



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00667-CV

Thomas **KING**,
Appellant

v.

OAK RIDGE APARTMENTS,
Appellee

From the County Court at Law No. 3, Bexar County, Texas
Trial Court No. 2016CV04897
Honorable David J. Rodriguez, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: June 14, 2017

AFFIRMED

After appellant received an unfavorable judgment in the justice of the peace court and after that court ruled his appeal “not timely perfected—no bond posted within [twenty-one] days,” appellant filed a petition for writ of certiorari in the county court. The county court denied the petition, and appellant now appeals. We affirm.

DISCUSSION

On appeal, appellant raises several complaints about actions taken by the justice of the peace court: (1) the court erred by denying his motion for discovery; (2) the court denied him his

due process rights by conducting an improper ex parte meeting in chambers with appellee's attorney; (3) the court erred by excluding and failing to consider evidence presented by appellant at trial; and (4) the court erred by ruling his appeal was not timely perfected. Assuming any of these issues may be raised in this appeal from the county court's ruling, we note the clerk's record on appeal contains a copy of the justice of the peace court's docket sheet, which indicates the court denied "permission to conduct discovery by plaintiff," and "appeal not timely perfected – no bond posted w/i 21 days." Other than this docket sheet, there is nothing in the clerk's record on appeal that supports any of appellant's complaints regarding actions taken by or in the justice of the peace court, and there is no reporter's record from any hearing conducted before the justice of the peace court.

"[W]e do not consider factual assertions that appear solely in briefs and are not supported by the record." *Unifund CCR Partners v. Weaver*, 262 S.W.3d 796, 797 (Tex. 2008) (per curiam) (quoting *Marshall v. Hous. Auth. of San Antonio*, 198 S.W.3d 782, 789 (Tex. 2006)); see TEX. R. APP. P. 38.1(g),(i) (requiring the statement of facts and argument be supported by citations to the record). Therefore, again assuming we may address complaints directed towards the justice of the peace court in this appeal, we must conclude the complaints lack merit because the record does not support appellant's complaints regarding that court.

Appellant's complaints regarding the county court are difficult to discern and are somewhat multifarious. However, liberally construing his brief, appellant appears to complain the county court (1) erred by denying his petition for writ of certiorari; (2) conducted an improper ex parte meeting with appellee's attorney; and (3) failed to take appropriate action upon learning of the alleged improprieties of the justice of the peace court.

“Except in eviction cases, after final judgment in a case tried in justice court, a party may apply to the county court for a writ of certiorari.”¹ TEX. R. CIV. P. 506.4(a). “An application must be granted only if it contains a sworn statement setting forth facts showing that either: (1) the justice court did not have jurisdiction; or (2) the final determination of the suit worked an injustice to the applicant that was not caused by the applicant’s own inexcusable neglect.” TEX. R. CIV. P. 506.4(b). In his petition, appellant does not contend the justice of the peace court lacked jurisdiction. Instead, he asserted he suffered a substantial injustice by rendition of a judgment by the justice of the peace court that (1) followed a meeting between the judge and the defendant’s attorney, and (2) erroneously denied his timely filed and perfected appeal. In his petition, appellant also alleged the justice of the peace court ignored his evidence and the justice of the peace court should have granted his motion for discovery.

“It is not necessary in every case to set out the entire testimony on the trial in the justice court, in order to obtain a writ of certiorari.” *Gould v. Sanders*, 60 Tex. Civ. App. 410, 411, 127 S.W. 899, 900 (1910, no writ). “But the petition must either state all the evidence, or show that a material and vital error occurred in the proceedings, or that the applicant has not been able to avail himself of a legitimate prosecution or defense, by no fault or neglect of his own.” *Id.* “One or all of these causes must be set forth, not by a general allegation of the wrong, but with sufficient detail to show a prima facie case entitling the petitioner to another hearing.” *Id.*

Appellant’s petition for a writ of certiorari contains only general allegations, and nothing in the record supports any of the allegations regarding ex parte meetings or denied discovery. As to his assertion he was harmed by the justice of the peace court’s ruling that his appeal was not timely perfected, appellant does not explain how the inability to appeal from the justice of the

¹ Appellant filed his original lawsuit in the justice of the peace court raising various allegations against his landlord, who is the appellee in this appeal. This is not an eviction case.

peace court resulted in a substantial injustice. Following an adverse decision by a justice of the peace court, an appellant has two distinct and cumulative remedies to redress the alleged injustice suffered by him, one by a direct appeal and the other by writ of certiorari. *Huebsch Mfg. Co. v. Coleman*, 113 S.W.2d 639, 641 (Tex. Civ. App.—Amarillo 1938, no writ). Here, appellant's inability to appeal to the county court did not preclude him from seeking relief via the writ of certiorari that he filed in the county court. The slim appellate record provided by appellant, however, does not support any of his complaints regarding actions taken by or in the county court. Therefore, we cannot say, on this record, the county court erred by denying appellant's petition for a writ of certiorari.

CONCLUSION

For the reasons stated above, we affirm the trial court's denial of appellant's petition for writ of certiorari.

Sandee Bryan Marion, Chief Justice