

FILED
November 7, 2013
Third Court of Appeals
Jeffrey D. Kyle
Clerk

Appellate Docket Number 03-13-00580-CV
Texas Third Court of Appeals

Motion to Fix Case Information

Marc T. Sewell Petition for Judicial Review
under Local Government Code Sec 211

Vs.

Llano Board of Adjustment (Chairman Mikel Virdell)

(a) Identity of Parties and Counsel

Appellant and Filer of this document:

Marc T. Sewell
108 Summit
Llano, TX 78643
Pro Se

Appellee:

City of Llano
Mikel Virdell Chairman & Mayor
301 West Main
Llano, TX 78643

Appellee Attorney:

Carey L. Bovey
2251 Double Creek Drive
Round Rock, TX 78664

Oral Argument Requested

RECEIVED
NOV 07 2013
THIRD COURT OF APPEALS
JEFFREY D. KYLE

TO THE HONORABLE THIRD COURT OF APPEALS:

I respectfully present this motion to fix the Case Information for Case # 03-13-00580-CV :

In the District Court’s Denial Order¹, the Court changed my case style from a request for judicial review to a traditional “vs.” style by selecting names from my petition and using them as defendants. The names in my petition were those of all involved who I believe were culpable for the violations. I say that because they were ones who erroneously represented the zoning laws and who were experienced in the zoning law so their illegal actions were overt. These names were in my petition and not on my petition cover and not intended to be used until later for determination of penalty.

Also, Section 211.011(c)² explicitly says that the writ be “directed to the board” and TRCP Rule 33³ requires that any suits against an incorporated city shall be in its corporate name. Thus, my specification of “Llano City Planning and Zoning Commission and Llano City Council” was correct and should not have been changed. The appellate court propagated this error.

¹ Appendix A - Judgment from District Court on page 5

² Appendix C - Local Government Code Sec 211.011. Judicial Review on page 7

³ Appendix D – TRCP Rule 33 on page 9

I have sent three emails⁴ to the 3rd Court of Appeals Clerk in an attempt to rectify this error. There was not a reply to the first two and the third, recent email, suggested I submit a motion.

Based on his motion to dismiss, I believe the appellee agrees that is was a Court error.

⁴ Emails #1, #2, and #3 in Appendix E - Email Correspondence between Sewell & District Courton page 9

Prayer

Thus, I respectfully request that the Appeals Court fix the case style in the record of docket #03-13-00580-CV to match the one I submitted in my appeal cover and that all parties except the City of Llano be removed.

Alternatively, I respectfully request that the Appeals Court fix the case style in the record of docket #03-13-00580-CV to “the City of Llano” and that all parties except the City of Llano be removed.

M. Sewell

Marc Sewell

108 Summit

Llano, TX 78643

Appendix

Appendix A - Judgment from District Court

NO. 18504

MARC T. SEWELL

V.

**BRENTON LEWIS, DIANNE
FIRESTONE, LETITIA McCASLAND,
MARCY METHVIN, TODD KELLER,
JEANNE PURYEAR AND
TOM MILAM**

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IN THE DISTRICT COURT

424TH JUDICIAL DISTRICT

LLANO COUNTY, TEXAS

ORDER DENYING WRIT OF CERTIORARI

After consideration of the Verified Petition for Judicial Review, it is hereby ordered that the Writ of Certiorari is DENIED.

SIGNED on July 23, 2013.



JUDGE PRESIDING

Appendix B – Cover from Original Petition

STATE OF Texas)
) SS: IN THE County COURT
COUNTY OF Llano) CASE NUMBER: _____ (created by County)
IN RE: PETITION to County Court for Judicial Review of Board Decision)

VERIFIED PETITION UNDER Local Government Code Sec 211

Comes now the Petitioner Marc T. Sewell and pursuant to Texas Local Government Code Section 211.011 petitions the Court for a Judicial Review of Llano City Planning and Zoning Commission and Llano City Council. Petition is attached in laymen's terms and format since Texas Local Government Code Section 211.011 says that a taxpayer may present the petition.

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

(signed) *M. Sewell*

Marc T. Sewell
Print your name

108 Summit
Mailing Address

Llano, TX 78643
Town, State and Zip Code

325-247-2508
Telephone number, with area code

Sworn to and subscribed
before me
this 20th day of June, 2013

Pattie Bradford (Seal)
Notary Public



Appendix C - Local Government Code Sec 211.011. Judicial Review

TEXAS LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) a person aggrieved by a decision of the board;
- (2) a taxpayer; or
- (3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Appendix D – TRCP Rule 33

Texas Rules of Civil Procedure

RULE 33. SUITS BY OR AGAINST COUNTIES

Suits by or against a county or incorporated city, town or village shall be in its corporate name.

Appendix E - Email Correspondence between Sewell & District Court

EMAIL Number 1.

From: Marc Sewell [mailto:marcs@simonlabs.com]

Sent: Thursday, August 29, 2013 10:44 AM

To: 'Jeff Kyle'

Subject: Appeals Court Record Update Docket 03-13-00580-CV

Mr. Kyle,

In reviewing your online case records for Docket 03-13-00580-CV, I found the following discrepancies:

1. Under heading Calendars, there is an outstanding requirement for “Court reporters record due”. Since the case was dismissed prior to trial, there is no reporter’s record.
2. The case style is incorrect. This case style was created by the District Court and is in error. The correct case style is on my docket statement as follows:

Marc T. Sewell Petition for Judicial Review under Local Government Code Sec 211 Vs. Llano Board of Adjustment (Chairman Mikel Virdell)

Thank you,

Marc Sewell

EMAIL Number 2.

From: Marc Sewell [mailto:marcs@simonlabs.com]
Sent: Friday, August 30, 2013 10:56 AM
To: 'Jeff Kyle'
Subject: FW: Appeals Court Record Update Docket 03-13-00580-CV

Thank you for changing the “court reporters due” status. Will you also be able to change the docketing statement as described in my request #2?

2. The case style is incorrect. This case style was created by the District Court and is in error. The correct case style is on my docket statement as follows:

Marc T. Sewell Petition for Judicial Review under Local Government Code Sec 211 Vs. Llano Board of Adjustment (Chairman Mikel Virdell)

Also, Diane Firestone, Letitia McCasland, Marcy Methvin, Todd Keller, Jeanne Puryear and Tom Milam should be removed as parties. This resulted from a error made by the district court and will be explained in my brief.

Thank you,

Marc Sewell

EMAIL Number 3.

From: Marc Sewell [mailto:marcs@simonlabs.com]
Sent: Thursday, October 10, 2013 10:12 AM
To: 'Jeff Kyle'
Subject: FW: 03-13-00580-CV; 3rd Court of Appeals - Incorrect Docket Record

Jeff Kyle,

The letter below from the appellee shows that he agrees the appleeles you named in the docket should be removed. He is now using that against me to have the case dismissed. Please remove the names from your docket record case style and list of appellees. Please see Issue #4 on page 15 of my appeal brief to understand why I have been requesting the change.

Thank you,


Marc Sewell

Appendix F- Certificate of Service

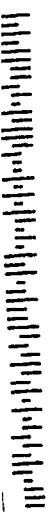
Certificate of Service

I certify that I have served the Motion to Fix Case Information for Docket Number 03-13-00580-CV on all other parties—which are listed below—on 11/6/13 as follows:

1. Llano City Attorney Carey Bovey **via email**
Law office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, TX 78664
(512) 904-9441
cary@boveylaaw.com
2. Board of Adjustment Chairman/Mayor Mikel Virdell **via email**
City of Llano
301 West Main
Llano, TX 78643
(325) 247-4158
mvirdell@cityofllano.com



Marc T. Sewell
108 Summit
Llano, TX 78643-1127
325-247-2508
marcs@simonlabs.com



MARC

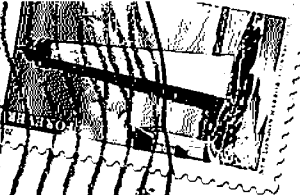
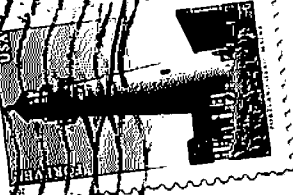
108 SJ

78643

LLANO, TX

AUSTIN PDC TX 78710

NOV 06 2011 3:41 PM



THIRD COURT of APPEALS

PO BOX 12547

AUSTIN, TX 78711