

VACATE and DISMISS; and Opinion Filed February 1, 2017.



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

No. 05-16-01129-CV

KYLE SCHUBERT, Appellant

V.

APTCO SHELL, Appellee

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-16-04359-E**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Lang-Miers

This is an appeal from a judgment in an eviction suit. On APTCO Shell's petition, the justice court awarded APTCO Shell possession of an apartment Kyle Schubert occupied and a monetary judgment. Schubert appealed by filing a statement of inability to pay six days after the justice court signed its judgment. Although the statement of inability to pay was due within five days after the judgment, the county court at law conducted a trial de novo. See TEX. R. CIV. P. 510.9(a), (f), 510.10(c); *Williams v. Schneiber*, 148 S.W.3d 581, 583 (Tex. App.—Fort Worth 2004, no pet.) (county court lacks jurisdiction over untimely-filed appeal bond from justice court). Like the justice court, the county court awarded APTCO Shell possession of the apartment and a monetary judgment. Schubert timely appealed from that judgment. However,

because our jurisdiction over the merits of a case extends no further than that of the court from which the appeal is taken, and it appeared Schubert had not timely appealed from justice court to county court, we questioned whether we had jurisdiction over this appeal and requested the parties brief this issue. *See Dallas Cty. Appraisal Dist. v. Funds Recovery, Inc.*, 887 S.W.2d 465, 468 (Tex. App.—Dallas 1994, writ denied). Although more than ten days have passed since we requested the briefing, we have received no response. Because nothing in the record demonstrates Schubert timely appealed from justice court, the county court lacked jurisdiction over the case and we also lack jurisdiction. *See id.* Accordingly, we vacate the county court’s judgment and dismiss the cause. *See id.*

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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

JUDGMENT

KYLE SCHUBERT, Appellant

No. 05-16-01129-CV V.

APTCO SHELL, Appellee

On Appeal from the County Court at Law
No. 5, Dallas County, Texas

Trial Court Cause No. CC-16-04359-E.

Opinion delivered by Justice Lang-Miers.

Justices Myers and Boatright participating.

In accordance with this Court's opinion of this date, we **VACATE** the judgment of County Court at Law No. 4 and **DISMISS** the case.

Judgment entered this 1st day of February , 2017.