

Reversed and Remanded and Opinion filed January 3, 2002.



In The
Fourteenth Court of Appeals

NO. 14-00-01206-CV

DAN HENNINGAN, Appellant

V.

FAST PACE REPORTING SERVICE CO., ET AL., Appellee

**On Appeal from County Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 730,181**

OPINION

Dan Henningan appeals the grant of summary judgment in favor of appellee on the ground that the court below lacked jurisdiction. We agree, reverse the judgment below, and remand this case so that it may be dismissed.

Procedural Background

Appellee sued appellant on a sworn account in Justice Court, then filed a request for a non-suit without prejudice. Appellee appealed (his own nonsuit) to the County Court at

Law. The County Court granted summary judgment in favor of appellee on the merits of the contract claim and this appeal resulted.

Discussion ¹

Appellant correctly argues that once a case is voluntarily dismissed, no further action may be taken in that cause, and any further action must be taken by instituting a suit *de novo*, unless there has been a successful motion to reinstate. *See Greenberg v. Brookshire*, 640 S.W.2d 870 (Tex. 1982); *Crofts v. Court of Civil Appeals*, 362 S.W.2d 101, 104 (Tex. 1962) (orders of nonsuits or dismissals without prejudice are not an adjudication on the rights of the parties because the parties are simply returned to the positions they were in before suit was brought).

We hold that no right exists to appeal a nonsuit granted without prejudice.² Appellant's single issue is sustained. Accordingly, we reverse the judgment below and remand this case to the County Court where it shall be dismissed for want of jurisdiction.

/s/ Joe L. Draughn
Senior Justice

Judgment rendered and Opinion filed January 3, 2002.

Panel consists of Justices Yates, Edelman, and Draughn.³

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ Our discussion is hindered by the absence of a brief from appellee.

² The result is different where the nonsuit issues with prejudice. *See, e.g., America's Favorite Chicken Co. v. Galvan*, 897 S.W.2d 874, 877 (Tex. App.—San Antonio 1995, writ denied, 934 S.W.2d 409) (order of dismissal of a cause pursuant to a nonsuit becomes a final judgment after the court's plenary jurisdiction expires) (citing *Harris County Appraisal Dist. v. Wittig*, 881 S.W.2d 193, 194-95 (Tex. App.—Houston [1st Dist.] 1994, orig. proceeding)); *see also Felderhoff v. Knauf*, 819 S.W.2d 110, 111 (Tex. 1991).

³ Senior Justice Joe L. Draughn sitting by assignment.