

**AFFIRM; and Opinion Filed May 3, 2016.**



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

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**No. 05-14-00936-CV**

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**KAREN HOUSTON, Appellant**

**V.**

**SOUTHWEST OUTDOOR, INC. AND HON. STEVEN L. SEIDER, Appellees**

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**On Appeal from the County Court at Law No. 3  
Dallas County, Texas  
Trial Court Cause No. CC-14-00702-C**

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**MEMORANDUM OPINION**

Before Justices Lang-Miers, Brown, and Schenck  
Opinion by Justice Brown

Appellant Karen Houston initiated a mandamus proceeding in the county court. She sought mandamus to have a default judgment against her declared void or to compel the justice court to forward to the county court her appeal from the denial of a bill of review she filed to set aside the default judgment. Houston appeals the trial court's order denying her petition for writ of mandamus and raises two issues. For reasons that follow, we affirm the trial court's order.

**BACKGROUND**

In January 2011, appellee Southwest Outdoor, Inc. sued Houston in small claims court for breach of a billboard rental contract. Houston, acting pro se, answered and filed a counterclaim. She later moved to recuse the trial judge, Justice of the Peace Albert Cercone. Her motion was granted, and the case was transferred to appellee Justice of the Peace Steven Seider. On October 9, 2012, after Houston failed to appear for trial, the small claims court

rendered a default judgment in favor of Southwest Outdoor. Almost six months later, on April 2, 2013, Houston filed a petition for bill of review in the justice court attacking the default judgment on grounds she did not receive notice of the trial setting. The justice court, Judge Seider presiding, denied Houston's petition for bill of review on October 15, 2013. In its order, the court found that Houston included an address in her motion to recuse that differed from the address in her answer and counterclaim. The court and Southwest Outdoor's counsel sent notice of the trial setting to Houston at the address she gave in the motion to recuse. The justice court found that Houston did not receive notice of the trial setting, but also found her failure to present a defense was not "unmixed with any fault or negligence on her part."

Houston attempted to appeal the justice court's denial of her petition for bill of review to the county court. The record reflects that on November 1, 2013, the justice court clerk sent Houston a letter notifying her that her appeal bond was being returned to her because a \$500 bond was required in compliance with rule of civil procedure 506.1. The letter informed Houston that she needed to file a corrected appeal bond within seven days. On November 27, 2013, the clerk sent Houston a letter informing her that her appeal bond was being returned to her because it was untimely filed. The record contains a copy of a \$500 cashier's check from Houston payable to Dallas County dated November 20, 2013. The clerk's letter instructed Houston to pick up the cashier's check or provide a self-addressed stamped envelope within ten days.

On February 13, 2014, Houston filed a pro se petition for writ of mandamus in the county court. In her petition and a May 2014 supplement, Houston alleged she had no notice of the small claims court trial setting and that Judge Seider knew she had no notice. She also alleged the small claims court refused to accept her timely "cash bond," and that Judge Seider should

have allowed her to appeal the denial of her bill of review.<sup>1</sup> After two hearings, the county court denied Houston's petition for writ of mandamus. This appeal followed.

#### MANDAMUS RELIEF

A statutory county court has mandamus power over justice courts. TEX. GOV'T CODE ANN. § 25.0004(a) (West Supp. 2015); *Meridien Hotels, Inc. v. LHO Fin. P'ship I, L.P.*, 97 S.W.3d 731, 736–37 (Tex. App.—Dallas 2003, no pet.). This power is not limited to issuing writs necessary for the enforcement of the jurisdiction of the court. *Meridien Hotels*, 97 S.W.3d at 736. An original proceeding for a writ of mandamus initiated in the trial court is a civil action subject to trial and appeal on substantive law issues and the rules of civil procedure as any other civil suit. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 792 n.1 (Tex. 1991). When we review a mandamus action that originated in the trial court, we do not apply the abuse of discretion standard applicable to mandamus actions that originate in this Court. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see Anderson*, 806 S.W.2d at 794 n.2. We review the court's findings of fact and conclusions of law in accordance with the standards generally applicable to trial court findings and conclusions. *University of Tex. Law Sch.*, 958 S.W.2d at 481. In a nonjury case, such as this one, where no findings of fact or conclusions of law are filed or requested, it will be implied that the trial court made all the necessary findings to support its judgment. *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83 (Tex. 1992). We will affirm the trial court's ruling on any legal theory finding support in the record. *Voltaix, LLC v. Ajongwen*, 406 S.W.3d 235, 239 (Tex. App.—Dallas 2013, no pet.).

Ordinarily, to obtain mandamus relief, a relator must show both that the trial court clearly abused its discretion and that relator has no adequate appellant remedy. *In re Prudential Ins.*

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<sup>1</sup> Houston's mandamus petition asserted various other complaints that are not raised in this appeal.

*Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). When a trial court signs an order that is void, the relator need not show there is no adequate remedy on appeal. *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding). Further, a writ of mandamus will issue to compel a public official to perform a ministerial act. *Anderson*, 806 S.W.2d at 793; *A.J.'s Wrecker Serv. of Dallas, Inc. v. Orozco*, 68 S.W.3d 45, 49 (Tex. App.—Dallas 2001, no pet.). An act is ministerial when the law clearly spells out the duty to be performed with sufficient certainty that nothing is left to the exercise of discretion. *A.J.'s Wrecker Serv.*, 68 S.W.3d at 49. A relator who seeks mandamus relief must demonstrate a clear right to the action it seeks. *In re Minter Elec. Co.*, 277 S.W.3d 540, 542 (Tex. App.—Dallas 2009, orig. proceeding). Mandamus is inappropriate when fact issues exist. *See Dick v. Kazen*, 292 S.W.2d 913, 915 (Tex. 1956); *see also Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 714 (Tex. 1990) (orig. proceeding).

#### **NOTICE OF TRIAL SETTING IN SMALL CLAIMS COURT**

In her first issue, Houston contends she was entitled to mandamus relief in the county court because the small claims court's default judgment is void. Notwithstanding the fact that the justice court denied her direct attack on the default judgment, Houston maintains the default judgment is void because she did not receive notice of the trial setting.

A defendant who has appeared in a case is entitled to notice of the trial setting as a matter of due process. *LBL Oil Co. v. Int'l Power Servs., Inc.*, 777 S.W.2d 390, 390–91 (Tex. 1989). Lack of notice of the trial setting, however, does not render the judgment of the trial court void. *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003); *In re Lowery*, No. 05-14-01509-CV, 2014 WL 8060585, at \*1 (Tex. App.—Dallas Dec. 18, 2014, orig. proceeding) (mem. op.). A judgment is void only when it is apparent that the court rendering judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no

capacity to act as a court. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990). Houston has not alleged the default judgment is void for any of these reasons. She was not entitled to mandamus relief on grounds the small claims court judgment was void. We overrule Houston's first issue.

#### **APPEAL OF THE JUSTICE COURT'S JUDGMENT**

In her second issue, Houston contends the procedure for appealing the denial of her bill of review deprived her of access to the appellate court. She contends she made a timely attempt at perfecting an appeal by tendering cash that the clerk refused to accept. We interpret her issue to be an assertion that she was entitled to mandamus relief to compel the justice court to accept her appeal and forward it to the county court.

A party may appeal a justice court judgment by filing a bond, making a cash deposit, or filing a statement of inability to pay with the justice court within twenty-one days after the judgment is signed or any motion to reinstate, motion to set aside, or motion for new trial is denied. TEX. R. CIV. P. 506.1(a). For an appellant who was the plaintiff, the amount of the required bond or cash deposit is \$500. *See id.* 506.1(b), (c). An appeal must not be dismissed for defects or irregularities in procedure without allowing the appellant seven days' notice to correct the defect. *Id.* 506.1(g). An appeal is perfected when a bond, cash deposit, or statement of inability to pay is filed. *Id.* 506.1(h).

Here, the justice court denied Houston's bill of review on October 15, 2013. To appeal the ruling, Houston was required to file a bond, cash deposit, or statement of inability to pay by November 5, 2015. Houston took some action before this deadline because on November 1 the court clerk, Angela Cedillo, sent her a letter stating that her appeal bond was being returned because a \$500 bond was required. On November 27, the clerk sent Houston another letter

stating that her bond was being returned because it was untimely filed. The clerk later returned to Houston a \$500 cashier's check dated November 20.

In an affidavit filed in the county court, Houston stated that on October 24, 2013, she presented Cedillo with a notice of appeal and \$500 cash to perfect an appeal. According to Houston, Cedillo told her no bond was needed and would not accept the cash. Houston stated that upon receiving Cedillo's letter dated November 1, she immediately drove to Dallas and brought the clerk the cashier's check dated November 20. Cedillo also filed an affidavit with the county court. According to Cedillo, Houston came to the justice court on or about October 24 to inquire about a bill of review. Houston filed a notice of appeal, but did not tender a bond, cash, or a statement of inability to pay. Cedillo denied informing Houston that no bond was necessary. Houston next came to the justice court on or about November 20 with a \$500 cashier's check.

To be entitled to mandamus relief ordering an official to perform a duty, the relator has to have a clear right to the performance of the duty. Houston has not shown a clear right to compel the clerk to accept her appeal. There is a factual dispute regarding whether Houston attempted to timely perfect an appeal by making a cash deposit that the clerk refused to accept. Mandamus is not proper when there is a fact issue. *Dick*, 292 S.W.2d at 915. Further, to the extent Houston made a defective attempt to perfect an appeal before November 5, her attempt did not indefinitely extend the time for correcting the defect. The defect needed to be corrected within the deadline specified in the rule — in this case, “after 7 days’ notice from the court.” *See* TEX. R. CIV. P. 506.1(g); *Watkins v. Debusk*, 286 S.W.3d 58, 61 (Tex. App.—El Paso 2009, no pet.). Houston does not argue that she timely cured the defect. The county court could have concluded mandamus was not proper because fact issues exist regarding whether Houston timely attempted to make a cash deposit that was refused or because the clerk did not have a ministerial duty to accept a cash deposit beyond the correction period. We overrule Houston's second issue.

We affirm the trial court's judgment.

/Ada Brown/  
ADA BROWN  
JUSTICE

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

**JUDGMENT**

KAREN HOUSTON, Appellant

No. 05-14-00936-CV      V.

SOUTHWEST OUTDOOR, INC. AND  
HON. STEVEN L. SEIDER, Appellees

On Appeal from the County Court at Law  
No. 3, Dallas County, Texas

Trial Court Cause No. CC-14-00702-C.

Opinion delivered by Justice Brown, Justices  
Lang-Miers and Schenck participating.

In accordance with this Court's opinion of this date, the trial court's June 19, 2014 order is **AFFIRMED**.

It is **ORDERED** that appellees SOUTHWEST OUTDOOR, INC. AND HON. STEVEN L. SEIDER recover their costs of this appeal from appellant KAREN HOUSTON.

Judgment entered this 3rd day of May, 2016.