

1 REPORTER'S RECORD  
2 VOLUME 1 of 1 VOLUMES  
3 CAUSE NO. 18504

4 IN RE: PETITION TO DISTRICT \* IN THE DISTRICT COURT  
5 COURT FOR JUDICIAL REVIEW OF \* LLANO COUNTY, TEXAS  
6 BOARD DECISION \*  
7 \* 33RD JUDICIAL DISTRICT

8 HEARING

9  
10 On the 14th day of May, 2014, the following  
11 proceedings came on to be heard in the above-entitled and  
12 numbered cause before the Honorable Allan Garrett, Judge  
13 Presiding, held in Llano, Llano County, Texas.

14 Proceedings reported by computerized stenotype  
15 machine.

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1 (Open court)

2 THE COURT: The Court will recall Cause No. 18504,  
3 In RE: Petition to District Court for Judicial Review of Board  
4 Decision.

5 All right. And just for the record you're  
6 Mr. Sewell, correct?

7 MR. SEWELL: Yes, sir.

8 THE COURT: And you're here representing yourself?

9 MR. SEWELL: Yes, sir.

10 THE COURT: All right. And for y'all, if y'all don't  
11 mind making an announcement for the record?

12 MR. BOVEY: Yes, sir. Cary Bovey for the City and  
13 the to-be-clarified respondents, Your Honor.

14 MR. COCHRAN: Luke Cochran representing the same.

15 THE COURT: All right. And I guess before we start  
16 off I should say -- well, let's go to your clarification  
17 request first because that will help Mr. Sewell as well  
18 depending upon what comes out of that.

19 MR. BOVEY: Yes, sir. Your Honor, as you're aware,  
20 this case was filed last year, and it was filed as a challenge  
21 to some actions of the planning and zoning commission and the  
22 city council of the City of Llano.

23 And Mr. Sewell filed this case as a -- he applied for  
24 a writ of certiorari from the Court which you denied, but he  
25 never did name any defendants, he never did serve anybody, he

1 never had citations issued. The City nor any other defendant  
2 accepted service. We didn't waive service.

3 So we really -- when this case was appealed to the  
4 Court of Appeals, there were several individuals who were not  
5 named in the original petition. And if you recall, there was  
6 communication.

7 May I approach the bench, Your Honor?

8 THE COURT: Please.

9 MR. SEWELL: May I object at this point?

10 THE COURT: Well, you'll get your turn. As soon as  
11 he's done, you'll be able to...

12 MR. SEWELL: Yes, sir.

13 MR. BOVEY: There's a copy of the original petition  
14 and the email that was sent to Mayor Virdell and myself as the  
15 city attorney -- and Lisa Bell was copied on that  
16 communication -- in which he states that he was not suing the  
17 City nor anybody named in the petition. He was simple trying  
18 to get a court -- get this Court to look at the zoning action.

19 And when this case was appealed to the Court of  
20 Appeals, then the City appeared on the listed defendants. The  
21 mayor, who was not originally listed in the petition itself,  
22 was listed on the appeal. So, as you know, the Court of  
23 Appeals dismissed for lack of jurisdiction. And at this point  
24 we really don't know who the defendants are because he never  
25 did designate anybody as a defendant, didn't serve anybody,

1 didn't have citations issued. So that's one of the first  
2 issues that I'd like to clarify with the Court.

3 THE COURT: Just so y'all know too, due to that  
4 procedural history, that's why I wanted everyone to get in here  
5 in one room to kind of figure out where we were.

6 Mr. Sewell, did you want to respond to -- just to  
7 what he said right there? Don't go into anything else but just  
8 kind of what he said about the defendants and...

9 MR. SEWELL: Yes. Well, first of all I'd like to  
10 object to him bringing that up. This is a status hearing and  
11 no -- and those weren't listed as pending issues, and in this  
12 hearing we're only supposed to be discussing pending hearings.

13 I did research. First of all, in the law that we're  
14 under, 211.011, which is the judicial review law, it does not  
15 have a status hearing in it. The first step in the process is  
16 me presenting the position to the district court which  
17 establishes jurisdiction, and I believe I did that correctly.  
18 Step 2 in the process was who can file that petition, and  
19 that's standing, and one of them was a taxpayer. I'm a  
20 taxpayer, so I had standing. And then the third step is  
21 issuing the writ of certiorari, and that's the Court's job as  
22 it's stated in the law.

23 There's no notification required in my first two  
24 steps. The step that contains notification is in Step 3, and  
25 it's the Court's responsibility to do that.

1           That said though, I would like to keep this -- I  
2 presented to the Court two issues to be resolved before we  
3 proceed. The City attorney didn't provide any.

4           And so according to Black's Law Dictionary, court  
5 rules usually require that the filing of a status conference  
6 statement prior to the conference, and that Rule 166 pretrial  
7 conference says that to consider all pending dilatory issues  
8 and pleas, motions, and exceptions. Okay? Lumped together as  
9 issues.

10           So it's my contention that it -- once we get past  
11 your motion to dismiss, I'm hoping we'll follow the process,  
12 and the next step of the process is to issue the writ, and  
13 that's the point where all of these dilatory issues can be  
14 brought forward. That's according to the process in the law.

15           And it starts at the Constitution. Texas  
16 Constitution says I have the right to redress grievances. Rule  
17 2001 dot -- I forget the number. Sixty-three, I think? No.

18           2001.176 is the general rule for judicial review in  
19 the state, and that says, yes, I should've notified, but it  
20 also says that I am allowed -- or that that rule is overruled  
21 for up -- for statutory judicial reviews. So in other words  
22 because there's a zoning judicial review, that is the rule, not  
23 2001.176. It's superceded by this specific one, and the  
24 specific one does not require me to notify. It's the Court's  
25 responsibility to do that.

1 I can also -- I don't -- see, I'm not prepared to get  
2 into the details of this issue because they're not -- they  
3 weren't expected. The status hearing was only supposed to  
4 cover the two issues that I've presented.

5 But I've got some notes here that in the Supreme  
6 Court of Texas said that once a party files a petition after a  
7 zoning board decision that jurisdiction exists. So at this  
8 point, I submit, a jurisdiction exists; therefore anything else  
9 is a procedural defect which you can waive. Or I have the  
10 right under Rule 63 and a couple of other rules to argue, and I  
11 will be prepared to do that once the City answers the original  
12 complaint.

13 THE COURT: Well, this is -- the purpose of the  
14 hearing today and me setting a status hearing was to get all  
15 this lined out so that we can have some sort of hearing later.  
16 So I don't want to get into any of the substantive issues  
17 either, just so we're both clear. What I would like to know is  
18 from I guess respondent's counsel -- the respondents to be  
19 named later -- procedurally the process. There was an  
20 application for a writ filed. The writ was denied. That was  
21 appealed from. There was an argument regarding, you know, it  
22 needing to be dismissed for want of jurisdiction.

23 MR. BOVEY: Yes, sir.

24 THE COURT: The Court of Appeals agreed with that.

25 MR. BOVEY: Yes, sir.



1           THE COURT: But of course because it's not a final  
2 order; the case is still ongoing. Where I'm at -- at least  
3 this is the way I see it. And I may be wrong. That's why I  
4 want to bring everybody together to talk about it so nobody  
5 would think I only talk to Mr. Sewell or only talk to you.

6           At this point don't the specific respondents need to  
7 be named and served with process?

8           MR. BOVEY: Your Honor, that's my position. I really  
9 don't know who I'm supposed to defend and represent in this  
10 case if he hasn't designated who the defendants are. Whenever  
11 his petition is originally filed, he needs to sue the City, the  
12 board of adjustment, the P and Z, the city council, whomever  
13 he's arguing made a mistake in the process for whatever his  
14 allegations are as laid out in the petition. But there needs  
15 to be a designation of defendants, and he hasn't done so. And  
16 so that, I think, is a pending issue with this Court is that,  
17 you know, who do I represent as a representative of the City.

18           I'm the City attorney, but he hasn't designated  
19 whether it's the City, whether it's the board of adjustment,  
20 certain individuals, that need to respond to his allegations.  
21 So that's part of what I would like to ask the Court to do is  
22 to get -- to order you -- to have you order him to designate  
23 who the defendants are in this lawsuit and have them properly  
24 served, et cetera.

25           THE COURT: Now, Mr. Sewell, do you understand what

1 he's saying? He's saying that in order for him to --

2           And I'm happy you're here because one of the tactics  
3 you could've chosen to take, and may have chosen to take, is  
4 just not to respond and stay out.

5           MR. BOVEY: Yes.

6           THE COURT: So I was trying to bring him to the  
7 courtroom. Because you understand as we sit here, he has no  
8 reason to be here except to try to get these issues ironed out  
9 so he knows who he's going to represent.

10           So I guess what I'm getting at is do you know as we  
11 sit here -- and I'm not going to hold you to it. You can  
12 obviously amend your pleadings and add or subtract whomever you  
13 want, but it seems to me by reading your original application  
14 that you have some beef with the P and Z. Is that right?  
15 Planning and zoning commission?

16           MR. SEWELL: Well, it's a continuum. The P and Z  
17 starts it, and the city council approves it. According to the  
18 law though, it's the Court's responsibility to decide who --  
19 how to serve it.

20           In the Supreme Court, *Tellez v. The City of Socorro*,  
21 they said that procedural defects can be waived, such as wrong  
22 party. "We agree with the court of appeals that the local  
23 Government Code" -- 211.011 -- "does not specify whom suit  
24 shall be filed." So as a citizen, I shouldn't know who to file  
25 it. There's two alternatives. You file it against the City

1 which is where all suits against government belong is against  
2 the City. But -- and I have the rule for that if you want to  
3 look that up.

4 But I specified, you know, where I thought it would  
5 go. And it says in -- in *Tellez* that -- they suggested the  
6 zoning board is the proper party because they must be served  
7 with the writ. So the Supreme Court says when you submit the  
8 writ, it's to the zoning board. But they didn't pass --

9 THE COURT: But the writ was denied.

10 MR. SEWELL: The writ was denied because I didn't  
11 notify, and that's -- I have an argument suggesting that was --

12 THE COURT: Well, where we are procedurally, at least  
13 in my mind, you filed a writ, the writ was denied, it goes up  
14 on appeal, it's affirmed and says your case is not over, but  
15 there's no writ, so it goes back down and now is the time where  
16 we need -- or I shouldn't say "we" -- where you need to say,  
17 okay, here are the people -- or not people -- here are the  
18 boards that specifically caused --

19 MR. SEWELL: I appealed on notification as the main  
20 issue. The Appeals Court said we can't rule on that because  
21 it's still active in this Court. So they didn't say that you  
22 or I were wrong on that issue; they just ignored it. Not  
23 ignored it but didn't answer it. Didn't answer it. And I have  
24 to come back here, which is what I'm doing, to revisit that  
25 issue. I would like to argue that notification isn't

1 necessary, and I'm prepared to do that. And that it is  
2 ambiguous on how you, you know, address it, the writ to the  
3 City. And I admit the law is not clear on that.

4 THE COURT: Well, let me ask you this: If a court --  
5 and you've read a lot of it so I appreciate you being -- your  
6 candor to the Court -- if a court denies the writ, what's the  
7 next step? If there aren't any appeals or anything like that.  
8 If there's a writ filed without naming -- you know, for lack of  
9 a better term -- without naming names as defendant, writ is  
10 filed, the Court reviews it. Right? And then the court says  
11 in this case I'm going to deny the writ. Then what's the next  
12 step for that aggrieved citizen?

13 MR. SEWELL: Well, that happened in this *Tellez* case  
14 for almost the same -- for almost a similar reason. And the  
15 answer is that, as far as I know, you appeal. And they  
16 never -- *Tellez* won the appeal but I don't know what happened  
17 after that. They don't say that.

18 THE COURT: What's your understanding -- I mean just  
19 hypothetically, a writ is filed, the writ is denied, then what  
20 is the aggrieved citizen to do?

21 MR. BOVEY: The Court of Appeals made it clear that  
22 they didn't have jurisdiction because you cannot appeal the  
23 denial of a writ of certiorari. They didn't say the denial was  
24 improper. They didn't say that -- as Mr. Sewell alleges in his  
25 letter to you of April 6 -- that, well, the court was

1 displeased with this court -- or the Court of Appeals was  
2 displeased because you didn't have a hearing. They did not  
3 mention that.

4 I think what happens next is that there are pending  
5 issues that the Court pointed out. And the Court of Appeals  
6 did also agree with the City's position that this action did  
7 not involve an action of the board of adjustment. The action  
8 that Mr. Sewell is complaining of involves a legislative action  
9 of the planning and zoning commission and the city council.

10 Therefore, you know at some point, Your Honor, I'm  
11 going to bring to you a plea to the jurisdiction saying that  
12 you don't have jurisdiction over this case under 211.011  
13 because that doesn't apply to a legislative action when the  
14 city council amends an ordinance. 211.011 applies to an action  
15 of the board of adjustment, which there was no board of  
16 adjustment action in the case at all.

17 So I think what you have before you at this point,  
18 the writ application has been denied. I think that still  
19 stands. The Court of Appeals decision does not change that.  
20 And then as the Court of Appeals mentioned, there are a couple  
21 of pending issues in terms of relief that he has requested. He  
22 has requested that this Court rescind the adoption of an  
23 ordinance, and he has also requested that this Court enter  
24 fines, misdemeanor fines, against certain named individuals  
25 which Mr. Sewell believes that wrongly acted in this case.

1           And I'll read this for you, but I don't think you  
2 have jurisdiction to do either one of those things. I think  
3 you can find an ordinance unconstitutional, you can find it  
4 invalid, but I don't think you can, as a district court,  
5 rescind an ordinance, take a legislative action and rescind an  
6 ordinance.

7           I also -- as far the criminal charges that he would  
8 like assessed against the individuals, the State hasn't brought  
9 any charges against the named individuals in the petition. And  
10 we're talking about ordinance violations. The ordinance  
11 violations, the exclusive and original jurisdiction of an  
12 ordinance violation is in municipal court. And so that would  
13 be my position. There are a couple of pending issues that at  
14 some point in the near future I'm going to ask this Court to  
15 address, but --

16           THE COURT: Let's figure out who you're representing  
17 first. I mean don't you at this point need --

18           MR. BOVEY: I agree.

19           THE COURT: He needs to name who the aggrieving  
20 parties are so that he can --

21           MR. BOVEY: I agree.

22           THE COURT: -- go get service against them and then  
23 you get to appear and --

24           MR. BOVEY: Yes, sir, I agree with that. That would  
25 be the immediate next step, yes, sir.

1 MR. SEWELL: Can I hand this out?

2 THE COURT: Sure. Sure. Thank you.

3 MR. SEWELL: Let me quickly address one of the  
4 jurisdiction items that should shut that one down.

5 In the Supreme Court, Texas, *Tellez v. the City of*  
6 *Socorro*, and also in *Davis v. Zoning Board of Adjustment*, the  
7 writ was the procedure by which the trial court conducted  
8 review. Jurisdiction exists once a party files a petition in a  
9 case, which I did. So at the point I filed the petition,  
10 jurisdiction existed. And you can't undo jurisdiction if  
11 they're denied, so there was jurisdiction.

12 And they also went on to say that any procedural  
13 defects like who gets sued can be waived or should be handled  
14 in other ways. There was no requirement or need for me to  
15 notify up until Step 3. And I have 211.011 up there. It's  
16 called Step C. They -- classically when you sue the city  
17 government, you say the City of Llano, so if he wants somebody  
18 to put on the top of the page: The City of Llano.

19 According to *Tellez* though, you can also say the  
20 zoning board. But they didn't pass the law. Now let me --

21 MR. BOVEY: Your Honor, may I response to his point  
22 about *Tellez*?

23 MR. SEWELL: He's chewing them up. I need to answer  
24 these, please.

25 It also says that the -- that I said in my letter

1 that the Supreme Court -- or that I -- I forget his words but  
2 all -- the Appeals Court.

3 All the Appeals Court did was say that they can't  
4 address my notification issue because there's a jurisdiction  
5 issue because of the writ did not say those magic words. That  
6 in other words, if your denial of writ said "by ruling of on  
7 the merits and disposing of all claims," if it said that, then  
8 they would've been able to look at my appeal, but because it  
9 didn't say that, I had to come back here and kind of get you to  
10 say that is the -- and as far as --

11 THE COURT: I need to you present your claim against  
12 someone who you think did something wrong. You can't just say,  
13 "I think somebody did something wrong," have no one show up,  
14 get a court order against nobody, and then say let's go take it  
15 on appeal if you don't get it.

16 MR. SEWELL: Well --

17 THE COURT: From your own standpoint -- I'm trying to  
18 help you -- from your own standpoint, if you don't have an  
19 order against some entity, then you don't have an order. Do  
20 you understand that part of it? You can't just have an order  
21 in the blue that says the Court thinks X, Y, and Z. You've got  
22 to have someone that's doing something that you don't like.  
23 Are you trying to avoid paying for service of process? Is that  
24 what's happening?

25 MR. SEWELL: No, no, no. I don't mind that. This is



1 nothing to do with that. I'm trying to follow the law and do  
2 it right, and I don't want to get caught up. I've spent the  
3 last nine months getting caught up.

4 THE COURT: No, I'm with you. That's why we're  
5 having this meeting today. Here's the bottom line: You need  
6 to pick out who you're going to name as defendants, serve  
7 process upon them so that you can bring those ultimate issues  
8 that the trial court and the appellate court haven't heard yet  
9 to the Court with the proper people who you're accusing of  
10 doing wrongdoing, so that the Court can make a decision on  
11 that.

12 MR. SEWELL: Well then, as soon as I say something,  
13 then it's going to be wrong. And the Supreme Court --

14 THE COURT: No, no. And I can -- if you have a  
15 procedural defect in there somewhere, trust me, I'm going to  
16 give you some deference as a pro se litigant. You're going to  
17 have the deference you need that you will not get hung up on a  
18 minor procedural issue, okay?

19 MR. SEWELL: Okay. City of Llano is whom -- is who I  
20 would say. Because there's a rule that says when you're suing  
21 the government entity, you have to sue the government entity,  
22 not the officers within the government, so the City of Llano.

23 In *Tellez* though it admits that that's ambiguous, but  
24 it's okay if you're wrong.

25 THE COURT: Okay. Do you have a response to that?

1 I'm going to see if he has a response.

2 MR. BOVEY: Your Honor, I would just say what *Tellez*  
3 stands for is that if there was an improper pleading, the  
4 pleading was against the city, the city waived it because they  
5 didn't object to that, and so what the Court of Appeals said  
6 was when that happens, you have waived your objection to that.

7 You know, this is a very niche area of the law in  
8 terms of the board of adjustment action and how it's handled.  
9 He still has to name defendants. And what happened in *Tellez*  
10 is the plaintiff named the incorrect defendant, but the Court  
11 of Appeals found that, well, the city didn't object to that and  
12 allowed the case to proceed on that basis, and so that's what  
13 happened in that case.

14 I need to know who I represent and who I'm defending  
15 against. I think, you know, there are issues with respect to  
16 his use of 211.011. I think that's incorrect. Again, we'll  
17 obviously deal with that at a future time.

18 THE COURT: Well, you've got to have a client before  
19 we get to that --

20 MR. BOVEY: I agree. That's --

21 THE COURT: Do you kind of see where I -- that's why  
22 I wanted to have us here because I was in this process. I  
23 appreciate both of y'all being here because this is to try to  
24 get us to a point where you have some resolution one way or  
25 another, Mr. Sewell, so that whether you like the resolution or

1 whether you want to appeal it on up, you have it in front of  
2 you. But right now --

3 MR. SEWELL: Well, the City of Llano is who I have  
4 the objective with, and within the City of Llano there were  
5 several parties that caused the problem. The law -- the  
6 ordinance change that was done was done illegally. So there  
7 was a law being broken, and I'm a citizen trying to complain  
8 about that. And this -- I shouldn't have to be caught up in  
9 these little ambiguities, especially when the law doesn't  
10 require you to.

11 THE COURT: Well, let me say that this isn't an  
12 ambiguity. In every case -- well, I shouldn't say that --  
13 99 percent of the cases, there's a petitioner or a plaintiff,  
14 and then there's someone that they're accusing of doing  
15 something wrong. That's not an ambiguity. That's --

16 MR. SEWELL: Well --

17 THE COURT: -- nuts and bolts.

18 MR. SEWELL: The --

19 THE COURT: So are you proposing to amending your  
20 pleading to make the accusations against the City of Llano?

21 MR. SEWELL: Well, first of all --

22 THE COURT: Let's go off the record. Let's go off.  
23 We don't need a record.

24 (Whereupon proceedings continued off the record until  
25 concluded.)

