

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Johnny Vasquez v. Sonia Sotello

Vasquez v. Sotello · No. 04-21-00215-CV · Decided September 16, 2021

SUMMARY

The Fourth Court of Appeals of Texas denied Johnny Vasquez’s motion for an emergency stay of a writ of possession arising from a county court judgment for possession of a manufactured home. The court held that the motion did not show compliance with Texas Property Code section 24.007, including the filing of a supersedeas bond within the required period, and denied relief without prejudice.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Patricia O. Alvarez; Luz Elena D. Chapa; Irene Rios
JURISDICTION	Texas
DECIDED	September 16, 2021
DOCKET	04-21-00215-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Appellant appealed a county court judgment for possession of a manufactured home and moved for an emergency stay of a writ of possession pending appeal.
PRECEDENTIAL VALUE	published
PARTIES	Johnny Vasquez v. Sonia Sotello

TOPICS

- appellate procedure
- eviction
- landlord tenant
- civil procedure
- injunctions

PRACTICE AREAS

- appellate procedure
- landlord-tenant
- eviction
- remedies

QUESTIONS PRESENTED

1. Whether the court of appeals could stay the county court's judgment and writ of possession pending appeal without evidence that the appellant timely filed a supersedeas bond in the amount set by the

county court.

HOLDINGS

1. A county court judgment may not be stayed pending appeal unless, within ten days after the judgment is signed, the appellant files a supersedeas bond in an amount set by the county court. Because Vasquez's motion did not show compliance with that requirement, emergency relief was denied.

KEY QUOTATIONS

“A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court.” (order)

FACTUAL BACKGROUND

The appeal arose from a county court judgment awarding possession of a manufactured home. Vasquez sought emergency relief to stay a writ of possession while his appeal was pending, but his motion did not include the judgment or evidence that he had filed a supersedeas bond within the statutory period.

PROCEDURAL HISTORY

The County Court at Law No. 3 of Bexar County entered a May 19, 2021 judgment for possession of a manufactured home. Vasquez filed a notice of appeal on May 25, 2021, and, while the clerk's record had not yet been filed, sought an emergency stay of a writ of possession. The court of appeals denied the emergency motion without prejudice because the motion did not include the county court judgment or evidence of a timely supersedeas bond.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

None. The emergency motion was denied without prejudice to refile a motion showing compliance with Texas Property Code section 24.007.

CASES CITED

- Marshall v. Hous. Auth. of City of San Antonio, 198 S.W.3d 782, 786 (Tex. 2006)

OPINION

PER CURIAM.

FILE COPY Fourth Court of Appeals San Antonio, Texas September 16, 2021 No. 04-21-00215-CV Johnny VASQUEZ, Appellant v. Sonia SOTELLO, Appellee From the County Court at Law No. 3, Bexar County, Texas Trial Court No. 2021CV00358 Honorable David J. Rodriguez, Judge

Presiding ORDER Sitting: Patricia O. Alvarez, Justice Luz Elena D. Chapa, Justice Irene Rios, Justice In this appeal from a county court's May 19, 2021 judgment for possession of a manufactured home, Appellant filed a notice of appeal on May 25, 2021, but the clerk's record has not yet been filed.

On September 15, 2021, Appellant moved this court to grant an emergency stay of a writ of possession. "A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court." TEX. PROP. CODE ANN. § 24.007 (emphasis added); accord *Marshall v. Hous.*

Auth. of City of San Antonio, 198 S.W.3d 782, 786 (Tex. 2006). Appellant's motion does not contain a copy of the county court's judgment or any evidence that Appellant filed a supersedeas bond as required. See TEX. PROP. CODE ANN. § 24.007; *Marshall*, 198 S.W.3d at 786. Appellant's motion for emergency relief is DENIED without prejudice to Appellant refiling a motion that shows compliance with the statute.

FILE COPY Here is a timeline of events—this is NOT part of the order. 19 Oct 2020 Notice to vacate 03 Nov 2020 Eviction Citation 07 Dec 2020 Bexar County JP1, PL2: Default judgment for eviction 19 May 2021 CCAL3: judgment for possession (forcible detainer), attorney's fees 25 May 2021 NOA filed in 4thCOA 12 Aug 2021 County court denied motion to set aside May 19, 2021 judgment 03 Sep 2021 Writ of possession filed in Bexar County District Court 08 Sep 2021 Writ of possession "completed" 15 Sep 2021 Emergency Stay of writ of possession requested

Patricia O. Alvarez, Justice IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 16th day of September, 2021. _____ MICHAEL A. CRUZ, Clerk of Court