



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-21-00171-CV

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**LORNE LEE CLARK, APPELLANT**

**V.**

**CHRISTOPHER CATRON, DAVID BOWERS,  
AND AUDRA LIGHTFOOT, APPELLEES**

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On Appeal from County Court  
Lamb County, Texas  
Trial Court No. CC-3363-B; Honorable James M. DeLoach, Presiding

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February 17, 2022

**MEMORANDUM OPINION**

**Before QUINN, C.J., and PIRTLE and PARKER, JJ.**

Appellant, Lorne Lee Clark, a resident of the Texas Civil Commitment Center (herein "TCCC") for sexually violent predators, located in Levelland, Lamb County, Texas, proceeding *pro se* and *in forma pauperis*, filed a small claims petition in the Justice Court, Precinct 3, of Lamb County, Texas, against TCCC, complaining of "confication [sic] &

engraving of personal property without due process.” Clark sought recovery of \$6,820 in damages and return of the personal property valued at \$650. At the same time, Clark filed *Plaintiff’s Original Petition to Bring a Small Claims Case Under Texas Rules of Civil Procedure Rules 500-507 & 523-591*, complaining of Appellees, Christopher Catron, David Bowers, and Audra Lightfoot, persons employed by Wellpath Recovery Solutions, a private contractor providing services to TCCC. The petition did not name TCCC as a defendant. On March 12, 2019, Catron, Bowers, and Lightfoot (hereafter TCCC representatives) filed a general denial and a plea to the jurisdiction, asserting sovereign immunity and other affirmative defenses. Without further pleadings appearing of record, on May 7, 2019, the Lamb County Justice of the Peace signed an *Order of Dismissal*, dismissing the suit for want of jurisdiction as to all defendants.

Clark responded by filing a motion to reinstate his complaint pursuant to Rule 505.3(a) of the Texas Rules of Civil Procedure on May 20, 2019. Rule 505.3(a) provides that a plaintiff whose case is dismissed may file a motion to reinstate no later than fourteen days after the dismissal order is signed. TEX. R. CIV. P. 505.3(a). Accordingly, Clark’s motion to reinstate was timely filed.

Clark’s motion to reinstate alleged the justice court had jurisdiction because the three named defendants were not entitled to immunity protection as they were private citizens employed by a private company. The motion to reinstate did not mention a cause of action against TCCC as a separate entity. A motion to reinstate a small claims lawsuit is overruled as a matter of law “at 5:00 p.m. on the 21st day after the day the judgment was signed.” TEX. R. CIV. P. 505.3(e). Accordingly, Clark’s motion to reinstate was overruled on May 28, 2019.

On June 4, 2019, the Justice of the Peace for Precinct 3 of Lamb County signed a *Certificate of Transcript* certifying that Clark intended to appeal the dismissal of his small claims petition to the County Court of Lamb County. Thereafter, the justice court filings were refiled with the Lamb County Court, in Cause Number CC-3363, on June 19, 2019. On October 18, 2019, the judge of the Lamb County Court signed an *Order of Dismissal* finding that it lacked subject matter jurisdiction in Cause Number CC-3363. The court's order dismissed Clark's suit "with prejudice." On November 14, 2019, Clark filed his *Notice of Appeal*. While Clark's notice of appeal stated that it was to the Texas Court of Appeals for the Ninth Supreme Judicial District of Texas at Beaumont; it, in fact, operated as an appeal to this court. On appeal, this court found that Clark's claims did fall within the jurisdictional limits of the Lamb County Court. Accordingly, the *Order of Dismissal* was reversed, and the cause was remanded for further proceedings. See *Clark v. Catron*, No. 07-19-00415-CV, 2021 Tex. App. LEXIS 2090, at \*7 (Tex. App.—Amarillo March 18, 2021, no pet.) (mem. op.).

On remand, on April 12, 2021, Clark filed his *Motion for Assisted Representation by Other Individual Who Is Not Being Compensated*. By this motion, Clark sought leave of the Lamb County Court to be represented by Gerald B. Wilson, a non-lawyer whom Clark described as "an established Pro Se litigant [who] is not being compensated . . . ." Clark's motion for assisted representation was denied on April 15, 2021. That same day, the Lamb County Court set this matter for a hearing on the merits at 10:00 a.m., on May 19, 2021.

On May 13, 2021, Amber R. Pickett appeared of record as secondary counsel for the TCCC representatives, substituting for Nicole Ordonez. Ms. Pickett immediately filed

*Defendant's Original Answer*, consisting of a general denial and other affirmative defenses, including immunity. The defendants' motion for continuance was granted and the May 19 hearing was rescheduled for a hearing on the merits for June 15, 2021. That hearing was later rescheduled for 10:00 a.m. on June 29, 2021.

Finally, on June 29, 2021, a hearing on the merits was held. At the conclusion of that hearing, the trial court found that Clark was not authorized to have possession of the property at issue, at TCCC, during the relevant time period. The trial court further found that the defendants were authorized to confiscate the property at issue and, therefore, did not wrongfully confiscate the property when they took possession of that property. Additionally, the trial court found Clark failed to prove any damages by way of any diminution of value resulting from the engraving of Clark's identification number on the property. As a result of these findings, the trial court entered a "take nothing" judgment on July 8, 2021. Clark filed a timely notice of appeal.

Clark presents five issues challenging the trial court's final judgment. By his first four issues, Clark alleges "intentional abuse of power" by the TCCC representatives for the confiscation of his personal property, for the lengthy period of time his property was held without notice or procedural due process, and for the damages his property sustained while in their possession when it was defaced. By a reply brief, he reiterates his position that his complaint is not the act of confiscation itself but rather, the violation of his personal rights, without due process of law, by the length of the confiscation, and the damage to his property resulting from the engraving of the property with his personal identification number without his consent. By his fifth issue in his original brief, he

contends the Lamb County Court abused its power by “inferring” it lacked jurisdiction over his suit. We affirm.

## **BACKGROUND**

The Sexually Violent Predators Act establishes a civil commitment procedure for long term supervision and treatment of sexually violent predators.<sup>1</sup> To effectuate supervision and treatment under the Act, the Legislature created the Texas Civil Commitment Office (TCCO).<sup>2</sup> TCCO developed a five-tier program to determine the level of restrictions imposed on a resident with tier one being the most restrictive and tier five being the least restrictive.<sup>3</sup> The program is intended to provide a seamless transition from total confinement to less restrictive housing and supervision and eventual release from civil commitment based on the committed individual’s behavior and progress in treatment.<sup>4</sup>

According to Clark, at the time his property was confiscated, he was a tier three resident and at that level, was entitled to have certain electronics. He enjoyed the privilege of access to an X-Box 360 Game Console, a television, and an MP4 Digital Player. When contraband in the form of pornography was discovered on certain electronic items in tier three housing, TCCC withdrew approval of electronics and confiscated them from all tier three residents. Clark argued he was not involved with

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<sup>1</sup> TEX. HEALTH & SAFETY CODE ANN. § 841.001; *Matzen v. McLane*, No. 20-0523, 2021 Tex. LEXIS 1192, at \*2 (Tex. Dec. 17, 2021).

<sup>2</sup> TEX. HEALTH & SAFETY CODE ANN. § 841.007.

<sup>3</sup> See TEX. HEALTH & SAFETY CODE ANN. § 841.0831; TEX. ADMIN. CODE ANN. § 810.153 (authorizing TCCO to develop a tiered program for supervision and treatment of committed individuals). See also *In re Bluit*, 605 S.W.3d 199, 201 (Tex. 2020).

<sup>4</sup> TEX. HEALTH & SAFETY CODE ANN. § 841.0834.

pornography and explained that his confiscated electronics did not have the capability to store pornography.

According to Clark's pleading, his property was seized on October 23, 2018, and was not returned until January 19, 2019. When the items were returned, he noticed they had been engraved with his identification number, which he did not approve. He then filed his small claims petition for conversion in the Justice Court of Precinct 3 of Lamb County, Texas, seeking \$6,820 in damages (his estimate for loss of use of the property). He also sought a declaration that the TCCC representatives' conduct violated his rights under certain policies and under the Texas Government Code and Texas Property Code. Clark claimed he had no notice or due process of law concerning the seizure of his property and also claimed the engraving of the items damaged them.

After the first appeal and remand, a brief hearing was held on Clark's claims. The TCCC representatives argued that pursuant to TCCC policies, searches for contraband are conducted periodically and Clark's property was lawfully confiscated. Clark conceded that "[t]hey can take our stuff whenever they want; I understand that. My biggest problem was the length that they kept it." He associated the delay in the return of his property as punishment for conduct by another resident.

At the conclusion of that hearing, the trial court found that Clark's property was lawfully seized and that no harm arose from the delay in returning that property. The trial court entered a final judgment in favor of the TCCC representatives, ordering that Clark "take nothing." The judgment recites that Clark was "not authorized to have the property at issue at the time period relevant to this suit and that [the TCCC representatives] were

authorized to confiscate the property . . . .” The judgment further recites that Clark did not present any evidence of damages from the items being engraved. Finally, the judgment resolves Clark’s claims with prejudice.

**ISSUES ONE, TWO, THREE, AND FOUR—ABUSE OF POWER BY THE THREE REPRESENTATIVES**

By his first four issues in his original brief and by two issues in his reply brief, Clark contends the TCCC representatives “abused their power” in confiscating his personal property for a lengthy period without notice or due process and in damaging the property by engraving it for identification purposes.<sup>5</sup> Essentially, Clark presents a due process violation. We disagree.

A deprivation of a plaintiff’s property does not result in a procedural due process violation if the State provides an adequate post-deprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984) (holding that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of due process if a meaningful post-deprivation remedy for the loss is available). *See also Alexander v. Ieyoub*, 62 F.3d 709, 712 (5th Cir. 1995); *Jones v. Copeland*, No. 07-11-00437-CV, 2012 Tex. App. LEXIS 6889, at \*10-11 (Tex. App.—

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<sup>5</sup> In his reply brief, Clark presents an argument not raised in his original brief but in response to the representatives’ brief addressing the *Notice of Submission of Evidence for Use at Hearing with Attached Documentation* filed less than twenty-four hours before the hearing. Clark asserts he did not receive the notice until after the hearing. He contends the documents “are fundamentally meritless” and “have no true value to this Case.” We need not address his contention on the ground that the documentation does not appear in the clerk’s record. The documents are only included in the appendix to the *Appellees’ Brief*. This court does not consider documents or exhibits included in an appendix to an appellate brief that do not appear in the trial court record. *See Pence v. S&D Builders, LLC*, No. 07-21-00080-CV, 2021 Tex. App. LEXIS 9916, at \*2 n.2 (Tex. App.—Amarillo Dec. 15, 2021, no pet. h.) (mem. op.).

Amarillo Aug. 16, 2012, no pet.) (mem. op.). A claim of conversion provides an adequate post-deprivation remedy. *Thompson v. Steele*, 709 F.2d 381, 383 (5th Cir. 1982).

To establish a conversion claim, a plaintiff must prove (1) he owned or had legal possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return the property. *J.P. Morgan Chase Bank, N.A. v. Tex. Contract Carpet, Inc.*, 302 S.W.3d 515, 536 (Tex. App.—Austin 2009, no pet.). A successful conversion claim requires the return of the plaintiff's property and damages for its loss of use during its detention or the value of the property. *Wiese v. Pro Am Services, Inc.*, 317 S.W.3d 857, 862 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

As argued by the TCCC representatives, TCCC policies permit periodic inspections and searches for contraband. Because Clark's property was classified as contraband within the facility at the time seized, an issue Clark acknowledged at the hearing and also in this court, it was subject to lawful seizure. Accordingly, Clark did not and could not establish the second element of a conversion claim—unlawful seizure.

Regarding his claim of failure to timely return his property, Clark did not satisfy his burden of presenting evidence to support that claim either. While the record shows a delay in returning the property (October 23, 2018 until January 19, 2019—88 days), such a delay does not rise to the level of a due process violation. Clark also failed to provide any evidence of damages for the loss of use of his property. Furthermore, he did not



show how the act of engraving it with his identification number damaged the property. Based on the record, we conclude that Clark has not shown that the TCCC representatives violated his due process rights or that his property was subjected to conversion. As such, we find the trial court did not abuse its discretion in ordering that Clark take nothing or that his claim be dismissed with prejudice. Issues one, two, three, and four are overruled.

#### **ISSUE FIVE—ABUSE OF POWER BY THE TRIAL COURT**

By his final issue, Clark maintains the trial court abused its power by inferring that it had no jurisdiction when it stated on the record as follows:

you are in a treatment facility that I do not have any control over, I do not have any—there’s not anybody in this county that has any control over that and I, I think that is, you know, something that is not . . . a purview of this Court or any court in this county.

The trial court then ruled in favor of the TCCC representatives. Clark acknowledged that he is in a treatment facility but commented, “I still think I have rights.” The trial court agreed but responded that “ownership and the possession of equipment is the policy of the Civil Commitment Office and the company that runs the facility . . . .”

While the trial judge’s choice of words might be read to reflect a limitation in his grasp of the procedural authority of his court to take certain action, it certainly does not reflect that the trial court “inferred” it had no jurisdiction. A trial court’s jurisdiction is defined as “the power to decide a case or issue a decree.” *Jurisdiction*, BLACK’S LAW DICTIONARY (11th ed. 2019). In the underlying case, the trial court held a hearing on Clark’s claims, claims it recognized it had the authority to adjudicate, and ultimately entered a judgment in favor of the TCCC representatives. As such, the trial court’s

comments do not indicate it was questioning its jurisdiction over Clark's claims. Issue five is overruled.

**CONCLUSION**

The trial court's judgment is affirmed.

Patrick A. Pirtle  
Justice