



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-17-00406-CV

EX PARTE J.L.

FROM THE 431ST DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 17-2561-431

MEMORANDUM OPINION¹

I. Introduction

In the first of its four issues, Appellant the Texas Department of Public Safety (DPS) appeals the trial court's order granting expunction of Appellee J.L.'s arrest records, arguing that J.L. was not entitled to have all records related to her December 28, 2014 arrest expunged. We sustain DPS's first issue, do not reach its remaining issues, reverse the trial court's judgment, and render the judgment that the trial court should have rendered. See Tex. R. App. P. 43.2(c), 47.1.

¹See Tex. R. App. P. 47.4.

II. Background

On March 28, 2017, J.L. filed a verified six-page ex parte petition for expunction under code of criminal procedure article 55.01(a)(2) as to her December 28, 2014 arrest for two counts of striking an unattended vehicle. On March 29, 2017, the trial court administrator set J.L.'s petition for a hearing on May 19, 2017. DPS was sent a ten-page fax bearing the cause number for the petition on April 4, 2017.²

On May 11, 2017, DPS filed an answer, responding that expunction was barred because J.L.'s arrest had resulted in a final conviction and court-ordered community supervision. To its answer, DPS attached copies of the information filed in each of three offenses—a class A misdemeanor DWI and two class B misdemeanor offenses of “duty on striking an unattended vehicle”—as well as the DWI judgment of conviction. See Tex. Penal Code Ann. §§ 49.04, 49.09(a) (West Supp. 2017) (setting out DWI elements and providing that DWI is a class A misdemeanor if the person has previously been convicted of DWI); Tex. Transp. Code Ann. § 550.024(b) (West 2011) (providing that the striking-unattended-vehicle offense is a Class B misdemeanor if the damage to all vehicles involved is \$200 or more). The DWI judgment stated that J.L. had pleaded nolo contendere and was convicted and sentenced to 330 days' confinement and a \$600 fine before

²The electronic bookmark in the clerk's record lists this item as “Fax Confirmation of Petition.”

the trial court suspended the imposition of her sentence and placed her on twenty-four months' community supervision. J.L. acknowledges in the statement of facts of her brief that the DWI and two counts of "striking unattended vehicle" arose from the same December 28, 2014 arrest and that she subsequently "pleaded no contest to the Driving While Intoxicated—2nd charge and was convicted and sentenced to 24 months of probation." See Tex. R. App. P. 38.1(g) ("In a civil case, the court will accept as true the facts stated unless another party contradicts them.").

The trial court granted J.L.'s petition on May 19, 2017, in a four-page order of expunction that did not reflect which parties, if any, had attended the May 19, 2017 hearing other than the assistant district attorney, who signed the order under the heading, "Not Opposed."³ On November 14, 2017, DPS filed a notice of restricted appeal in this court, arguing that it had not participated in the expunction proceeding. See Tex. Code Crim. Proc. Ann. art. 55.02, § 3(a) (West 2018); Tex. R. App. P. 30.

III. Restricted Appeal

DPS can prevail in its restricted appeal only if (1) it filed notice of the restricted appeal within six months after the order or judgment was signed, (2) it was a party to the underlying lawsuit, (3) it did not participate in the hearing that

³The line under the district attorney's signature contained a caveat that the district attorney's office was not signing off for any other agency.

resulted in the order or judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law,⁴ and (4) error is apparent on the face of the record. See Tex. R. App. P. 26.1(c), 30; *Ins. Co. of State of Pa. v. Lejeune*, 297 S.W.3d 254, 255 (Tex. 2009). These requirements are jurisdictional and will cut off a party's right to seek relief by way of a restricted appeal if they are not met. *Ex parte K.K.*, No. 02-17-00158-CV, 2018 WL 1324696, at *2 (Tex. App.—Fort Worth Mar. 15, 2018, no pet.) (mem. op.) (citing *Lab. Corp. of Am. v. Mid-Town Surgical Ctr., Inc.*, 16 S.W.3d 527, 528–29 (Tex. App.—Dallas 2000, no pet.)).

A. Timely Notice of Appeal

J.L. argues that DPS did not meet the restricted appeal requirements because DPS's notice of appeal was not timely filed. Six months from the date that the May 19, 2017 order was signed and entered was November 19, 2017, which was a Sunday. See Tex. R. App. P. 4.1(a) (stating that if the last day of a period is a Saturday, Sunday, or legal holiday, the period extends to the end of the next day that is not a Saturday, Sunday, or legal holiday). Accordingly, DPS's notice of restricted appeal was due on Monday, November 20, 2017. See Tex. R. App. P. 4.1(a), 26.1(c), 30. DPS e-filed its notice of appeal in this court on November 14, 2017. See Tex. R. App. P. 25.1(a) (stating that if a notice of appeal

⁴In the fact statement of her brief, J.L. concedes that DPS did not attend the May 19, 2017 hearing. See Tex. R. App. P. 38.1(g).

is filed with the appellate court instead of the trial court clerk, “the notice is deemed to have been filed the same day with the trial court clerk”). Accordingly, DPS’s notice of restricted appeal was timely.

B. Amount in Controversy

J.L. also argues that DPS did not establish an amount in controversy exceeding \$250, the threshold for a civil case to be appealed under civil practice and remedies code section 51.012. See Tex. Civ. Prac. & Rem. Code Ann. § 51.012 (West 2015). DPS replies that if an amount in controversy over \$250 were required to establish jurisdiction for this appeal, then code of criminal procedure article 55.02 would be rendered useless and no court would have jurisdiction over the appeal of any expunction matter.

We recently addressed a similar issue in *State v. L.P.*, 525 S.W.3d 418 (Tex. App.—Fort Worth 2017, no pet.), a case of first impression in this court that involved nondisclosure. In that case, we recited that for this court to have jurisdiction, we must either have a general constitutional grant, subject to any regulations or restrictions imposed by the legislature, or a specific statutory grant of jurisdiction. *Id.* at 419 (quoting Tex. Const. art. V, § 6(a), and *Tex. Dep’t of Pub. Safety v. Barlow*, 48 S.W.3d 174, 175–76 (Tex. 2001)). We dismissed the appeal in that case for want of jurisdiction because the applicable statute, former government code section 411.081, did not expressly provide a right to appeal, and the record did not otherwise reflect the amount in controversy required by civil practice and remedies code section 51.012. *Id.* at 420.

Unlike former government code section 411.081, code of criminal procedure article 55.02, section 3(a) expressly provides for a right to appeal, stating that “[t]he person who is the subject of the expunction order *or an agency protesting the expunction* may appeal the court’s decision in the same manner as in other civil cases.” Tex. Code Crim. Proc. Ann. art. 55.02, § 3(a) (emphasis added).

While J.L. argues that the portion of the statute that requires the appeal to be “in the same manner as in other civil cases” means that civil practice and remedies code section 51.012 imposes the \$250 amount-in-controversy requirement, we instead read article 55.02, section 3(a) to subject an expunction-based appeal to the same rules of appellate procedure that govern other civil appeals. See, e.g., Tex. Fam. Code Ann. § 109.002(a) (West Supp. 2017) (stating that an appeal from a final order in a suit under the family code “shall be *as in civil cases generally under the Texas Rules of Appellate Procedure*” (emphasis added)), § 152.314 (West Supp. 2017) (providing that an appeal under the Uniform Child Custody Jurisdiction and Enforcement Act may be taken from a final order “in accordance with accelerated *appellate procedures in other civil cases*” (emphasis added)); Tex. Health & Safety Code Ann. § 841.146(b) (West 2017) (“Except as otherwise provided by this subsection, a civil commitment proceeding *is subject to the rules of procedure and appeal for civil cases.*” (emphasis added)). We do not read article 55.02, section 3(a) to impose civil practice and remedies code section 51.012’s amount-in-controversy requirement because if the legislature had intended to incorporate that requirement, it would have done so

explicitly. See Tex. Gov't Code Ann. § 311.021(2)–(4) (West 2013) (providing that in enacting a statute, it is presumed that the entire statute is intended to be effective, that a just and reasonable result is intended, and a result feasible of execution is intended).

C. Error on the Face of the Record

We review a trial court's ruling on a petition for expunction for an abuse of discretion, but to the extent that the ruling turns on a question of law, we review it *de novo* because the trial court has no discretion in determining what the law is or in applying the law to the facts. *K.K.*, 2018 WL 1324696, at *3. Further, when construing a statute, our primary objective is to ascertain and give effect to the legislature's intent. *S.J. v. State*, 438 S.W.3d 838, 843 (Tex. App.—Fort Worth 2014, no pet.).

The traditional and primary purpose of the expunction statute is to remove records of wrongful arrests. *Id.* at 841. Generally, an arrest is not wrongful when a defendant pleads guilty or *nolo contendere* to an offense arising from the arrest. See *id.* at 841–42. And because a petitioner's right to expunction is purely a matter of statutory privilege, she bears the burden to show that all of the required statutory conditions have been met. *Id.* at 841 (citing *Tex. Dep't of Pub. Safety v. Nail*, 305 S.W.3d 673, 675 (Tex. App.—Austin 2010, no pet.) (op. on reh'g)); see *In re I.V.*, 415 S.W.3d 926, 929 (Tex. App.—El Paso 2013, no pet.) (stating that in a “statutory cause of action, all provisions are mandatory and exclusive”).

J.L. sought expunction of the two “striking unattended vehicle” offenses under code of criminal procedure article 55.01(a)(2), and the trial court granted the expunction under that subsection. We have previously held that subsection (a)(2) is *arrest*-based and that a person seeking expunction must meet the requirements of article 55.01(a)(2) for *all* charges arising from the same arrest. *S.J.*, 438 S.W.3d at 839, 845–46 (holding applicant was not entitled to expunction when he was placed on court-ordered community supervision for one of the charges arising from the arrest); *see also State v. T.S.N.*, 547 S.W.3d 617, 623 (Tex. 2018) (“The expunction scheme under subsection (a)(2) is not at issue, and we express no opinion about it.”); *State v. N.R.J.*, 453 S.W.3d 76, 78 (Tex. App.—Fort Worth 2014, pet. denied) (applying *S.J.* to bar expunction in the case of a single charge arising from a multi-charge arrest). In *S.J.*, we construed article 55.01(a)(2) to preclude expunction when it is apparent that the dismissed and pleaded-to charges relate to a single instance of criminal conduct. 438 S.W.3d at 846.

Because the record reflects (and J.L. agrees in her appellee’s brief) that the arrest for the two offenses that she seeks to have expunged also gave rise to the DWI offense for which she was convicted and placed on community supervision, we hold that there is error apparent on the face of the record. Accordingly, we sustain DPS’s first issue. Based on our disposition of DPS’s first issue, we do not reach its remaining three issues. *See Tex. R. App. P. 47.1.*

IV. Conclusion

Having sustained DPS's dispositive issue, we reverse the trial court's judgment and render judgment that J.L.'s petition for expunction is denied. See Tex. R. App. P. 43.2(c) (providing that the court may reverse the trial court's judgment in whole or in part and render the judgment that the trial court should have rendered).

/s/ Bonnie Sudderth

**BONNIE SUDDERTH
CHIEF JUSTICE**

PANEL: SUDDERTH, C.J.; WALKER and BIRDWELL, JJ.

DELIVERED: August 31, 2018