COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-09-00462-CV

GANIU BELLO — APPELLANT

V.

TARRANT COUNTY, CITY OF FORT WORTH, FORT WORTH INDEPENDENT SCHOOL DISTRICT, TARRANT REGIONAL WATER DISTRICT, TARRANT COUNTY HOSPITAL DISTRICT, AND TARRANT COUNTY COLLEGE DISTRICT — APPELLEES

FROM THE 236TH DISTRICT COURT OF TARRANT COUNTY

MEMORANDUM OPINION[1]

In this tax delinquency case, appellant Ganiu Bello raises three issues to appeal the trial court's judgment in favor of appellees Tarrant County, City of Fort

[1] *See* Tex. R. App. P. 47.4.

Worth, Fort Worth Independent School District, Tarrant Regional Water District, Tarrant County Hospital District, and Tarrant County College District. We affirm.

Background Facts

In 2003, appellees filed a lawsuit against appellant, alleging that there were delinquent taxes, penalties, interest, and costs due on appellant's Fort Worth real property.[2] The original petition sought a money judgment against appellant and asked for foreclosure of the tax lien on his property so that the property could be sold.[3] Appellees attempted to serve appellant with citation through constables but were unsuccessful in doing so because the constables could not find him. Thus, in 2005, appellees served citation by publication in a newspaper. A few months later, the trial court appointed an attorney ad litem to represent appellant.

Appellant's attorney ad litem filed an answer on his behalf. In 2006, the trial court entered a judgment against appellant in which it found that he was delinquent in paying his taxes assessed between 1993 and 2005, awarded

[2]The original petition listed the plaintiffs as the State and Tarrant County "on behalf of other political subdivisions whose taxes are collected by the Tarrant County Tax Collector." Appellee Fort Worth Independent School District intervened in 2006.

[3]Appellees' subsequent petitions sought similar relief. A provision of the tax code states, "On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the property . . . . The lien exists in favor of each taxing unit having power to tax the property." Tex. Tax Code Ann. § 32.01(a) (Vernon 2008).

appellees distinct amounts of money that cumulatively equaled more than $33,000, and foreclosed the tax lien.

Between 2006 and 2008, appellant corresponded through letters with appellees' counsel about the judgment and appellees' attempts to sell his property. Appellant acknowledged in one of the letters that his taxes were delinquent by more than $20,000 but claimed that he had been paying some of the taxes. In 2008, appellant, appearing pro se (without the assistance of his attorney ad litem), filed expedited motions to set aside the trial court's judgment and to set aside the order of sale that had been entered regarding the property. Among other contentions, appellant claimed that he had not been given notice of the suit and therefore had been deprived of an opportunity to defend his rights. In August 2008, the trial court granted appellant's motion to vacate the judgment.

In July 2009, appellant filed an answer in which he generally denied appellees' claims, complained that he had never been served with citation, and objected to appellees' petition. Appellant also filed a motion for summary judgment, contending that (1) the court did not have jurisdiction because he had not been served with citation, (2) his payment of taxes was not delinquent, and (3) appellees' counsel was not contractually qualified to bring the suit under section 6.30 of the tax code.[4] Although appellant argued in his summary

[4] *See* Tex. Tax Code Ann. § 6.30(c) (Vernon 2008) ("[A] taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes.").

judgment motion that he was not delinquent in paying his taxes, he recognized that he had a "past due balance."

Appellees filed a joint motion for summary judgment; they included an affidavit from a deputy tax collector who attached copies of delinquent tax records. Appellant then filed an affidavit to support his motion; that affidavit attached forty pages of tax receipts that showed that appellant had been making payments on his past-due taxes. But the most recent tax receipt that appellant provided, dated November 18, 2009, showed that his "REMAINING AMOUNT DUE" was $26,334.37.

In December 2009, the trial court signed a judgment for appellees. The judgment awarded Tarrant County $6,980.93, the City of Fort Worth $9,509.46, and the Fort Worth Independent School District $8,708.85.[5] The judgment also foreclosed the tax liens and said that an order of sale could be issued. Appellant filed notice of this appeal.

Service of Citation

In his first issue, appellant contends that the trial court's judgment is defective because he was not properly served with citation. He contends that the lack of proper service deprived the trial court of jurisdiction over him and his property and violated due process.

[5]These amounts match the "Total Due" columns of November 23, 2009 tax statements that were attached to the judgment.

"The purpose of citation is to give the court proper jurisdiction over the parties and to provide notice to the defendant that he has been sued, and by whom and for what, so that due process will be served and he will have an opportunity to appear and defend the action." *Aavid Thermal Techs. of Tex. v. Irving Indep. Sch. Dist*., 68 S.W.3d 707, 710 (Tex. App.—Dallas 2001, no pet.); *see Yaquinto v. Britt*, 188 S.W.3d 819, 828 n.9 (Tex. App.—Fort Worth 2006, pet. denied) ("[P]ersonal jurisdiction is dependent on citation being issued and served as required by law."); *Conseco Fin. Servicing v. Klein Indep. Sch. Dist.*, 78 S.W.3d 666, 676 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (explaining that the "requirement of due process of law is met if the notice prescribed affords the party a fair opportunity to appear and defend its interests"). Service of citation must normally be accomplished by personally delivering it to the defendant or mailing it to the defendant by registered or certified mail. Tex. R. Civ. P. 106(a); *see Burgess v. State*, 313 S.W.3d 844, 850 (Tex. App.—Fort Worth 2010, no pet.). The rules of civil procedure also allow service of citation by publication in some circumstances. Tex. R. Civ. P. 109, 114; *see In re A.B.*, 207 S.W.3d 434, 438 (Tex. App.—Dallas 2006, no pet.). Even in delinquent tax suits, service of citation by publication may be authorized. Tex. R. Civ. P. 117a(3) ("When citation [by publication] is served as here provided it shall be sufficient, and no other form of citation or notice to the named defendants therein shall be necessary."); *see* Tex. R. Civ. P. 117a(5); *State v. Farmer*, 457 S.W.2d 179, 181 (Tex. Civ. App.—Dallas 1970, no writ).

Appellant argues that appellees "failed to serve summons and notice of process . . . as required by Texas law" and generally states that service was "contrary to the Rules," but he does not explain why the 2005 service of citation by publication was insufficient under rule 117a. The citation in the record is in the form that rule 117a(5) prescribes. *See* Tex. R. Civ. P. 117a(5).

Furthermore, even if the service by publication was insufficient under rule 117a, appellant has waived that insufficiency. "A failure to satisfy the notice component of in personam jurisdiction may . . . be waived." *Seals v. Upper Trinity Reg'l Water Dist.*, 145 S.W.3d 291, 296 (Tex. App.—Fort Worth 2004, pet. dism'd). In *Seals*, we explained,

> To constitute an answer or appearance, the party must seek a judgment or a decision by the court on some question. A general appearance is normally in the form of an answer to the claims made in the suit. The emphasis is on a request for affirmative action which impliedly recognizes the court's jurisdiction over the parties, since the mere presence of a party or his attorney in the courtroom at the time of a hearing or a trial, where neither participates in the prosecution or defense of the action, is not an appearance. A party who examines witnesses or offers testimony has made a general appearance. . . . Whether or not the party making a general appearance intended that result is immaterial in determining jurisdiction.

Id. at 296–97 (citations omitted); *see Baker v. Monsanto Co.*, 111 S.W.3d 158, 160 (Tex. 2003) ("Monsanto made a general appearance when it answered the plaintiffs' complaint . . . . That appearance relieved the intervenors of the responsibility to serve Monsanto with citation."); *Torres v. Johnson*, 91 S.W.3d 905, 910 (Tex. App.—Fort Worth 2002, no pet.) (holding that service of an

amended complaint upon a defendant was not required because the defendant made an appearance by moving for summary judgment); *Schulz v. Schulz*, 726 S.W.2d 256, 258 (Tex. App.—Austin 1987, no writ) ("Because petitioner appeared in the trial court, all complaints concerning defective service are waived.").

Appellant made several general appearances; he filed an answer, moved for summary judgment, and separately filed an affidavit of tax receipts to support his motion for summary judgment. Therefore, we hold that if there was any error in service of process, appellant waived that error by submitting himself to the trial court's jurisdiction. *See Baker*, 111 S.W.3d at 160; *Seals*, 145 S.W.3d at 296–97.

As part of his first issue, appellant also succinctly argues that appellees' counsel could not bring this suit because "there is no valid contract between the taxing units and the attorneys" under section 6.30 of the tax code. *See* Tex. Tax Code Ann. § 6.30(c). But appellant does not cite authority to show that the validity or existence of appellees' contract with their attorneys affects the propriety of the trial court's judgment that is based on the delinquency of his taxes. Thus, to the extent that appellant relies on section 6.30 as an independent reason for reversing the trial court's judgment, we overrule that argument because it is inadequately briefed. *See* Tex. R. App. P. 38.1(i); *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994) (discussing the "long-standing rule" that an issue may be waived by inadequate

briefing); *Clifton v. Walters*, 308 S.W.3d 94, 99, 102 (Tex. App.—Fort Worth 2010, pet. denied).

For all of these reasons, we overrule appellant's first issue.

The Delinquency of Appellant's Taxes

In his second issue, appellant argues that his taxes were not delinquent because he had been making monthly payments on his balance since 2006. He asserts that his payments have reduced the balance of what he owes. He also seems to argue that the tax code's provisions concerning delinquency are ambiguous. We construe appellant's argument as a challenge to the trial court's decision to grant appellees' motion for summary judgment.

We review a summary judgment de novo. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). We consider the evidence presented in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could and disregarding evidence contrary to the nonmovant unless reasonable jurors could not. *Id.* We indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *20801, Inc. v. Parker*, 249 S.W.3d 392, 399 (Tex. 2008). A plaintiff is entitled to summary judgment on a cause of action if it conclusively proves all essential elements of the claim. *See* Tex. R. Civ. P. 166a(a), (c); *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986). When both parties move for summary judgment and the trial court grants one motion and denies the other, the reviewing court should review both parties' summary judgment evidence and

determine all questions presented. *Mann Frankfort*, 289 S.W.3d at 848. The reviewing court should render the judgment that the trial court should have rendered. *Id.*

Property taxes are due on receipt of a tax bill and are "delinquent if not paid before February 1 of the year following the year in which imposed."[6] Tex. Tax Code Ann. § 31.02(a) (Vernon 2008); *Dallas Cent. Appraisal Dist. v. Park Stemmons, Ltd.*, 948 S.W.2d 11, 14 (Tex. App.—Dallas 1997, no writ) (op. on reh'g). "At any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both." Tex. Tax Code Ann. § 33.41(a) (Vernon 2008); *see id.* § 33.43(a) (Vernon 2008).

Section 33.47 of the tax code states,

> In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax and penalties imposed and interest accrued constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of the law and that the amount of tax alleged to be delinquent against the property and the amount of penalties and interest due on that tax as listed are the correct amounts.

Tex. Tax Code Ann. § 33.47(a) (Vernon 2008); *see Davis v. City of Austin*, 632 S.W.2d 331, 333 (Tex. 1982) ("[T]he taxing authority established its prima facie case as to every material fact necessary to establish the cause of action when it

[6]Once a tax is delinquent, the person or entity who owes the tax incurs statutory penalties, interest, and costs. *See* Tex. Tax Code Ann. §§ 33.01, .48 (Vernon 2008).

introduced a copy of the delinquent tax record, certified by the proper taxing authority to be true and correct with the amount stated thereon to be unpaid."). However, a tax receipt that states that a tax has been paid constitutes prima facie evidence that the tax has been paid as stated by the receipt. Tex. Tax Code Ann. § 31.075(b) (Vernon 2008). "Only taxes that are delinquent on the date of a judgment may be included in the amount recoverable under the judgment by the taxing units that are parties to the suit." Tex. Tax Code Ann. § 33.52(a) (Vernon 2008).

Appellees attached records to their summary judgment motion to show the amount of past due taxes, penalties, interest, and attorney's fees on appellant's property. The records showed unpaid amounts due to Tarrant County from taxes assessed between 1995 and 2005, amounts due to Fort Worth for taxes assessed between 1994 and 2004, and amounts due to the Fort Worth Independent School District for taxes assessed between 2001 and 2005. Appellant's evidence did not refute the delinquency shown by appellees' records but instead showed that, even though he had been making some payments, as of November 18, 2009, he still owed $26,334.37.

Appellant asserts, "[A] tax payer that is paying is not delinquent." But as explained above, section 31.02 of the tax code particularly defines delinquency as taxes unpaid by February 1 following the year they are imposed. Tex. Tax Code Ann. § 31.02(a). The evidence submitted by appellees showed delinquent taxes under that standard, and the authority cited by appellant does not support

his definition of tax delinquency but instead relates to issues such as workers' compensation and annexation.[7]

For these reasons, we hold that appellees satisfied their burden to show that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law for payment of appellant's delinquent taxes. *See* Tex. Tax Code Ann. §§ 33.41(a), .43(a), .47(a); Tex. R. Civ. P. 166a(a), (c); *Jones*, 710 S.W.2d at 60. We overrule appellant's second issue.[8]

The Signing of the Judgment

In his third issue, appellant contends, essentially, that the wrong judge signed the judgment. The record shows that a district judge, the Honorable Tom Lowe, signed and later vacated the original judgment in this case. He also signed the December 2, 2009 judgment that is the subject of this appeal. However, another judge, the Honorable Sidney Farrar, rather than Judge Lowe, conducted the November 19, 2009 hearing on the parties' competing summary judgment motions.[9] Neither party objected to Judge Farrar's presiding over the

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[7]Appellant also cites section 33.02 of the tax code, which concerns a tax collector's ability to enter into an installment agreement with someone who owes delinquent taxes. *See* Tex. Tax. Code Ann. § 33.02(a) (Vernon 2008). The record does not establish any such agreement in this case.

[8]Appellant does not complain about the particular amount of money awarded to appellees in the judgment, which is based on records attached to it.

[9]Appellant states in his brief that Judge Lowe was sick on November 19. The parties did not present testimony at the hearing. *See* Tex. R. Civ. P. 166a(c).

hearing. At the end of the hearing, Judge Farrar said, "All right. After having heard the response filed by Mr. Bello, as well as his motion itself, . . . the sum of $26,334.37 is the amount due. I'm going to award the plaintiffs a judgment in that amount." Thus, the judge who orally granted the judgment was different from the judge who signed it.

In *Davis v. Crist Industries, Inc.*, the appellant argued that a district judge, the Honorable Bonnie Sudderth, had no authority to preside over the final days of a trial when a visiting judge, the Honorable William Brigham, was assigned to Judge Sudderth's court and began the trial. 98 S.W.3d 338, 340 (Tex. App.—Fort Worth 2003, pet. denied). The appellant contended that Judge Sudderth's actions were "a nullity and resulted in the rendition of a void judgment." *Id.* at 340–41. We overruled the appellant's assertion, explaining,

> The presiding judge of an administrative region is authorized to assign judges in the region to "try cases and dispose of accumulated business." Generally, visiting judges are assigned either to a particular case or for a period of time. The terms of the assignment order controls the extent of the visiting judge's authority and when it terminates. Typical assignment orders provide that the visiting judge's authority terminates on a date specified in the assignment order, or upon the occurrence of a specific event such as the signing of a judgment or ruling on a motion for new trial.
>
> Here, the assignment order did not assign Judge Brigham to a particular case in the 352nd District Court. Instead, the order authorized Judge Brigham to sit on the court for the period of time between October 1, 2001 and October 5, 2001 and to complete any trial begun during this period. Because the trial of this case began during Judge Brigham's assigned time period, Judge Brigham was authorized by the terms of the order to complete the trial of the case.

> Contrary to [the appellant's] contention, however, Judge Brigham did not have "exclusive" authority or "jurisdiction" to try the case. Under the Texas Constitution and the rules of civil procedure, more than one judge may exercise authority over a single case. *Absent language in Judge Brigham's assignment order specifically assigning him to the case, Judge Sudderth had the authority to complete the trial of the case in Judge Brigham's absence. The terms of Judge Brigham's order did not preclude Judge Sudderth from exercising authority over the case when expedient.*

Id. at 341 (footnotes and citations omitted) (emphasis added); *see also In re Tenet Healthcare, Ltd.*, 104 S.W.3d 692, 694–95 (Tex. App.—Corpus Christi 2003, orig. proceeding) (relying on *Davis* and explaining that "denying judges the authority to rule on or dispose of cases merely because an assigned judge has issued a ruling on a pretrial matter would lead to absurd results"); *Beard v. Beard*, 49 S.W.3d 40, 50 (Tex. App.—Waco 2001, pet. denied) ("Barbara's argument that the later assignment of another judge terminated Judge Douglas's authority must be based on the notion that two judges cannot have authority over the same case at the same time. We disagree with that proposition.").

We noted in *Davis* that if "Judge Brigham had been specifically assigned to preside in th[e] case, however, his assignment would give him exclusive authority over the case and would have to be withdrawn before Judge Sudderth or any other judge could do so." *Davis*, 98 S.W.3d at 341 n.9. The record in this case does not contain an order assigning Judge Farrar. Thus, appellant cannot show that Judge Farrar had exclusive authority over the case. *See id.*

For these reasons, we hold that appellant has not shown reversible error from the fact that the judge who signed the judgment was different from the judge

who heard the summary judgment arguments and orally granted judgment. *See* Tex. R. App. P. 44.1(a). We overrule appellant's third issue.

Conclusion

Having overruled all of appellant's issues, we affirm the trial court's judgment.

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; MCCOY and MEIER, JJ.

DELIVERED: December 9, 2010