeal from the County Court at Law No. 1
of Dallas County, Texas. (Tr.Ct.No. CC-10-
01060-A).

Opinion delivered by Justice Murphy, Justices
FitzGerald and Fillmore participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings. It is **ORDERED** that appellant Inwood on the Park Apartments recover its costs of this appeal from appellee Stephanie Morris and all occupants of 5720 Forest Park Road, Apt. 4107, Dallas, Texas 75235.

Judgment entered August 23, 2012.

/Mary Murphy/

MARY MURPHY

JUSTICE