**Affirmed and Opinion filed August 9, 2001.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-00005-CV**

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**DAVID HUNTINGTON AND LOUIS A. THORPE, Appellants**

**V.**

**FRANK BEARD AND K. A. SKANDALIS, Appellees**

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**On Appeal from the 80th District Court**
**Harris County, Texas**
**Trial Court Cause No. 84-07782**

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## O P I N I O N

This is an appeal from a trial court's denial of an application for a writ of scire facias. David Huntington and Louis A. Thorpe bring one issue on appeal. We affirm.

The underlying judgment in this case was entered in favor of appellants on March 13, 1985. Although the record does not contain a copy, both parties agree that appellants obtained a writ of execution dated July 11, 1985, which was returned marked "nulla bonna" [sic] on October 9, 1985.[1] Appellants contend that a second writ of execution

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[1] "Nulla bona" is the notation used by a sheriff on a return to a writ of execution when the judgment debtor has not seizable property within the jurisdiction. BLACK'S LAW DICTIONARY 1095 (7th Edition 1999). Although there is no documentation of this first writ of execution in the record, we may accept appellants assertion that it issued on July 11, 1985, because appellees do not dispute this fact. TEX. R. APP. P. 38.1(f).

dated November 26, 1985, was issued, but the record contains no documentation of a second writ of execution. Appellees dispute that a second writ was issued and complain of the lack of record documentation for this alleged writ. Appellants have included documentation regarding the writs of execution in the appendix to their brief and state that they requested inclusion of this documentation in the record, but this documentation is not in the record. It is appellants' burden to present a sufficient record to the appellate court to show error requiring reversal. *Melendez v. Exxon Corp.*, 998 S.W.2d 266, 274 (Tex. App.–Houston [14th Dist.] 1999, no pet.); *Estate of Veale v. Teledyne Indus., Inc.*, 899 S.W.2d 239, 242 (Tex. App.–Houston [14th Dist.] 1995, writ denied). Because the documentation regarding a second writ of execution is outside the record, we may not consider it. *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.–Austin 1991, writ denied).

In denying appellants' application for a writ of scire facias, the trial court stated the following in its order: "the underlying Foreign Judgment is dormant and unenforceable . . . ." Appellants argue that the trial court erred in finding the underlying judgment unenforceable because the judgment was revived under section 31.006. It describes how to revive a dormant judgment and provides that a dormant judgment "may be revived by scire facias or by an action of debt brought not later than the second anniversary of the date that the judgment becomes dormant." TEX. CIV. PRAC. & REM. CODE ANN. § 31.006 (Vernon 1997).

Section 34.001 describes when a judgment becomes dormant. A judgment becomes dormant if a writ of execution is not issued within 10 years after the rendition of judgment. TEX. CIV. PRAC. & REM. CODE ANN. § 34.001(a) (Vernon 1997). The parties both agree that a first writ of execution was issued within 10 years after rendition of judgment. Thus, subsection (a) does not apply. Subsection (b) provides that a judgment will become dormant even if a writ of execution is issued within 10 years after rendition of judgment, if a second writ of execution is not issued within 10 years after the first issued writ of execution. *Id.* at (b). Although appellants argue that a second writ of execution issued

within 10 years after rendition of judgment, nothing in the record supports this argument.

Absent any proof of issuance of a second writ of execution, appellees contend the underlying judgment became dormant 10 years after issuance of the first writ of execution, or on July 11, 1995. We agree. Section 31.006 allows revival of dormant judgments, but only if the action to revive is brought on or before the second anniversary of the date the judgment became dormant. TEX. CIV. PRAC. & REM. CODE ANN. § 31.006 (Vernon 1997).[2] As we have already found, the underlying judgment became dormant on July 11, 1995. Therefore, appellants were required to file their application for writ of scire facias not later than the second anniversary of the date of dormancy, or by July 11, 1997. Appellants filed their application on July 14, 1997. Accordingly, their application came too late. The trial court properly denied appellants' application.

We affirm the judgment of the trial court.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed August 9, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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[2] Appellees claim that the 1995 amendment to section 31.006 does not apply to this action and would result in the ex post facto application of that provision. Section 31.006 was amended in 1995 (effective September 1, 1995) and the amendatory act provided that it "applies only to an action to revive a judgment brought on or after December 1, 1996." Act of September 1, 1995, 74th Leg., R.S., Ch. 935, § 2, sec. 31.006, 1995 Tex. Gen. Laws 4702, 4703. In support of their claim that the 1995 amendment does not apply, appellees argue that the effective date of this amendment did not occur until two months after the judgment in this case becomes dormant. The amendment does not, however, base application on the date of dormancy. Instead, it applies to actions to revive judgments brought on or after December 1, 1996. Because appellants filed their action to revive the underlying judgment after December 1, 1996, we hold that the amended version of section 31.006 applies.

Do Not Publish — TEX. R. APP. P. 47.3(b).