

Reversed and Rendered and Opinion filed November 15, 2001

**In The
Fourteenth Court of Appeals**

NO. 14-00-01328-CV

TEXAS DEPARTMENT OF PUBLIC SAFETY, Appellant

V.

JAMES BRAWNER, Appellee

**On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 11247*RM100**

OPINION

In a single point of error, appellant, Texas Department of Public Safety, appeals an order granting appellee, James Brawner's, petition for expunction of all files relating to his separate arrests for burglary of a building and criminal mischief. We reverse the judgment of the trial court and set aside the expunction order.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 8, 2000, appellee filed a petition to expunge all files relating to his above described arrests. A hearing was set for June 12, 2000. The named respondents, the District Attorney of Brazoria County, Texas, and appellant, received reasonable notice of the June

12, 2000 setting. For reasons not apparent from the record, the case was actually heard on April 27, 2000. Appellant did not receive notice of this change, nor did it waive the requirement of notice. Consequently, appellant did not participate in the hearing. On April 27, 2000, an agreed order of expunction was signed by the court. An Assistant District Attorney for Brazoria County, and appellee's attorney also signed the order.

In a single point of error, appellant contends the trial court abused its discretion in holding the hearing on April 27, 2000 because it was not provided reasonable notice. Appellee did not file a brief with this court.

II. DISCUSSION

In order to qualify for a restricted appeal under rule 30 of Texas Rules of Appellate Procedure, appellant: (1) must file notice of appeal within six months; (2) must not have participated in trial, (3) must have been a party to the suit, and (4) show error on the face of the record. TEX. R. APP. P. 30; *Osteen v. Osteen*, 38 S.W.3d 809, 811–12 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (citations omitted). Appellant filed its notice of appeal within six months after the expunction order was signed on April 27, 2000. Appellant did not participate in the hearing, but was a named party to the suit. Appellant argues there is error on the face of the record because it was not given reasonable notice of the date of the hearing. We agree.

Texas Code of Criminal Procedure, article 55.02, sets forth procedures to be followed in an expunction proceeding. (Vernon Supp. 1999). A court is required by article 55.02 to give reasonable notice of the hearing to each agency named in the petition. TEX. CRIM. PROC. CODE. ANN. art. 55.02, § 2(c). The procedures provided for in article 55.02 are mandatory. *Texas Dep't of Public Safety v. Deck*, 954 S.W.2d 108, 112 (Tex. App.—San Antonio 1997, no writ) (citing *Texas Dep't of Public Safety v. Riley*, 773 S.W.2d 756, 758 (Tex. App.—San Antonio 1989, no writ)). If the record does not indicate an agency named in the petition was given reasonable notice of the hearing, the proceeding was held in

violation of article 55.02 and the expunction order must be set aside. *Id.* (citing *Rdoriguez v. T.M.B.*, 812 S.W.2d 449, 450–51 (Tex. App.—San Antonio 1991, no writ)).

There is no indication in the record before this court the trial court notified appellant of the April 26, 2000 hearing.¹ Therefore, appellant’s point of error is sustained.

III. CONCLUSION

We reverse the judgment of the trial court and set aside the order of expunction.

s/s John S. Anderson
 Justice

Judgment rendered and Opinion filed November 15, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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

¹ Although a representative for the Brazoria County District Attorney’s Office was apparently at the hearing, as evidenced by his signature on the agreed expunction order, each respondent listed on the petition is entitled to representation at the hearing. *Deck*, 954 S.W.2d at 111 (citing *Texas Dep’t of Pub. Safety v. Katopodis*, 886 S.W.2d 455, 458 (Tex. App.—Houston [1st Dist] 1994, no writ); TEX. CRIM. CODE. PROC. ANN. art. 55.02, § 2(c) (Vernon Supp. 2001). Nothing in the record indicates appellant agreed to be represented at the hearing by the Brazoria County District Attorney’s Office.