

FILE COPY

RE: Case No. 18-1201

COA #: 01-17-00705-CV

DATE: 3/1/2019
TC#: 2017-32712

STYLE: PALMA v. HARRIS CNTY. APPR. REVIEW BD.

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case.

MR. MICHAEL FRANCIS PALMA
* DELIVERED VIA E-MAIL *

Opinion issued July 10, 2108.



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-17-00705-CV

MICHAEL FRANCIS PALMA, Appellant

V.

HARRIS COUNTY APPRAISAL REVIEW BOARD, Appellee

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Case No. 2017-32712**

MEMORANDUM OPINION

Michael Francis Palma, as beneficiary of 6205 Trust, appeals from the trial court's order granting the Harris County Appraisal Review Board's plea to the jurisdiction.

Palma is the beneficiary of 6205 Trust, which owns real property located at 5026 Autumn Forest Dr., Houston, Texas 77091. After the Harris County Appraisal District (“HCAD”) appraised the property for the 2016 tax year, Palma alleges that he filed a protest with the Harris County Appraisal Review Board (“ARB”) arguing that the property’s taxable situs was not in Harris County.

In May 2017, Palma filed suit against the ARB in district court alleging that he had timely protested HCAD’s appraisal of the property for tax year 2016 and ARB had failed to hold a “taxable situs hearing” on the matter, even though it was required to do so under the Tax Code. ARB filed a plea to the jurisdiction arguing that the trial court did not have subject matter jurisdiction over Palma’s claim because (1) Palma did not file a timely notice of situs protest for tax year 2016 and (2) Palma is not entitled to a taxable situs protest hearing because the ARB held a hearing and rendered a determination on Palma’s timely filed value protest for the property. The trial court granted the motion on September 7, 2017. This appeal followed.

Appellant is representing himself in this case. Although we must liberally construe pro se pleadings and briefs, we nevertheless hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978); *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.);

see also Harkins v. Dever Nursing Home, 999 S.W.2d 571, 573 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (requiring pro se litigants to substantially comply with appellate rules). A pro se litigant is required to properly present his case to both the trial and appellate courts. *Valadez*, 238 S.W.3d at 845. Otherwise, pro se litigants would benefit from an unfair advantage over those parties who are represented by counsel. *See id.* Therefore, we do not make allowances or apply different standards when a case is presented by a litigant acting without the advice of counsel. *See id.*

Palma filed his appellant's brief on January 1, 2018. The ARB filed its responsive brief on March 5, 2018, arguing, among other things, that Palma had not adequately briefed his appellate issues by failing to cite the record or providing supporting authority. On March 16, 2018, Palma filed a document titled, "Re-brief of Appellant and Response to Defendant," which the ARB subsequently moved to strike.

As a general rule, "a party must seek leave of court to file an amended or supplemental brief, and the appellate court has some discretion in deciding whether to allow the filing." *Standard Fruit & Vegetable Co. v. Johnson*, 985 S.W.2d 62, 65 (Tex. 1998); *see also* TEX. R. APP. P. 38.7 ("A brief may be amended or supplemented whenever justice requires, on whatever reasonable terms the court may prescribe."). It is undisputed that Palma did not seek leave to file an amended

brief and therefore, we construe Palma's "Re-brief of Appellant and Response to Defendant" to be a reply brief.

Among other requirements, an appellant's brief must contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). Without citing to the record or any supporting legal authority, Palma asserted in his opening brief that "appellant home requested a situs hearing and one was NOT held by the appellee even though all of your rules were followed" and that he followed "the administrative rules by filing a protest within the thirty day time frame." *See generally Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 500 (Tex. 2015) ("Failure to provide citations or argument and analysis as to an appellate issue may waive it."). Although this is an appeal from the granting of a plea to the jurisdiction, Palma's brief does not include any authority with regard to pleas to the jurisdiction or the applicable standard of review. The brief also does not contain an index of authorities or a table of contents, as required by the rules. *See* TEX. R. APP. P. 38.1.

Palma did not develop or properly brief his argument that he was entitled to a situs hearing until his reply brief. Generally, "a party may not present arguments for the first time in its reply brief." *Cebcor Serv. Corp. v. Landscape Design & Constr., Inc.*, 270 S.W.3d 328, 334 (Tex. App.—Dallas 2008, no pet.); *see also Yazdchi v. Bank One, Tex.*, 177 S.W.3d 399, 404 n.18 (Tex. App.—Houston [1st Dist.] 2005,

pet. denied). Accordingly, we hold that, to the extent that Palma has attempted to challenge the trial court's granting of ARB's plea to the jurisdiction on his claim for a situs hearing, this issue has been waived due to inadequate briefing. *See Bank of Am., N.A. v. Barth*, No. 13-08-00612-CV, 2013 WL 5676024, at *3 (Tex. App.—Corpus Christi Oct. 17, 2013, no pet.) (mem. op.) (holding party who “cit[ed] to the record and authority for the first time in its reply brief” had waived issue due to inadequate briefing).

Palma spends a significant amount of time arguing that the real property at issue does not have situs in Harris County and that HCAD has no authority to appraise it. Palma raised the same argument in another appeal before this court involving HCAD's appraisal of the same property for the 2015 tax year. *See Palma v. Harris Cty. Appraisal Dist.*, No. 01-17-00502-CV, 2018 WL 1473792 (Tex. App.—Houston [1st Dist.] Mar. 27, 2018, no pet. h.) (mem. op.). Affirming the trial court's granting of summary judgment in HCAD's favor in that case, this court held that the property in question is real property located in Harris County and thus appraisable by HCAD. *See id.* at *2 (stating Palma “argued incorrectly that the property was not taxable because it did not generate income, citing caselaw addressing the situs and taxability of intangible personal property, not real property”).

We overrule Palma's appellate issues.

Conclusion

We affirm the trial court's order granting the ARB's plea to the jurisdiction.
Any pending motions are dismissed as moot.

Russell Lloyd
Justice

Panel consists of Chief Justice Radack and Justices Jennings, and Lloyd.