In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-22-00038-CV

BARBARA KADOW, Appellant

V.

MAA, WATERMARK, Appellee

On Appeal from County Court at Law No. 2
Denton County, Texas
Trial Court No. CV-2021-03417-JP

Before Womack, Wallach, and Walker, JJ.
Memorandum Opinion by Justice Walker

MEMORANDUM OPINION

In this case brought under the Texas Towing and Booting Act (the Towing Act), pro se Appellant Barbara Kadow appeals the trial court's take-nothing judgment in favor of Appellee MAA, Watermark (Watermark). *See* Tex. Occ. Code Ann. § 2308.001. We will affirm.

I. BACKGROUND

Kadow lived as a tenant in a Watermark apartment complex in Roanoke, Texas (Complex), until her lease agreement with Watermark (Lease) expired on August 16, 2021. Soon after August 16, she returned to the Complex to visit friends and parked her car, a 1999 Toyota 4Runner (Vehicle), in the Complex's parking lot. On a gate in the parking lot was hung a sign with the following text in all-caps:

TOWING ENFORCED 24/7
UNAUTHORIZED VEHICLES WILL BE TOWED
AT OWNER'S OR OPERATOR'S EXPENSE
VEHICLES PROHIBITED: FOR SALE VEHICLES
ABANDONED, INOPERABLE, ON JACKS/BLOCKS
FLAT TIRES, PARKING ON GRASS, UNAUTHORIZED
HANDICAP PARKING, BLOCKING DRIVE OR
DUMPSTER, EXPIRED INSPECTION OR
REGISTRATION, VEHICLES WITHOUT
REQUIRED PERMIT, VISITORS PASS,
UNAUTHORIZED VEHICLES, IN
ASSIGNED OR RESERVED SPACES,
NO TRACTOR/TRAILER PARKING.
NO PARKING IN FIRE LANES[.]

On August 26, 2021, an employee of Watermark placed a yellow tow warning notice sticker on the Vehicle, stating that it was illegally parked as an "Abandoned

Vehicle (Parked in Space for more than 48 Hours)."[1] The warning contained a contact phone number for the towing company and stated that the Vehicle would be towed on or after 10:00 a.m. on August 28, 2021, at the expense of the Vehicle's owner or operator if it was not moved. On August 27, 2021, Watermark had the towing company conduct a title search on the vehicle's license plate. That search established no connection to Kadow[2] or any resident of the Complex. On August 28, 2021, having received no response to the tow warning notice and the Vehicle having not been moved, the Vehicle was towed from the Complex.

On September 10, 2021, pursuant to Section 2308.452 of the Towing Act, Kadow requested a tow hearing in the justice court, alleging that no probable cause existed for Watermark to tow her vehicle. She sought $5,523.23 in towing and storage fees and $359.99 for a cracked windshield. The justice court entered judgment for Watermark, finding that probable cause existed to tow the vehicle and ordering Kadow to pay all towing costs. Kadow appealed the justice court's judgment to the

[1]The warning contained other possible reasons why a vehicle might have been illegally parked in the parking lot, including that it was: inoperable, a boat, trailer, or recreational vehicle, a commercial vehicle weighing more than one ton, an unauthorized vehicle in a reserved space, parked in a fire lane or loading zone, constituted a health or bio-hazard, did not have a valid permit, or had a flat tire or broken window.

[2]Kadow had never registered the Vehicle with Watermark. Instead, on the residency application completed by Kadow on July 6, 2020, and submitted to Watermark, Kadow indicated that she drove a tan Suburban.

county court at law (trial court). *See* Tex. Occ. Code Ann. §§ 2308.453, 2308.459; Tex. R. Civ. P. 506.3.

The trial court conducted a bench trial on December 28, 2021. After both parties rested, the trial court orally raised concerns about whether Kadow had standing to bring the suit due to questions about whether she owned the Vehicle:

> Trial Court: In addition, I'm still unsure as to whose vehicle this is. You can't—and all the evidence is in. I see a renewal receipt here for someone who is not you. I see insurance that is for you. But I can insure a vehicle and not necessarily be the owner. So I would question as to whether or not you even have standing in this matter.
>
> Kadow: Umm—
>
> Trial Court: Ma'am, this is not an opportunity for you to speak. This is an opportunity to hear my ruling. Okay? I'm just—even the information provided by [Watermark], which is almost illegible, suggests another owner. Again, I don't think you have standing to bring—ma'am, this is not any opportunity for you to talk. Okay? This is an opportunity for the Court to make its ruling. You've had your opportunity to speak. I'm sorry if that didn't work out the way you wanted it to, but the Court believes that you don't have standing and therefore will issue a take-nothing judgment. Ma'am, that's it. That's the Court's ruling. Y'all have a good day.

The trial court signed its written "Take Nothing Judgment" on December 30, 2021, ordering that Kadow take nothing as to her claims against Watermark. No findings of fact or conclusions of law were requested or filed.

II. DISCUSSION

Kadow raises three issues on appeal: (1) that the trial court erred in concluding that she did not have standing to recover damages under the Towing Act; (2) that

probable cause did not exist for Watermark to tow the Vehicle; and (3) that the trial court exhibited bias against her that violated her right to a fair trial.

A. STANDING ISSUE

In her first issue, Kadow argues that the trial court erred in ruling that she did not have standing to bring her wrongful-towing action. We will overrule this argument because the trial court decided the case on the merits and did not dismiss it for lack of standing.

1. Standard of Review and Relevant Law

Standing is a component of subject-matter jurisdiction that we review de novo. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *Meeker v. Tarrant Cnty. Coll. Dist.*, 317 S.W.3d 754, 759 (Tex. App.—Fort Worth 2010, pet. denied). If a trial court does not have subject-matter jurisdiction, it cannot decide a case's merits. *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018); *Odeh Group, Inc. v. Sassin*, No. 02-20-00112-CV, 2021 WL 733086, at *3 (Tex. App.—Fort Worth Feb. 25, 2021, no pet.) (mem. op.). The proper remedy for a trial court's lack of subject-matter jurisdiction is to dismiss the action, generally without prejudice. *State v. Langley*, 232 S.W.3d 363, 369 (Tex. App.—Tyler 2007, no pet.). However, when a trial court renders a take-nothing judgment, it makes a ruling on the case's merits. *Odeh*, 2021 WL 733086 at *3.

When there is any conflict between a trial court's oral pronouncements and its written judgment, the written judgment controls. *In re E.D.*, No. 02-20-00208-CV,

2022 WL 60781, at *10 (Tex. App.—Fort Worth Jan. 6, 2022, no pet.) (mem. op.); *Gasperson v. Madill Nat'l Bank*, 455 S.W.2d 381, 387 (Tex. App.—Fort Worth 1970, writ ref'd n.r.e.); *see In re W.E.R.*, 669 S.W.2d 716, 716 (Tex. 1984) ("The court of appeals was not entitled to look to any comments that the judge may have made at the conclusion of a bench trial as being a substitute for findings of fact and conclusions of law.")

2. Analysis

Here, at the end of the bench trial, the trial court orally pronounced a take-nothing judgment against Kadow and questioned whether, because the evidence did not establish her ownership of the Vehicle, she had shown standing to bring the suit. Though not entirely clear from her appellant's brief, Kadow seems to argue that these oral pronouncements by the trial court established that it erred by disposing of her case on the basis that it lacked subject-matter jurisdiction. This argument is belied by that fact that the trial court signed a written, take-nothing judgment—which is inherently merits-based—against Kadow rather than dismissing her suit for lack of subject-matter jurisdiction. Because the written judgment controls over any alleged conflicting ruling from the oral pronouncements, we overrule Kadow's first issue. *See Gasperson*, 455 S.W.2d at 387.

B. PROBABLE CAUSE ISSUE

In her second issue, Kadow argues that probable cause did not exist for Watermark to tow the Vehicle. Specifically, Kadow attacks the existence of probable

cause on three grounds: that (1) the towing violated Subsections 2308.253(d) and (e) of the Towing Act, (2) the towing violated the lease between the parties, and (3) the sign posted in the Complex parking lot did not adequately state who may park in the lot as required by Towing Act subsection 2308.301(b)(4). Though Kadow has risked waiving several of these arguments by inadequate briefing because she has not supplied us with a standard of review or a clear argument connecting her contentions to admissible evidence, we will liberally construe her arguments as challenges to the legal and factual sufficiency of the evidence to support the trial court's implied finding that probable cause existed. *See* Tex. R. App. P. 38.1, 38.9; *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Tex. 1989).

1. Standard of Review and Relevant Law

In a bench trial in which no findings of fact or conclusions of law are filed, the trial court's judgment implies all findings of fact necessary to support it. *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017). We must affirm the judgment if we can uphold it on any legal theory supported by the record. *Rosemond v. Al-Lahiq*, 331 S.W.3d 764, 766–67 (Tex. 2011); *Liberty Mut. Ins. v. Burk*, 295 S.W.3d 771, 777 (Tex. App.—Fort Worth 2009, no pet.).

When reviewing an assertion that the evidence is factually insufficient to support a finding, we set aside the finding only if, after considering and weighing all the pertinent record evidence, we determine that the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that

the finding should be set aside and a new trial ordered. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex. 1965). If the evidence is factually sufficient, then it is necessarily legally sufficient and we need not also analyze for legal sufficiency. *S. B. v. Tex. Dep't of Fam. & Protective Servs.*, 654 S.W.3d 246, 252 (Tex. App.—Austin 2022, pet. filed); *In re A.S.*, No. 02-16-00076-CV, 2016 WL 3364838, at *7 (Tex. App.—Fort Worth June 16, 2016, no pet.) (mem. op.).

The Towing Act provides that an "owner or operator of a vehicle that has been removed and placed in a vehicle storage facility . . . without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement . . . ." Tex. Occ. Code Ann. § 2308.452. Thus, the primary issue to be determined by the trial court is whether probable cause existed to tow the vehicle. *Id.* § 2308.452; *Brazos Valley Roadrunner, L.P. v. Cichy*, No. 10-19-00424-CV, 2021 WL 3191917, at *2 (Tex. App.—Waco July 28, 2021, no pet.) (mem. op.). Probable cause is a "flexible, common[-]sense standard requiring only a probability of suspect activity rather than an actual showing of such activity." *Senter v. City of Dallas*, No. 05-05-01416-CV, 2006 WL 3218548, at *2 (Tex. App.—Dallas Nov. 8, 2006, no pet.) (mem. op.). When, as here, the owner or operator of the vehicle requests the tow hearing, she has the burden of proof to disprove that probable cause existed. *Zhao v. Two Steppin Towing*, No. 02-21-00351-CV, 2022 WL 11456754, at *2 (Tex. App.—Fort Worth Oct. 20, 2022, pet. filed) (mem. op.).

Because there were no findings or conclusions filed in this case, it is implied that the trial court found that probable cause existed to tow the Vehicle. We will overrule Kadow's second issue because her first two arguments are inapplicable to this case and her third argument fails to negate the implied finding that probable cause existed.

2. Subsections 2308.253(d) & (e) Are Inapplicable To This Case

Citing to subsection 2308.253(d), Kadow appears to argue that Watermark violated the Towing Act's prohibition against towing a vehicle solely because it displayed expired license plates or state registration. *See* Tex. Occ. Code Ann. § 2308.253(d). It is true that this subsection provides that the operator of an apartment complex parking facility "may not have a vehicle towed from the parking facility merely because the vehicle does not display an unexpired license plate or registration insignia for the vehicle" under the vehicle registration laws of any state. *Id.* However, there is no evidence in the record that the Vehicle was towed because it did not display an unexpired license plate or registration insignia under the laws of any state.[3] Thus, this subsection is not applicable to Kadow's case.

Relatedly, citing to Subsection 2308.253(e) of the Towing Act, Kadow argues that she was entitled to ten days' notice before the Vehicle was towed. *See Id.* §

[3]The record here showed that the Vehicle was towed, at least in part, because it was not registered with Watermark—not that it displayed an expired *state-issued* registration or license plate.

2308.253(e). Subsection 2308.253(e) likewise applies to operators of apartment complex parking facilities and requires that

> *[a] contract provision* providing for the towing from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of a vehicle to be given at least 10 days' written notice that the vehicle will be towed from the parking facility at the vehicle owner's or operator's expense if it is not removed from the parking facility.

Id. (emphasis added). Any contract provision that does not contain this ten-day written notice is void. *Id.* § 2308.253(g).

Thus, by its terms, subsection 2308.253(e) applies only to situations where a valid contract (e.g. a residential lease) exists that contains a provision allowing an apartment complex operator to tow a vehicle in its parking lot for failing to display unexpired license plates or registration. *Id.* § 2308.253(e). For such a contract provision to be enforceable, it must expressly state that the vehicle's owner or operator is entitled to ten-days' notice before towing. *Id.*

Kadow contends that the contract giving rise to her entitlement to this ten-days' notice was her Lease with Watermark. However, this argument fails because the undisputed evidence established that the Lease expired on August 16, 2021, and the record does not show that another contract existed between the parties on August 28, 2021—the day the Vehicle was towed. Further, as we have already explained, there is no evidence in the record that the Vehicle was towed because it displayed expired license plates or registration.

For these reasons, subsections 2308.253(d) and (e) are inapplicable to this case, and we overrule these arguments.

3. The Lease Had Expired and Had No Effect

Next, Kadow argues that, because the Lease allowed for unattended vehicles to be on the property for thirty days and for guest vehicles to remain for seven days, the towing of the Vehicle was improper. Again, as we explained above, it is undisputed that the Lease expired more than ten days before the Vehicle was towed and, thus, had no effect on this dispute. Accordingly, we overrule this argument.

4. The Evidence Supported The Trial Court's Finding

Finally, citing to subsection 2308.301(b)(4), Kadow argues that the sign posted in the parking lot did not contain an adequate statement describing who was permitted to park in the parking lot.[4] *See Id.* § 2308.301(b)(4). She contends that, though the sign contained a "laundry list" of what constituted unauthorized or prohibited vehicles, it did not expressly state what vehicles were permitted to park there and, thus, violated the Towing Act.

---

[4]In her appellate reply brief, Kadow also argues that the sign violated Subsection 2308.301 because it did not (1) state "resident parking" or "resident and guest parking," (2) comply with minimum height requirements, (3) comply with placement requirements, and (4) appear conspicuously in the dark or in the shadows. To the extent that Kadow attempts to raise these as additional issues on appeal, we cannot consider them because she raised them for the first time in her reply brief and, thus, did not preserve them for our review. *See City of The Colony v. N. Tex. Mun. Water Dist.*, 272 S.W.3d 699, 754 n.16 (Tex. App.—Fort Worth 2008, pet. dism'd); *see also* Tex. R. App. P. 38.3.

The Towing Act provides that a vehicle may be towed without the consent of its owner or operator if its requirements are met, including if a sign located on the parking facility at the time of towing warned that unauthorized vehicles would be towed. *Id.* § 2308.252(a). Such a sign must "contain[] a statement describing who may park in the parking facility and prohibiting all others." *Id.* § 2308.301(b)(4).

Watermark's sign stated that unauthorized vehicles would be towed and provided approximately a dozen examples of what constituted unauthorized parking, including "vehicles without required permit [or] visitors pass." We hold that this evidence was factually sufficient for the trial court to conclude that this sign met the statutory requirement to identify who was permitted to park in the parking lot because it prohibited unauthorized vehicles and stated that vehicles not bearing permits or visitors passes were prohibited from parking in the lot. *See Emesowum v. Milam St. Auto Storage, Inc.*, No. 01-14-00472-CV, 2015 WL 3799371, at *2 (Tex. App.—Houston [1st Dist.] June 18, 2015, no pet.) (mem. op.) (holding that trial court could have reasonably found that a sign complied with subsection 2308.301(b)(4) when it stated only that "unauthorized vehicles will be towed at owner's or operator's expense"). And, based on this conclusion, the trial court could have reasonably found that probable cause existed to tow the Vehicle.

Additionally, even if Watermark's sign did not comply with Subsection 2308.301(b)(4) and could not have served as a proper basis upon which

Watermark could have towed the Vehicle, the trial court's judgment could have rested on a separate legal theory. *See Rosemond,* 331 S.W.3d at 766–67.

A parking facility operator may also tow a vehicle without the owner or operator's consent—regardless of whether or not any towing signs are present—if it places upon the vehicle a conspicuous notice stating: (1) that the vehicle is in a parking space in which it is not authorized to be parked, (2) a description of all other unauthorized areas in the parking facility, (3) that the vehicle will be towed at the expense of the owner or operator if it remains in an unauthorized area of the facility; and (4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle. Tex. Occ. Code Ann. § 2308.252(a)(2).

The warning sticker placed upon the Vehicle stated that the Vehicle was illegally parked, contained an exhaustive list of the various unauthorized parking locations or unauthorized parking conditions, stated that the Vehicle was subject to being towed at the owner or operator's expense, and contained a phone number for the towing facility. We hold that this evidence was sufficient for the trial court to conclude that the warning sticker placed upon Kadow's vehicle complied with Section 2308.252(a)(2) and, thus, to support the finding that probable cause existed to tow the Vehicle on these grounds.

For these reasons, we overrule Kadow's second issue.

C. TRIAL-COURT BIAS ISSUE

Kadow also appears to raise an issue of judicial bias. The entirety of her argument on this issue exists in a single sentence:

> In this case, the trial judge's attitude, actions, and words throughout the entire proceeding showed a deep-seated antagonism for Appellant that violated her constitutional right to a fair trial, resulting in a judgment that neither this court nor the public generally could be confident was not improper. *See* [*In re L.S.*, No. 02-17-00132-CV, 2017 WL 4172584, at *16 (Tex. App.—Fort Worth Sept. 21, 2017, no pet.)] (finding trial judge's conduct during bench trial revealed a bias that resulted in the party's rights to due process and an impartial fact[-]finder and reversing).

Kadow waived this argument because she did not adequately brief it. She has not presented us with a standard of review, pointed to any evidence from the record, or engaged in substantive analysis to support her argument.[5] Instead, she makes only a brief, conclusory statement and cites generally to one legal precedent. *See* Tex. R. App. P. 38.1; *Holcombe v. Reeves Cnty. Appraisal Dist.*, 310 S.W. 3d 86, 91–92 (Tex. App.—El Paso 2010, no pet.).

However, even if Kadow had adequately raised the issue for our consideration, her argument would be unavailing because there is no evidence from this record that the trial court acted with bias against her. In her reply brief, Kadow argues that the trial court showed bias at the end of the trial when it told her "ma'am, this is not an

[5]In her appellate reply brief, Kadow asserts—without any reference to record evidence—that she had been involved in local politics and that the trial court judge was biased against her because she had previously spoken out about "refusing to support police officers who commit perjury and violate the constitution."

opportunity for you to talk. Okay? This is an opportunity for the Court to make its ruling."

Our review of the record, however, shows that the trial court conducted the proceedings with professionalism. These allegedly biased comments were made after both parties had rested, evidence was closed, and the trial court was orally rendering its decision. Accordingly, we read no bias into these comments. And Kadow's mere dissatisfaction with the trial court's judgment does not support a finding of bias. *See Zhao*, 2022 WL 11456754, at *8.

III. CONCLUSION

Having overruled all of Kadow's issues, we affirm the trial court's judgment. Tex. R. App. P. 43.2(a).

/s/ Brian Walker

Brian Walker
Justice

Delivered: December 22, 2022