In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00526-CV

BENJIE JOHNSON, Appellant

V.

HOPE VILLAGE APARTMENTS, Appellee

On Appeal from the County Court
Jasper County, Texas
Trial Cause No. 2834

MEMORANDUM OPINION

Benjie Johnson seeks attorney's fees and taxable costs after Hope Village non-suited its forcible entry and detainer case.[1] In three appellate issues, Johnson contends (1) the trial court's order of September 11, 2009, is not a final and appealable judgment; (2) the trial court's August 21, 2009, order releasing funds from the registry of the court

[1]Similar issues regarding the finality of the trial court's orders are raised in another appeal involving different tenants but the same landlord, which is styled *Grant, et. al v. Hope Village Apartments*, No. 09-09-00527-CV, __ WL __ (Tex. App.—Beaumont, October 28, 2010, no pet. h.).

should be vacated; and (3) the trial court's August 6, 2009, order of dismissal allowed the trial court to avoid ruling on his pending motions and claims.

While Johnson filed a notice of appeal from the trial court's September 11 order, the issues he raises attack the trial court's August 6 order of dismissal and the trial court's order of August 21 releasing funds from the court's registry. We conclude that Johnson failed to timely perfect an appeal from the trial court's final and appealable August 6 order. As Johnson did not timely file his notice of appeal, and his notice was filed more than fifteen days after the date it was due, we are without jurisdiction to reach Johnson's complaints about the August 6 order of dismissal.

We further conclude that the trial court's order of August 21, 2009, is separately appealable. While Johnson failed to timely perfect an appeal from the trial court's August 21 order, his notice of appeal was filed within fifteen days of his filing deadline from that order. Under Rule 26.3 of the Texas Rules of Appellate Procedure, we are authorized to grant Johnson an extension, which allows our exercise of appellate jurisdiction over the trial court's August 21 order. Therefore, we consider Johnson's complaints only as they relate to the trial court's August 21 order.

Background

In August 2007, Benjie Johnson leased an apartment from Hope Village. In May 2008, Johnson entered into a new lease on the same unit. In July 2008, Hope Village notified Johnson that he was to vacate the premises, because he had "falsely indicated on the Application for rental that no member of [his] household had any criminal charges."

In August 2008, when Johnson failed to vacate the apartment, Hope Village sued to evict him. Hope Village filed the suit seeking Johnson's eviction in the justice of the peace court of Jasper County, Texas. On September 11, 2008, Hope Village's attorney sent Johnson a letter notifying him that due to his prior felony conviction, he would no longer receive rent subsidies. The letter also notified Johnson of retrospective and prospective rent increases.

On September 23, 2008, Hope Village's attorney filed a motion to dismiss the forcible entry and detainer suit it had filed in the justice court. Its motion requested that the justice court dismiss its case "with prejudice." On September 23, 2008, the Justice of the Peace entered an order dismissing Hope Village's case "with prejudice."

In November 2008, Hope Village's attorney sent Johnson a letter demanding payment of past due rent based on the increased rental amounts demanded in its September 2008, letter. The November letter advised that if the rental amounts it demanded were not paid, Hope Village would file a forcible detainer suit seeking "recovery of that rent and such other charges as may be permitted under the terms of the lease or the law of the State of Texas." On December 16, 2008, Hope Village filed a second suit in the justice of the peace court seeking Johnson's eviction. The December letter advised Johnson of Hope Village's claim that he owed $2,688 in unpaid rent for the months of August, September, October and November of 2008.

In March 2009, the justice court granted Hope Village the right to possess Johnson's apartment. Thereafter, by filing a pauper's affidavit with the justice court,

Johnson secured a trial de novo of Hope Village's forcible entry and detainer case. *See* Tex. R. Civ. P. 749, 749a.

For reasons that are not apparent from the record, Hope Village decided to drop its second forcible entry and detainer suit. In July 2009, Hope Village filed a notice non-suiting the case. On August 6, 2009, the trial court entered an "Order Confirming Nonsuit." When the trial court dismissed the suit, Johnson's live pleading was his Second Amended Original Answer. *See* Tex. R. Civ. P. 65 (Substituted Instrument Takes Place of Original). Johnson's live pleading asserts a general denial and several affirmative defenses. Johnson never filed a counterclaim. However, the prayer in Johnson's live pleading requests awards for attorney's fees and costs of court.

In June 2009, and before Hope Village non-suited its case, Johnson filed a traditional motion for summary judgment. *See* Tex. R. Civ. P. 166a(c). Johnson's motion for summary judgment asserts that Johnson's lease had not been properly terminated and that Hope Village's claims were barred by the doctrine of res judicata. The prayer in Johnson's motion for summary judgment requests the trial court to enter a take-nothing judgment, asks the trial court to dismiss Hope Village's case with prejudice, and requests that Hope Village be taxed with costs.

On July 30, 2009, Hope Village filed its notice of non-suit in the county court, asking the trial court to dismiss the case "without prejudice as to all claims[.]" On August 6, 2009, the trial court entered an order confirming non-suit, decreeing that "Hope Village's claims against all Defendants are hereby DISMISSED, WITHOUT

PREJUDICE."[2] Two weeks later, Hope Village filed a motion asking the trial court to release to it the funds Johnson had deposited in the court's registry. Although the record before us is not complete, we assume that Johnson deposited funds into the registry based on the provisions of Rule 749b(4) of the Texas Rules of Civil Procedure.[3] On the day Hope Village filed its motion to release the funds, Johnson filed an opposing motion, claiming that the funds on deposit should not be released because all claims that were not resolved by the trial court's order of dismissal. On August 21, 2009, the trial court signed an order releasing "all such funds" to Hope Village.

Finality of August 6 Order

In issue one, Johnson asserts the trial court's order of September 11, 2009, is not a final order because the order did not dismiss Johnson's "pending affirmative claims." In response, Hope Village asserts that the trial court's order of August 6 disposed of all claims and parties because Johnson had no pending claims for affirmative relief when Hope Village non-suited its claims.

[2]From the record before us, it appears that the sole defendant in the case was Benjie Johnson. The trial court's reference to "Defendants" in the order of dismissal appears to have been a clerical error. If necessary, the parties can remedy this clerical error by having the trial court enter a judgment nunc pro tunc. *See* Tex. R. Civ. P. 316. In this appeal, none of the parties contend there were multiple defendants before the trial court.

[3]The partial record before us does not reveal the amount Johnson paid into the court's registry, but we assume that he followed the provisions of Rule 749b by depositing the amount of rent "due under the terms of the rental agreement." Tex. R. Civ. P. 749b(2). Johnson does not assert that Hope Village received more than the rental amount that he was obligated to pay to Hope Village.

Under the Texas Rules of Civil Procedure, a plaintiff may dismiss a case or take a non-suit at any time prior to introducing all of his evidence, other than rebuttal evidence. Tex. R. Civ. P. 162. "The trial court generally has no discretion to refuse to dismiss the suit, and its order doing so is ministerial." *Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon*, 195 S.W.3d 98, 100 (Tex. 2006). While a non-suit is effective when filed, the date the trial court signs its dismissal order is "the 'starting point for determining when a trial court's plenary power expires[.]'" *Id.* (quoting *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997)).

As *Blackmon* explained, Rule 162 provides that a plaintiff's right to non-suit neither prejudices an adverse party's right to be heard on pending claims for affirmative relief nor excuses payment of costs taxed by the clerk. *Id.*; *see* Tex. R. Civ. P. 162. Further, a dismissal does not affect "any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal[.]" Tex. R. Civ. P. 162. Claims for affirmative relief "must allege a cause of action, independent of the plaintiff's claim, on which the claimant could recover compensation or relief, even if the plaintiff abandons or is unable to establish his cause of action." *Blackmon,* 195 S.W.3d at 101.

Johnson argues that the trial court's September 11 order denying all pending motions did not dispose of his pending claims and that the order does not contain any language of finality. However, after reviewing the pleadings on file when the trial court entered its order of dismissal, we conclude that neither Johnson's motion for summary judgment nor his live answer contain independent claims that seek affirmative relief.

To allege a claim seeking affirmative relief, a defendant must allege that he "has a cause of action, independent of the plaintiff's claim, on which he could recover benefits, compensation or relief[.]" *Gen. Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 570 (Tex. 1990) (quoting *Weaver v. Jock*, 717 S.W.2d 654, 657 (Tex. App.—Waco 1986, writ ref'd n.r.e.)). "If a defendant does nothing more than resist plaintiff's right to recover, the plaintiff has an absolute right to the nonsuit." *Id*. Generally, matters of avoidance, not affirmative claims, are found in a defendant's answer. Affirmative defenses are theories by which a defendant seeks to avoid liability for the claims advanced by the plaintiff. *See* Tex. R. Civ. P. 94 (requiring the defendant to plead matters "constituting an avoidance or affirmative defense"). While a claim for affirmative relief can theoretically be found in an answer, such a claim is still required to contain "a short statement of the cause of action sufficient to give fair notice of the claim involved[.]" Tex. R. Civ. P. 47.

A request for attorney's fees in the defendant's answer and in the pleading's prayer, not made in connection with an affirmative claim alleging that the opposing party has independently committed a breach of the party's contract, does not constitute a claim for affirmative relief. *See Leon Springs Gas Co. v. Rest. Equip. Leasing Co.*, 961 S.W.2d 574, 578 (Tex. App.—San Antonio 1997, no pet.).[4] Johnson's second amended answer does not allege that Johnson's request for attorney's fees was based on Hope Village's

[4]In *Villafani*, the Texas Supreme Court cites to the *Leon Springs* opinion for the proposition that "[a] claim for attorney's fees is not an affirmative claim where it is based solely on the defense against the other party's claims but is an affirmative claim where it is based on an independent ground or as a sanction." *Villafani v. Trejo*, 251 S.W.3d 466, 470 (Tex. 2008).

alleged breach of the lease. Moreover, Johnson's second amended answer contains no reference establishing a statutory basis for his request for attorney's fees, and Johnson's answer fails to provide a short statement explaining the basis of his claim for attorney's fees. We conclude that Johnson's second amended answer does not contain a statement of an affirmative claim for relief as contemplated by Rule 47 of the Texas Rules of Civil Procedure. Therefore, Johnson had no pending independent claim for attorney's fees against Hope Village at the point the trial court dismissed Hope Village's case.

Next, we address whether Johnson had a pending claim for costs when the trial court dismissed the case on August 6. In his brief, Johnson acknowledges that the trial court has plenary power to rule on a motion for costs. While Johnson prayed for a recovery of costs in his second amended answer and in his motion for summary judgment, the record does not reflect that Johnson ever filed a motion for costs or that he provided the trial court with any evidence of any taxable costs that he had incurred. Moreover, Johnson fails to provide any record reference in his brief to indicate where the record reflects that he paid any taxable costs. Additionally, a prayer to recover taxable costs is not considered to be a claim for affirmative relief. *Anglo Exploration Corp. v. Grayshon*, 562 S.W.2d 567, 568 (Tex. Civ. App.—Houston [14th Dist.] 1978, writ ref'd n.r.e.).

We hold that Johnson's prayer seeking to recover costs does not raise an affirmative claim for relief within the meaning of Rule 47 of the Texas Rules of Civil Procedure. Therefore, Johnson's requests for costs, located in his live pleading and in his

motion for summary judgment, are not sufficient to constitute the pleading of a pending independent claim for affirmative relief.

In arguing that his pleadings raised pending independent claims, Johnson relies on the Texas Supreme Court's denial of Hope Village's motion to dismiss a mandamus that arose from the parties' discovery dispute. With respect to Johnson's discovery mandamus, we denied Johnson's attempt to avoid the trial court's order to give a deposition. *In re Benjie F. Johnson*, No. 09-09-00194-CV, 2009 WL 1650343, *2 (Tex. App.—Beaumont, June 11, 2009, orig. proceeding [mand. denied]). The petition for mandamus that Johnson then filed in the Texas Supreme Court concerning the same matter was denied. *Id*. Johnson contends that because the Texas Supreme Court denied Hope Village's motion to dismiss the mandamus in which Hope Village argued the matter was moot, the Texas Supreme Court implicitly ruled that Johnson still had pending claims. Without citing any legal authority, Johnson argues that the law of the case doctrine[5] establishes that "the matter is not mooted and there remains a live controversy that requires resolution."

Although "[a]ppellate briefs are to be construed reasonably, yet liberally, so that the right to appellate review is not lost by waiver[,]" we conclude that Johnson has not sufficiently briefed his "law of the case" argument. *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008). We are not required to make Johnson's argument for him, nor are we

[5]"The 'law of the case' doctrine is defined as that principle under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages." *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986).

required to brief the argument on his behalf. *See George v. Houston Eye Assocs.*, No. 14-02-00629-CV, 2003 WL 22232651, at *3 (Tex. App.— Houston [14th Dist.] Sept. 30, 2003, pet. denied) ("It is not the appellate court's responsibility to create the appellant's argument."). To the extent Johnson argues that the "law of the case" doctrine dictates a result in his favor, we hold that Johnson's brief is inadequate to present a challenge to the finality of the trial court's ruling on that basis. *See* Tex. R. App. P. 38.1(i); *Kupchynsky v. Nardiello*, 230 S.W.3d 685, 692 (Tex. App.—Dallas 2007, pet. denied) (issue inadequately briefed when party gave general cite to one case stating elements of cause of action); *Sterling v. Alexander*, 99 S.W.3d 793, 798-99 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (issue inadequately briefed when party failed to make proper citations to authority or the record and in failing to make a cogent argument); *Wheeler v. Methodist Hosp.*, 95 S.W.3d 628, 646 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (issue inadequately briefed when party did little more than summarily state his point of error, without citations to legal authority or substantive analysis); *Velasquez v. Waste Connections, Inc.*, 169 S.W.3d 432, 436 (Tex. App.—El Paso 2005, no pet.) (issue inadequately briefed when argument did not contain any references to relevant cases or legal principles).

Having determined that Johnson had no pending independent claims when the trial court dismissed the case, we now address whether the August 6 order of dismissal is final. An order dismissing all claims in a case is a final judgment. *See Ritzell v. Espeche*, 87 S.W.3d 536, 538 (Tex. 2002) ("'[A]n order that expressly disposes of the entire case is

not interlocutory merely because the record fails to show an adequate motion or other legal basis for the disposition.'") (quoting *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 206 (Tex. 2001)). Although the trial court's order of non-suit does not recite that the trial court intended the dismissal to function as a final judgment, an order of dismissal that disposes of all claims for affirmative relief functions as a final judgment and is appealable. *See Lehmann*, 39 S.W.3d at 192-93. (explaining that "a judgment issued without a conventional trial is final for purposes of appeal if and only if either it actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties"). Here, the trial court's August 6 order of dismissal was final and appealable because it dismissed all of Hope Village's pending claims, and Johnson pled no independent affirmative claims for relief. *Cf. Crites v. Collins*, 284 S.W.3d 839, 840-41 (Tex. 2009) (explaining that an order of non-suit did not function as a final judgment where it did not dispose of a cross-action requesting sanctions).

Because the order was final, we must now determine whether we have jurisdiction over that part of Johnson's appeal that complains of the trial court's August 6 order. In cases in which a party files a motion for new trial, a notice of appeal must be filed within ninety days after the judgment is signed. *See* Tex. R. App. P. 26.1(a)(1) (providing that notice of appeal must be filed within 90 days after judgment is signed where any party files a timely motion for new trial). Johnson filed his notice of appeal on November 20, 2009, more than ninety days after the trial court entered its August 6 order.

The deadline to file a notice of appeal runs from the date of the judgment.[6] *Id*. The trial court's rulings on Johnson's motions can be appealed as part of his appeal from the trial court's final judgment. *Id.* We conclude that Johnson's deadline to appeal from the trial court's rulings of August 6 and September 11 began to run on August 6, the date the trial court ordered a dismissal of all of the claims that were at that point in time pending. By failing to timely file a notice of appeal, Johnson allowed the order of dismissal to become final.

In summary, Johnson's complaints in issue one attack an interlocutory order whose deadline for purposes of appeal was controlled by the trial court's August 6 order of dismissal. Johnson failed to timely perfect an appeal from the trial court's order of dismissal, depriving us of jurisdiction to consider the complaints he makes with respect to the trial court's rulings on his motion for new trial and his motion for summary judgment. Issue one is dismissed for want of jurisdiction.

In issue three, Johnson's complaints all concern the trial court's August 6 order. For the same reasons, we further conclude that we do not have jurisdiction over the complaints that Johnson raises in issue three. We dismiss Johnson's complaints in issue one and three for want of jurisdiction.

August 21 Order Releasing Funds

In issue two, Johnson complains about Hope Village's failure to file a sworn motion to procure a release of the funds Johnson had deposited into the registry of the

[6]Johnson's appeal does not fall within the fifteen day grace period during which an appellate court may grant an extension for filing the notice. Tex. R. App. P. 26.3.

court. Generally, a trial court has authority to enter post-judgment orders to enforce its judgment. *See* Tex. R. Civ. P. 308. Post-judgment orders "enforcing the court's judgment itself are appealable orders; they function like judgments." *Cook v. Stallcup*, 170 S.W.3d 916, 920 (Tex. App.—Dallas 2005, no pet.)

With respect to forcible entry and detainer cases, Rule 749b(4) provides three alternative circumstances when the trial court may permit the landlord to withdraw funds that a pauper has deposited into the court's registry. *See* Tex. R. Civ. P. 749b(4). These alternatives include a provision authorizing the trial court to release the funds in the court's registry when the appeal of a forcible entry and detainer case is dismissed. Tex. R. Civ. P. 749b(4)(b).

On August 21, 2009, the trial court entered an order that required "all such funds be paid to [Hope Village]." The trial court's order was entered after the trial court dismissed the suit. Because the August 21 order was intended to enforce the trial court's order of dismissal, it is separately appealable. *See Cook*, 170 S.W.3d at 920.

We now address whether we have jurisdiction to hear an appeal complaining in part about the trial court's order of August 21. The deadline to file a notice of appeal from the August 21 order was November 19, 2009, and Johnson filed his notice of appeal on November 20, 2009. Thus, Johnson failed to perfect a timely appeal by filing his notice of appeal within ninety days of the trial court's August 21 order. Tex. R. App. P. 26(a)(1). Nevertheless, Johnson's notice of appeal was filed within the fifteen day grace period for perfecting appeals, and we imply that he therefore intended to request an

extension. *See* Tex. R. App. P. 26.3; *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that in civil cases, "a motion for extension of time is necessarily implied" when appellant, acting in good faith, files notice of appeal beyond time permitted by Rule 26.1, but within fifteen-day period in which appellant would be entitled to move to extend filing deadline under Rule 26.3).

Johnson's explanation for filing his notice of appeal beyond the ninety day period is apparent from the argument that he makes in his brief. Although Johnson is mistaken about whether his pleadings assert independent claims for affirmative relief for the reasons we have already explained, Johnson's confusion may be considered to constitute a reasonable explanation for his delay in filing a timely notice of appeal. *See Hone v. Hanafin*, 104 S.W.3d 884, 886-87 (Tex. 2003) (explaining that ordinarily, the appeals court should accept the appellant's explanation for his delay as reasonable). Accepting Johnson's confusion about his deadline to file a timely notice of appeal, we extend Johnson's deadline for filing his notice of appeal from the August 21 order by one day to avoid a dismissal of Johnson's complaints about the trial court's August 21 order.[7]

Having extended Johnson's deadline to timely file his notice of appeal from the August 21 order, we turn to Johnson's issue two complaints. In issue two, Johnson asserts the trial court's order of August 21 should be vacated because the requirements of Texas

[7]We are unable to use Rule 26.3 of the Texas Rules of Appellate Procedure to save Johnson's appeal of the August 6 order, as his notice was filed beyond fifteen days of the deadline. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (stating "once the period for granting a motion for extension of time under Rule [26.3] has passed, a party can no longer invoke the appellate court's jurisdiction.").

Rule of Civil Procedure 749b(4) were not met. Johnson's argument presumes, incorrectly, that when the trial court dismissed the case on August 6, Johnson still had pending independent claims for attorney's fees and costs. Based on Johnson's belief that he had pending independent claims, Johnson argues that Hope Village "needed to comply with the proper subsections of Rule 749(b); which is subsection [749b(4)](a) and not (b)." However, Johnson's brief states that he "does not oppose [Hope Village] obtaining the funds from the registry[.]" Nevertheless, Johnson contends the trial court should have required Hope Village to file a sworn motion complying with the provisions of Rule 749b(4)(a)[8] before it released the funds placed in the court's registry during the appeal from the justice of the peace court.

Rule 749b provides:

> In a nonpayment of rent forcible detainer case a tenant/appellant who has appealed by filing a pauper's affidavit under these rules shall be entitled to stay in possession of the premises during the pendency of the appeal, by complying with the following procedure:
>
> (1) Within five days of the date that the tenant/appellant files his pauper's affidavit, he must pay into the justice court registry one rental period's rent under the terms of the rental agreement.
>
> (2) During the appeal process as rent becomes due under the rental agreement, the tenant/appellant shall pay the rent into the

[8]Johnson's brief asserts that the trial court failed to hold a hearing on Hope Village's motion to withdraw funds, but the trial court's August 21 order recites that the order was entered "after reviewing the pleadings and the evidence, and hearing any arguments of counsel[.]" We have no transcript of a hearing conducted by the trial court resulting in the August 21 order, but we expressly note that Johnson has not raised an issue complaining of the lack of an evidentiary hearing, nor has he shown that he was harmed because the trial court refused to allow him to present evidence at a hearing on Hope Village's motion. Based on Johnson's brief, we assume that Hope Village credited Johnson's account in an amount equal to the funds the trial court released. *See* Tex. R. Civ. P. 749b(1)-(2).

> county court registry within five days of the due date under the terms of the rental agreement.
>
> (3) If the tenant/appellant fails to pay the rent into the court registry within the time limits prescribed by these rules, the appellee may file a notice of default in county court. Upon sworn motion by the appellee and a showing of default to the judge, the court shall issue a writ of restitution.
>
> (4) Landlord/appellee may withdraw any or all rent in the county court registry upon a) sworn motion and hearing, prior to final determination of the case, showing just cause, b) dismissal of the appeal, or c) order of the court upon final hearing.
>
> (5) All hearings and motions under this rule shall be entitled to precedence in the county court.

Tex. R. Civ. P. 749(b).

We have previously explained that the trial court's August 6 order of dismissal effectively dismissed all of Hope Village's claims, and that Johnson's pleadings asserted no independent claims for affirmative relief. Rule 749b reinforces the general authority a trial court possesses over funds in the court's registry. "Funds on deposit in the registry of a trial court are always subject to the control and order of the trial court, and the court enjoys great latitude in dealing with them." *Burns v. Bishop*, 48 S.W.3d 459, 467 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

Because Rule 749b(4)(b) expressly authorizes a trial court to release funds in its registry upon the dismissal of the appeal, we conclude the trial court was authorized to enter the order that is now in dispute. *See* Tex. R. Civ. P. 749b(4)(b). Johnson has made no claim that he was entitled to any of the funds the trial court released based on its order dated August 21. In light of the dismissal of the appeal, and because there appears to be no dispute that Hope Village is entitled to the funds in the registry based on Johnson's

obligation to pay rent during the appeal, Johnson has failed to demonstrate that the trial court erred by entering an order releasing the funds to Hope Village. We overrule issue two.

Conclusion

We have no jurisdiction over the complaints that Johnson raises concerning the trial court's August 6 order. Those portions of Johnson's appeal, addressed in issues one and three, are dismissed for want of jurisdiction. With respect to Johnson's second issue, which concerns the trial court's release of funds from its registry, we hold the trial court did not err in releasing the funds Johnson had deposited. The funds in the court's registry were due Hope Village for past due rent and were subject to being released upon dismissal of the appeal of the forcible entry and detainer case that had originated in the justice of the peace court. Finding no reversible error with respect to the trial court's entry of the August 21 order, we affirm the trial court's August 21 order.

Affirmed in Part, Dismissed in Part – Want of Jurisdiction.

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HOLLIS HORTON
Justice

Submitted on September 15, 2010
Opinion Delivered October 28, 2010
Before McKeithen, C.J., Kreger and Horton, JJ.