

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term 2019

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JAMES ANTHONY DAVIS  
Appellant-Petitioner

vs.

BRAZORIA COUNTY, CITY OF ANGLETON,  
ANGLETON INDEPENDENT SCHOOL DISTRICT ET AL  
Respondent

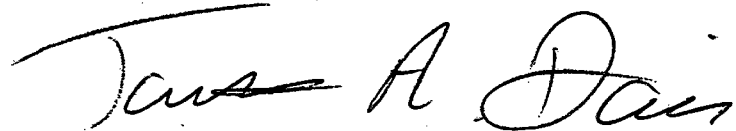
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From a case appealed from the Texas Supreme Court  
Cause No. 19-0318

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

James Anthony Davis

A handwritten signature in black ink, appearing to read "James A. Davis", written in a cursive style.

Appellant Pro Se  
612 Marshall Rd  
Angleton, Texas 77515  
(979) 248-8312

## APPENDIX TO WRIT OF CERTIORARI

- A. Texas Supreme Court- Denial of Rehearing
- B. Texas Supreme Court- Denial of Petition for Review
- C. Fourteenth Court of Appeals- Denial of Motion for Rehearing
- D. Memorandum and Opinion - Fourteenth Court of Appeals
- E. Trial Court Judgment 05/22/17- Cause No. 84732-T
- F. Respondent's Motion to Dismiss 11/12/14- Cause No. 64967
- G. Order of Dismissal (submitted by Respondent) 11/19/14 - Cause No. 64967
- H. Order of Dismissal (submitted by Veronica Davis) 11/18/14 - Cause No. 64967
- I. Attorney General Opinion referenced in Petition

## APPENDIX A

FILE COPY

RE: Case No. 19-0138

DATE: 5/24/2019

COA #: 14-17-00692-CV

TC#: 84732-T

STYLE: DAVIS v. ANGLETON I.S.D.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.  
(Justice Busby not sitting)

MS. VERONICA L. DAVIS  
ATTORNEY AT LAW  
226 NORTH MATTSON  
WEST COLUMBIA, TX 77486  
\* DELIVERED VIA E-MAIL \*

## APPENDIX B

FILE COPY

RE: Case No. 19-0138

COA #: 14-17-00692-CV

STYLE: DAVIS v. ANGLETON I.S.D.

DATE: 3/29/2019

TC#: 84732-T

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. (Justice Busby not sitting)

MS. VERONICA L. DAVIS  
ATTORNEY AT LAW

226 NORTH MATTON

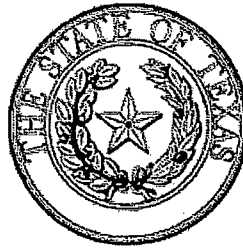
WEST COLUMBIA, TX 77486

\* DELIVERED VIA E-MAIL \*

## APPENDIX C

**Justices**

WILLIAM J. BOYCE  
TRACY CHRISTOPHER  
MARTHA HILL JAMISON  
J. BRETT BUSBY  
JOHN DONOVAN  
MARC W. BROWN  
KEN WISE  
KEVIN JEWELL



**Chief Justice**

KEM THOMPSON FROST

**Clerk**

CHRISTOPHER A. PRINE  
PHONE 713-274-2800

**Fourteenth Court of Appeals**

301 Fannin, Suite 245  
Houston, Texas 77002

Tuesday, December 18, 2018

Michael J. Darlow  
Perdue, Brandon, Fielder, Collins and  
Mott, LLP  
1235 North Loop West, Suite 600  
Houston, TX 77008  
\* DELIVERED VIA E-MAIL \*

Veronica L. Davis  
226 N. Mattson  
West Columbia, TX 77486  
\* DELIVERED VIA E-MAIL \*

RE: Court of Appeals Number: 14-17-00692-CV  
Trial Court Case Number: 84732-T

Style: James Anthony Davis  
v.  
Angleton Independent School District et al

Please be advised that on this date the court **DENIED APPELLANT'S** motion  
for rehearing en banc in the above cause.

**Panel Consists Of Chief Justice Frost and Justices Boyce, Christopher  
Jamison, Busby, Donovan, Brown, Wise, and Jewell**

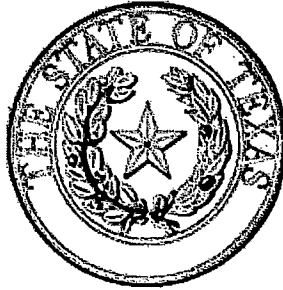
Sincerely,

/s/ Christopher A. Prine, Clerk



## APPENDIX D

**Affirmed and Memorandum Opinion filed September 11, 2018.**



**In The  
Fourteenth Court of Appeals**

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**NO. 14-17-00692-CV**

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**JAMES ANTHONY DAVIS, Appellant**

**V.**

**ANGLETON INDEPENDENT SCHOOL DISTRICT, ANGLETON  
DRAINAGE DISTRICT, ANGLETON-DANBURY HOSPITAL DISTRICT,  
BRAZORIA COUNTY, CITY OF ANGLETON, PORT FREEPORT, AND  
SPECIAL ROAD AND BRIDGE DISTRICT, Appellees**

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**On Appeal from the 239th District Court  
Brazoria County, Texas  
Trial Court Cause No. 84732-T**

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**M E M O R A N D U M   O P I N I O N**

This appeal arises from a dispute regarding payment of property taxes. In five issues, appellant James Anthony Davis challenges the trial court's May 22, 2017 final judgment awarding outstanding property taxes to appellees Angleton Independent School District, Angleton Drainage District, Angleton-Danbury Hospital District, Brazoria County, City of Angleton, Port Freeport, and Special

Road and Bridge District (collectively referred to as the “Taxing Entity Appellees”). For the reasons below, we affirm the trial court’s May 22, 2017 final judgment.

## **BACKGROUND**

Multiple Brazoria County taxing entities brought two suits to collect outstanding property taxes owed on two tracts of land in Brazoria County: a tract located in West Columbia (the “West Columbia tract”) and a tract located in Angleton (the “Angleton tract”). The first suit was filed against Veronica L. Davis and the second suit was filed against her son, James.<sup>1</sup> This appeal arises from the final judgment signed in the second suit.

The taxing entities filed the first suit in September 2011 and sought to collect from Veronica the 2009 and 2010 property taxes owed on the West Columbia tract, along with the 2007, 2009, and 2010 property taxes owed on the Angleton tract.<sup>2</sup>

Veronica filed a motion to dismiss in July 2013, asserting that she paid the property taxes owed on both tracts. Veronica’s motion stated that, despite her payment, the taxing entities “advised [Veronica] that [they] could keep the suit going until the 2012 taxes were paid, as allowed by statute.” Veronica asserted in her motion that “she [wa]s no longer the owner of that property and is no longer obligated for taxes for the year 2012.”

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<sup>1</sup> Because Veronica and James share the same last name, we refer to them by their first names to avoid confusion. Veronica represents James as his attorney in the second suit.

<sup>2</sup> The taxing entities named in the first suit’s original petition are Angleton Drainage District; Angleton Independent School District; Angleton-Danbury Hospital District; Brazoria County; Brazoria County Emergency Services District #1; Brazoria County Emergency Services District #2; City of Angleton; City of West Columbia; Columbia-Brazoria Independent School District; Port Freeport; Special Road and Bridge District; and West Brazoria County Drainage District #11.

The taxing entities filed a first amended petition in August 2014 seeking payment from Veronica only with respect to the 2013 property taxes owed on the West Columbia tract.<sup>3</sup> Veronica filed a combined answer and motion to dismiss asserting that she paid all taxes owed on the West Columbia tract. The taxing entities filed a motion in November 2014 seeking to dismiss their suit because “all taxes, penalt[ies] and interest have been paid.”

The trial court signed a final judgment in the first suit on November 18, 2014. The final judgment states that Veronica paid “all taxes due and owing in this case” and “the costs ordered by the Court.” The trial court signed a separate “Order of Dismissal” on the same day granting the taxing entities’ motion to dismiss.

The Taxing Entity Appellees filed the second suit in January 2016 and sought to collect from James the 2012-2014 property taxes owed on the Angleton tract. In their first amended petition, the Taxing Entity Appellees added a claim for the Angleton tract’s 2015 property taxes. The Taxing Entity Appellees filed a second amended petition that adjusted the amount of their requested recovery.

James answered the Taxing Entity Appellees’ second amended petition and asserted that “there are no delinquent taxes due for the years 2012 and 2013” because those taxes were paid in connection with the first suit filed against Veronica. James also asserted special exceptions that challenged the Taxing Entity Appellees’ pleadings with respect to (1) fees; (2) causes of action; (3) court costs; and (4) the identity of the plaintiffs.

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<sup>3</sup> The taxing entities named in the first suit’s first amended petition are Brazoria County; Brazoria County Emergency Services District #1; Brazoria County Emergency Services District #2; City of West Columbia; Columbia-Brazoria Independent School District; Port Freeport; Special Road and Bridge District; and West Brazoria County Drainage District #11.

The second suit was set for trial in May 2017.<sup>4</sup> The trial court signed a final judgment on May 22, 2017, ordering James to pay the Taxing Entity Appellees \$892.85 for “delinquent taxes, penalties, interest, and costs” owed with respect to the Angleton tract for 2012. The May 22, 2017 final judgment also orders James to pay the Taxing Entity Appellees \$200 “for ascertaining the name, identity, and location of necessary parties and description of the property.”

The trial court signed findings of fact and conclusions of law on July 14, 2017. James timely appealed.

### ANALYSIS

James asserts five issues on appeal:

1. The first suit’s November 18, 2014 final judgment adjudicates the issue of the 2012 property taxes owed on the Angleton tract. The second suit’s May 22, 2017 final judgment, which awards the Taxing Entity Appellees “delinquent taxes, penalties, interest, and costs” owed on the Angleton tract for 2012, “is contradictory to and violative of” the first suit’s final judgment.
2. Res judicata precludes the second suit’s award of the 2012 property taxes owed on the Angleton tract because this issue was adjudicated in the first suit.
3. The May 22, 2017 final judgment lacks specificity and proper parties.
4. The attorney’s fees, penalties, and costs taxed against James in the May 22, 2017 final judgment are “duplicative, unreasonable or unsupported by statute.”
5. The evidence is insufficient to establish nonpayment of taxes.

We address these issues below. We overrule all five issues and affirm the trial court’s May 22, 2017 final judgment.

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<sup>4</sup> Although the suit proceeded to trial, this appellate court did not receive a reporter’s record for these proceedings. This court received an “Information Sheet by Court Reporters” stating that there is no reporter’s record in this action.

## **I. Preclusive Effect of the November 18, 2014 Final Judgment**

James asserts that the November 18, 2014 final judgment signed in connection with the first suit prevents the Taxing Entity Appellees from recovering in the second suit for the 2012 property taxes owed on the Angleton tract. James argues that the Angleton tract's 2012 property taxes were "adjudicated and found to have been paid" in the November 18, 2014 final judgment.

The Taxing Entity Appellees contend that the November 18, 2014 final judgment did not adjudicate the 2012 property taxes owed on the Angleton tract. They point to the taxing entities' first amended petition filed in the first suit, which omitted the entities' claims with respect to the Angleton tract.

An amended petition supplants any earlier petition. Tex. R. Civ. P. 65; *Whole Foods Market Sw., L.P. v. Tijerina*, 979 S.W.2d 768, 778 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). "[C]auses of action not contained in amended pleadings are effectively dismissed at the time the amended pleading is filed." *FKM P'ship, Ltd. v. Bd. of Regents of the Univ. of Houston Sys.*, 255 S.W.3d 619, 633 (Tex. 2008); *see also Randolph v. Walker*, 29 S.W.3d 271, 274-75 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The dismissal does not require a hearing and "[e]ntry of an order granting the nonsuit is ministerial." *FKM P'ship, Ltd.*, 255 S.W.3d at 632.

Here, the taxing entities' original petition filed in the first suit sought to recover outstanding property taxes for both the Angleton and West Columbia tracts. The taxing entities filed a first amended petition in August 2014 asserting tax claims only with respect to the West Columbia tract. The first amended petition did not include any claims seeking taxes for the Angleton tract. The first amended petition effectively dismissed the taxing entities' claims with respect to the Angleton tract. *See id.*; *Randolph*, 29 S.W.3d at 274-75.

The first suit's November 18, 2014 final judgment states that "[Veronica] has paid all taxes due and owing in this cause." The taxing entities' first amended petition was the live pleading at the time the November 18, 2014 final judgment was signed and delineates the claims adjudicated by the judgment. *See* Tex. R. Civ. P. 301 ("[t]he judgment of the trial court shall conform to the pleadings"); *see also Moran v. Williamson*, 498 S.W.3d 85, 93 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *Wilson v. McCracken*, 713 S.W.2d 394, 395 (Tex. App.—Houston [14th Dist.] 1986, no writ). The first amended petition did not include any claims seeking property taxes with respect to the Angleton tract. Contrary to James's argument, the 2012 property taxes owed on the Angleton tract were not adjudicated by the first suit's November 18, 2014 final judgment.

James also asserts that he was not record title holder of the Angleton tract on January 1, 2012, and therefore "is not responsible for delinquent taxes for 2012." To support this claim, James references evidence and testimony heard in the first suit and the deed records of Brazoria County. James did not provide citations for this evidence or otherwise indicate that it was included in the appellate record. Because this evidence is not a part of the record in this subsequent appeal, we do not consider James's argument that he is not the record title holder of the Angleton tract. *See Ramex Constr. Co. v. Tamcon Servs. Inc.*, 29 S.W.3d 135, 138 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

James contends that Veronica and the taxing entities entered into a Rule 11 agreement in the first suit for the payment of the 2012 property taxes at issue in this second suit. James asserts that the Rule 11 agreement shows that Veronica "accept[ed] responsibility for the [2012] taxes" owed on the Angleton tract.

We disagree with James's contention regarding the Rule 11 agreement. The Rule 11 agreement was filed in the first suit on May 23, 2012, and states that

Veronica agreed to a 12-month payment plan with Brazoria County. With respect to the Angleton tract, the agreement states only that Veronica “will pay at a minimum 10% down.” The Rule 11 agreement does not indicate that Veronica “accept[ed] responsibility for the [2012] taxes” owed on the Angleton tract.

We overrule James’s first issue.

## II. Res Judicata

James’s res judicata argument, like those advanced in his first issue, asserts that liability for the Angleton tract’s 2012 property taxes was adjudicated in the first suit. James also argues that, to the extent his tax liability was not litigated in the first suit, he “should have been joined in the suit as a necessary party, pursuant to Texas Rule[] of Civil Procedure 39 . . . .”

Res judicata bars a second action by parties and their privies on matters litigated in a prior suit and claims that, “through the exercise of diligence, could have been litigated in a prior suit.” *Hallco Tex., Inc. v. McMullen Cty.*, 221 S.W.3d 50, 58 (Tex. 2006); *see also Johnson v. Oxy USA, Inc.*, 533 S.W.3d 395, 401 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). The party asserting res judicata must prove (1) a prior final determination on the merits by a court of competent jurisdiction; (2) identity of the parties or those in privity with them; and (3) a second action based on the same claims that were or could have been raised in the first action. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010); *see also Johnson*, 533 S.W.3d at 401.

Our analysis focuses on the third element, which is dispositive of James’s res judicata argument. James does not show that liability for the 2012 property taxes owed on the Angleton tract are claims “that were or could have been raised in the first action.” *See Travelers Ins. Co.*, 315 S.W.3d at 862.



As discussed above, we disagree with James's contention that the first suit adjudicated the issue of the 2012 property taxes owed on the Angleton tract. When the November 18, 2014 final judgment was signed, the taxing entities were not asserting any claims seeking taxes owed on the Angleton tract — the taxing entities' first amended petition dismissed the claims arising from the Angleton tract. *See FKM P'ship, Ltd.*, 255 S.W.3d at 633; *Randolph*, 29 S.W.3d at 274-75. The first suit did not adjudicate liability for the 2012 property taxes owed on the Angleton tract and does not provide a basis to invoke res judicata. *See Travelers Ins. Co.*, 315 S.W.3d at 862; *Johnson*, 533 S.W.3d at 401.

James also appears to address the “could have been raised” prong on appeal insofar as he asserts that he “should have been joined in the [first] suit as a necessary party, pursuant to Texas Rule[] of Civil Procedure 39 . . . .” *See Travelers Ins. Co.*, 315 S.W.3d at 862.

When it was filed in September 2011, the first suit sought to recover from Veronica property taxes owed on both the West Columbia and Angleton tracts. After Veronica stated in her motion to dismiss that “she [wa]s no longer the owner of that property,” the taxing entities filed their first amended petition seeking to recover only with respect to taxes owed on the West Columbia property. James has not cited any case law or other authority to support his claim that he was a necessary party to a suit involving a different piece of property owned by a different person. We reject James's argument that he was a “necessary party” to the first suit and conclude that res judicata does not bar adjudication of the Angleton tract's 2012 property taxes in the second suit.

We overrule James's second issue.

### III. Errors in the May 22, 2017 Final Judgment

James contends that the second suit's May 22, 2017 final judgment is in error because (1) the amount of damages it awards are not certain; (2) the trial court abused its discretion in failing to grant James's special exceptions; and (3) Brazoria County was not named in the Taxing Entity Appellees' second amended petition.

James quotes in his appellate brief the following excerpt from the May 22, 2017 final judgment and asserts that he is "unable to ascertain the amount of penalties, interest, court costs, and attorney's fees" assessed:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that [the Taxing Entity Appellees], do have and recover from [James], as indicated above, the total sum of money due for taxes, penalties, interest, and attorney fees with penalty and interest continuing to accrue at the statutory rate from the date of judgment until paid or sold, plus all costs of court, for which let execution issue . . . .

(emphasis added). This portion of the final judgment orders that the Taxing Entity Appellees are to recover from James the sums "indicated above." Preceding this paragraph, the final judgment sets out the following itemization of amounts owed by James to the Taxing Entity Appellees:

IT IS ORDERED, ADJUDGED, AND DECREED that the taxing entities which are parties to this suit have valid claims for delinquent taxes, penalties, interest, and costs allowed by law, which claims are secured by tax liens against the property hereinafter described and in the amounts indicated, to wit:

\* \* \*

Taxing Unit	Tract	Tax Years	Total
Brazoria County	TRACT 1	2012	\$116.92
Port Freeport	TRACT 1	2012	\$14.14
Special Road and Bridge District	TRACT 1	2012	\$16.48
Angleton Independent School District	TRACT 1	2012	\$399.50
City of Angleton	TRACT 1	2012	\$198.64

Angleton-Danbury Hospital District	TRACT 1	2012	\$98.71
Angleton Drainage District	TRACT 1	2012	\$48.46

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that [the Taxing Entity Appellees] recover \$200.00 for ascertaining the name, identity, and location of necessary parties and description of property.

A final judgment must be “definite and certain” such that “the clerk can ascertain the amount to place in the writ of execution.” *In re Blankenhagen*, 513 S.W.3d 97, 100 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding [mand. denied]). The May 22, 2017 final judgment is “definite and certain” — it quantifies the amounts awarded for a total of \$892.85 and, with reference to the “statutory rates” for penalties and interest, provides the mechanism for calculating any additional amounts owed.

James contends that the trial court abused its discretion when it “failed to address [his] special exceptions.” James’s special exceptions were included in his answer and challenged the court costs, attorney’s fees, and interest included in the Taxing Entity Appellees’ pleadings. The record does not reflect that James requested a hearing or obtained a ruling from the trial court with respect to these special exceptions.

Special exceptions are used to challenge a defective pleading. *See* Tex. R. Civ. P. 91. Failure to obtain a timely hearing and a ruling on special exceptions waives the exceptions and does not preserve them for appeal. *McAllister v. Samuels*, 857 S.W.2d 768, 773 (Tex. App.—Houston [14th Dist.] 1993, no writ) (appellants asserted that the trial court erred by “entering a final judgment without ruling on, or even considering,” their special exceptions; appellants waived error on this point because the record did not show that appellants obtained a hearing and a ruling on their special exceptions).

The appellate record does not show that James requested a hearing on his special exceptions, or that a hearing was held or a ruling obtained. James did not preserve this issue for appeal. *See id.*

James asserts that the trial court erred when it granted relief to Brazoria County in the May 22, 2017 final judgment because “Brazoria County is not a named Plaintiff.” Contrary to James’s claim, Brazoria County was listed as a plaintiff in the Taxing Entity Appellees’ second amended petition, the live pleading at the time the final judgment was signed.

We overrule James’s third issue.

#### **IV. Fees and Costs Included in the May 22, 2017 Final Judgment**

James’s fourth challenge addresses the May 22, 2017 final judgment’s inclusion of collection costs, attorney’s fees, sheriff’s department service fees, and research fees.

James asserts that “an alleged delinquent tax payer shall not pay collection costs, as well, as attorney’s fees” because “seeking both collections costs and attorney fees are violative of the statute and prohibited by law.” James cites to Texas Tax Code sections 33.07 and 33.48 to support his argument. *See Tex. Tax Code Ann. §§ 33.07, 33.48 (Vernon 2015).*

The Taxing Entity Appellees respond that they “did not seek, and the [May 22, 2017] Judgment does not award, [the Taxing Entity Appellees’] attorney’s fees under Tax Code § 33.48.”

The section of the May 22, 2017 final judgment that itemizes the Taxing Entity Appellees’ recovery does not mention attorney’s fees.<sup>5</sup> James did not cite to

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<sup>5</sup> The section of the May 22, 2017 final judgment that itemizes the Taxing Entity Appellees’ recovery states “IT IS ORDERED, ADJUDGED, AND DECREED that the taxing

any part of the appellate record that indicates he is liable for both collection costs and attorney's fees. We overrule James's argument challenging the award of attorney's fees.

James also challenges the sheriff's department's service fees and asserts that the fees are "unreasonable" and that "the Sheriff did not testify as to any efforts regarding service." But James does not cite to any part of the appellate record that indicates he is required to pay these fees or in what amount. Neither the May 22, 2017 final judgment nor the trial court's bill of costs assesses these costs against James. Unable to ascertain whether and in what amount the sheriff's department's service fees were assessed, we cannot evaluate James's arguments on this point.

James asserts that the \$200 research fee included in the second suit's May 22, 2017 final judgment is "in all things unreasonable."

Texas Tax Code section 33.48(a)(4) provides that, in a suit to collect a delinquent tax, a taxing unit may recover "reasonable expenses that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due." Tex. Tax Code Ann. § 33.48. We previously have upheld a \$250 research fee assessed in an action to collect unpaid property taxes. *See Rogers v. Fort Bend Indep. Sch. Dist.*, No. 14-10-00968-CV, 2011 WL 2685742, at \*1-2 (Tex. App.—Houston [14th Dist.] July 12, 2011, no pet.) (mem. op.).

James does not cite any case law or other authority to support his challenge to the reasonableness of the \$200 research fee included in the May 22, 2017 final judgment. We overrule James's fourth issue challenging the fees and costs included in May 22, 2017 final judgment.

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entities which are parties to this suit have valid claims for delinquent taxes, penalties, interest, and costs allowed by law . . . ." (emphasis added).

## V. Sufficiency of the Evidence

Challenging the evidence presented at trial, James asserts that the Taxing Entity Appellees “failed to put on sufficient evidence that taxes were due and owing.” James argues that he “submitted evidence that judgment had been rendered showing all taxes had been paid . . . along with payment records . . . and a fax to Appellee’s [sic] counsel showing proof of payment.”

James supports his argument with reference to several documents listed as “exhibits” in the clerk’s record. We did not receive, and James does not cite to, a reporter’s record transcribing the proceedings held in the trial court. The court reporter’s information sheet states that a reporter’s record was not made in this proceeding.

“When an appellant challenges the sufficiency of the evidence supporting the trial court’s judgment against him, he cannot prevail without first meeting his burden of presenting a sufficient record on appeal because it is presumed that the omitted portions of the record support the trial court’s judgment.” *Cisneros v. Cisneros*, No. 14-14-00616-CV, 2015 WL 1143125, at \*3 (Tex. App.—Houston [14th Dist.] Mar. 12, 2015, no pet.) (mem. op.); *see also Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991) (per curiam); *Pub., Inc. v. Cty. of Galveston*, 264 S.W.3d 338, 341-42 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

James did not meet his burden of presenting a sufficient record on appeal. Without a reporter’s record showing the evidence and arguments heard by the trial court as well as the parties’ objections and the trial court’s rulings thereon, we cannot evaluate James’s evidentiary sufficiency challenges. *See Schafer*, 813 S.W.2d at 155; *Pub., Inc.*, 264 S.W.3d at 341-42; *see also Cisneros*, 2015 WL 1143125, at \*3.

Moreover, the arguments advanced in James's fifth issue appear to reassert the contentions discussed above. Referencing the November 18, 2014 final judgment and "Order of Dismissal" signed in the first suit, James asserts that he "submitted evidence that judgment had been rendered showing all taxes had been paid . . . ."

We rejected this argument in our analysis of James's first and second issues on appeal. The filings in the first suit and the November 18, 2014 final judgment do not show that the 2012 property taxes owed on the Angleton tract were adjudicated in the first suit as necessary to limit the Taxing Entity Appellees' recovery in the second suit.

We overrule James's fifth issue.

#### CONCLUSION

We overrule James's issues on appeal and affirm the trial court's May 22, 2017 final judgment.

/s/ William J. Boyce  
Justice

Panel consists of Justices Boyce, Donovan, and Wise.

## APPENDIX E



FILED  
at 2:47 o'clock P. M.

MAY 22 2017

*Ronda Benesh*  
Clerk of District Court Brazoria Co., Texas  
BY \_\_\_\_\_ DEPUTY

NO. 84732-T

ANGLETON INDEPENDENT  
SCHOOL DISTRICT, ET AL  
VS.  
DAVIS, JAMES ANTHONY

§ IN THE 239TH DISTRICT COURT  
§ IN AND FOR  
§ BRAZORIA COUNTY, TEXAS

JUDGMENT

On the 19th day of May, 2017, this cause being called in its regular order, came the Plaintiff Taxing District(s) whether Plaintiff(s), Intervenor(s) or Impleaded Plaintiff(s), to wit:

ANGLETON DRAINAGE DISTRICT, ANGLETON INDEPENDENT SCHOOL DISTRICT, ANGLETON-DANBURY HOSPITAL DISTRICT, BRAZORIA COUNTY, CITY OF ANGLETON, PORT FREEPORT AND SPECIAL ROAD AND BRIDGE DISTRICT,

The Defendant(s) are as follows:

JAMES ANTHONY DAVIS, Said Defendant(s) have heretofore appeared and filed a written answer.

Said cause coming on for trial and no jury having been demanded, all parties announced ready. All matters of controversy, both of fact and of law, were submitted to the Court. The Court, after considering the pleadings, evidence, and arguments of counsel, grants judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that the taxing entities which are parties to this suit have valid claims for delinquent taxes, penalties, interest, and costs allowed by law, which claims are secured by tax liens against the property hereinafter described and in the amounts indicated, to wit:

TRACT 1: LOT 4, BLOCK 1, OF WASHINGTON TERRACE, A SUBDIVISION IN BRAZORIA COUNTY, TEXAS AS SHOWN ON THE MAP OR PLAT THEREOF RECORDED IN VOLUME 8 PAGE 15 OF THE MAP RECORDS OF BRAZORIA COUNTY, TEXAS. (ACCOUNT NUMBER 8180-0005-000)

Taxing Unit	Tract	Tax Years	Total
BRAZORIA COUNTY	TRACT 1	2012	\$116.92
PORT FREEPORT	TRACT 1	2012	\$14.14
SPECIAL ROAD AND BRIDGE DISTRICT	TRACT 1	2012	\$16.48
ANGLETON INDEPENDENT SCHOOL DISTRICT	TRACT 1	2012	\$399.50
CITY OF ANGLETON	TRACT 1	2012	\$198.64
ANGLETON-DANBURY HOSPITAL DISTRICT	TRACT 1	2012	\$98.71
ANGLETON DRAINAGE DISTRICT	TRACT 1	2012	\$48.46

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff taxing unit(s) recover \$200.00 for ascertaining the name, identity, and location of necessary parties and description of property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following taxing units, having been joined herein but having failed to plead and prove their claims for delinquent taxes on the above described real property, shall have their tax liens on such property extinguished for all delinquent taxes due, as of the date of this judgment, pursuant to the provisions of Section 33.44 of the Texas Property Tax Code, to wit:

None

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the market value of the hereinabove described property, on the date of trial, is as follows:

Tract Information	Value
TRACT 1	\$20,240.00

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff taxing units, do have and recover from the Defendant(s), as indicated above, the total sum of money due for taxes, penalties, interest, and attorney fees with penalty and interest continuing to accrue at the statutory rate from the date of judgment until paid or sold, plus all costs of court, for which let execution issue, provided, however, that no money judgment is granted against any defendant identified above as IN REM ONLY.

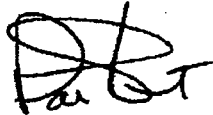
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a tax lien against each of the above-described tracts of land secures the payment of all taxes, penalties, interest, abstractor's fees, attorneys fees, and costs of court, attributable to each of said tracts. Such tax lien(s) are prior and superior to all claims, right, title, interest, or lien(s) asserted by any Defendant(s) herein. Plaintiff(s) shall have foreclosure of said tax lien(s) on each of said tracts of land against the Defendant(s) or any person(s) claiming under said Defendant(s) by any right, title or interest acquired during the pendency of this suit. Further, said tracts of land are ORDERED SOLD to satisfy the amounts secured by such tax lien(s). The clerk of this court is directed to issue an order of sale, commanding that the Sheriff or any Constable of this county seize, levy upon, advertise for sale, and sell said tracts of land to the highest bidder for cash, as under execution, pursuant to the provisions of Chapters 33 and 34 of the Texas Property Tax Code.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the net proceeds of the sale (other than struck off to taxing units), shall belong and be distributed to all taxing units which were parties to this suit and which have been adjudged to have tax liens against said property, pro rata and in proportion to the amounts of their respective tax liens as established in this judgment. Any excess in the proceeds of sale over and above the amount necessary to satisfy the cost of suit, sale, and other expenses incurred in this suit, shall be paid to the clerk of this Court and be retained by said clerk in accordance with Section 34.03 of the Texas Property Tax Code.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the clerk of this court shall issue a writ of possession, as authorized by law, to the purchaser at the foreclosure sale or his/her heirs, executors, administrators or assigns.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all parties heretofore named in any pleadings filed by any party and not included in this judgment, and any property set out in previous pleadings but not included in this judgment, are hereby dismissed without prejudice to the right to refile their claims, or to have the claims against them refiled, and any relief previously requested and not herein granted is expressly denied.

Signed this the 22 day of May, 2017.



JUDGE PRESIDING

## APPENDIX F

Filed for Record  
11/12/2014 9:05:04 AM  
Rhonda Barchak, District Clerk  
Brazoria County, Texas  
64967  
Norma Castro, Deputy

NO. 64967

Filed for Record  
10/16/2017 5:25 PM  
Rhonda Barchak, District Clerk  
Brazoria County, Texas  
84732-T  
Barbara Welborn, Deputy

BRAZORIA COUNTY

§ IN THE 239TH DISTRICT COURT

VS.

§ IN AND FOR

DAVIS, VERONICA L.

§ BRAZORIA COUNTY, TEXAS

**MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT

Now comes the Plaintiff(s), Angleton Drainage District, Angleton Independent School District, Angleton-Danbury Hospital District, Brazoria County, Brazoria County Emergency Services District # 1, Brazoria County Emergency Services District # 2, City of Angleton, City of West Columbia, Columbia-Brazoria Independent School District, Port Freeport, Special Road And Bridge District and West Brazoria County Drainage District # 11, in the above styled and numbered cause, and moves the Court to dismiss the suit as to the cause of action asserted by the Plaintiff(s) for the reason that all taxes, penalty and interest have been paid.

Respectfully submitted,

**PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.**  
**ATTORNEYS AT LAW**  
1235 North Loop West  
Suite 600  
Houston, TX 77008  
(713) 862-1860 FAX: (713) 862-1429

*Michael J. Darlow*  
By \_\_\_\_\_  
Email Address - PBFCM-Houston@pbfcml.com  
Michael J. Darlow / Bar # 05387300  
Elizabeth A. Wiehle-Wang / Bar # 24075276  
Attorney For Plaintiff(s)

000008

## APPENDIX G

FILED  
at 4:37 o'clock P M.

NOV 18 2014

*Ronda Bunch*  
Clerk of District Court Brazoria Co., Texas  
BY *pe* DEPUTY

NO. 64967

BRAZORIA COUNTY

§ IN THE 239TH DISTRICT COURT

VS.

§ IN AND FOR

DAVIS, VERONICA L.

§ BRAZORIA COUNTY, TEXAS

**ORDER OF DISMISSAL**

Came on to be heard the Motion of the Plaintiff(s), Angleton Drainage District, Angleton Independent School District, Angleton-Danbury Hospital District, Brazoria County, Brazoria County Emergency Services District # 1, Brazoria County Emergency Services District # 2, City of Angleton, City of West Columbia, Columbia-Brazoria Independent School District, Port Freeport, Special Road And Bridge District and West Brazoria County Drainage District # 11, to dismiss the above styled and numbered cause of action, and the Court having heard the said Motion, is of the opinion that said Motion should be granted.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the Court that said suit be, and the same is hereby, dismissed as to said Plaintiff(s) cause of action without prejudice to the claim of any other taxing unit.

Signed the 18 day of November, 2014.

*[Signature]*

JUDGE PRESIDING

FILED  
at 2:47 o'clock P M.

MAY 22 2017

*Ronda Bunch*  
Clerk of District Court Brazoria Co., Texas  
BY \_\_\_\_\_ DEPUTY

84732-T

14543

Davis  
Exh. "C"

000074

## APPENDIX H



FILED  
at 2:47 o'clock P M.

MAY 22 2017

*Ronda Burchett*  
Clerk of District Court Brazoria Co., Texas  
BY \_\_\_\_\_ DEPUTY

64967

BRAZORIA COUNTY ET AL

VS.

VERONICA L. DAVIS

§ IN THE DISTRICT COURT 84732-T  
§  
§ OF BRAZORIA COUNTY, TEXAS  
§  
§ 239<sup>TH</sup> JUDICIAL DISTRICT

JUDGMENT

On the 19 day of September, 2014 came on this cause for trial. Came also for consideration was Defendant's Motion to Dismiss due to payment of taxes.

The Court having heard the argument fo counsel FINDS that Defendant has paid all taxes due and owing in this cause and the matter for dispute in this cause is for attorney's fees, recording fees, and filing fees.

**DEFENDANT IS ORDERED** to pay court costs in this case by November 01, 2014.

Upon payment of said costs, Plaintiff's Motion to Dismiss will be in all things **GRANTED**.

The Court finds that Defendant, Veronica L. Davis paid the costs ordered by the Court on November 01, 2014,

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that this cause is hereby **DISMISSED**.

**IT IS FURTHER ORDERED** that any relief not expressly granted herein is **DENIED**.

SIGNED AND ENTERED November 18, 2014.

*[Signature]*  
JUDGE PRESIDING

FILED  
at 4:39 o'clock P M.

NOV 18 2014

*Ronda Burchett*  
Clerk of District Court Brazoria Co., Texas  
BY NC DEPUTY

000073

DAVIS,  
4B  
Exh.

# EXHIBIT I

**Texas Attorney General Opinions**

**1949.**

**No. V-0815 (1949).**

**1**

April 27, 1949

Hon. William S. Fly, Chairman

House Judiciary Committee

Fifty-first Legislature

Austin, Texas

Opinion No. V-815

Re: The constitutionality of H. B. 484 to validate summary delinquent tax sales previously made by tax collectors of counties, cities, and other governmental subdivisions.

Dear Mr. Fly:

Your letter of April 12, 1949, is as follows:

"The Judiciary Committee took up for consideration H. B. 484 Monday, April 11, 1949.

"It is my understanding that the City of Cleburne and other cities have sold certain properties for delinquent taxes under a 1931 Act of the Legislature permitting summary sales.

"This legislation attempts to validate those sales which I understand were declared invalid in several decisions to wit: *Duncan v. Gabler* 215 S.W.2d 155 and *School District v. Mexia* 133 S.W.2d 118.

"The Judiciary Committee asks you for your opinion as to whether the Legislature has the power to validate these summary sales made under the invalid Act of 1931."

You thus present for the opinion of this office the constitutionality of H. B. 484, 51st Legislature.

It has been definitely settled by the Supreme Court of this State that since the effective date of Article 7328a, V.C.S.,

**2**

enacted in 1929, summary sales of real estate for delinquent taxes are unauthorized. This statute is as follows:

"Section 1. That all sales of real estate made for the collection of delinquent taxes due thereon shall be made only after the foreclosure of tax lien securing same has been had in a court of competent jurisdiction in accordance with existing laws governing the foreclosure of tax liens in delinquent tax suits.

"Sec. 2. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed."

In the case of *Duncan v. Gabler*, 215 S.W.2d 155 (Tex. Sup. 1948) Associate Justice Smedley said:

"The amendment of Section 13 in 1932 was not self-executing. It contemplated and required legislation to provide for 'speedy sale, without the necessity of a suit in Court'. ... There has been no such legislation since the amendment was adopted. And since the Act of 1929 repealed all statutes then in effect that provided for sales for the collection of delinquent taxes without suit and foreclosure, there is now no statute authorizing the sale of land for delinquent taxes except after foreclosure of the tax lien in a court."

It therefore necessarily follows that since the effective date of Article 7328a, supra, which repealed all prior statutes authorizing summary sales of real estate for delinquent taxes, there has not existed in this State any statutory authority for summary sales. Summary sales made since the effective date of this statute are therefore absolutely void, and pass no title to the purchaser; and this regardless of whether a taxing unit or private individual becomes the purchaser. Title remains vested in the owner, unaffected by the sale or the execution and delivery of the deed. This being true, we must hold that the Legislature does not have the authority to validate summary tax sales which were void at their inception. The Legislature has no power to pass a law divesting the title to property out of one person and giving it to another. Article XIV, Section 1, of the Constitution of the United States, provides in part as follows:

"... nor shall any state deprive any person of life, liberty, or property without due process of law ..." (Emphasis ours)

**3**

Article I, Section 19, of the Constitution of the State of Texas provides in part as follows:

"No citizen of this State shall be deprived of ... property ... except by the due course of the law of the land."

This bill violates both of the foregoing constitutional provisions.

We are fortified in our conclusion by the decisions of the Supreme Court of this State and by the Supreme Court of the United States. We direct attention to the case of *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S.W. 567 (1897) in which a void tax sale was involved, and the construction of a remedial statute somewhat similar in effect as this bill. The Supreme Court, speaking through Associate Justice Brown, said:

"If the sale was void, it was as if no sale had been made.

" ...

" ... Such a law, if upheld, would give to a deed which is void in itself, or which is based upon a void sale, the effect to vest a good and perfect title in the purchaser of the property, contrary to the provision of section 13 of article 8 of the constitution. In so far as article 518, Rev. St. 1895, makes the payment of taxes by the owner to the city, or to one who has purchased at a void sale or claims the property under a void deed, a condition precedent to his resisting the claim made upon his property under such void proceeding, it is violative of the constitution of the state in the several particulars before mentioned, as well as of section 1 of the fourteenth amendment of the constitution of the United States. ..."

Since the summary sale was made without authority of law, the Legislature could not divest title out of the then owner. That would be a taking "without due process of law."

The rule is stated in general terms in the case of *Campbell v. Holt*, by the Supreme Court of the United States, 115 U. S. 620, (1896):

"It may, therefore, very well be held that in an action to recover real or personal property, where the

4

question is as to the removal of the bar of the Statute of Limitations by a legislative Act passed after the bar has become perfect, such Act deprives the party of his property without due process of law. The reason is, that, by the law in existence before the repealing Act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the Act the effect of transferring this title to plaintiff would be to deprive him of his property without due process of law."

We deem the foregoing sufficient clearly to show that this bill if passed would be unconstitutional, and you are, therefore, accordingly so advised.

## SUMMARY

Since the effective date of Article 7328a, V.C.S., there has been no statutory authority in this State for the sale of real estate for delinquent taxes by summary sales, and such sales are absolutely void and pass no title to the purchaser. The Legislature has no constitutional power to validate such sales. The same would violate Article XIV, Section 1, of the Federal Constitution, and Article I, Section 19 of the Constitution of Texas. *Duncan v. Gabler*, 215 S.W.2d 155; *Eustis v. City of Henrietta*, 90 Tex. 468, 39 S.W. 567; *Campbell v. Holt*, 115 U.S. 620.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s

E. P. Lollar

Assistant

LPL:amm:mwb

APPROVED

/s

ATTORNEY GENERAL