Dismissed in Part, and Affirmed in Part, and Opinion filed March 30, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00614-CV

HANDY SPOT, Appellant

V.

RICHARD B. WILLIAMSON, Appellee

On Appeal from the County Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 713,033

O P I N I O N

This is a forcible detainer case. Handy Spot (Appellant) appeals from the judgment of the county court at law, which granted possession of the commercial property at issue to Richard B. Williamson (Appellee). Appellant contends that the trial court erred (1) in entering the judgment because the "sworn complaints for eviction was never notarized," (2) in awarding damages, (3) in awarding attorney's fees, and (4) because "the rent for the month of May, 1999 was paid in advance." We dismiss, in part, for want of jurisdiction, and affirm, in part.

In a forcible detainer action, the issue of possession is not appealable if the premises are used for commercial purposes: "A final judgment of a county court in a forcible entry and detainer suit or a forcible detainer suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only." *See* TEX. PROP. CODE ANN. § 24.007 (Vernon Supp. 2000); *Carlson's Hill Country Beverage v. Westinghouse Road Joint Venture*, 957 S.W.2d 951, 952-53 (Tex. App.–Austin 1997, no pet.). Appellant does not dispute that the premises in question were leased for commercial purposes; therefore, it may not appeal any finding essential to the issue of possession. *See id.*; *Academy Corp. v. Sunwest N.O.P., Inc.*, 853 S.W.2d 833, 834 (Tex. App.–Houston [14th Dist.] 1993, writ denied).

In its first point of error, Appellant contends that the trial court erred in "accepting" the complaint for eviction because it was not notarized. To the extent Appellant's first point relates to the adequacy of notice provided in the complaint, it is not reviewable by this Court for want of jurisdiction. *See Carlson's Hill Country Beverage*, 957 S.W.2d at 953 (a finding on a threshold issue such as the adequacy of notice before termination cannot be appealed if such a finding is merely an element of the issue of possession). On the other hand, to the extent we have jurisdiction to review Appellant's first point, we find that the record clearly refutes Appellant's contention. The record shows that the complaint was sworn. Point of error one is overruled.

In its second point of error, Appellant contends that the trial court erred in awarding monetary damages because of a breach of contract by Appellee. Because Appellant's second point of error relates to a breach of contract, we are without jurisdiction to review it. A "breach of the lease is merely an element of possession and may not be appealed." *See id.* Point of error two is dismissed for want of jurisdiction.

In its third point of error, Appellant contends that the trial court erred in awarding attorney fees because Appellee failed to provide proper notice of eviction. Appellant also contends in its third point that the amount of attorney fees awarded by the trial court was excessive.

First, we have not been provided with a reporter's record in this case.[1] Consequently, Appellant is unable to sustain its burden to show that the trial court's award of attorney's fees was excessive or otherwise erroneous. *See Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991). Appellant's third point of error, as it relates to the sufficiency of the evidence to support the award of attorney's fees, is overruled.

Second, whether Appellant received proper notice of eviction "is a threshold determination on the issue of possession." *See Powell v. Mel Powers Inv. Builder*, 590 S.W.2d 837, 839 (Tex. Civ. App.–Houston [14th Dist.] 1979, no writ); *see also Carlson's Hill Country Beverage*, 957 S.W.2d at 953; *Academy Corp.*, 853 S.W.2d at 834. For that reason, we are without jurisdiction to consider Appellant's third point of error relating to proper notice.

In its fourth point of error, Appellant contends that the trial court erred in not giving it an offset or credit on the award of damages for the rent Appellant paid to Appellee for the month of May 1999. Appellant provides no citations to the record to support its contention. *See* TEX. R. APP. P. 38.1(h); *see also Schafer*, 813 S.W.2d at 155. Point of error four is overruled.

On Appellant's points of error relating to the possession of the commercial property at issue, Appellee's motion to dismiss and first cross-point, contending, respectively, that we should dismiss this appeal for want of jurisdiction are granted. Appellant's second cross-point, seeking sanctions and attorney fees against Appellant for filing a frivolous appeal is overruled. *See Chapman v. Hootman*, 999 S.W.2d 118, 124 (Tex. App.–Houston [14th Dist.] 1999, no pet. h.) (imposing sanctions for filing a frivolous appeal is within our discretion, which we exercise with prudence and caution, but we will do so only in circumstances that are truly egregious). Likewise, Appellant's request for sanctions against Appellee in its reply brief is overruled. In all other respects, the trial court's judgment is affirmed.

---

[1] We note that we have been provided with the clerk's record in this case, consisting of one volume. *See* TEX. R. APP. P. 34.5. However, we have not been provided with a reporter's record. *See* TEX. R. APP. P. 34.6.

PER CURIAM

Judgment rendered and Opinion filed March 30, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

Do Not Publish — TEX. R. APP. P. 47.3(b).