

Reverse and Remand and Opinion Filed February 20, 2025



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

No. 05-23-00705-CV

CEDRIC VINCENT AND ALL OTHER OCCUPANTS, Appellant

V.

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE
TRUSTEE, ON BEHALF OF THE HOLDERS OF THE ACCREDITED
MORTGAGE LOAN TRUST 2007-1, ASSET BACKED NOTES,
ITS SUCCESSORS AND/OR ASSIGNS, Appellee**

On Appeal from the County Court at Law No. 3

Dallas County, Texas

Trial Court Cause No. CC-23-01344-C

MEMORANDUM OPINION

Before Justices Breedlove, Clinton, and Rossini

Opinion by Justice Breedlove

In this forcible detainer case, appellant Cedric Vincent failed to appear for trial and the trial court rendered a default judgment awarding possession of real property located at 6400 Military Parkway in Dallas to appellee Deutsche Bank National Trust Company, as Indenture Trustee. In one issue, Vincent complains that the trial court erred by proceeding with trial on June 15, 2023, after giving him written notice that trial was reset for July 14, 2023. We reverse the trial court's judgment and remand the cause for new trial.

BACKGROUND

The Bank filed an original petition for forcible detainer against Vincent in justice court and obtained a final judgment of eviction on January 13, 2023. Vincent appealed the judgment to county court.¹

By notice dated May 9, 2023, the trial court notified counsel of record that the case was set for non-jury trial on June 12, 2023, at 3:10 p.m. The notice included a statement that “All cases are called for trial unless otherwise notified in writing by the Court.” Accordingly, on June 12, 2023, the court called the case for trial and counsel for the Bank appeared. Neither Vincent nor his counsel appeared, and the trial court noted on the record that “the Defendant is not here.”

The court admitted a deed of trust and a substitute trustee’s deed into evidence.² But the court also questioned whether the Bank’s notice to vacate the property had been given to the proper party. The court noted that the deed of trust reflected “Betty Vincent” as the “original grantor/mortgagor,” but the notice to

¹ An appeal from justice court to county court vacates the justice court’s judgment, and the county court must try the matter de novo. TEX. R. CIV. P. 506.3. “A trial de novo is generally defined as a new trial on the entire case, on both questions of fact and issues of law, conducted as though there had been no trial in the first instance.” *Laws v. Roberson*, No. 05-20-00342-CV, 2022 WL 224358, at *1 (Tex. App.—Dallas Jan. 26, 2022, no pet.) (mem. op.).

² Volume 5 of the reporter’s record includes three exhibits. The exhibit volume bears the correct caption, but purports to contain exhibits from proceedings on April 27, 2023, not June 12 or 15, 2023. Two of the three exhibits pertain to property in Ellis County owned by Jimmie Lee Beal-Giles, not property in Dallas County owned by Betty Vincent. Exhibit 3, however, contains notices to Vincent to vacate the Dallas County property at issue here. From the trial court’s comments on the record, it appears that the trial court was reviewing the correct set of documents—addressing property in Dallas County owned by Betty Vincent—that are now included in the clerk’s record on appeal. The correct documents are included in the section of the clerk’s record that contains the record from the justice court, but do not appear in the reporter’s record on appeal.

vacate the property was addressed to appellant Cedric Vincent and “All Occupants, Tenants, or Subtenants.”³ Although counsel advised the court that Betty was deceased, the court explained that “[y]ou have to prove that up,” and the documents the Bank submitted were insufficient to do that.

The court ruled, “I’m going to say defendant wasn’t properly served.” The court explained, “you are going to have to fix” the proof of service, and absent that proof, “we’re done for now.” The court advised counsel that “You can go back and reset it right now and just get your paperwork fixed.” The proceedings then ended.

On June 12, 2023—the same day—the trial court sent notice to the parties that the case was set for a non-jury trial on July 14, 2023 at 9:40 a.m.

On June 15, 2023, however, the trial court held further proceedings in the case. The record begins as follows:

THE COURT: You’re here for Deutsche Bank, right?

MR. TIPTON: Yes.

THE COURT: I’m calling you back, your client, because we were in trial on Monday.

MR. TIPTON: Yes, and Chris [Ferguson, the attorney representing the Bank at the June 12, 2023 trial] asked me to appear for him today.

THE COURT: I know. I didn’t agree with him on some stuff. Do you have the exhibits he was trying to enter?

MR. TIPTON: Yes.

³ To avoid confusion with appellant Cedric Vincent, we will refer to Betty Vincent as “Betty.” The parties have explained that Vincent is Betty’s son.

The court and counsel discussed the issues the court had raised on June 12. At the conclusion of the proceedings, the court noted that “Cedric Vincent is apparently who’s living there, and you gave him notice on [Exhibit] 3 about the eviction.” The court, however, asked Tipton to call Vincent’s counsel to determine whether Vincent was “contesting the fact of possession.” Tipton stated he “would really rather not since they didn’t appear.” The court responded, “I don’t know that he got notice. This whole thing is just wrong.” The court gave counsel the telephone number, but the record shows only that “[a] break was held,” after which the court set a bond and concluded the proceedings.

On the same day—June 15, 2023—the trial court rendered a “Final Judgment of Possession” reciting that “[t]his matter was called to trial before the court on this the 12th & 15th days of June, 2023.” The judgment also recites that Vincent failed to appear.

On July 12, 2023, Vincent filed a motion to set aside the judgment, a request for findings of fact and conclusions of law, and a notice of appeal. This appeal commenced, and on May 1, 2024, Vincent sought an extension of time to file his brief, explaining among other matters that the clerk’s record did not contain the June 12, 2023 notice that trial was set for July 14, 2023. We granted Vincent’s motion in part, ordering the clerk to file either the supplemental records requested or “written verification the records do not exist or cannot be located.”

On May 15, 2024, the clerk complied with our order, submitting a supplemental record that included two non-jury trial notices. The first, dated May 9, 2023, notified the parties of a trial setting on June 12, 2023, at 3:10 p.m. The second, dated June 12, 2023, notified the parties of a trial setting on July 14, 2023, at 9:40 a.m. Relying on the second notice, appellant argues on appeal that “the trial court abused its discretion in proceeding forward with trial on June 15, 2023, when it had notified the Appellant-Defendant in writing that the trial was reset to July 14, 2023, at 9:40 a.m.”

DISCUSSION

“The trial court has a duty to schedule its cases in such a manner as to expeditiously dispose of them and, absent a showing of clear abuse of discretion, we will not interfere with the court’s management of its docket.” *Idhe v. Nationstar Mtge. LLC*, No. 05-20-00576-CV, 2021 WL 5104374, at *2 (Tex. App.—Dallas Nov. 3, 2021, pet. denied) (mem. op.) (citing *Clanton v. Clark*, 639 S.W.2d 929, 931 (Tex. 1982)).

However, “[o]nce a defendant has made an appearance in a cause, he is entitled to notice of the trial setting as a matter of due process under the Fourteenth Amendment to the federal constitution.” *LBL Oil Co. v. Int’l Power Servs., Inc.*, 777 S.W.2d 390, 390–91 (Tex. 1989) (per curiam) (citing *Peralta v. Heights Med. Ctr., Inc.*, 480 U.S. 80, 84–85 (1988)). “Failure to provide notice of a trial setting to a party who has appeared in the case violates basic principles of due process

warranting a new trial.” *Wade v. Valdetaro*, 696 S.W.3d 673, 676 (Tex. 2024) (internal quotation omitted).

There is nothing in the record to show that Vincent received notice of the proceedings held on June 15. To determine whether the trial court erred by rendering judgment on that date, we must decide whether the court “reset” the case on June 12, or merely recessed, then resumed, trial proceedings for which Vincent was given proper notice but failed to appear.

The trial court’s statement on June 15 that “I’m calling you back, your client, because we were in trial on Monday,” combined with the recitation in the judgment that the case “was called to trial before the court on this the 12th & 15th days of June, 2023,” arguably supports the conclusion that trial was recessed and then resumed. It was within the trial court’s discretion to do so. *Idhe*, 2021 WL 5104374, at *2.

However, a different conclusion is better supported in the record. The trial court’s June 12 written notice that trial was set for July 14, following the trial court’s instruction to “reset” the case, establishes that the trial court “reset” the case on July 14, but then proceeded to trial on June 15 without notice to Vincent. When a case previously has been set for trial, the trial court “may reset said contested case to a later date on any reasonable notice to the parties or by agreement of the parties.” TEX. R. CIV. P. 245. Here, however, there is nothing in the record to show that that Vincent received “reasonable”—or any—notice of the proceedings on June 15.

Due process claims can be waived by failure to object in the trial court and obtain a ruling. *Interest of M.M.M.*, No. 05-19-00392-CV, 2019 WL 4744694, at *4 (Tex. App.—Dallas Sept. 30, 2019, pet. denied) (mem. op.) (citing TEX. R. APP. P. 33.1(a)). But “[i]n a civil case, the overruling by operation of law of a motion for new trial . . . preserves for appellate review a complaint properly made in the motion, unless taking evidence was necessary to properly present the complaint in the trial court.” TEX. R. APP. P. 33.1(b). Vincent’s motion for new trial⁴ was overruled by operation of law on August 29, 2023, 75 days after the judgment was signed. TEX. R. CIV. P. 329b(c).⁵ Accordingly, he preserved his claim that he did not receive notice of the June 15 proceedings. TEX. R. APP. P. 33.1(b).

Because Vincent did not receive notice of the June 15 proceedings, we sustain his sole issue.

⁴ Vincent’s motion was entitled “Motion to Set Aside Judgment” rather than “Motion for New Trial,” but “we look to the substance of a motion to determine the relief sought, not merely to its title.” *Surgitek, Bristol-Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999). The substance of the motion was that Vincent received the notice setting trial for July 14, 2023, but received notice of the final judgment on June 30, 2023, after “a hearing was held on June 15, 2023.” We conclude this motion was sufficient to inform the court that Vincent was seeking a new trial.

⁵ We reject the Bank’s argument that because Vincent filed his motion for new trial and notice of appeal on the same day, the trial court “lost jurisdiction” to rule on the motion for new trial. Although the Bank correctly cited appellate procedure rule 25.1 for the proposition that a notice of appeal invokes the appellate court’s jurisdiction, it cites no authority for its contention that at the same time, the trial court loses jurisdiction to rule on a motion for new trial. *See* TEX. R. APP. P. 25.1. The rules of civil procedure expressly provide to the contrary. “If a motion for new trial is timely filed by any party, the trial court, regardless of whether an appeal has been perfected, has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after all such timely-filed motions are overruled, either by a written and signed order or by operation of law, whichever occurs first.” TEX. R. CIV. P. 329b(e).

CONCLUSION

We reverse the trial court's judgment and remand the case for a new trial.

/Maricela M. Breedlove/

MARICELA M. BREEDLOVE
JUSTICE



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

JUDGMENT

CEDRIC VINCENT AND ALL
OTHER OCCUPANTS, Appellant

No. 05-23-00705-CV V.

DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS
INDENTURE TRUSTEE, ON
BEHALF OF THE HOLDERS OF
THE ACCREDITED MORTGAGE
LOAN TRUST 2007-1, ASSET
BACKED NOTES, ITS
SUCCESSORS AND/OR ASSIGNS,
Appellee

On Appeal from the County Court at
Law No. 3, Dallas County, Texas
Trial Court Cause No. CC-23-01344-
C.

Opinion delivered by Justice
Breedlove. Justices Clinton and
Rossini participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for a new trial.

It is **ORDERED** that appellant Cedric Vincent recover his costs of this appeal from appellee Deutsche Bank National Trust Company, as Indenture Trustee, on Behalf of the Holders of the Accredited Mortgage Loan Trust 2007-1, Asset Backed Notes, its Successors and/or Assigns.

Judgment entered this 20th day of February, 2025.