

Affirmed and Opinion Filed March 1, 2016



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-14-01292-CV

**A-1 PARTS STOP, INC. AND CHRIS NASRALLAH, Appellants
V.
EDWARD SIMS, Appellee**

**On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-14-01562-E**

MEMORANDUM OPINION
Before Justices Bridges, Myers, and Whitehill
Opinion by Justice Bridges

A-1 Parts Stop and Chris Nasrallah, owner of A-1, appeal the county court's judgment in favor of Edward Sims on Sims' claims arising out of the purchase of a truck engine from A-1. In three issues, A-1 argues the county court erred in awarding attorney's fees in addition to actual damages, failing to immediately dismiss the case when Sims' claim clearly exceeded the court's jurisdictional and procedural limits, and awarding Sims lost use damages. We affirm the county court's judgment.

In November 2013, Sims filed a petition in justice court asserting a complaint of "Faulty product and refusal to refund money (\$5,000.00)" and seeking damages of \$7019.46. In February 2014, the justice court conducted a trial at which A-1 failed to appear and entered judgment in favor of Sims for \$7155.46. The record shows Sims had incurred \$1775 in

attorney's fees, though the justice court did not award attorney's fees. A-1 appealed to county court.

In county court, Sims filed his first amended original petition alleging Sims operates a business that hauls palletized cargo, and he requires a hauling truck. In September 2013, Sims and A-1 agreed A-1 would provide Sims a new diesel engine for his truck in exchange for an advance payment of \$5000. On September 18, 2013, Sims paid the \$5000, and A-1 agreed it would provide the engine by September 24, 2013 and guarantee the engine for ninety days after purchase. A-1 did not deliver an engine to Sims until October 2, 2013. Once the engine was delivered, Sims hired Dallas Trailer Repair Mechanics (DTRM) to install the engine in his truck, but DTRM determined the engine was faulty. A-1 retrieved the engine in order to "re-work the head." However, A-1 did not repair the engine and refused to refund Sims' deposit. As a result, Sims had to periodically lease a truck to conduct his business. Sims' amended petition alleged claims of breach of contract, breach of warranty, unjust enrichment, and violation of the Texas Deceptive Trade Practices Act. The amended petition also sought recovery of Sims' costs and reasonable attorney's fees.

On July 3, 2014, the county court conducted a hearing at which A-1 failed to appear. The trial court noted A-1 and Nasrallah had filed motions for continuance. In response to the motions, Sims' counsel argued A-1 and Nasrallah had not "had not appeared through counsel during this entire proceeding, even though they're the ones that initiated this appeal." Counsel argued A-1 had presented no evidence the absence of its counsel was through no fault of its own, the procedural history of the case demonstrated the motions for continuance were filed in bad faith, and equity demanded the case be resolved as quickly as possible because Sims was forced to continue to operate his business with a rented truck until A-1 paid him back the \$5000. The

county court denied the motions for continuance and proceeded with a hearing. A-1 does not appeal the denial of the motions for continuance.

Counsel presented evidence A-1 failed to respond to requests for admissions after being served with the requests, and the admissions were therefore deemed admitted. The deemed admissions established that A-1 accepted a \$5000 payment from Sims in connection with the sale of an engine, the engine A-1 provided was not in good working condition, A-1 was not able to cure the engine's defects, and A-1 did not refund the \$5000 to Sims. The county court accepted all of the deemed admissions as true. Sims testified he had to rent trucks to continue his business because A-1 did not fix his own truck. Sims introduced receipts from the truck rentals and a receipt from DTRM for work performed in an attempt to repair his truck. Joshua Jenkins, service manager at DTRM, testified the engine A-1 delivered had "massive amounts of metal in the old [oil] pan and the cylinder score." A-1 came and took the engine back, but the oil pan was still covered in metal shavings when A-1 returned the engine to DTRM. Jenkins testified the only changes A-1 made to the engine were replacement of a piston that was scored and replacement of a head gasket. With the metal remaining in the oil pan, Jenkins testified, the engine would fail.

Sims' counsel reiterated that Sims established in JP court that he was entitled to \$7144.46 in damages and argued Sims had incurred additional damages due to the passage of time. Counsel introduced an affidavit asserting his legal fees were reasonable and necessary and summarizing the legal services provided to Sims. The affidavit stated the legal services rendered totaled \$14,384.31, comprised of \$13,895 in legal fees and \$489.31 in costs. Attached to the affidavit were seven pages detailing the legal services provided and the costs incurred.

At the conclusion of the hearing, the county court found in favor of Sims and against A-1 and Nasrallah, jointly and severally, and awarded the full amount of damages requested,

including attorney's fees. The county court found the amount of the judgment in JP court was supported by the evidence, and since that time there was "a good amount of damages" resulting from the passage of time. These damages included additional attorney's fees and truck rentals. The county court entered judgment awarding Sims \$35,730.79, which included \$21,206.31 in damages (including those accrued due to the passage of time), \$14,384.31 in attorney's fees and costs, and \$140.17 in interest on the JP judgment. The county court did not enter an award based on violations of the DTPA. This appeal followed.

In its first issue, A-1 argues the county court erred in awarding attorney's fees "in addition to actual damages instead of inclusive therein, so as to exceed the small claims limitation by over threefold." In support of its argument, A-1 cites rule of civil procedure 500.3, which provides in pertinent part:

A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

A-1 argues the "including attorney fees" language in rule 500.3 "clearly indicates the limited role that attorneys are expected to have in small claims cases so as to prohibit fees from eclipsing the actual controversy." Thus, A-1 argues, the county court was bound to the \$10,000 damages limitation. In its second issue, A-1 makes the related argument that Sims' claim exceeded the county court's jurisdictional and procedural limits.

Whether a court has subject matter jurisdiction is a question of law that we review de novo. *See Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004) (plea to the jurisdiction); *U. Lawrence Boze' & Assoc., P.C. v. Harris Cnty. Appraisal Dist.*, 368 S.W.3d 17, 23 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (motion to dismiss for lack of subject matter jurisdiction). Where, as here, the jurisdictional challenge is based on the amount in controversy, the plaintiff's pleadings are generally determinative unless the defendant

specifically alleges and proves the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction or can readily establish that the amount in controversy does not fall within the court's jurisdictional limits. See *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554–55 (Tex. 2000); *Hoffman v. Cleburne Bldg. & Loan Ass’n*, 85 Tex. 409, 22 S.W. 154, 155 (1893); *Delk v. City of Dallas*, 560 S.W.2d 519, 520 (Tex. App.—Texarkana 1977, no writ). When the petition does not affirmatively demonstrate the absence of jurisdiction, the petition should be liberally construed in favor of jurisdiction. *Garza v. Chavarria*, 155 S.W.3d 252, 255 (Tex. App.—El Paso 2004, no pet.). Moreover, if the original petition is within the jurisdictional limits, but an amendment increases the amount in controversy above the court’s jurisdictional limits, the court continues to have jurisdiction if the additional amount accrued because of the passage of time. *Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444, 449 (Tex. 1996).

Pursuant to statute, the justice court has original jurisdiction of civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than \$10,000 exclusive of interest. TEX. GOV’T CODE ANN. § 27.031(a)(1) (West Supp. 2015). When a case originally filed in justice court is appealed to the county court, the county court's appellate jurisdiction is restricted to the jurisdictional limits of the justice court, because a county court has no jurisdiction over the appeal unless the justice court had jurisdiction. *Crumpton v. Stevens*, 936 S.W.2d 473, 476 (Tex. App.—Fort Worth 1996, no writ); see *Childress Oil Co. v. Wood*, 111 Tex. 165, 166, 230 S.W. 143 (1921) (“If the Justice Court is without jurisdiction there can be no jurisdiction in the County Court. While the case is tried de novo in the County Court, its power is not original. The case is there only in virtue of the appeal. With this true, its power to determine it on the appeal cannot exist if the original tribunal had no power to consider it.”).

Here, Sims' complaint in justice court sought damages of \$7019.46. Following a trial at which A-1 failed to appear, the justice court entered judgment in favor of Sims for \$7155.46. At that time, the record shows Sims had incurred \$1775 in attorney's fees, though the justice court did not award attorney's fees. Thus, even including attorney's fees, which Sims did not claim, Sims' claim in justice court would have totaled \$8930.46, less than the \$10,000 jurisdictional limit.

A-1 appealed to county court but again failed to appear at a hearing on the matter. The trial court entered judgment awarding Sims \$35,730.79, which included \$21,206.31 in damages (including those accrued due to the passage of time), \$14,384.31 in attorney's fees and costs, and \$140.17 in interest on the JP judgment. The pleading of attorney's fees on appeal to county court in an amount greater than original jurisdiction does not deprive the county court of jurisdiction. *See Rodney R. Elkins & Co. v. Immanivong*, 406 S.W.3d 777, 779-80 (Tex. App.—Dallas 2013, no pet.); *see Crumpton*, 936 S.W.2d at 477. Such fees are considered additional damages as a result of the passage of time. *Immanivong*, 406 S.W.3d at 780; *Crumpton*, 936 S.W.2d at 477. We conclude Sims' claim did not exceed the county court's jurisdictional and procedural limits. *See Immanivong*, 406 S.W.3d at 780; *Crumpton*, 936 S.W.2d at 477. We overrule A-1's first and second issues.

In its third issue, A-1 argues there was no evidence it was the producing cause of the lost use of Sims' vehicle. In addition, A-1 argues there was no evidence the subject engine was bad, A-1 breached its warranty, the engine would not run when installed, A-1 was paid to repair Sims' truck, or Sims returned the engine to A-1 when Sims demanded his money back.

In determining a "no-evidence" issue, we are to consider only the evidence and inferences that tend to support the finding and disregard all evidence and inferences to the contrary. *Bradford v. Vento*, 48 S.W.3d 749, 754 (Tex. 2001); *Cazarez*, 937 S.W.2d at 450; *In re*

King's Estate, 150 Tex. 662, 244 S.W.2d 660, 661 (1951). Anything more than a scintilla of evidence is legally sufficient to support the finding. *Cazarez*, 937 S.W.2d at 450; *Leitch v. Hornsby*, 935 S.W.2d 114, 118 (Tex. 1996). More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about the existence of a vital fact. *Rocor Int'l, Inc. v. Nat'l Union Fire Ins. Co.*, 77 S.W.3d 253, 262 (Tex. 2002).

A “no-evidence” issue may only be sustained when the record discloses one of the following: (1) a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla of evidence; or (4) the evidence establishes conclusively the opposite of a vital fact. *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 334 (Tex.1998).

To prove up loss of use, the reasonable rental value of a substitute automobile is sufficient evidence to support an award of actual damages. *Luna v. N. Star Dodge Sales, Inc.*, 667 S.W.2d 115, 119 (Tex. 1984). The period of compensatory loss of use will be the amount of time the plaintiff was deprived of the loss of use of the automobile. *Id.* The evidence put before the jury may be a reasonable rental value by the day, week, or month. *Id.* A breach of contract occurs when a party fails to perform an act that it has expressly or impliedly promised to perform. *Worldwide Asset Purchasing, L.L.C. v. Rent-A-Ctr. E., Inc.*, 290 S.W.3d 554, 561 (Tex. App.—Dallas 2009). The elements of a claim for breach of contract are: (1) existence of a valid contract; (2) performance or tentative performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damage resulting to the plaintiff from the breach. *Id.*

Here, the evidence showed Sims and A-1 agreed Sims would pay \$5000 for an engine. Sims paid the \$5000 up front. A-1 provided an engine, but it was defective, and A-1 did not

adequately repair the engine or return the \$5000. As a result, Sims was forced to hire trucks to conduct his business. This evidence was sufficient to show A-1 breached its contract with Sims. *See id.* Further, this evidence was sufficient to show A-1 was the producing cause of the lost use of Sims' vehicle. *See id.; Luna*, 667 S.W.2d at 119. We overrule A-1's third issue.

We affirm the county court's judgment.

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/David L. Bridges/

DAVID L. BRIDGES
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

A-1 PARTS STOP, INC. AND CHRIS
NASRALLAH, Appellant

No. 05-14-01292-CV V.

EDWARD SIMS, Appellee

On Appeal from the County Court at Law
No. 5, Dallas County, Texas
Trial Court Cause No. CC-14-01562-E.
Opinion delivered by Justice Bridges.
Justices Myers and Whitehill participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee EDWARD SIMS recover his costs of this appeal from appellant A-1 PARTS STOP, INC. AND CHRIS NASRALLAH.

Judgment entered March 1, 2016.