



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

COLETTE SAVAGE	§	No. 08-22-00067-CV
AND KENT GRAHAM,		
	§	Appeal from the
Appellants,		
	§	169th District Court
v.		
	§	of Bell County, Texas
G.W. IVEY,		
	§	(TC# 324994-0)
Appellee.		
	§	

OPINION

Appellants, Colette Savage and Kent Graham, appearing *pro se*, appeal from a final judgment granting the plea to the jurisdiction of Appellee, G.W. Ivey.¹ We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Savage has been involved in numerous lawsuits in at least three other courts, beginning in 2014, most arising out of the same set of circumstances.² Initially, a conservatorship matter

¹ This case was transferred from the Austin Court of Appeals pursuant to the Texas Supreme Court's docket equalization efforts. See TEX.GOV'T CODE ANN. § 73.001. We follow the precedent of the Austin Court of Appeals to the extent it might conflict with our own. See TEX.RAPP.P. 41.3.

² A more extensive history can be found in *Graham v. Savage*, No. 1:21-CV-151-RP, 2022 WL 3368133, at *1 (W.D. Tex. Aug. 16, 2022).

involving Savage and her brother, Mark, among others, was filed in California regarding the care of their mother and control of her estate. *See Savage v. Savage*, No. A150984, 2018 WL 4959441, (Cal. App. Oct. 15, 2018). Savage became indebted to Mark for defending the California probate proceedings, and she signed a promissory note secured by a deed of trust on six tracts of land in Hubbard, Hill County, Texas, as partial repayment. *See Graham v. Savage*, No. 1:21-CV-151-RP, 2022 WL 3368133, at *1 (W.D. Tex. Aug. 16, 2022).

Sometime after Savage signed the promissory note, Mark initiated foreclosure proceedings on the Hill County properties. *Id.* Savage, proceeding *pro se*, filed suit against Mark and his attorney in Hill County, seeking to stop the foreclosure. *Id.*; *see Savage v. McDonald and Savage*, No. 52,939 (66th Dist. Ct., Hill Cnty., Tex., Dec. 28, 2015). The trial court granted summary judgment denying all of Savage’s claims, and the appellate court affirmed. *Savage v. Savage*, No. 10-17-00139, 2018 WL 5290041, at *1 (Tex.App.—Waco Oct. 24, 2018, pet. denied).³

While the Hill County suit was on appeal, Savage filed a separate suit against Mark entitled “Bill of Review” challenging the trial court’s rulings. *Graham*, 2022 WL 3368133, at *2; *see Savage v. Savage*, No. CV-219-18-DC (66th Dist. Ct., Hill County, Tex. Apr. 20, 2018). The trial court dismissed the case with prejudice as baseless, *id.*, and Savage’s appeal was dismissed for want of prosecution. *Savage v. Savage*, No. 10-18-00230-CV, 2018 WL 5290167, at *1 (Tex.App.—Waco Oct. 24, 2018, pet. dismiss’d w.o.j.)(mem. op.).

³ Savage filed an interlocutory appeal during this case complaining of an order granting dismissal of one defendant and ordering sanctions against her and an order regarding requests for admissions filed by her. *See Savage v. Savage*, No. 10-16-00094-CV, 2016 WL 1722922, at *1 (Tex.App.—Waco Apr. 28, 2016, no pet.)(mem. op.). It was dismissed for want of jurisdiction. *Id.* Savage also filed a petition for writ of mandamus during this case, which was denied. *See In re Savage*, No. 10-18-00181-CV, 2018 WL 2727864, at *1 (Tex.App.—Waco June 6, 2018, no pet.).

Savage filed suit in federal court in California challenging the Texas and California state court rulings. *See Savage v. Savage*, No. 19-CV-07994-DMR, 2020 WL 2525079, (N.D. Cal. May 18, 2020), *aff'd*, 2021 WL 3758347, (9th Cir. Aug. 25, 2021). The California court concluded Savage's claims were a "forbidden de facto appeal of state court decisions" and dismissed the case for lack of subject matter jurisdiction. *Id.* The Ninth Circuit Court of Appeals affirmed. *Savage v. Savage*, 2021 WL 3758347, at *1 (9th Cir. Aug. 25, 2021).

On February 11, 2021, Savage and Graham filed suit in federal court, in Texas, challenging the Texas Court rulings on the note, deed of trust, and foreclosure. *Graham*, 2022 WL 3368133, at *2. In the federal case, Appellants included as defendants the Texas judges and justices who adjudicated the previous Texas cases. *Id.* Appellants claimed the judicial defendants "committed fraud, denied [their] access to the courts, violated their equal protection rights, fabricated evidence, illegally converted [their] property and money, and aided and abetted Mark in stealing their money and property." *Id.* The court dismissed the case for lack of subject matter jurisdiction. *Id.* The court further ordered Savage is enjoined from filing any future actions in the Western District of Texas challenging the note, the deed of trust, the foreclosure, or any Texas State Court rulings on those matters, without first receiving leave to do so from a federal district judge for that district. *Id.*

Within this same timeframe, on March 2, 2017, Savage filed suit in Texas federal court against a mortgage corporation and several other entities apparently arising out of the forfeiture of her home due to a mortgage default. *Savage v. Reliance Mortgage Corp.*, No. 6:17-CV-00053-RP-JCM, 2018 WL 4702535, at *1 (W.D. Tex. June 7, 2018). This suit was dismissed after Savage failed to timely file objections to the magistrate judge's proposed findings and recommendations and the district court found no clear error in them. *Savage v. Reliance Mortgage Corp.*, No. 6:17-CV-00052-RP, 2018 WL 4688785, (W.D. Tex. Aug. 27, 2018).

On February 2, 2018, Savage filed yet another separate suit in Texas federal court against the owner of a pawn shop in Hill County and an individual she alleged pawned jewelry stolen from her. *See Savage v. Hill County Pawn*, No. 6:18-CV-00043-ADA, 2018 WL 7377622, at *1 (W.D. Tex. Oct. 10, 2018). Although her jewelry was pawned for \$343, she alleged its value was \$100,000. *Id.* The court dismissed Savage's case after the pawn shop owner disputed the value of the jewelry and moved to dismiss for lack of subject matter jurisdiction. *Id.* at *2.

The facts underlying this case were not fully explained by Appellants in either the trial court or on appeal. Apparently, Savage avers she owned a house that she gave to Graham, but the house was wrongfully adjudicated to be the subject of a deed of trust and was ultimately awarded to her brother, Mark. Appellants complain that Graham was wrongfully evicted from this home in a forcible detainer action by a third party who claimed to have obtained ownership from Mark. This eviction was litigated in Justice Court Precinct 3 in Bell County, Texas, before Justice of the Peace G.W. Ivey (Judge Ivey). *See Mehta v. Graham*, No. 32-2020-S-002936-1 (Bell Cnty., Tex., Justice Ct. Pct. 3, Pl. 2, May 13, 2021). Appellants did not appeal the eviction. Instead, on May 24, 2021, Appellants filed this separate proceeding in the 169th District Court of Bell County, Texas. Appellants complained of the following during the eviction proceeding: denial of due process; fraudulent transfers of property; misprision of a felony for fraudulent transfer; suppression of right for grievances, prejudice and bias; and denial of rights under 42 U.S. Code § 1983.

Judge Ivey filed a plea to the jurisdiction, alleging judicial and sovereign immunity from suit, averring the case is an improper collateral attack, and stating Appellants have no valid federal claims.

The trial court granted the plea to the jurisdiction and dismissed the suit.⁴ This appeal followed.

II. STANDARD OF REVIEW

Appellate courts review a challenge to the trial court's subject matter jurisdiction de novo. *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 486 (Tex. 2018). If a plea to the jurisdiction challenges the pleadings, we must determine whether the plaintiff has alleged facts that affirmatively demonstrate the trial court's jurisdiction. *Id.* We construe the pleadings liberally in the plaintiff's favor, considering the plaintiff's intent. *Id.* If the plaintiff's pleadings do not affirmatively demonstrate the trial court's jurisdiction, but the pleadings also do not affirmatively establish incurable jurisdictional defects, the plaintiff should be allowed to amend his pleadings. *Id.* Conversely, if the pleadings affirmatively negate jurisdiction, making amendment to invoke jurisdiction impossible, the plea to the jurisdiction may be granted without allowing an opportunity to amend, and the case may be dismissed. *Id.*

III. DISCUSSION

In thirteen issues on appeal, Appellants complain of Judge Ivey's actions during the eviction. They claim Judge Ivey lacked jurisdiction, deprived Graham of his due process rights in the eviction, caused Graham personal injury from distress over the eviction, refused to transfer court records from his court to the court in which this proceeding was initiated, did not appear at the hearing in the trial court, allowed the eviction to continue even though the sale of the property

⁴ The final judgment from the trial court indicates that the court was ruling on the Amended Plea to the Jurisdiction, on which it held a hearing on January 21, 2022. Neither the reporter's record from that hearing nor the following documents shown on the court's case summary were made part of the record on appeal: Answer to Motion on Jurisdiction, Motion to Transfer Case, and Motion to Proceed; Defendant's Amended Plea to the Jurisdiction; Answer to Motion on Jurisdiction, Motion to Transfer Case into Temple District Court, Motion to Proceed in 169th District Court for an Evidentiary Hearing; and Answer to Amended Motion on Jurisdiction.

was based on a counterfeit promissory note and the constable's writ was illegal, and knowingly collected a falsified debt. Appellants also complain the trial court judge denied them due process, did not conduct a proper de novo review of the eviction, did not conduct a de novo review of the property theft transfer, only focused on Judge Ivey's immunity claim and not their claim that he acted without jurisdiction, improperly dismissed the case because Judge Ivey did not have jurisdiction, and ignored their "appeals" on the property fraud filed after the dismissal.

Judge Ivey responds that this suit is an improper collateral attack on the eviction judgment. Judge Ivey urges judicial immunity, official immunity, and governmental immunity shield him from Appellants' actions against him. He argues Appellants' federal claims are not a proper cause of action, and, at any rate, he has qualified immunity against them. Finally, Judge Ivey avers Savage has no standing to pursue the claims she has advanced.

We agree with Judge Ivey's contentions that Appellants' attack on the justice court judgment is an improper collateral attack. We affirm the trial court's judgment.

Collateral Attack

Although Appellants present a lengthy procedural history of the dispute between Savage and her brother and complain of many of the judges Savage has previously encountered, they have apparently encountered G.W. Ivey only in his capacity as Justice of the Peace of Precinct 3, Place 2, in Bell County. By this suit, they complained of his ruling in the eviction, claimed the justice court lacked jurisdiction, and they named Judge Ivey as a defendant. On appeal, Appellants request Graham's property be returned to him.⁵

⁵ Appellants' prayer on appeal reads as follows: We request that all orders in 52939 be made void. W[e] request cease and desist of all endless financial exploitation by the courts and Mark Savage. The Appellate 10 court judgment is void for fraud. There is no Texas Note. We request all attorneys fees returned. We request any mention of a Promissory Note or Texas Note to be excluded from the record. We request the judgment be made void under Judge Harris with documented reference to corruption. We request Kent Graham's seized property be reversed and granted back to Kent

Although there was no prayer in the original petition, Appellants did request the trial court to “review the jurisdiction in small claims court and the conduct of this judge” in their pleading entitled “Immunity is Moot Based on Jurisdiction Fraud.” Appellants’ complaints about Judge Ivey all arise from his presiding over the eviction of Graham from the home presumably owned by Savage at some point in the past. Filing suit in the trial court seeking to have the eviction set aside is an improper collateral attack on that judgment.

A collateral attack on a final judgment is generally impermissible because the policy of the law is to give judgments finality. *In re D.S.*, 602 S.W.3d 504, 512 (Tex. 2020). Collateral attacks are disfavored because they run counter to our judiciary’s strong policy of finality of judgments by attempting to bypass the appellate process in challenging the integrity of a judgment. *Id.* A person collaterally attacks a judgment because they are seeking to avoid the binding effect of a judgment in order to obtain specific relief impeded by that judgment. *Id.* Only void judgments may be collaterally attacked. *Id.* A void judgment is one in which it is apparent that the court had no jurisdiction over the parties, property, or subject matter, no jurisdiction to enter the judgment, or no capacity to act. *Id.*

Appellants attack the justice court’s jurisdiction over the subject matter. They claim the court “did not have jurisdiction to collect thefts by illegal transfer from Kent Graham to [the current owner],” the value of the home exceeded the \$10,000 jurisdictional limit of the court,⁶ and section 27.031 divests justice courts of jurisdiction over suits to try title or suits to enforce liens on land.

Graham. W[e] ask that an investigation be opened on Judge Lee Harris. We ask that both judges be disqualified. Our institutions are not operating impartially or fairly. There was no prayer in the original petition in the trial court.

⁶ The original jurisdiction limit of Texas justice courts was raised to \$20,000 effective September 1, 2020, before this suit was filed. *See* Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 32, eff. Sept. 1, 2020 (now codified at TEX.GOV’T CODE ANN. § 27.031(a)).

See TEX.GOV'T CODE ANN. § 27.031. Appellants fail to recognize that section 27.031 specifically gives justice courts jurisdiction over cases of forcible entry and detainer, and considering Appellants refer to the justice court proceeding as an eviction, that was likely the basis for jurisdiction.

Nonetheless, although we do have jurisdiction to determine whether a judgment underlying an appeal is void, *see State ex. rel. Latty v. Owens*, 907 S.W.2d 484 (Tex. 1995), we cannot entertain Appellants' arguments regarding jurisdiction because Judge Ivey's judgment was not made a part of the record on appeal.⁷ Moreover, we cannot tell from the record before us whether the justice court's judgment was brought before the trial court. Neither the trial court nor this court can make any determination about the validity of a judgment that we do not have before us. *See Chandler v. Carnes Co.*, 604 S.W.2d 485, 487 (Tex.App.—El Paso 1980, writ ref'd n.r.e.) (“[T]his Court, in reviewing the decision of the trial Court, must decide the case on the record before that Court and may not look to the record in some other case to decide this case.”). Accordingly, we must presume the trial court had jurisdiction to enter its judgment and the judgment is valid. *See Ramsey v. Ramsey*, 19 S.W.3d 548, 552 (Tex.App.—Austin 2000, no pet.) (“In a collateral attack, we are to presume that the judgment under attack is valid.”).

The appropriate manner for Appellants to challenge the validity of the justice court's judgment was to appeal the judgment to the county court. TEX.R.CIV.P. 506.1, 510.9. The procedural requisite for perfecting that appeal was filing a bond or a statement of inability to afford costs in the justice court. *Id.* Once again, there is nothing in the record before us to indicate that a

⁷ Appellant attached numerous documents to both their brief and their reply brief. We will not consider that evidence because it is not part of the record on appeal. TEX.R.APP.P. 34.1; *see Bolanos v. Purple Goat, LLC*, 649 S.W.3d 753, 764 n. 10 (Tex.App.—El Paso 2022, no pet.).

bond or a statement of inability to afford costs was filed in the justice court.⁸ Rather than properly appealing from the eviction in the justice court, Appellants filed suit in the 169th District Court and lodged their complaints about the justice court's ruling there.⁹ This suit, from which this appeal was taken, was an improper collateral attack.

IV. CONCLUSION

Because we hold Appellant's suit was an impermissible collateral attack on the judgment of the justice court, we need not reach the other issues raised by Appellants. Accordingly, we affirm the judgment of the trial court.

Yvonne T. Rodriguez, Chief Justice

December 16, 2022

Before Rodriguez, C.J., Alley, and Palafox, JJ.

⁸ Appellants averred in the trial court they filed for new trial and appeal on May 18, 2021, but there is no record of this motion or perfection of this appeal in the record. After a hearing on Judge Ivey's plea to the jurisdiction took place in the trial court, but before the court entered its order granting the amended plea to the jurisdiction, Appellants filed several documents supposedly relating to their appeal from the justice court. Only one of those documents bears the justice court's file-stamp. That document requests a new trial and is file-stamped May 19, 2021. However, there is no indication of payment of the required bond or the filing of an inability to pay court costs in that document. Further, because the justice court's judgment is not in the record before us, we are unable to determine whether the document was timely filed.

⁹ Appeal from the justice court would have properly been to the County Court of Bell County. *See* TEX.R.CIV.P. 506.3.