

**REVERSE RENDER IN PART AND REMAND IN PART; Opinion Filed  
March 17, 2021**



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

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**No. 05-19-01578-CV**

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**NMF PARTNERSHIP, Appellant**

**V.**

**CITY OF DALLAS, DALLAS COUNTY, DALLAS COUNTY  
COMMUNITY COLLEGE DISTRICT, PARKLAND HOSPITAL  
DISTRICT, DALLAS COUNTY SCHOOL EQUALIZATION FUND,  
IRVING INDEPENDENT SCHOOL DISTRICT, AND DALLAS COUNTY  
EDUCATION DISTRICT, Appellees**

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**On Appeal from the 44th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-16-02335**

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**MEMORANDUM OPINION**

Before Justices Schenck, Smith, and Garcia  
Opinion by Justice Schenck

NMF Partnership (NMF) appeals the trial court's order denying its request for a declaratory judgment setting aside an earlier order by which the trial court had voided a sheriff's sale and transfer of title. Because we conclude the trial court lacked the power to sign the order voiding the sheriff's sale and deed, we reverse the trial court's order denying all relief requested by NMF, render judgment in favor of NMF declaring as void that order voiding the sheriff's sale and deed, and remand

the issue of the trial court's award of attorneys' fees to NMF. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

### **BACKGROUND**

In 1991, a number of taxing entities situated in Dallas County, Texas consisting of the City of Dallas, Dallas County, Dallas County Community College District, Parkland Hospital District, Dallas County School Equalization Fund, Irving Independent School District, and Dallas County Education District (collectively, the Taxing Entities) filed suit against NMF Partnership for non-payment of delinquent ad valorem property taxes relating to certain real property located at 2929 Barge Lane, Dallas, Texas 75212 (Property). On March 30, 1995, the trial court entered a final judgment (Judgment) against NMF, which included an order of sale for the Property. On August 31, 1995, the Property was duly sold at public auction, and the Property was conveyed to the City of Dallas for the sum of \$38,460.46, which reflected the amount of the Judgment. On October 24, 1996—more than a year after the dates of the Judgment and the sale—the trial court signed an Order to Void Sheriff's Sale and Deed (Post Judgment Order).

On February 29, 2016, NMF filed the instant suit, seeking to declare as void the Post Judgment Order. The parties agreed to a trial on briefs, which were filed in April 2019.<sup>1</sup> In its trial brief, NMF argued the Post Judgment Order was itself void

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<sup>1</sup> The trial court initially denied relief to NMF after granting a plea to the jurisdiction. NMF appealed to this Court, which reversed. *See NMF P'ship v. Dallas Cty.*, No. 05-17-00747-CV, 2018 WL 3301593, at \*4 (Tex. App.—Dallas July 5, 2018, no pet.). On remand, the Taxing Entities did not seek further review.

due to the expiration of the trial court's plenary power at the time of its entry and further argued it had not received any notice of the motions or proceedings related to the Post Judgment Order. The Taxing Entities' trial brief argued the trial court had the inherent power to sign the Post Judgment Order and that they had provided sufficient notice to NMF.

On October 11, 2019, the trial court signed an Order Denying All Relief Requested by Plaintiff. NMF filed a motion for new trial, requests for findings of fact and conclusions of law, and notice of past due findings of fact and conclusions of law. The trial court did not file any findings of fact or conclusions of law, and NMF's motion for new trial was overruled by operation of law. This appeal followed.

## **DISCUSSION**

### **I. Jurisdiction**

In its first issue, NMF contends the Post Judgment Order was itself void because it was entered after the trial court's plenary power expired and that the trial court lacked any inherent power to sign such an order.

A trial court's plenary power expires thirty days after the judgment is signed, unless a plenary-power extending motion is filed. *See* TEX. R. CIV. P. 329b(d), (e). After the expiration of the plenary power, "a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law." TEX. R. CIV. P. 329b(f). After the trial court loses its jurisdiction, it can

only correct clerical errors in a judgment but cannot correct a jurisdictional error made in rendering a judgment. *See id.* Judicial action taken after the trial court’s plenary power has expired is void. *See In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding).

Here, the record establishes the Post Judgment Order was signed on October 24, 1996, over a year after the Judgment was signed on March 30, 1995, with no plenary-power extending motions filed. Thus, the trial court lacked plenary power to sign the Post Judgment Order.

The Taxing Entities nevertheless argue the trial court had the inherent power to enforce the Judgment and that the Post Judgment Order was within that power and as such not void. Texas law provides district court judges with “the power to issue writs necessary to enforce their jurisdiction.” *See* TEX. CONST. art. V, § 8; *see also* TEX. GOV’T CODE ANN. § 21.001. While the Taxing Entities urge the Post Judgment Order falls within this power to “enforce” the judgment, they fail to explain how an order withdrawing part of the relief afforded by the judgment would amount to “enforcement” or be available to a party after expiration of the trial court’s plenary power other than by appeal. In all events, they do not cite, and we have not found, any authority providing for a trial court to enter an order vacating a sale that

was conducted pursuant to the trial court's previous judgment as part of its enforcement.<sup>2</sup> We decline the invitation to pioneer that law here.

We conclude the trial court lacked inherent power to sign the Post Judgment Order. Accordingly, we conclude the Post Judgment Order is void, and the trial court's order denying NMF's request for declaratory relief should be reversed.

## **II. Attorney's Fees**

The declaratory judgment act permits the trial court to award reasonable and necessary attorneys' fees as are equitable and just. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009. The grant or denial of attorney's fees in a declaratory judgment action is within the trial court's discretion, and its decision will not be reversed on appeal absent a clear showing that it abused its discretion. *SAVA gumarska in kemijska industrija d.d. v. Advanced Polymer Scis., Inc.*, 128 S.W.3d 304, 323 (Tex. App.—Dallas 2004, no pet.). It may be appropriate to award attorneys' fees to the prevailing party if such an award is equitable and just and the fees are reasonable and necessary. *See id.* However, in a declaratory judgment action, the prevailing party is not entitled to attorneys' fees as a matter of law. *See id.* at 324. In the exercise of its discretion, the trial court may decline to award

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<sup>2</sup> The Taxing Entities cite a provision of the tax code that was not enacted until 1999 in support of their arguments; however, that provision, even assuming it applied retroactively, is inapposite here. *See* TEX. TAX CODE ANN. § 33.56 (providing for vacation of judgment, not tax sale, and prohibiting any petition "unless the tax sale has been vacated by an order of a court").

attorneys' fees to either party. *See id.* Or, the trial court may award attorneys' fees to the nonprevailing party. *See id.*

Because NMF preserved its request for attorney's fees and because we reverse and render declaratory judgment in NMF's favor, we remand the issue of attorney's fees for reconsideration in light of our disposition on appeal. *See id.*

### **III. Remaining Issues**

In its remaining three issues, NMF complains it never received notice of the proceedings to void the sheriff's sale and that the trial court erred by refusing to grant or otherwise rule upon NMF's objections and by refusing the issue findings of fact and conclusions of law. NMF's petition noted it could not find a copy of the Motion to Void or the Post Judgment Order with the District Clerk of Dallas County. The only evidence offered by the Taxing Entities of notice, other than a copy of its Motion to Void containing a certificate of service, is a copy of the envelope in which they aver the Motion to Void was sent to NMF at the same address as that of the Property over a year after the Property had been sold to the City of Dallas.

To be sure, NMF alleges concerning issues related to service, but in all events, as discussed above, the trial court lacked jurisdiction to enter the Post Judgment Order. Accordingly, we pretermitt discussion of NMF's remaining issues. *See* TEX. R. APP. P. 47.1.

## CONCLUSION

We reverse the trial court's order denying all relief requested by NMF, render judgment in favor of NMF declaring as void that order voiding the sheriff's sale and deed, and remand to the trial court the issue of the trial court's award of attorneys' fees to NMF.

/David J. Schenck/  
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DAVID J. SCHENCK  
JUSTICE

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

**JUDGMENT**

NMF PARTNERSHIP, Appellant

No. 05-19-01578-CV      V.

CITY OF DALLAS, DALLAS  
COUNTY, DALLAS COUNTY  
COMMUNITY COLLEGE  
DISTRICT, PARKLAND  
HOSPITAL DISTRICT, DALLAS  
COUNTY SCHOOL  
EQUALIZATION FUND, IRVING  
INDEPENDENT SCHOOL  
DISTRICT, AND DALLAS  
COUNTY EDUCATION  
DISTRICT, Appellees

On Appeal from the 44th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-16-02335.  
Opinion delivered by Justice  
Schenck. Justices Smith and Garcia  
participating.

In accordance with this Court's opinion of this date, we **REVERSE** the trial court's October 11, 2019 Order Denying All Relief Requested by NMF PARTNERSHIP, **RENDER** judgment in favor of NMF PARTNERSHIP declaring as void that October 24, 1996 Order to Void Sheriff's Sale and Deed, and **REMAND** the issue of the trial court's award of attorneys' fees to NMF PARTNERSHIP.

It is **ORDERED** that appellant NMF PARTNERSHIP recover its costs of this appeal from appellee CITY OF DALLAS, DALLAS COUNTY, DALLAS COUNTY COMMUNITY COLLEGE DISTRICT, PARKLAND HOSPITAL DISTRICT, DALLAS COUNTY SCHOOL EQUALIZATION FUND, IRVING



INDEPENDENT SCHOOL DISTRICT, AND DALLAS COUNTY EDUCATION DISTRICT.

Judgment entered this 17th day of March, 2021.