NUMBER 13-15-00480-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CHARLES LINDER FLOYD, **Appellant,**

v.

WHARTON COUNTY, TEXAS, **Appellee.**

On appeal from the 329th District Court
of Wharton County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Justice Rodriguez

Appellant Charles Linder Floyd, pro se, appeals from a default judgment entered in favor of appellee Wharton County, Texas, in a suit for delinquent taxes and for foreclosure

of a tax lien on a piece of real property located in Wharton County, Texas.[1] *See* TEX. TAX CODE ANN. §§ 33.41–.53 (West, Westlaw through 2015 R.S.). By two issues, Floyd brings personal-jurisdiction due process claims, contending that the judgment was void because "the [t]rial [c]ourt never acquired jurisdiction over all persons needed for a valid, binding, and enforceable adjudication." We affirm.

I. SUBJECT-MATTER JURISDICTION

On November 8, 2016, we abated the appeal and requested supplemental briefing from the parties regarding this Court's jurisdiction to consider this appeal and the trial court's jurisdiction to vacate a March 11, 2013 judgment more than one year later on July 21, 2014, to reinstate Wharton County's cause of action, and to issue a new judgment on August 17, 2015, the determination of which affects our jurisdiction. After receiving the requested supplemental briefs, we reinstated the appeal. Before addressing Floyd's personal-jurisdiction issues, we address the matter of subject-matter jurisdiction.[2]

A. This Court's Subject-Matter Jurisdiction

1. Standard of Review and Applicable Law

Subject-matter jurisdiction is essential to a court's power to decide a case. *Bland*

[1] Wharton County, Texas, filed suit seeking to collect delinquent taxes owed to itself and the jurisdictions for which it collected taxes, including Wharton Independent School District, Coastal Bend Groundwater District, Wharton County Emergency Services District #1, Emergency Services District #3 and Wharton County Junior College District. Defendants in this case include Rosa Lee Richardson, Deceased; Odee Richardson, Deceased; Serlander Richardson Johnson a/k/a Salina Richardson Johnson, Deceased; Doris Richardson Cushingberry, Deceased; Charles Linder Floyd; Bettie Joe Richardson Griffin a/k/a Beeie Richardson Griffin; and Wilma Jean Richardson Norman a/k/a Wilma Richardson Norman. Only Floyd appealed from the trial court's judgment.

[2] Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* TEX. R. APP. P. 47.4.

Ind. Sch. Dist. v. Blue, 34 S.W.3d 547, 553–54 (Tex. 2000) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993)). We treat challenges to a court's subject-matter jurisdiction as questions of law that we review de novo. *See State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007).

A timely notice of appeal must be filed in order to invoke this Court's jurisdiction. *See* TEX. R. APP. P. 25.1(b). "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." *Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997).

A notice of appeal must be filed within thirty days after the judgment is signed. TEX. R. APP. P. 26.1. "The appellate court may extend the time to file the notice of appeal if, within 15 days after the deadline for filing the notice of appeal, the party: (a) files in the trial court the notice of appeal; and (b) files in the appellate court a motion complying with Rule 10.5(b)." *Id.* R. 26.3; *see also id.* R. 10.5(b) (governing contents of motions to extend time). If an appellant files a notice of appeal within fifteen days after the date it was due but does not file a motion to extend time, as in this case, we generally consider the appeal perfected because the filing of the notice of appeal within the fifteen-day window for extension "implies" a motion requesting an extension. *See Verburgt,* 959 S.W.2d at 616–17; *see also In re J.Z.P.*, 484 S.W.3d 924, 925 (Tex. 2016) (per curiam) ("Filed two days after the deadline, [appellant's] notice of appeal implied a motion for an extension of time."); *Hone v. Hanafin*, 104 S.W.3d 884, 887 (Tex. 2003) (per curiam) (applying *Verburgt*). But the appellant must still provide a reasonable explanation for the late filing. *See* TEX. R. APP. P. 10.5(b)(1)(C); *see also id.* R. 26.3; *In re K.M.Z.*, 178

S.W.3d 432, 434 (Tex. App.—Fort Worth 2005, no pet.) (dismissing the appeal for lack of jurisdiction because the appellant did not provide a reasonable explanation for the late filing of her notice of appeal).

2. Discussion

Wharton County argues that this Court does not have jurisdiction over this appeal because Floyd filed his notice of appeal after the filing deadline and did not file a timely motion for extension of time to file his notice of appeal. Floyd asserts that we have jurisdiction because he filed his notice of appeal timely within fifteen days from the initial thirty days of time to file the notice of appeal and that, having done so, we must imply a motion for extension of time to file his notice of appeal. We agree with Floyd and further note that on November 2, 2015, Floyd filed a motion for leave to file his notice of appeal and by order and corresponding notice, we granted it.

Floyd's notice of appeal was due on September 16, 2015, thirty days after the trial court entered a final judgment. *See* TEX. R. APP. P. 25.1. With the extension window, it was due on October 1, 2015. We received Floyd's notice of appeal, without a motion to extend, on October 5, 2015.[3] On November 2, 2015, Floyd filed his amended notice of appeal and his motion to extend time to file his notice advising this Court that he had mailed the notice on September 30, 2015, within fifteen days after the date it was due. In his motion to extend, Floyd advised the Court of "serious medical difficulties" that "hampered [his] ability to comply sooner with the relevant deadlines." We granted

[3] On October 5, 2015, the same day we received Floyd's notice of appeal, this Court advised Floyd that his notice was defective, having been filed late, and that he had thirty days to correct the defect. We received and filed Floyd's response on October 20, 2015. In his response, Floyd repeated portions of his motion, including the section regarding his reasonable explanation for the requested extension of time.

Floyd's motion on November 20, 2015.

It is undisputed that Floyd's notice was mailed on September 30, 2015, and we received it on October 5, 2015. When a notice of appeal is mailed, that pleading "is considered timely filed" if it: (1) is received within ten days after the filing deadline; (2) was sent to the proper clerk by United States mail in a properly addressed and stamped envelope or wrapper; and (3) was deposited in the mail on or before the filing deadline. TEX. R. APP. P. 9.2(b)(1); *In re Smith*, 270 S.W.3d 783, 786 (Tex. App.—Waco 2008) (orig. proceeding). Floyd mailed his notice of appeal after the thirty-day deadline but within the fifteen-day extension deadline, and we received his notice within ten days after the filing deadline. The notice was deemed timely filed, and a motion requesting an extension was implied. *See* TEX. R. APP. P. 9.2(b)(1); *Verburgt*, 959 S.W.2d at 616–17; *see also In re J.Z.P.*, 484 S.W.3d at 925.

Because a motion to extend was implied, Floyd was required to articulate a reasonable explanation for the late filing. *See Verburgt*, 959 S.W.2d at 616–17; *see also In re J.Z.P.*, 484 S.W.3d at 925. Floyd subsequently filed a motion for extension of time to file his notice of appeal, providing such an explanation. In his motion, Floyd discussed the mailing of his notice on September 20, 2015, and his serious medical difficulties, including hypertension, that hampered his compliance with deadlines. *See* TEX. R. APP. P. 10.5(b)(1)(C).

Based on the foregoing, which we have reviewed de novo, *see Holland*, 221 S.W.3d at 642, Floyd filed his notice of appeal timely. *See* TEX. R. APP. P. 26.1, .3; *see also id.* R. 10.5(b). We conclude that we have jurisdiction of this appeal. *See* TEX. R.

APP. P. 25.1(b).

B. The Trial Court's Subject-Matter Jurisdiction

Wharton County contends that the trial court had jurisdiction under section 33.56 of the Texas Tax Code to vacate the March 11, 2013 judgment. *See* TEX. TAX CODE ANN. § 33.56. In response, Floyd argues it did not. He suggests that while section 33.56 allows for the vacation of a judgment in certain instances, we should treat it as a statutory or an equitable bill of review and conclude that Wharton County's motion to vacate was insufficient because section 33.56 requires that a "petition" be filed and not a "mere motion."

1. Applicable Law

"[S]ubject-matter jurisdiction traditionally consists of a power, conferred by constitutional or statutory authority, to decide the type of claim alleged in the plaintiff's petition and to award an authorized form of relief." *Save Our Springs Alliance, Inc. v. City of Kyle*, 382 S.W.3d 540, 544 (Tex. App.—Austin 2012, no pet.). Apart from general grants of adjudicative power, a statute may grant the district court special statutory jurisdiction to hear, determine, and award relief in specific types of cases that are themselves authorized by statute. *Sierra Club v. Tex. Natural Res. Conservation Comm'n*, 26 S.W.3d 684, 688 (Tex. App.—Austin 2000), *aff'd*, 70 S.W.3d 809 (Tex. 2002).

Texas Tax Code section 33.56, titled "Vacation of Judgment," provides, in relevant part, the following:

> (a) If, in a suit to collect a delinquent tax, a court renders a judgment for foreclosure of a tax lien on behalf of a taxing unit, any taxing unit that

> was a party to the judgment may file a petition to vacate the judgment on one or more of the following grounds:
>
> (1) failure to join a person needed for just adjudication under the Texas Rules of Civil Procedure . . . .

TEX. TAX CODE ANN. § 33.56(a)(1) (West, Westlaw through 2015 R.S.). Section 33.56(b) adds that "[t]he taxing unit must file the petition under the same cause number as the delinquent tax suit and in the same court." *Id.* § 33.56(b). And, importantly, section 33.56 places no time limit on seeking an order vacating the judgment.

Texas Rule of Civil Procedure 71, entitled "Misnomer of Pleading," provides the following: "When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated." TEX. R. CIV. P. 71. Under rule 71, we look to the substance of a document rather than the title to determine the relief sought, if any. *Stroman v. Tautenhahn*, 465 S.W.3d 715, 719 (Tex. App.—Houston [14th Dist.] 2015, review dism'd w.o.j.) (reviewing an attorney's affidavit and concluding that it was not a motion for attorney's fees) (citing *Surgitek, Bristol–Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999)).

2. Discussion

We disagree with Floyd's threshold premise—that Wharton County's motion is insufficient. On July 10, 2014, Wharton County filed its motion to vacate the March 11, 2013 judgment in Wharton County district court and in cause number 8992, the same cause number in which the district judge entered the March 11 Judgment. *See id.* Wharton County's motion requested the vacation of the judgment and reinstatement of the cause on the following ground:

> The judgment heretofore entered by this court herein directed foreclosure of the tax liens against certain property. It has since come to [Wharton County's] attention that particular defendants were erroneously omitted from this cause of action. Therefore, [Wharton County] respectfully requests this court to vacate the prior judgment and reinstate said cause.

This ground for vacation of a judgment is proper under the tax code. *See id.* § 33.56(a)(1). Wharton County also satisfied the requirement of section 33.56(e) when it sent a copy of the motion, via certified mail, to each party to the delinquent tax suit, including Floyd.[4] *See id.* § 33.56(e) ("A copy of the petition must be served in a manner authorized by Rule 21a, Texas Rules of Civil Procedure, on each party to the delinquent tax suit.").

Section 35.56 does set out that the taxing unit may file a "petition," and Wharton County did file a document titled "Motion to Vacate Judgment and Reinstate Cause of Action." But the substance of Wharton County's motion satisfied all of the statutory requirements for such a "petition." Looking at the substance of the document, *see Stroman*, 465 S.W.3d at 719, we determine that although titled as a motion, it was in effect a petition to vacate the March 2013 Judgment for its failure to join a person or persons needed for just adjudication under the rules of procedure. We treat the document as if it had been properly designated. *See* TEX. R. CIV. P. 71.

In support of his argument, Floyd relies on the following excerpt from *Brown v. Peters*:

> Pleadings are the allegations made by the parties to a civil or criminal case, for the purpose of presenting the issue to be tried and determined, whether

[4] Based on our review of the record, Wharton County mailed the motion to Floyd and one other defendant via certified mail. The remaining defendants received the motion through their attorney ad litem.

> such issue be of law or of fact. Pleadings relate to the cause of action, either to support or defeat it, being comprised in the record of the case, as distinguished [sic] from papers not pleadings, such as motions, mere statements not entitled to filing, or affidavits.

127 Tex. 300, 94 S.W.2d 129, 131 (Tex. 1936). Floyd's reliance on *Brown* and its definition of "pleadings" is misplaced. Section 33.56 does not require "pleadings." *See* TEX. TAX CODE ANN. § 33.56(a). Instead, the statute provides that a taxing unit may file a "petition" to vacate a judgment pursuant to section 33.56(a). *See id.* And Black's Law Dictionary defines "petition" as "[a] formal written request presented to a court or other official body," such as a bankruptcy petition, a certiorari petition, a juvenile petition, a petition for probate, and, in some states, the first pleading in a lawsuit, which would include, in Texas, a bill of review. *Petition*, BLACK'S LAW DICTIONARY (10th ed., 2014) (available on Westlaw). Wharton County's motion is, in substance, a petition—a request presented to the district court to vacate a judgment.

In sum, having satisfied all requirements of the statute, we conclude that Wharton County petitioned the district court for relief that the court had special statutory subject-matter jurisdiction to hear, determine, and grant. *See Save Our Springs Alliance*, 382 S.W.3d at 544; *Sierra Club*, 26 S.W.3d at 688. Floyd provides no authority, and we find none, that persuades us otherwise.[5]

II. PERSONAL JURISDICTION

By his first issue, Floyd contends that "[b]ecause the [j]udgment is not severable, and [p]laintiffs never served the authorized representatives of the [d]eceased

[5] Because our determination of this matter is dispositive of this issue, we need not address Floyd's general bill-of-review contentions. *See* TEX. R. APP. P. 47.1.

[d]efendants, alternatively or additionally that said authorized representatives never voluntarily appeared, the [t]rial [c]ourt never acquired jurisdiction over all persons needed for a valid, binding, and enforceable adjudication." By his second and final issue, Floyd asserts that he did not receive personal service within the State's jurisdiction, which rendered the judgment void.

A. Standard of Review and Applicable Law

Whether a trial court has personal jurisdiction over a defendant is a question of law reviewed de novo by this Court. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). "A court must possess both subject matter jurisdiction over a case and personal jurisdiction over a party to issue a binding judgment. While subject matter jurisdiction refers to the court's power to hear a particular type of suit, personal jurisdiction concerns the court's power to bind a particular person or party." *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). A court cannot enter judgment against a party who has not been properly served. *See Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990). However, personal jurisdiction can be voluntarily waived by appearance. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

B. Personal Jurisdiction Over the Deceased Defendants

While Floyd asserts a lack of service on all deceased defendants that creates a fundamental jurisdictional defect, our review of the record reveals that Wharton County accomplished service. It served all defendants identified as deceased by posting a citation, accompanied by a compliant affidavit as its basis, at the Wharton County Courthouse in Wharton, Texas. *See* TEX. R. CIV. P. 117a(3) (providing for citation in suits

for delinquent ad valorem taxes); *Hellman v. Huebner*, 234 S.W.2d 117, 119 (Tex. Civ. App.—Galveston 1950, writ ref'd n.r.e.). The return on citation by posting in this delinquent tax suit showed that service had been completed by publication on June 3, 2015. Reviewing this issue, de novo, *see Moki Mac River Expeditions*, 221 S.W.3d at 574, we conclude that by such service, the trial court acquired jurisdiction over these defendants. We overrule Floyd's first issue.

C. Personal Jurisdiction Over Floyd

Floyd filed his answer on February 26, 2015, after the case was reinstated and after Wharton County filed and served its first amended petition on Floyd. Filing an answer constitutes a general appearance. TEX. R. CIV. P. R. 121 ("An answer shall constitute an appearance of the defendant so as to suspense with the necessity for the issuance of service of citation upon him."); *id.* R. 124 ("In no case shall judgment be rendered against any defendant unless upon service, acceptance or waiver of process, or *upon an appearance by the defendant*." (emphasis added)). Floyd's February 26 answer in this lawsuit dispensed with the need for the issuance and service of citation and waived any complaints he had about service. *See* TEX. R. CIV. P. 121,124; *In re $475,001.16*, 96 S.W.3d 625, 628–29 (Tex. App.—Houston [1st Dist.] 2002, no pet.). By our de novo review, *see Moki Mac River Expeditions*, 221 S.W.3d at 574, because Floyd appeared in this lawsuit when he filed his answer, Floyd voluntarily waved his personal-jurisdiction complaint. *See World-Wide Volkswagen Corp.*, 444 U.S. at 292. We overrule Floyd's second issue.

III. CONCLUSION

We affirm the judgment of the trial court.

NELDA V. RODRIGUEZ
Justice

Delivered and filed the
18th day of May, 2017.