

Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion filed February 22, 2018.



In The

Fourteenth Court of Appeals

NO. 14-17-00841-CV

**IN RE ABIRA MEDICAL LABORATORIES, LLC D/B/A GENESIS
DIAGNOSTICS, Relator**

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 1080417**

MEMORANDUM OPINION

On October 25, 2017, Abira Medical Laboratories, LLC d/b/a Genesis Diagnostics (“Genesis”) filed a petition for writ of mandamus in this court. *See* Tex. Gov’t Code Ann. § 22.221 (West Supp. 2017); *see also* Tex. R. App. P. 52. In the petition, Genesis asks this court to compel the Honorable Roberta Lloyd, presiding judge of County Civil Court at Law No. 4 of Harris County, to vacate the following three orders: (1) the September 11, 2017 order granting the plea in intervention of

Hologic, Inc.; (2) the September 25, 2017 nunc pro tunc to the September 11, 2017 order granting the plea in intervention of Kingsbridge Holdings, LLC; and (3) the September 25, 2017 order, granting Kingsbridge's motion to direct the receiver to make payments towards Kingsbridge's judgment. We conditionally grant the petition.

I. BACKGROUND

St. Jude Medical SC, Inc. filed an original petition against K & S Consulting, LLC aka and d/b/a K & S Consulting; Westside Surgical Hospital, LLC aka and d/b/a Westside Surgical Hospital; and Omar Kiggundu (collectively, "Westside") on July 20, 2016, and a first amended petition on August 1, 2016. The trial court, County Civil Court at Law No. 4, signed a default judgment in favor of St. Jude against Westside in the amount of \$73,560 on October 14, 2016. The trial court also awarded St. Jude's attorneys \$24,520 in attorneys' fees.

St. Jude filed an application in the trial court for turnover after judgment and the appointment of a receiver. On April 24, 2017, the trial court appointed a receiver "with the power and authority to take possession of all non-exempt property, real and personal" of Westside.

On May 3, 2017, Hologic filed a plea in intervention in the underlying post-judgment receivership pending in the trial court. Hologic alleged that it is a judgment lien creditor because it obtained a judgment, on February 2, 2017, against Westside in the amount of \$426,909.80 in the 190th District Court in Harris County.

On July 10, 2017, Kingsbridge filed its own plea in intervention in the underlying post-judgment receivership. Kingsbridge alleged that it is a judgment

lien creditor because it obtained a judgment against Westside in the amount of \$606,639.13 in Lake County, Illinois, on March 14, 2017, which Kingsbridge domesticated in Tarrant County, Texas, on May 1, 2017. On July 20, 2017, Kingsbridge filed a motion to direct the receiver to make payments towards Kingsbridge's judgment.

On August 2, 2017, Genesis filed a plea in intervention in the underlying post-judgment receivership. Genesis claimed that it had a perfected security interest in certain assets, which has priority over all other judgment creditors.

Genesis filed a motion to strike Hologic's plea in intervention on August 11, 2017, and a motion to strike Kingsbridge's plea in intervention on August 22, 2017. The trial court signed the order granting Hologic's plea in intervention on September 11, 2017, and signed the nunc pro tunc to the order granting Kingsbridge's plea in intervention on September 25, 2017. The trial court also signed the order granting Kingsbridge's motion to direct the receiver to make payments towards Kingsbridge's judgment after "full satisfaction of the judgment of Intervenor, Hologic, Inc."¹

In two issues, Genesis asserts that the orders granting the post-judgment interventions of Hologic and Kingsbridge and the order granting Kingsbridge's motion to direct the receiver to make payments towards Kingsbridge's judgment are void because the trial court (1) had already lost its plenary power before the pleas in

¹ On September 19, 2017, Genesis filed a motion to vacate or set aside the trial court's April 24, 2017 order appointing a receiver and order of reference. The trial court denied Genesis's motion on October 10, 2017. Genesis did not appeal the order denying its motion to vacate the receivership. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(2) (West Supp. 2017). That order is not the subject of this mandamus proceeding.

interventions were filed; and (2) does not have subject matter jurisdiction over the interventions.

II. MANDAMUS STANDARD OF REVIEW

Generally, a relator seeking mandamus relief must demonstrate that (1) the trial court clearly abused its discretion; and (2) the relator has no adequate remedy by appeal. *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 226 (Tex. 2016) (orig. proceeding) (per curiam). A trial court clearly abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze the law correctly or apply the law correctly to the facts. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302–03 (Tex. 2016) (orig. proceeding) (per curiam); *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding) (per curiam). When an order is void, the relator need not show that it does not have an adequate remedy by appeal. *In re Vaishangi, Inc.*, 442 S.W.3d 256, 261 (Tex. 2014) (orig. proceeding) (per curiam).

II. ANALYSIS

As addressed below, we conclude that the subject orders are void because the trial court (1) had no plenary power to enter the orders; and (2) does not have subject matter jurisdiction over the pleas in intervention.

A. The Trial Court's Lack of Plenary Power

In its first issue, Genesis asserts that the orders granting the post-judgment interventions of Hologic and Kingsbridge and the order granting Kingsbridge's motion to direct the receiver to make payments towards Kingsbridge's judgment are

void because the trial court had already lost its plenary powers over the proposed interventions.

“Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” Tex. R. Civ. P. 60. Generally, a plea in intervention filed after final judgment has been rendered is not timely and may not be considered unless the judgment is set aside. *State v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015); *see also Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008) (stating that one may not intervene after final judgment).

Absent a timely-filed motion for new trial, or a motion to modify, correct or reform a judgment, the trial court loses its plenary power over its judgment thirty days after the judgment is signed. Tex. R. Civ. P. 329b(d); *In re Lynd Co.*, 195 S.W.3d 682, 684 (Tex. 2006) (orig. proceeding). If a motion for new trial, or a motion to modify, correct or reform a judgment is filed by a party to the suit within the initial thirty-day period, the trial court’s plenary power is extended up to an additional seventy-five days, depending on when or whether the court acts on the motions. *Lank Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 310 (Tex. 2000). “Judicial action taken after the trial court’s jurisdiction over a case has expired is a nullity.” *State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (per curiam).

The trial court signed a default judgment in favor of St. Jude on October 14, 2016. No post-judgment motion was filed to extend the courts plenary power past November 13, 2016. Hologic and Kingsbridge did not file their pleas in intervention until after the trial court had signed the final judgment. Hologic intervened in the underlying lawsuit on May 3, 2017, or 171 days after the trial court lost its plenary

power. Kingsbridge intervened on July 10, 2017, or 239 days after the trial court lost its plenary power. Therefore, Genesis claims that Hologic's and Kingsbridge's interventions were untimely filed.

Genesis acknowledges that there is an exception to the rule that an intervention filed post-judgment is untimely. An intervention is not barred after the trial court has rendered final judgment where the intervenor does not attack the substance of the judgment itself, but merely seeks to protect its interest in property that is the subject of a turnover motion. *Breazeale v. Casteel*, 4 S.W.3d 434, 437 (Tex. App.—Austin 1999, pet. denied).

Hologic alleged in its plea in intervention that it has a judgment entered against Westside in an unrelated case from in the 190th District Court. Kingsbridge similarly alleged in its plea in intervention that it has a foreign judgment, which it domesticated in Tarrant County, Texas. These judgments do not constitute interests in property subject to the receivership. Therefore, the *Breazeale* exception does not apply to Hologic's and Kingsbridge's judgments.

Kingsbridge also asserts that it has an interest in medical equipment it leased to Westside, of which Westside retained possession. Kingsbridge applied for, and was granted, a writ of sequestration for the medical equipment. However, Kingsbridge did not allege an interest in the medical equipment in its plea in intervention. Therefore, Kingsbridge did not seek to protect any interest in property that is the subject of the turnover order by filing a plea in intervention.

Hologic and Kingsbridge filed their pleas in intervention after the trial court's plenary power had expired. Therefore, the orders granting their pleas and intervention and the order granting Kingsbridge's motion to direct the receiver to

make payments towards Kingsbridge's judgment are void.² We sustain Genesis's first issue.

B. The Trial Court's Lack of Subject Matter Jurisdiction

In its second issue, Genesis asserts that Hologic and Kingsbridge could not have brought any part of their original claims in the underlying lawsuit because the value of their claims exceeded the jurisdictional limit of the trial court.³

² See *Storck v. Tres Lagos Prop. Owners Ass'n, Inc.*, No. 06-16-00001-CV, 2016 WL 5854356, at *3 (Tex. App.—Texarkana Oct. 7, 2016, no pet.) (mem. op.) (holding that the order signed by the trial court in connection with the intervention was void because the petition for intervention was filed after the trial court's plenary had expired); *Bennetsen v. Mostyn Law Firm*, No. 01-14-00184-CV, 2015 WL 1778356, at *3 (Tex. App.—Houston [1st Dist.] Apr. 16, 2015, no pet.) (mem. op.) (holding that all orders signed by the trial court in connection with the intervention were void because the intervention was filed after the court's plenary power had expired); *Douglas-Peters v. Choe, Holen, Yoo & Burchfiel, P.C.*, No. 05-10-00208-CV, 2010 WL 4946612, *2 (Tex. App.—Dallas Dec. 7, 2010, no pet.) (mem. op.) (holding that all orders signed by the trial court in connection with the intervention were void because the intervention was filed after the court's plenary power had expired); *State & Cty. Mut. Fire. Ins. Co. v. Kelly*, 915 S.W.2d 224, 227 (Tex. App.—Austin 1996, no pet.) (holding the order granting the motion for intervention, which was signed after the court's plenary power had expired, was void).

³ Hologic and Kingsbridge assert that Genesis waived any complaint about their intervention because Genesis did not set its motions to strike for a hearing or obtain a ruling on the motions. See *Main Rehab. & Diagnostic Ctr. v. Liberty Mut. Ins. Co.*, 376 S.W.3d 825, 828 (Tex. App.—Dallas 2012, no pet.) (holding that the Workers' Compensation Division was a party to the case because the appellants did not file a motion to strike or obtain a ruling from the trial court striking the intervention); *Bryant v. United Shortline, Inc. Assur. Servs., N.A.*, 984 S.W.2d 292, 295 (Tex. App.—Fort Worth 1998, no pet.) (holding that the appellant waived the right to complain about the intervention by not moving to strike the intervention). However, the trial court signed orders granting the pleas in interventions, implicitly denying the motions to strike. In any event, the issue is not whether Hologic's and Kingsbridge's pleas in intervention should have been stricken, but whether the trial court has subject matter jurisdiction over their claims. See *Abdullatif v. Erpile, LLC*, 460 S.W.3d 685, 694 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (“[W]e are not asked to decide whether Choudhri properly made himself a party to this lawsuit, but whether, having become a party, Choudhri asserted claims within the trial court's subject-matter jurisdiction. These are distinct questions. There may be no practical difference in the effect that

Subject matter jurisdiction is essential to a court’s power to decide a case. *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (per curiam). A court cannot grant relief if it lacks subject matter jurisdiction. *In re Doe (Trooper)*, 444 S.W.3d 603, 608 (Tex. 2014). An order is void if rendered by a court without subject matter jurisdiction. *Engelman Irrigation Dist. v. Shields Bros., Inc.*, 514 S.W.3d 746, 750 (Tex. 2017). “Whether a pleader has alleged facts that affirmatively demonstrate a trial court’s subject matter jurisdiction is a question of law reviewed *de novo*.” *Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 384 (Tex. 2016) (internal quotations and citation omitted).

“‘[I]n the jurisdictional context,’ the phrase ‘amount in controversy’ means ‘the sum of money *or the value of the thing* originally sued for.’” *In re City of Dallas*, 501 S.W.3d 71, 73 n.1 (Tex. 2016) (orig. proceeding) (per curiam) (quoting *Tune v. Tex. Dep’t of Pub. Safety*, 23 S.W.3d 358, 361 (Tex. 2000)). A jurisdictional challenge based on the amount in controversy must ordinarily be decided on the pleadings. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). When the amount in controversy exceeds the jurisdictional limit of the county court at law, the court lacks jurisdiction over the matter. *In re City of Dallas*, 501 S.W.3d at 73; *United Servs. Auto. Ass’n v. Brite*, 215 S.W.3d 400, 401 (Tex. 2007).

County courts at law are courts of limited jurisdiction. *Brite*, 215 S.W.3d at 401. A county court at law has jurisdiction over a “matter in controversy,” which exceeds \$500, but does not exceed \$200,000. Tex. Gov’t Code Ann. § 25.0003(c)(1) (West Supp. 2017). Hologic’s first amended petition states that Hologic seeks

an appellate court’s adverse ruling on either question might have on an intervenor, but there is a considerable difference in the way that courts review each issue.” (footnotes omitted)).

“monetary relief over \$500,000.00 but no more than \$1,000,000.00.” Hologic was awarded a judgment in the amount of \$526,909.80, plus attorney’s fees, interest, and costs of court, in the 190th District Court. Therefore, Hologic’s claims exceed the \$200,000.00 maximum jurisdictional limit of the trial court. Kingsbridge asserted claims in its petition for \$606,639.13 in a judgment obtained in Illinois, and domesticated in Tarrant County. Kingsbridge’s claim also exceeds the \$200,000.00 maximum jurisdictional limit of the trial court.

Kingsbridge argues that, in determining the amount in controversy, the court looks to St. Jude’s pleading, which is within the trial court’s jurisdiction. In support of this assertion, Kingsbridge claims that Texas courts have expressly permitted intervention by a third party where a court had subject matter jurisdiction pursuant to the plaintiff’s pleadings even though the intervenor’s claim was not otherwise within the court’s subject matter jurisdiction. *See, e.g., Mo., Kan. & Tex. Ry. Co. of Tex. v. Bacon*, 80 S.W. 572, 573 (Tex. Civ. App. 1904, writ ref’d) (rejecting the appellant’s contention that the trial court did not have jurisdiction over the intervenor’s claims, which were a sum less than the jurisdictional limits of the district court, because “[i]t has always been the rule in Texas that when a court once obtains jurisdiction over the subject-matter it has the power to adjust all rights growing out of it, even as to the demands that are not, when standing alone, sufficient to give the court jurisdiction”). However, more recently, this court held that the county court at law lacked subject matter jurisdiction over the intervenor’s claims because the intervenor did not plead damages within the court’s jurisdictional limit. *See Abdullatif*, 460 S.W.3d at 691–92; *see also Lubbock Oil Ref. Co. v. Bourn*, 96 S.W.2d 569, 571 (Tex. Civ. App.—Amarillo 1936, no writ) (holding that, to appoint

a receiver, a judge or court of competent jurisdiction must preside over a court having jurisdiction over the subject matter involved, and the petition must affirmatively plead facts which that bring the case within the jurisdiction of the court).

Hologic contends that, because it holds a valid and subsisting judgment against Westside and is owed a liquidated debt, it is entitled to obtain court assistance in obtaining satisfaction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (West Supp. 2017). Section 31.002 allows a judgment creditor to pursue turnover and receivership in “a court of appropriate jurisdiction.” *Id.* § 31.002(a). Hologic asserts that section 31.002 places no limit on the term, “a court of appropriate jurisdiction.” However, the statute does not define “jurisdiction” to mean anything other than the traditional meaning of a court’s jurisdiction that is necessary to decide a case. *See Colorado Cty. v. Staff*, 510 S.W.3d 435, 444 (Tex. 2017) (“When construing a statute, our primary objective is to give effect to the Legislature’s intent. . . . “[W]e may not look beyond its language for assistance in determining legislative intent unless the statutory text is susceptible to more than one reasonable interpretation.”). We conclude that turnover and receivership proceedings under section 31.002 are required to be brought in a court, which has subject matter jurisdiction over the claims. *See Trooper*, 444 S.W.3d at 608 (observing that a court cannot grant relief if it lacks subject matter jurisdiction); *Rhule*, 417 S.W.3d at 442 (stating that subject matter jurisdiction is essential to a court’s power to decide a case).

Subject matter jurisdiction is based on the petition’s allegations about the amount in controversy. *Lopez v. Soto*, No. 03-12-00031-CV, 2014 WL 3055955, at *1 (Tex. App.—Austin July 2, 2014, pet. denied) (mem. op.). The claims in

Hologic’s and Kingsbridge’s pleas in intervention exceed the jurisdictional limit the trial court. Therefore, the trial court does not have jurisdiction over Hologic’s and Kingsbridge’s pleas in intervention. *See City of Dallas*, 501 S.W.3d at 73; *Brite*, 215 S.W.3d at 401. Because the trial court did not have subject matter jurisdiction over the pleas in intervention, the orders granting the pleas and the order granting Kingsbridge’s motion to direct the receiver to make payments towards Kingsbridge’s judgment are void. *See Engelman Irrigation Dist.*, 514 S.W.3d at 750. We sustain Genesis’s second issue.⁴

III. CONCLUSION

We hold that the trial court abused its discretion by signing the complained-of orders because the court (1) no longer had plenary power when Hologic and Kingsbridge filed their pleas intervention; and (2) does not have subject matter jurisdiction over their pleas in intervention because the pleaded claims exceed the jurisdictional limit of the trial court. Therefore, the (1) September 11, 2017 order granting the Hologic’s plea in intervention; (2) the September 25, 2017 order

⁴ Hologic and Kingsbridge complain that their remedy is to intervene in the underlying post-judgment proceeding because Westside’s property is being held by the receiver *in custodia legis*. *See Mitchell v. Turbine Res. Unlimited, Inc.*, 523 S.W.3d 189, 200 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (“Intervention is a recognized option for a non-party seeking to protect its interest in property that is the subject of a turnover motion.”). “Usually, when funds or property are held by an instrumentality of the court, and are subject to the control of the court, the fund or property is held *in custodia legis*.” *Keathley v. J.J. Inv. Co., L.T.D.*, No. 06-14-00036-CV, 2015 WL 3918446, at *3 (Tex. App.—Texarkana June 26, 2015, no pet.) (mem. op.); *see also Pratt v. Amrex, Inc.*, 354 S.W.3d 502, 504 (Tex. App.—San Antonio 2011, pet. denied) (stating that the court appointing a receiver generally has exclusive jurisdiction over property subject to the receivership). The fact that Westside’s property is being held *in custodia legis* does not affect the fact that Hologic and Kingsbridge filed untimely their pleas in intervention or did not plead claims within the jurisdictional limit of the trial court. When this receivership is closed, Hologic and Kingsbridge may pursue their own turnover proceeding in a district court.

granting Kingsbridge's plea in intervention; and (3) the September 25, 2017 order granting Kingsbridge's motion to direct the receiver to make payments towards Kingsbridge's judgment are void. Because those orders are void, it is not necessary for Genesis to show that it does not have an adequate remedy by appeal. *See In re Vaishangi, Inc.*, 442 S.W.3d at 261. We order the trial court to vacate those orders and grant Genesis's motion to strike Hologic's plea intervention and motion to strike Kingsbridge's plea in intervention. The writ will issue only if the trial court fails to act in accordance with this opinion.

/s/ Ken Wise
Justice

Panel consists of Justices Christopher, Brown, and Wise.