



**Judge Adam M. Swartz, Justice of the Peace, 3-1**  
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**Case Style:** *Kandyse Hunt v. The Trellis at Lake Highlands & Ben Adamcik, Constable Pct. 3-1*

**Cause No.:** CC-22-02457-E

**Decided:** September 19, 2022

**Resulting JP 3-1 Court Policy:**

A *writ of possession* cannot issue where an eviction appeal has been perfected by either posting bond or filing a statement of inability to afford payment of an appeal bond. In this situation, procedurally, Court Clerks will treat non-payment of rent cases in the same manner as holdover/lease violation cases. Appeals will be sent to the Dallas County Courts at Law. The Justice Court will no longer have jurisdiction of the case and cannot re-obtain it without the matter being remanded back to it from the respective County Court at Law. Where there is no perfected appeal, the Justice Court will issue a *writ of possession* upon proper request.

**What is This About?**

While Judge Cercone and Constable Adamcik were still in office, the presiding Judge in Dallas County Court at Law 5 signed an order granting Declaratory Relief, holding plainly that it is unconstitutional (TX) to allow a *writ of possession* to issue pursuant to an eviction when a tenant has otherwise perfected an appeal by filing a pauper's affidavit/affidavit of inability to pay. The Order for Declaratory Relief is binding on this Court and extends to other cases that are similarly situated.

**Text of the Order:**

**"IT IS ORDERED that Tex. Prop. Code §§ 24.0053 and 24.0054 and Tex. R. Civ. P. § 510.9 are hereby declared facially unconstitutional**, under Art. 1, § 13 (Open Courts, Art. 1, § 19 (Due Course of Law), and Art. 1, § 3 (Equal Protection) of the Texas Constitution, **to the extent those provisions allow a *writ of possession* to be issued and/or executed after judgment is rendered in an eviction case where a defendant has timely perfected an appeal of the eviction by filing an affidavit of inability to pay** (also known as a "pauper's affidavit") **and the writ of possession would otherwise be issued and/or executed based on that defendant's failure to pay money** (i.e., rent) **into a court registry."**

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### Supporting Texas Supreme Court Citations:

- Marshall v. Hous. Auth. Of the City of San Antonio, 198 S.W. 3d 782, 787 (Tex.2006)(**when a defendant in a forcible detainer/eviction action is no longer in possession of the premises, then an appeal is moot unless the defendant asserts “a potentially meritorious claim of right to current, actual possession of the [premises].”**);
- Texas Assoc. of Business v. Texas Air Control Board, 852 S.W.2d 440, N.18 (Tex.1993)(**“the guarantee of constitutional rights should not depend on the balance in one’s bank account.”**);
- EBS Solutions, Inc. v. Hegar, 601 S.W.3d 744, 756 (Tex.2020)(**a tenant’s right to open courts is violated when its only means of access to courts is by relying on a statute that requires prepayment of money**)(discussing prior rulings declaring unconstitutional a statute that required taxpayers to pay taxes and sue for a refund, as opposed to having access to the courts without having to pay the taxes, where there was no mechanism to waive the prepayment requirement in circumstances of inability to pay.)

### Reasoning in Plain(er) English

- Allowing a *writ* to be executed pursuant to Tex, Prop. Code § 24.0054(a-2) when a legally valid, perfected appeal has been filed would, as a practical matter, **deny a tenant their right to appeal** the issue of possession of the Property altogether because once they are physically removed from the Property, the County Court at Law may lose jurisdiction to hear the appeal on that issue because it is mooted.
- Allowing the *writ of possession* to be issue/executed, where an eviction appeal was otherwise perfected and an affidavit of inability to pay was filed, would moot the tenant’s appeal and effectively deny her meaningful access to the courts.
  - o Denial of a tenant’s meaningful right to access courts would be done purely as a function of whether or not the tenant has enough money to pay, violating both the equal protection and due course of law clauses under the Texas Constitution.