88R11192 TSS-D

By:  Schofield H.B. No. 3952

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction of courts in cases of forcible entry and detainer and forcible detainer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 25.0003, Government Code, is amended by adding Subsection (g) to read as follows:

(g)  A statutory county court has concurrent jurisdiction with a justice court in cases of forcible entry and detainer and forcible detainer.

SECTION 2.  Section 27.031, Government Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a)  In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of:

(1)  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 $20,000, exclusive of interest;

[~~(2)  cases of forcible entry and detainer;~~] and

(2) [~~(3)~~]  foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction.

(b-1)  A justice court has concurrent jurisdiction with a statutory county court in cases of forcible entry and detainer and forcible detainer.

SECTION 3.  Section 24.004, Property Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1)  Except as provided by Subsection (b), a statutory county court has concurrent jurisdiction with a justice court in forcible entry and detainer and forcible detainer suits. A statutory county court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

(b)  A justice court or statutory county court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21A, Business & Commerce Code.

SECTION 4.  Section 24.0051(a), Property Code, is amended to read as follows:

(a)  In a suit [~~filed in justice court~~] in which the landlord files a sworn statement seeking judgment against a tenant for possession of the premises and unpaid rent, personal service on the tenant or service on the tenant under Rule 742a, Texas Rules of Civil Procedure, is procedurally sufficient to support a default judgment for possession of the premises and unpaid rent.

SECTION 5.  Section 24.00511(a), Property Code, is amended to read as follows:

(a)  In a residential eviction suit for nonpayment of rent, the statutory county court or justice court in which the suit is filed shall state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under Section 24.0053.

SECTION 6.  Section 24.00512, Property Code, is amended to read as follows:

Sec. 24.00512.  CONTEST OF CERTAIN APPEAL BONDS. (a) This section does not apply to an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance to engage in business in this state.

(b)  If a party appeals the judgment of a statutory county court or justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the [~~justice~~] court that rendered the judgment contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the [~~justice~~] court shall notify the other party and the surety of the contest.

(c)  Not later than the fifth day after the date the contest is filed, the statutory county court or justice court in which the notice under Subsection (b) is filed shall hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety.

(d)  If a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the bond, as applicable, is insufficient. If a party contests the financial ability of a surety to pay the bond, the party filing the bond must prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. If the [~~justice~~] court determines that the amount or form of the bond is insufficient or the surety does not have sufficient nonexempt assets to pay the appeal bond, the [~~justice~~] court must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved.

(e)  Not later than the fifth day after the date the statutory county court or justice court, as applicable, disapproves an appeal bond, the party appealing may make a cash deposit, file a sworn statement of inability to pay with the [~~justice~~] court, or appeal the decision disapproving the appeal bond to the county court, if the decision is made by a justice court, or to the court of appeals, if the decision is made by a statutory county court. If the party appealing fails to make a cash deposit, file a sworn statement of inability to pay, or appeal the decision disapproving the appeal bond, the judgment of the [~~justice~~] court that rendered the original judgment becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee.

(f)  If an appeal is filed with the county court under Subsection (e), the justice court shall transmit to the county court the contest to the appeal bond and all relevant documents. The county court shall docket the appeal, schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo.

(f-1)  If an appeal is filed with the court of appeals under Subsection (e), the statutory county court shall transmit to the court of appeals the contest to the appeal bond and all relevant documents. The court of appeals shall docket the appeal, and if oral argument is requested, schedule a hearing as soon as practicable and notify the parties and the surety of any hearing set.

(f-2)  The failure of a [~~the county~~] court to hold a timely hearing is not grounds for approval or denial of the appeal. A writ of possession may not be issued before the court hearing the appeal [~~county court~~] issues a final decision on the appeal bond.

(g)  After the contest is heard by the [~~county~~] court in which an appeal is filed, the [~~county~~] clerk of the court shall transmit the transcript and records of the case to the [~~justice~~] court that rendered the original judgment in the case. If the [~~county~~] court hearing the appeal disapproves the appeal bond, the party may, not later than the fifth day after the date the court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in the [~~justice~~] court that rendered the original judgment in the case in an amount determined by the [~~county~~] court hearing the appeal or by filing a sworn statement of inability to pay with the [~~justice~~] court that rendered the original judgment in the case pursuant to the Texas Rules of Civil Procedure. If the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the [~~justice~~] court that rendered the original judgment becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee. If the landlord is the appealing party and a cash deposit is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the [~~justice~~] court that rendered the original judgment becomes final. If the appeal bond is approved by the [~~county~~] court hearing the appeal, the court shall transmit the transcript and other records of the case to the [~~justice~~] court that rendered the original judgment, and that [~~the justice~~] court shall proceed as if the appeal bond was originally approved.

SECTION 7.  Section 24.0052, Property Code, is amended to read as follows:

Sec. 24.0052.  TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the [~~justice~~] court that rendered the original judgment by filing with that [~~the justice~~] court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the [~~justice~~] court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

(1)  the tenant's identity;

(2)  the nature and amount of the tenant's employment income;

(3)  the income of the tenant's spouse, if applicable and available to the tenant;

(4)  the nature and amount of any governmental entitlement income of the tenant;

(5)  all other income of the tenant;

(6)  the amount of available cash and funds available in savings or checking accounts of the tenant;

(7)  real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;

(8)  the tenant's debts and monthly expenses; and

(9)  the number and age of the tenant's dependents and where those dependents reside.

(b)  A statutory county court or [~~The~~] justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c)  The [~~justice~~] court in which a pauper's affidavit is filed under this section shall promptly notify the landlord that [~~if~~] a pauper's affidavit has been [~~is~~] filed by the tenant.

(d)  A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the [~~justice~~] court in which the affidavit was filed shall notify the parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e)  If the [~~justice~~] court approves the pauper's affidavit of a tenant filed under this section, the tenant is not required to pay the [~~county court~~] filing fee in the court in which the appeal is filed or file an additional affidavit in the appellate [~~county~~] court under Subsection (a).

SECTION 8.  Section 24.00521, Property Code, is amended to read as follows:

Sec. 24.00521.  CONTEST OF CERTAIN APPEAL BONDS [~~IN COUNTY COURT~~]. (a) A contest under Section 24.00512 filed in a justice court does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit.

(b)  A contest under Section 24.00512 filed in a statutory county court does not preclude a party from contesting the appeal bond in the court of appeals after the court of appeals has jurisdiction over the appeal of an eviction suit.

(c)  After the county court has jurisdiction over the appeal of an eviction suit or a court of appeals has jurisdiction over the appeal of an eviction suit, the county court or court of appeals, as applicable, may modify the amount or form of the bond and determine the sufficiency of the surety.

SECTION 9.  Sections 24.0053(a), (a-1), (a-2), (a-3), (b), (c), (d), and (e), Property Code, are amended to read as follows:

(a)  If a statutory county court or [~~the~~] justice court, as applicable, enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

(a-1)  In an eviction suit for nonpayment of rent, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas Rules of Civil Procedure, the [~~justice~~] court in which the affidavit or bond is filed shall provide to the tenant a written notice at the time the pauper's affidavit or [~~appeal~~] bond is filed that contains the following information in bold or conspicuous type:

(1)  the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the [~~justice~~] court registry;

(2)  whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(3)  the calendar date by which the initial deposit must be paid into the [~~justice~~] court registry;

(4)  for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and

(5)  a statement that failure to pay the required amount into the [~~justice~~] court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without a hearing.

(a-2)  The date by which an initial deposit must be paid into the [~~justice~~] court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by the Texas Rules of Civil Procedure.

(a-3)  If a tenant files an appeal bond to appeal an eviction for nonpayment of rent, the tenant must, not later than the fifth day after the date the tenant filed the appeal bond, pay into the [~~justice~~] court registry the amount of rent to be paid in one rental pay period as determined by the court under Subsection (a). If the tenant fails to timely pay that amount into the [~~justice~~] court registry and the transcript has not yet been transmitted to the [~~county~~] court in which the appeal is filed, the plaintiff may request a writ of possession. On request and payment of the applicable fee, the [~~justice~~] court that rendered the original judgment shall issue the writ of possession immediately and without a hearing. Regardless of whether a writ of possession is issued:

(1)  a [~~, the~~] justice court shall transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees; or

(2)  a statutory county court shall transmit the transcript and appeal documents to the court of appeals for an appeal conducted in the same manner as the appeal of any other order or other action of the court.

(b)  If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the [~~justice~~] court [~~or the county court~~] registry[~~, as applicable,~~] during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the [~~justice~~] court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).

(c)  If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the [~~justice~~] court determines must be paid into the [~~county~~] court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the judge or justice, as applicable, signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the [~~justice~~] court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the [~~justice~~] court shall determine the portion of the rent that must be paid by the tenant under this section.

(d)  If the tenant objects to a [~~the~~] justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. If the tenant objects to a statutory county court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the appeal is final. During the pendency of an [~~the~~] appeal taken from a justice court, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e)  If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the landlord under Section 24.0052(d), the [~~justice~~] court shall hold the hearing on both contests at the same time.

SECTION 10.  Sections 24.0054(a), (a-2), (a-3), (a-4), (b), (c), (e), and (f), Property Code, are amended to read as follows:

(a)  During an appeal of an eviction case for nonpayment of rent, the [~~justice~~] court that rendered the original judgment, on request, shall immediately issue a writ of possession, without hearing, if:

(1)  a tenant fails to pay the initial rent deposit into the [~~justice~~] court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and Section 24.0053;

(2)  the [~~justice~~] court has provided the written notice required by Section 24.0053(a-1); and

(3)  the [~~justice~~] court has not yet forwarded the transcript and original papers to the [~~county~~] court in which the appeal is filed as provided by Subsection (a-2).

(a-2)  The [~~justice~~] court that rendered the original judgment shall forward the transcript and original papers in an appeal [~~of an eviction case~~] to the [~~county~~] court hearing the appeal but may not forward the transcript and original papers before the sixth day after the date the tenant files a pauper's affidavit, except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the [~~justice~~] court registry in accordance with Section 24.0053, the court may forward the transcript and original papers immediately. If the tenant has not timely paid the initial deposit into the [~~justice~~] court registry, the [~~justice~~] court, on request, shall issue a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court. If the court that rendered the original judgment is a justice court, the [~~The~~] justice court shall forward the transcript and original papers in the case to the county court for trial de novo, notwithstanding the fact that a writ of possession under this section has already been issued. If the court that rendered the original judgment is a statutory county court, the county court shall forward the transcript and original papers in the case to the court of appeals, notwithstanding the fact that a writ of possession under this section has already been issued.

(a-3)  Notwithstanding Subsections (a) and (a-2), the [~~justice~~] court that rendered the original judgment may not issue a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under Section 24.0053(d).

(a-4)  During an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the [~~justice~~] court [~~or county court~~] registry as the rent becomes due under the rental agreement in accordance with the Texas Rules of Civil Procedure and Section 24.0053, the landlord may file with the [~~county~~] court hearing the appeal a sworn motion that the tenant failed to pay rent as required. The landlord shall notify the tenant of the motion and the hearing date.

(b)  If the [~~county~~] court hearing the appeal finds that the tenant has not complied with the payment requirements of the Texas Rules of Civil Procedure and Section 24.0053, the [~~county~~] court shall immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry:

(1)  all rent not paid in accordance with the Texas Rules of Civil Procedure and Section 24.0053; and

(2)  the landlord's reasonable attorney's fees, if any, in filing the motion.

(c)  If the court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion:

(1)  the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees, if any; and

(2)  the [~~county~~] court hearing the appeal shall immediately issue a writ of possession.

(e)  In a motion or hearing under Subsection (a-4), or in a motion to dismiss an appeal of an eviction case [~~in county court~~], other than a motion to dismiss an appeal filed in a court of appeals, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

(f)  During the appeal of an eviction case, if a government agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the [~~justice~~] court [~~or county court~~] registry, the landlord may file a motion with the [~~county~~] court hearing the appeal requesting that the tenant be required to pay into the [~~county~~] court registry, as a condition of remaining in possession, the full amount of each rental period's rent, as it becomes due under the rental agreement. After notice and hearing, the court shall grant the motion if the landlord proves by credible evidence that:

(1)  a portion of the rent is owed by a government agency;

(2)  the portion of the rent owed by the government agency is unpaid;

(3)  the landlord did not cause wholly or partly the agency to cease making the payments;

(4)  the landlord did not cause wholly or partly the agency to pay the wrong amount; and

(5)  the landlord is not able to take reasonable action that will cause the agency to resume making the payments of its portion of the total rent due under the rental agreement.

SECTION 11.  Section 24.0062(i), Property Code, is amended to read as follows:

(i)  Before the sale of the property by the warehouseman, the tenant may file suit in the [~~justice~~] court in which the eviction judgment was rendered, or in another court of competent jurisdiction in the county in which the rental premises are located, to recover the property described by Subsection (e) on the ground that the landlord failed to return the property after timely demand and payment by the tenant, as provided by this section. Before sale, the tenant may also file suit to recover all property moved or stored by the warehouseman on the ground that the amount of the warehouseman's moving or storage charges is not reasonable. All proceedings under this subsection have precedence over other matters on the court's docket. The [~~justice~~] court that issued the writ of possession has jurisdiction under this section regardless of the amount in controversy.

SECTION 12.  Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007.  APPEAL. (a) A final judgment of a county court in an eviction suit originally filed in a justice court may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court in an eviction case originally filed in a justice court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

(b)  A final judgment of a court of appeals in an eviction suit originally filed in a statutory county court may not be further appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a court of appeals in an appeal taken from an eviction case originally filed in a statutory county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the court of appeals. In setting the supersedeas bond the court of appeals shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

SECTION 13.  Section 24.011(a), Property Code, is amended to read as follows:

(a)  In eviction suits in a statutory county court or justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in a statutory county court or justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

SECTION 14.  Section 501.0521(a), Transportation Code, is amended to read as follows:

(a)  A justice of the peace or municipal court judge may not issue an order related to a title except as provided by Chapter 47, Code of Criminal Procedure, or Section 27.031(a)(2) [~~27.031(a)(3)~~], Government Code.

SECTION 15.  The changes in law made by this Act apply only to a forcible entry and detainer or a forcible detainer suit filed on or after the effective date of this Act. A suit filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 16.  This Act takes effect September 1, 2023.