

Rehearing Denied and Supplemental Opinion filed December 6, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00311-CV

H & H WRECKER, Appellant

V.

CRYSTAL KOCTAR AND BRAZORIA AUTO & RECOVERY, Appellee

**On Appeal from the County Court at Law No. 1
Jefferson County, Texas
Trial Court Cause No. 124195**

**S U P P L E M E N T A L M E M O R A N D U M O P I N I O N
O N R E H E A R I N G**

In its motion for rehearing, appellant H & H Wrecker argues for the first time that we should reverse the judgments of the justice and county courts and dismiss this case for lack of subject-matter jurisdiction. H & H contends that (1) the justice court lacked subject-matter jurisdiction over the appellee lienholders' request for a tow hearing because the owner gave consent for the truck to be towed and the lienholders raised issues outside the proper scope of such a hearing, and (2)

the county court lacked jurisdiction over the lienholders' claim for statutory damages against H & H for violating the Texas Towing and Booting Act (Chapter 2308 of the Occupations Code). We disagree.

Under the Act, “[t]he owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.” Tex. Occ. Code Ann. § 2308.452 (West 2012). The Act defines the term “vehicle owner” to include a lienholder. *Id.* § 2308.002(15). Here, it is undisputed that although the owner requested the tow, the lienholders did not consent. Moreover, H & H did not treat the tow as consensual because it sought to collect storage charges from the lienholders under Chapter 2303, which does not apply to a consent tow. *Id.* § 2303.003. Therefore, the lienholders were entitled to seek a hearing under section 2308.452.

Such a hearing occurs in justice court, *id.* § 2308.453, and sections 2308.451 and 2308.458 define the scope of the hearing. H & H's argument that the lienholders raised issues outside that scope at the tow hearing is a challenge to the relief sought in the justice court on the merits, not a challenge that implicates the justice court's jurisdiction. *See, e.g., Dubai Petrol. Co. v. Kazi*, 12 S.W.3d 71, 76–77 (Tex. 2000) (explaining distinction between right of plaintiff to relief and jurisdiction of court to afford it). Moreover, H & H does not identify any action taken by the justice court that exceeded its authority under the statutes that define its jurisdiction. We therefore do not consider H & H's argument, which it raised for the first time on rehearing in this Court. *See* Tex. R. App. P. 33.1(a).

H & H also argues that the lienholders' filing of a petition in county court raising a claim for statutory damages did not confer jurisdiction because that claim exceeded the scope of the county court's appellate jurisdiction over the justice

court's judgment. But the Act makes a towing company that intentionally, knowingly, or recklessly violates its provisions liable to the vehicle owner for a \$1,000 statutory penalty, and a county court has original jurisdiction to hear a claim for such a penalty. *See* Tex. Occ. Code § 2308.404(c); *Black Bull Towing, LLC v. Ybarra*, No. 02–14–00227–CV, 2015 WL 3637933, at *1–3 (Tex. App.—Fort Worth June 11, 2015, pet. denied) (mem. op.). H & H's argument that the county court erred in trying matters involving its original and appellate jurisdiction together does not establish a defect in the county court's jurisdiction, and thus it too may not be raised for the first time on appeal. *See* Tex. R. App. P. 33.1(a); *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 439–40 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

For these reasons, we deny H & H's motion for rehearing.

/s/ J. Brett Busby
Justice

Panel consists of Justices Christopher, McCally, and Busby.