

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Jason Loban v. City of Grapevine and Lawrence Hopkins

Loban · No. No. 2-09-068-CV · Decided December 31, 2009

SUMMARY

The Texas Court of Appeals, Second District, held that a money judgment awarded to the City of Grapevine was void because the City had not pleaded for monetary relief and the issue was not tried by consent. The court vacated the portion of the trial court's judgment awarding \$10,670.20 and affirmed the remainder of the judgment. The court did not reach the appellant's challenge to the sufficiency of the evidence supporting the monetary award.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Cayce, C.J.; Dauphinot, J.; Walker, J.
JURISDICTION	Texas
DECIDED	December 31, 2009
DOCKET	No. 2-09-068-CV
DISPOSITION	other
PROCEDURAL POSTURE	Loban appealed a final judgment entered after the trial court granted temporary injunctive relief concerning the destruction of his dogs and then awarded the City \$10,670.20 in damages.
STANDARD OF REVIEW	Whether a judgment is void for lack of pleading or trial by consent is reviewed as a question of law; a void judgment may be challenged at any time and the challenge cannot be waived.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion under Tex. R. App. P. 47.4
PARTIES	Jason Loban v. City of Grapevine, Lawrence Hopkins

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court could award the City \$10,670.20 when the City did not plead for monetary relief and the issue was not tried by consent.
2. Whether the evidence supported the amount of the monetary award.

HOLDINGS

1. A judgment awarding monetary relief that is unsupported by the pleadings and was not tried by consent is void. Because the City did not plead for a money judgment and the issue was not tried by consent, the trial court's \$10,670.20 money judgment was void.
2. Loban was not required to preserve his challenge in the trial court because a void judgment may be challenged at any time and the challenge cannot be waived.

KEY QUOTATIONS

“A judgment that is not supported by any pleading or tried by consent is void.” (4)

“We vacate and set aside that portion of the trial court’s judgment awarding the City a money judgment against Loban and affirm the remainder of the judgment.” (5)

FACTUAL BACKGROUND

A City of Grapevine animal control officer declared two dogs owned by Jason Loban to be dangerous animals under a City ordinance, and the municipal court affirmed that determination. The City imposed impoundment fees and daily care charges and notified Loban that the dogs would become City property and be destroyed unless he obtained additional insurance and paid the charges. Loban obtained the insurance but did not pay, instead seeking injunctive and declaratory relief. The City did not plead for monetary relief, and no evidence established the amount of the assessed charges.

PROCEDURAL HISTORY

A City animal control officer declared Loban's dogs dangerous, and the municipal court affirmed that determination. Loban filed an action for injunctive and declaratory relief in district court. The district court entered a final judgment ordering the City to return the dogs, requiring Loban to comply with applicable laws and ordinances, dismissing Hopkins, and awarding the City \$10,670.20. Loban appealed the monetary award.

DISPOSITION

other

CASES CITED

- *In re Loban*, 243 S.W.3d 827, 828 (Tex. App.—Fort Worth 2008, orig. proceeding [mand. denied])
- *Oil Field Haulers Ass'n v. R.R. Comm'n*, 381 S.W.2d 183, 191 (Tex. 1964)
- *Mastin v. Mastin*, 70 S.W.3d 148, 154 (Tex. App.—San Antonio 2001, no pet.)

- Easterline v. Bean, 121 Tex. 327, 334, 49 S.W.2d 427, 429 (1932)
- Webb v. Glenbrook Owners Ass'n, No. 05-07-01122-CV, 2009 WL 3135179, at *4–5 (Tex. App.—Dallas Oct. 1, 2009, no pet.)

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