

Affirmed and Memorandum Opinion filed July 21, 2011.



In The

Fourteenth Court of Appeals

NO. 14-09-00596-CV

LAWRENCE EDWARD THOMPSON, Appellant

V.

ALDINE INDEPENDENT SCHOOL DISTRICT, HARRIS COUNTY, HARRIS COUNTY DEPARTMENT OF EDUCATION, PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, HARRIS COUNTY FLOOD CONTROL DISTRICT, THE HARRIS COUNTY HOSPITAL DISTRICT, LONE STAR COLLEGE SYSTEM DISTRICT, AND CITY OF HOUSTON, Appellees

**On Appeal from the 152nd District Court
Harris County, Texas
Trial Court Cause No. 2003-05510**

M E M O R A N D U M O P I N I O N

Appellant, Lawrence Edward Thompson, appeals a judgment ordering foreclosure of liens for delinquent ad valorem taxes owed to appellees, Aldine Independent School District, Harris County, Harris County Department of Education, Port of Houston Authority of Harris County, Harris County Flood Control District, The Harris County Hospital District, Lone Star College System District, and City of Houston. In three

issues, Thompson contends (1) the trial court erred by rendering judgment without ruling on Thompson's motion for a bench warrant to secure his presence at trial, (2) appellees failed to prove the taxes were delinquent and that they provided Thompson notice of delinquency, and (3) the court erred by rejecting Thompson's affidavit regarding his inability to pay appellate costs. We affirm.

BACKGROUND

Aldine Independent School District ("the school district") filed this suit to collect delinquent taxes on a vacant tract of land in Humble, Texas. The school district originally named as defendants the unknown heirs of Will Wilson and Tennie Wilson, who had allegedly owned the property. The school district later amended its petition to name as defendants the unknown heirs of Will Wilson and Willie Elma Williams, who was allegedly the sole devisee of the deceased Tennie Wilson. The school district subsequently amended its petition numerous times to add various identified heirs, including Thompson, who appeared by filing an answer. The trial court appointed an attorney ad litem to represent both unknown heirs and several identified heirs who had not been located. The other appellees eventually intervened to collect delinquent taxes they had assessed on the property.

On January 23, 2009, a tax master conducted a hearing and signed a report, setting forth the delinquent taxes, penalties, and interest due appellees for the applicable tax years, plus attorneys' fees and some miscellaneous collection costs. On February 25, 2009, the trial court adopted the report and signed a judgment awarding appellees the amounts found by the master and ordering foreclosure of their tax liens and sale of the property to satisfy the judgment. In the judgment, the court expressed that no monetary relief was awarded against certain defendants, including Thompson, and the judgment was solely "in rem" relative to these defendants. Thompson filed a motion to vacate the judgment, which the trial court denied on the master's recommendation.

REQUEST FOR BENCH WARRANT

Thompson asserts that he was incarcerated in the Texas Department of Criminal Justice at the time of the hearing. He filed a “Request For Bench Warrant or In the Alternative, Hearing By Teleconference” to secure his participation at the hearing. The record does not include an explicit ruling on the request. In his first issue, Thompson contends the trial court erred by failing to rule on the request.

In his request, Thompson referenced a trial set for December 19, 2008, whereas the hearing actually occurred on January 23, 2009. The record does not include any request relative to the January 23, 2009 hearing. Nonetheless, to the extent Thompson’s request may be construed as applicable to any trial setting, the court implicitly denied it by allowing the hearing to proceed without issuing the bench warrant or securing appellant’s participation by teleconference. *See In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003) (holding that court’s proceeding to trial without explicitly ruling on incarcerated defendant’s request for bench warrant constituted implicit denial of request).

Thompson’s appellate contention is confined solely to complaining that the trial court did not rule on his request. He does not advance any argument regarding the merits of the request or contend that the trial court’s implicit ruling was erroneous. Accordingly, we overrule his first issue.

PROOF OF DELINQUENT TAXES AND NOTICE

In his second issue, Thompson suggests appellees did not prove (1) taxes were delinquent and (2) they provided notice of delinquency to Thompson.

Thompson’s entire argument in support of this issue is less than one page of his brief. His first complaint regarding proof that taxes were delinquent consists solely of the following assertion with no supporting argument or authority: “the trial court erred in entering judgment in the appellee’s favor without a showing that the taxes were delinquent. . . .” Nonetheless, we construe this assertion as a challenge to legal

sufficiency of the evidence supporting the master’s finding, subsequently adopted by the trial court, that certain taxes were delinquent.

When examining a legal-sufficiency challenge, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could not. *Id.* at 827. The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the verdict under review. *Id.*

Appellees proved taxes were delinquent using the method prescribed under Texas Tax Code section 33.47(a):

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 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) (West 2008).

The school district submitted an affidavit of its Tax Assessor-Collector who authenticated an attached delinquent tax statement. The other appellees collectively submitted a “Certified Delinquent Tax Statement Detail” from the Harris County Tax Assessor-Collector. The amounts of delinquent taxes shown on these documents for the applicable years were consistent with the amounts of delinquent taxes found by the master. Accordingly, the evidence is legally sufficient to support the master’s finding that certain taxes were delinquent.

With respect to his contention regarding lack of notice, Thompson cites Tax Code section 33.04, which provides that, subject to certain exceptions, “[a]t least once each year the collector for a taxing unit shall deliver a notice of delinquency to each person whose name appears on the current delinquent tax roll.” Tex. Tax Code Ann. § 33.04

(West 2008). We note that Thompson also mentions a requirement that the taxing authority give “a separate [sic] notice every five years.” He apparently references a former version of section 33.04 which required the tax collector “in each year divisible by five” to also deliver written notice of delinquency to each person whose name and mailing address were listed on the most recent certified appraisal roll, if the taxes had been delinquent more than one year. *See* Act of Mat 30, 1999, 76th Leg., R.S., ch. 1481 § 16, 1999 Tex. Gen. Laws 5097, 5101 (amended 2001) (current version at Tex. Tax Code Ann. § 33.04). A person who did not receive this notice could avoid payment of penalties and interest on delinquent taxes. *See id.* However, the Legislature amended section § 33.04, effective September 1, 2001, to delete the five-year-notice requirement. *See* Tex. Tax Code Ann. § 33.04. The current statute applies to all taxes, even those that became delinquent before its effective date, except taxes subject to a collection suit filed before the effective date, which remain subject to the former statute. *See id.* Because appellees filed this suit after September 1, 2001, the current version of section 33.04 applies.

Thus, appellees were required to deliver only a yearly notice of delinquency “to each person whose name appears on the current delinquent tax roll.” *See id.* The evidence reflects that “Tennie Wilson” was the name on appellees’ delinquent tax rolls. There is no evidence that Thompson’s name was on the delinquent tax rolls for any applicable years. In fact, while Thompson generally states that appellees failed to prove he “had notice,” he does not claim his name was on the delinquent tax rolls. Accordingly, appellees were not required to deliver notice to Thompson under section 33.04. We overrule his second issue.

AFFIDAVIT REGARDING INABILITY TO PAY APPELLATE COSTS

In his third issue, Thompson contends the trial court erred by “denying” his “Affidavit of Inability to Pay Costs on Appeal.” Thompson filed several affidavits in the trial court attempting to establish his inability to pay costs. Before the appellate record was filed, Thompson filed a similar affidavit in our court. We abated this appeal to give

Thompson an opportunity to amend the affidavit to comply with the applicable Texas Rule of Appellate Procedure. Thompson then filed an amended “Affidavit of Indigence” in the trial court. The district clerk filed a contest to the affidavit. The record reflects that the trial court originally sustained the district clerk’s contest, stating that Thompson had failed to file an amended affidavit. However, the trial court later signed a “Judgment and Order Denying Contest to Pauper’s Oath,” ruling,

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED, that the Contest to the Affidavit of Affiant [Thompson] to proceed in this matter without prepayment of the costs of appeal or any part thereof, or to give security therefore is DENIED.

IT IS FURTHER ORDERED that the District Clerk shall proceed and process all further actions or settings on this case without [Thompson] paying any costs, or giving security therefore of this appeal.

Our file indeed shows Thompson is classified as indigent, and the record was filed after the court signed the above-cited order. Accordingly, Thompson’s third issue is moot.

We affirm the trial court’s judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Anderson, Seymore, and McCally.