



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00030-CV**

JEFFREY MANN

APPELLANT

V.

DENTON COUNTY, DENTON  
COUNTY SHERIFF'S OFFICE,  
PAIGE MCCORMICK, AND BENNY  
PARKEY

APPELLEES

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FROM THE 211TH DISTRICT COURT OF DENTON COUNTY  
TRIAL COURT NO. 2008-30359-211

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**MEMORANDUM OPINION**<sup>1</sup>  
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Appellant Jeffrey Mann appeals the trial court's judgment granting the Appellees Denton County, the Denton County Sheriff's Office, Paige McCormick,

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<sup>1</sup>See Tex. R. App. P. 47.4.

and Benny Parkey's plea to the jurisdiction. Jeffrey Mann brings five issues. We affirm.

### **Background**

On June 6, 2003, Jeffrey Mann pleaded guilty and was convicted of numerous offenses. On the same date, in cause numbers F-2002-1487-A, F-2002-1488-A, F-2002-1489-A, F-2003-0281-A, F-2003-0288-A, and F-2003-0283-A, styled *State of Texas v. Mann*, the trial court signed an "Order for Release of All Non-Contraband Evidence." In its entirety, this order provides:

On this day came on to be considered Defendant's Motion for Release of All Non-Contraband Evidence. It being the opinion of the Court that the motion is well taken, the motion is GRANTED.

It is hereby ORDERED and DECREED that all non-contraband evidence in the above styled and numbered causes shall be released to the designated agent of Jeffrey Charles Mann.<sup>[2]</sup>

This order became the basis of all the subsequent litigation.

On May 6, 2008, Jeffrey Mann, on his own behalf and on behalf of others, filed a federal lawsuit seeking the recovery of the non-contraband property. On September 3, 2008, Jeffrey Mann's federal lawsuit was dismissed.

On November 20, 2008, Jeffrey Mann filed the present lawsuit in state court in which he again sought the recovery of the non-contraband property. Jeffrey Mann and Gary Mann signed the October 2, 2009 "Plaintiff's [sic] First

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<sup>2</sup>We have not found this order in the record for this appeal. We have, however, located it in one of Jeffrey Mann's earlier appeals. We take judicial notice of this order from an earlier appeal. See Tex. R. Evid. 201(b)(2).

Ammendment [sic] to Their Original Civil Complaint.” Both identified themselves as proceeding pro se.

Within their amended complaint, they identified numerous other plaintiffs on whose behalf they were purportedly acting: (1) The Health Center, (2) Chiro-Plus Chiropractic, (3) Noble Clinic and Rehabilitation, (4) The Health Center and Rehabilitation Clinic, (5) J.C. Mann Enterprises, (6) Mark Dodson, (7) Carol Criner, (8) Betty Scott, and (9) “1500 Known but Unnamed Patients.” The Health Center, Chiro-Plus Chiropractic, Noble Clinic and Rehabilitation, The Health Center and Rehabilitation Clinic, and J.C. Mann Enterprises were all identified as assumed names of unincorporated businesses that shared the same address as Jeffrey Mann.

Nothing in the record suggests Jeffrey Mann is an attorney, and we question on what basis Jeffrey Mann purportedly represented all these parties at trial and continues to represent these parties on appeal (assuming Jeffrey Mann successfully perfected the appeal on their behalf). Accordingly, for purposes of this opinion, when referring to Jeffrey Mann, we are referring to him individually. However, to the extent these additional parties may be properly before this court, when we dispose of Jeffrey Mann’s claims, we are also disposing of theirs as well because nothing in the record suggests any of these other purported parties had any presence in the litigation apart from Jeffrey Mann. Because Gary Mann signed documents in the trial court, we continue to refer to him individually by name.

Within their amended complaint, Jeffrey Mann and Gary Mann identified five defendants: (1) Denton County; (2) the Denton County Sheriff's Department; (3) Paige McCormick, an assistant district attorney; (4) E. Lee Gabriel, a district judge; and (5) Benny Parkey, a sheriff.<sup>3</sup> For purposes of this opinion, we continue to refer to Judge Gabriel by name, and we refer to the other four defendants collectively as the four Denton County defendants.

The trial court disposed of and severed the suit against Judge Gabriel on December 29, 2009, and Jeffrey Mann and Gary Mann appealed both the severed portion as to Judge Gabriel and the non-severed portion as to the four Denton County defendants. We dismissed Jeffrey Mann and Gary Mann's appeal against the four Denton County defendants for want of a final judgment. See *Mann v. Vick*, No. 02-10-00098-CV, 2010 WL 2243432, at \*1 (Tex. App.—Fort Worth June 3, 2010, no pet.) (mem. op.). The Eastland Court of Appeals affirmed the judgment against Jeffrey Mann and Gary Mann and in favor of Judge Gabriel. See *Mann v. Gabriel*, No. 11-10-00265-CV, 2012 WL 2865811, at \*1 (Tex. App.—Eastland July 12, 2012, no pet.) (mem. op.).

After the proceedings in the trial court resumed as to the four Denton County defendants, the case returned to our court. Jeffrey Mann filed a petition for writ of mandamus, which we denied. See *In re Mann*, No. 02-13-00372-CV,

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<sup>3</sup>On August 9, 2016, we received a "Suggestion of Death of Benny Parkey." For purposes of this appeal, we will proceed as if all parties were alive. See Tex. R. App. P. 7.1(a)(1).

2013 WL 6570731, at \*1 (Tex. App.—Fort Worth Dec. 12, 2013, orig. proceeding) (mem. op.). Additionally, Jeffrey Mann appealed the trial court’s dismissal order in favor of the four Denton County defendants. See *Mann v. Denton Cty.*, No. 02-13-00217-CV, 2014 WL 5089189, at \*1 (Tex. App.—Fort Worth Oct. 9, 2014, pet. denied) (mem. op.). Within this latter appeal, on April 17, 2014, in the context of Jeffrey Mann’s motion for sanctions, we issued an order that summarized the nature of the dispute at that time:

On November 12, 2013, we received the State’s response. In the response, the State candidly disclosed that all of the property subject to the district court’s 2003 order had been destroyed on October 30, 2013 after being cleaned out of the district attorney’s office’s property room and transferred to the Dallas Police Department (DPD). Specifically, Charles Orbison, the Denton County assistant district attorney to whom we sent the October 23 e-mail, provided documents asserting the following:

- appellant’s property (including computers, miscellaneous documents, and photos) was seized pursuant to a search warrant in October 2002;
- in June 2003, in conjunction with appellant’s felony convictions, the district court ordered all noncontraband evidence to be returned to him;
- in July 2003, pursuant to the State’s motion, the district court forfeited some of appellant’s property (his computers and storage devices) to the State under the code of criminal procedure;
- in 2004, appellant “pursued the return” of his property through a motion, and at that time, appellant and employees of the district attorney’s office attempted to “negotiate” the return of property;
- in 2004, the United States Postal Service (USPS) seized appellant’s computer equipment for a criminal investigation against him;

- the USPS kept the computer equipment until October 2009, when it returned the equipment to Denton County;
- in July 2013, appellant filed a motion in the district court for enforcement of the June 2003 order;
- after receiving no ruling on that motion, appellant filed a petition for a writ of mandamus in this court in October 2013;
- Orbison became aware of the filing of appellant's petition for a writ of mandamus on October 23, 2013 but did not become aware of the contents of the petition until October 30, when we ordered a response;
- the reason that Orbison was not aware of the contents of appellant's petition on October 23, 2013 was an "office procedure" in which the district attorney's office waited to see if this court ordered a response before reviewing the petition;
- "entirely by coincidence," Brian Wolfe, a Denton County District Attorney's Office investigator, began a project in January 2013 of clearing the district attorney's office's property room of old evidence, and by October 2013, the project involved appellant's property;
- Wolfe believed that appellant had no active appeals or writs pending;
- Wolfe noticed that the cases against appellant had originated from the DPD, so the DPD took possession of the property on October 30, 2013; and
- when Orbison became aware of the contents of appellant's mandamus petition on October 30, he instructed another investigator to contact the DPD in an effort to avoid the destruction of the property, but the DPD had already destroyed the property on October 30.

The State, through Orbison, later filed another document in which it recognized that appellant had been litigating issues related to his property through a civil suit that he filed in 2008 and that another attorney in the district attorney's office was aware of the civil

suit. [Footnote omitted.] Orbison stated, however, “As a general rule, the Appellate Division does not have knowledge of the substantial work produced by the Civil Division, and the Civil Division does not have knowledge of the substantial work produced by the Appellate Division.”

In this same April 17, 2014 order, we identified the State of Texas as the real party in interest. We denied Jeffrey Mann’s motion for sanctions against the Denton County Sheriff’s Department, McCormick, and Parkey because they were not involved in the events leading up to the destruction of Jeffrey Mann’s property. However, because employees of Denton County may have been involved in the destruction of a portion of Jeffrey Mann’s property, we abated the appeal for the trial court to consider whether to assess any sanctions. On August 8, 2014, after the trial court had complied with our April 17, 2014 order, we ordered Denton County “to retrieve and return any non-contraband data that remain[ed] on CDs, floppy disks, or papers that appellee Denton County still possesse[d].” On October 1, 2014, the four Denton County defendants filed in our court their “Appellees’ Notice of Compliance with Order to Release Non-Contraband Items to Appellant’s Designee.” On October 9, 2014, we set aside the dismissal order in favor of the four Denton County defendants because the trial judge who had signed the dismissal order had previously recused himself from the case. *Id.* Thereafter, the litigation in the trial court resumed.

On August 4, 2015, the four Denton County defendants filed a plea to the jurisdiction. They argued that (1) the plaintiffs’ suit was moot because all the non-contraband property had either been lawfully destroyed or released to

Jeffrey Mann's representative, (2) the plaintiffs' claims were barred by limitations, (3) each of the four Denton County defendants had immunities barring suit against them, and (4) the plaintiffs lacked standing. A component of their fourth argument was that the plaintiffs had sued the wrong defendants because none of them were parties to the complained-of June 6, 2003 order; rather, the State of Texas was.

On August 10, 2015, the four Denton County defendants sent out their notice of the September 17, 2015 hearing by submission only of their plea to the jurisdiction. Their certificate of service, however, shows they sent their notice only to Jeffrey Mann.

Thereafter, three things happened in quick succession on September 15, 16, and 17, 2015. On September 15, 2015, Jeffrey Mann filed a response to the four Denton County defendants' plea to the jurisdiction. Only Jeffrey Mann signed the response. Jeffrey Mann asserted he was filing the response on behalf of all the plaintiffs. On September 16, 2015, the four Denton County defendants filed a reply to Jeffrey Mann's response to the plea to the jurisdiction. The judgment reflects that the trial court submitted the plea to the jurisdiction on September 17, 2015.

On September 22, 2015, Jeffrey Mann filed a "Plaintiff's [sic] First Supplemental Petition to Plaintiff's [sic] first Amendment to their Original Civil Complaint." This document is signed by Jeffrey Mann but sworn to by Gary Mann. Jeffrey Mann signed an unsworn declaration. Jeffrey Mann expanded the



pool of defendants to include: (1) Charles Orbison, the chief of the appellate division of the Denton County district attorney's office; (2) Brian Wolfe, chief of the investigative division of the Denton County district attorney's office; (3) the City of Dallas; and (4) Gregory Dugger, an officer for the Dallas police department.

On September 25, 2015, the four Denton County defendants filed a motion to strike Jeffrey Mann and Gary Mann's first supplemental petition. They complained that Jeffrey Mann had filed the plaintiffs' September 22, 2015 supplemental petition late because their plea to the jurisdiction was submitted on September 17, 2015. They also asserted the supplemental petition did nothing to cure three of the arguments raised in their plea to the jurisdiction. The certificate of service shows that the four Denton County defendants mailed this document to both Jeffrey Mann and Gary Mann.

On October 19, 2015, the trial court signed a "Final Judgment." The trial court granted the four Denton County defendants' motion to strike the first supplemental petition, granted their plea to the jurisdiction, and dismissed the plaintiffs' claims with prejudice.<sup>4</sup>

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<sup>4</sup>Jeffrey Mann thereafter filed another suit in Denton County. See *Mann v. Denton Cty.*, No. 02-16-00084-CV, 2016 WL 3364855, at \*1 (Tex. App.—Fort Worth June 16, 2016, no pet.) (mem. op.) (dismissing for want of jurisdiction Jeffrey Mann's attempt to appeal a dismissal of his suit against Denton County, Paul Johnson, Charles Orbison, Brian Wolfe, Hardy Burke, Sam Mooney, and Pattie Biffar). Our review of that case shows that Jeffrey Mann, on his own behalf and on behalf of numerous other plaintiffs, filed an "Original Civil Complaint" on November 9, 2015—twenty days after the "Final Judgment" in this

Only Jeffrey Mann signed the notice of appeal. The notice of appeal provides, however, “COMES NOW, Plaintiffs Jeffrey Mann, Gary Mann, The Health Center[,], Chiro Plus Chiropractic, Noble Clinic and Rehab, The Health Center and Rehabilitation Clinic, J.C. Mann Enterprises, and 1500 Known but unnamed patients who respectfully present this their ‘notice of Appeal’ . . . .” Jeffrey Mann does not identify on what basis he assumed the authority to file the notice of appeal on behalf of any of the other parties.

## **Discussion**

### *Whether Gary Mann was Served*

We address Jeffrey Mann’s fifth issue first. In his fifth issue, he complains that the trial court erred by ruling on the plea to the jurisdiction because Gary Mann had never been served.<sup>5</sup> In his brief, Jeffrey Mann asserts that he is not counsel for Gary Mann. In the section of his brief entitled “Identity of the Parties,” Jeffrey Mann asserts that none of the appellants has counsel and that they are all proceeding pro se. Despite that, Jeffrey Mann continues to articulate his arguments in terms of “plaintiffs.” Assuming, without deciding, that Jeffrey Mann

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suit. We take judicial notice of the documents filed in that case. See Tex. R. Evid. 201(b)(2).

<sup>5</sup>This is not the first time the courts have seen Jeffrey Mann raise this argument. In 2009, the trial court set aside a November 24, 2009 dismissal order in Judge Gabriel’s favor when two plaintiffs filed verified pleadings asserting they did not have notice of the hearing. See *Gabriel*, 2012 WL 2865811, at \*1. The subsequent December 29, 2009 dismissal order in Judge Gabriel’s favor was the one Jeffrey Mann appealed but lost on the merits. *Id.*

had the authority to perfect the appeal on behalf of Gary Mann, Gary Mann did not sign Jeffrey Mann's brief, has not filed his own appellant's brief, has not complained about his failure to be served, and has not complained about the trial court's judgment. A party cannot complain about relief not awarded to another party; one party lacks standing to make such a complaint on behalf of another. See *Paul v. Merrill Lynch Trust Co. of Tex.*, 183 S.W.3d 805, 811–12 (Tex. App.—Waco 2005, no pet.). We overrule Jeffrey Mann's fifth issue for lack of standing.

#### *Jeffrey Mann's Remaining Issues*

Jeffrey Mann's first four issues assert essentially the same complaint. Jeffrey Mann asserts he had over twenty-five motions pending before the trial court that the trial court failed to rule on. He complains that the trial court heard and ruled on the four Denton County defendants' plea to the jurisdiction and motion to strike while refusing to hear or rule on any of the numerous motions he had filed from 2009 through 2015. The bulk of his brief is a jeremiad of all the unsuccessful efforts he took to prosecute his case at the trial court level. Jeffrey Mann complains that the four Denton County defendants' plea to the jurisdiction was "fast track[e]d" while his own motions were left unheard, were never reviewed, and were never considered by the trial court. He asserts that the trial court's refusal to consider all of his motions amounted to a denial of due process. He also raises other complaints. He complains that the trial struck his

supplemental petition without him present.<sup>6</sup> He complains that the four Denton County defendants successfully influenced and improperly coerced the trial judge by submitting a proposed judgment.<sup>7</sup> He also asserts that the trial court erred by dismissing his case with prejudice; he contends that if dismissal was proper, it should have been without prejudice.<sup>8</sup>

None of his issues addresses the bases of the four Denton County defendants' plea to the jurisdiction—whether Jeffrey Mann's complaints were now moot, whether Jeffrey Mann's claims were barred by limitations, whether the four Denton County defendants had various immunities that shielded them from suit, whether any of the plaintiffs had standing, and whether the plaintiffs had even sued the right defendants. If the trial court lacked subject-matter jurisdiction, all of Jeffrey Mann's procedural complaints were moot. See *Gabriel*,

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<sup>6</sup>Oral hearings are not always required. See *Cire v. Cummings*, 134 S.W.3d 835, 843–44 (Tex. 2004) (holding oral hearing not required on motion to compel and for sanctions); *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) (holding oral hearing not required on motion for summary judgment). Jeffrey Mann's reliance on criminal procedure is misplaced. See *Illinois v. Allen*, 397 U.S. 337, 338, 90 S. Ct. 1057, 1058 (1970).

<sup>7</sup>Movants routinely submit proposed orders or judgments with their motions for the trial court's consideration.

<sup>8</sup>Jeffrey Mann does not show how he preserved this error for appellate review. Our review of his post-judgment "Plaintiff's [sic] Motion to Vacate[/]Set Aside Judgment and Verified Motion for New Trial/Reconsideration/Re-Hearing/Re-Hearing Enbanc [sic]" does not show he complained about the dismissal being with prejudice. See Tex. R. App. P. 33.1.

2012 WL 2865811, at \*1–3 (holding Jeffrey Mann’s procedural complaints were moot where trial court properly granted plea to the jurisdiction).

Whether a court has subject-matter jurisdiction is a question of law. *Combined Specialty Ins. Co. v. Deese*, 266 S.W.3d 653, 657 (Tex. App.—Dallas 2008, no pet.). When the trial court grants a plea to the jurisdiction and does not state the basis of its ruling, we may affirm on any basis preserved in the record. *Id.* When the trial court does not specify the basis of its ruling, the appealing party must show that the trial court erred regardless of which ground asserted in the motion the trial court relied on. See *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995) (stating in context of summary judgment). An appellate court must affirm the trial court’s judgment if any one of the movant’s theories has merit. See *id.* When an appellant fails to attack one of the possible grounds on which a judgment was granted, the judgment must be affirmed. See *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970) (stating proposition in context of summary judgment); *Strather v. Dolgencorp of Tex., Inc.*, 96 S.W.3d 420, 423 (Tex. App.—Texarkana 2002, no pet.). The rationale is that the appellant failed to challenge on appeal one of the grounds that was available to the trial court. See *Malooly Bros., Inc.*, 461 S.W.2d at 121; *Strather*, 96 S.W.3d at 423. Because the judgment may have been granted—properly or improperly—on a ground not challenged on appeal, we affirm the judgment. See *Star-Telegram, Inc.*, 915 S.W.2d at 474; *Malooly Bros., Inc.*, 461 S.W.2d at 121; *HB Turbo, L.P. v. Turbonetics Eng’g & Servs.*, No. 13-06-00083-CV, 2007 WL

1629949, at \*3 (Tex. App.—Corpus Christi June 7, 2007, pet. denied) (mem. op.).

In his brief, Jeffrey Mann never asserts the trial court erred by concluding that his suit was barred by limitations or erred by concluding that each of the defendants was entitled to immunity. Because even one unchallenged ground is sufficient, we do not have to decide whether Jeffrey Mann's brief addressed the grounds that the suit was moot or that the plaintiffs lacked standing. We can affirm the trial court's judgment on the basis of even one unchallenged ground. See *Star-Telegram, Inc.*, 915 S.W.2d at 474; *Malooly Bros., Inc.*, 461 S.W.2d at 121; *HB Turbo, L.P.*, 2007 WL 1629949, at \*3. We overrule Jeffrey Mann's first, second, third, and fourth issues as moot. See *Gabriel*, 2012 WL 2865811, at \*1–3 (holding Jeffrey Mann's procedural complaints were moot where trial court properly granted plea to the jurisdiction).

### **Jeffrey Mann's Reply Brief**

Jeffrey Mann filed a reply brief in which he continues to argue the merits of the complaints he raised in his original brief and in which he also responds to the four Denton County defendants' arguments that the judgment should be affirmed on the bases presented in their plea to the jurisdiction. Jeffrey Mann's reply brief addresses the four Denton County defendants' limitations, immunities, and standing arguments. We will not consider new issues raised in a reply brief. See *City of The Colony v. N. Tex. Mun. Water Dist.*, 272 S.W.3d 699, 754 n.16 (Tex. App.—Fort Worth 2008, pet. dism'd) (stating that issues raised for the first time in

a reply brief are not preserved for appeal); see also *Wells Fargo Bank, N.A. v. Blackburn*, No. 02–10–00166–CV, 2011 WL 346951, at \*8 (Tex. App.—Fort Worth Feb.3, 2011, no pet.) (mem. op.) (same). We treat pro se parties the same as licensed attorneys to ensure fairness in the treatment of all litigants. *Wilner v. Deutsche Bank Nat. Trust Co.*, No. 02-11-00287-CV, 2012 WL 6632508, at \*1 n.2 (Tex. App.—Fort Worth Dec. 21, 2012, no pet.) (mem. op.); *Branch v. Fannie Mae*, No. 02–11–00355–CV, 2012 WL 3030525, at \*1 (Tex. App.—Fort Worth July 26, 2012, no pet.) (mem. op.). Accordingly, our disposition of Jeffrey Mann’s five issues remains the same.

### **Conclusion**

Having overruled Jeffrey Mann’s five issues, we affirm the trial court’s judgment, and we deny all other relief requested by Jeffrey Mann in this appeal.

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER and MEIER, JJ.

DELIVERED: February 9, 2017