

Affirmed and Memorandum Opinion filed July 21, 2020.



In The
Fourteenth Court of Appeals

NO. 14-19-00171-CV

HOUSTON GATEWAY ACADEMY, INC., Appellant

V.

IRRH, LLC F/N/A INTEGRA REALTY RESOURCES-HOUSTON, LLC,
Appellee

On Appeal from the County Civil Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 1103769

M E M O R A N D U M O P I N I O N

Appellee IRRH, LLC f/n/a Integra Realty Resources-Houston, LLC (“IRRH”) sued Appellant Houston Gateway Academy, Inc. (“Houston Gateway”), asserting a claim for suit on a sworn account. The trial court signed a final judgment in favor of IRRH, awarding it actual damages and attorney’s fees. Houston Gateway appealed and asserts that it did not receive any notice or an opportunity to be heard before the final judgment was signed. For the reasons below, we affirm.

BACKGROUND

IRRH filed suit in December 2017, asserting that Houston Gateway failed to remit the payments it owed under the parties' contract for IRRH's provision of appraisal services. Houston Gateway filed a general and verified denial. IRRH filed a motion for traditional summary judgment and attached as evidence (1) the parties' letter agreement, (2) an invoice showing the work IRRH completed pursuant to the agreement, and (3) an affidavit from IRRH's attorney with respect to the attorney's fees incurred in the litigation. Responding to IRRH's summary judgment motion, Houston Gateway asserted that more time was needed to undertake additional discovery.

After these filings, the next entry in the record is the "Final Summary Judgment" order that accompanied IRRH's motion for summary judgment. "DENIED" is handwritten on the top of the order; the order is not signed or dated.

The record next shows that an "Order for Trial Resetting" was signed in October 2018 and that the case was reset for trial beginning on December 3, 2018. After this order, the next entry in the record is a final judgment signed January 28, 2019. The final judgment states that, "[a]t the hearing on this cause, . . . Houston Gateway failed to appear." The judgment also notes that:

[Houston Gateway] has requested a trial by jury, but has failed to pay the jury fee. Of particular note, the non-jury trial of this cause was set for December 3, 2018, was continued based on the in-court motion of [Houston Gateway] to continue this trial setting to afford [Houston Gateway] the opportunity to pay the jury fee and for the trial to be reset on the Court's jury docket. However, [Houston Gateway] still failed to pay the jury fee. Therefore, the Court finds that [Houston Gateway] waived its request for a jury.

Continuing on, the trial court's final judgment states that it "took notice of [IRRH's]

Notice of Deemed Admissions¹ filed in this cause” and finds that judgment should be rendered in favor of IRRH. The trial court awarded IRRH \$20,050 in damages plus interest and attorney’s fees. Houston Gateway timely filed this direct appeal.

ANALYSIS

Asserting that the trial court failed to provide it with “any notice or any opportunity to be heard before entry of a final judgment”, Houston Gateway argues that this failure constitutes a violation of its due process rights. Houston Gateway asks that we reverse the trial court’s final judgment.

The law presumes that a trial court will hear a case only after proper notice to the parties. *Felt v. Comerica Bank*, 401 S.W.3d 802, 806 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Welborn-Hosler v. Hosler*, 870 S.W.2d 323, 329 (Tex. App.—Houston [14th Dist.] 1994, no writ). An appellant bears the burden of rebutting this presumption by affirmatively showing a lack of notice. *Hendricks v. Barker*, 523 S.W.3d 152, 162 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *Felt*, 401 S.W.3d at 808. This fact issue – *i.e.*, whether or not the appellant was given notice of the date and time of the hearing – must be resolved by the trial court before it may be addressed on appeal. *See Williams v. Bayview-Realty Assocs.*, 420 S.W.3d 358, 364-66 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding that party failed to preserve error by failing to complain about a lack of notice in the trial court); *Felt*, 401 S.W.3d at 806 (noting that the court begins with a presumption that a defendant had proper notice, and that the defendant must overcome this presumption by affirmatively showing a lack of notice via competent evidence); *see also Obasogie v. Amtex Auto Ins. Co.*, No. 14-17-00405-CV, 2018 WL 3237161, at *1 (Tex. App.—Houston [14th Dist.] July 3, 2018, pet. denied) (mem. op.).

¹ IRRH’s “Notice of Deemed Admissions” is not included with the clerk’s record.

Here, Houston Gateway did not raise its complaint in the trial court and did not present any evidence to support its claim that it did not receive notice of the hearing at which the final judgment was signed. Instead, Houston Gateway raised this issue for the first time on appeal. Therefore, Houston Gateway waived its complaint regarding lack of proper notice. *See Williams*, 420 S.W.3d at 364, 366; *Felt*, 401 S.W.3d at 806; *see also Obasogie*, 2018 WL 3237161, at *1.

CONCLUSION

We affirm the trial court's January 28, 2019 final judgment.

/s/ Meagan Hassan
Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.