AFFIRMED in part; REVERSE and RENDER in part and Opinion Filed August 4, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00689-CV

IN RE ESTATE OF LORETTA POWELL, DECEASED

On Appeal from the Probate Court No. 1
Dallas County, Texas
Trial Court Cause No. PR-16-01344-1

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Osborne

Appellant Douglas Doyle, one of Loretta Powell's sons and the executor of her estate, prepared and recorded three deeds conveying Powell's property to himself and to appellants Madison Doyle and Ashley Doyle. Appellant Joe Putnam, Douglas Doyle's lawyer, notarized the deeds. The trial court set aside the deeds and assessed sanctions against Douglas Doyle and Putnam. In seven issues, appellants challenge the trial court's orders. We affirm in part and reverse and render in part. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

Loretta[1] died in 2016. In her 2014 will, she divided her estate among her children, leaving forty percent to Douglas, forty percent to her daughter Robin Christopher,[2] and twenty percent to her son Steve Doyle. Douglas, Robin, and Steve are the only beneficiaries named in the will. As provided in Loretta's will, Douglas became her estate's executor after the trial court granted his motion, signed by Putnam, to probate the will and for letters testamentary. The estate's primary asset was a house in Farmers Branch.

Disputes arose among the siblings regarding the administration of the estate and the disposition of Loretta's property, and Robin filed a motion in August 2018 to remove Douglas as executor. Douglas responded that there were no grounds for his removal. The matter was set for hearing several times but no proceedings were recorded until January 15, 2019. Following the hearing, the trial court removed Douglas as administrator and appointed Ryan Trobee as successor administrator.

Immediately before the January 15, 2019 hearing and his removal as executor, Douglas signed and recorded three deeds conveying interests in Loretta's property to himself and to Steve's daughters Ashley and Madison. Putnam notarized Douglas's signature on the deeds. Robin learned of the deeds the following month.

[1] For clarity we refer to family members by their first names.

[2] Robin has filed an appellee's brief, as has Ryan Trobee, the successor administrator of the estate.

She filed a motion to set aside the deeds and for an award of attorney's fees and sanctions. In the motion, Robin alleged:

- a show cause hearing on her application to remove Douglas as executor was scheduled for November 5, 2018;
- both parties appeared and announced ready, but the court determined there was insufficient time for the parties to present their anticipated evidence, and advised the parties to obtain a new hearing date;
- Robin's counsel advised the court that rescheduling would necessitate her immediate filing of an emergency application for a temporary restraining order to bar Douglas from making any transfer or encumbrance of estate property;
- upon the court's inquiry, Douglas "affirmatively and unambiguously announced in open court his agreement to maintain the status quo during the pendency of [Robin's] application for his removal";
- at the rescheduled hearing on December 5, 2018, the trial court reviewed a prior order compelling discovery, determined that Douglas's responses were incomplete, ordered further responses by December 14, and rescheduled the hearing on Robin's application to remove Douglas as executor for January 15, 2019;
- without any notice to Robin or the court, on January 8, 2019, Douglas conveyed interests in Loretta's property to himself, Ashley, and Madison;
- at the hearing on January 15, Douglas was removed as executor; and
- on February 12, 2019, Robin's attorney discovered the deeds when researching the property records relating to Loretta's home.

Robin attached her attorney's affidavit to the motion attesting to the facts recited in her motion. Putnam filed a response to the motion without stating in what capacity he did so.

The trial court heard Robin's motion on April 2, 2019. Kelly Nguyen, the trial court's reporter, testified about the alleged agreement to maintain the status quo until the hearing on Robin's motion. Robin testified to the substance of her dispute with Douglas about the administration of the estate, including their agreement to pay Steve in cash in exchange for his disclaimer of interest in Loretta's estate.

After the hearing, the trial court signed an order on April 30, 2019 rescinding the deeds to Douglas, Ashley, and Madison. The trial court also signed a separate order on May 22, 2019, sanctioning Douglas and Putnam. This appeal followed.

ISSUES

In seven issues, appellants complain of the trial court's orders of April 30, 2019 and May 22, 2019. They contend the trial court erred because:

1. The trial court had no jurisdiction to render judgment against Douglas, Madison, or Ashley because they were neither served with citation nor appeared in court;

2. There was no enforceable rule 11 agreement between the parties;

3. The alleged oral agreement is disputed;

4. Robin lacked standing to challenge the deeds;

5. The May 22, 2019 order is a nullity because it violates rule of civil procedure 301;

6. There is no legal or factual basis for the assessment of attorney's fees against Douglas or Putnam; and

7. There is no legal or factual basis to impose sanctions against Douglas[3] or Putnam.

STANDARDS OF REVIEW

We review determinations of personal jurisdiction de novo. *M&F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 885 (Tex. 2017).

We review challenges to the legal and factual sufficiency of the evidence under well-known standards. In evaluating the legal sufficiency of the evidence to support a finding, we credit favorable evidence if a reasonable factfinder could, and disregard contrary evidence unless a reasonable factfinder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). Anything more than a scintilla of evidence is legally sufficient to support a challenged finding. *See Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994). In reviewing the factual sufficiency of the evidence, we review all of the evidence in support of and against the trial court's finding and will set aside the finding only if the evidence is so weak or if the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam). In a bench trial, the trial court is the sole judge of the credibility of the witnesses and the

[3] In their statement of issues and the summary of argument in their appellate brief, appellants challenge only the award against Putnam. In the argument section of the brief, however, they include a complaint as to Douglas. Consequently, we construe the issue to include Douglas's complaint. *See Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008) (appellate briefs to be considered reasonably, yet liberally, so that the right to appellate review is not lost by waiver).

evidence. *See Fulgham v. Fischer*, 349 S.W.3d 153, 157 (Tex. App.—Dallas 2011, no pet.).

We review the imposition of sanctions under an abuse of discretion standard. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 361 (Tex. 2014). A sanctions award will not withstand appellate scrutiny if the trial court acted without reference to guiding rules and principles to such an extent that its ruling was arbitrary or unreasonable. *Id.* A trial court has no discretion in determining what the law is or applying the law to the facts. *Id.* But a trial court does not abuse its discretion in levying sanctions if some evidence supports its decision. *Id.*

DISCUSSION

1. Notice of hearing

In their first issue, appellants contend the trial court lacked jurisdiction to render judgment against Douglas, Madison, or Ashley because none of them were served with citation or made an appearance in the trial court. They rely on civil procedure rule 124 providing that "[i]n no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant . . . ." TEX. R. CIV. P. 124. Appellants also cite case authority requiring that grantees of deeds must be made parties to an action for rescission of the deed. *See, e.g., Mason v. Snider*, 425 S.W.2d 377, 378 (Tex. Civ. App.—Tyler 1968, writ dism'd). We need not address these points, however,

because the record shows that Douglas, Madison, and Ashley received notice of the hearing.

If a party is represented by an attorney of record in a probate proceeding, any required notice to the party must be served on the attorney. TEX. EST. CODE § 51.051(a). The motion to set aside the deeds was served on Putnam, who filed a response and appeared in person at the hearing. Although Putnam argued at the hearing that he only represented Douglas in his capacity as independent executor, not in his individual capacity, no such disclaimer was made prior to the hearing or was reflected in the response to Robin's motion. *See* TEX. R. CIV. P. 10 ("An attorney may withdraw from representing a party only upon written motion for good cause shown."). On inquiry by the court, Putnam confirmed there was no dispute between he and Douglas, after which the court concluded that Putnam remained aligned with Douglas. Further, the administrator advised the court on the record that he had served trial subpoenas on both Douglas and Putnam to appear at the April 2 hearing. Consequently, we conclude that Douglas had both appeared in the proceeding and received notice of the April 2 hearing. *See Arndt v. Farris*, 633 S.W.2d 497, 500 (Tex. 1982) (service pursuant to rule 21a and attorney's representation that his client had actual knowledge of the hearing was sufficient notice of sanctions hearing).

The record also includes a notice of the April 2 hearing signed by Robin's counsel. He certified that he served a copy of the notice on Madison and Ashley via regular and certified mail on March 15, 2019. Proof of the certified mail is attached

to the notice. *See* TEX. R. CIV. P. 21a(b)(1) (service by mail complete on deposit of document, postpaid and properly addressed, in the mail); *id.* 21a(d) (notice may be served by an attorney of record); *id.* 21a(e) (certificate of service by party or attorney is prima facie evidence of fact of service); *see also Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005) (per curiam) (notice properly sent pursuant to rule 21a raises presumption that notice was received). Consequently, service on Madison and Ashley complied with civil procedure rule 21a.

The April 30 order recites:

> Robin Christopher personally appeared; Joe Putnam announced his appearance on his own behalf only, and stated on the record that he was not making appearance on behalf of Doug Doyle; and Doug Doyle, though duly noticed and served through counsel of record with trial subpoena, failed to appear; Ashley Renee Doyle and Madison Kay Doyle were duly served with notice of this hearing at their last known addresses via both Certified and Regular mail, and both failed to answer or appear.

We conclude that Robin served notice of the probate proceeding on Douglas, Madison, and Ashley, and that the probate court properly exercised its jurisdiction under the estates code. We decide appellants' first issue against them.

2. Rule 11 agreement

In their second issue, appellants contend there was no enforceable rule 11 agreement to maintain the status quo. In their third issue, appellants argue that in any event, Douglas's actions in signing executor's deeds to himself, Madison, and Ashley were not changes to the status quo.

Civil procedure rule 11 provides that "no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record." TEX. R. CIV. P. 11. The purpose of the rule is to relieve the courts of the necessity of resolving disputes over the terms of oral agreements relating to pending suits. *Anderson v. Cocheu*, 176 S.W.3d 685, 688 (Tex. App.—Dallas 2005, pet. denied). As explained in *Anderson*, however, in enforcing rule 11 "the Texas Supreme Court has been mindful of the fact that the rule may be said to abridge the substantive right of persons to enter into oral contracts." *Id*. (citing *Kennedy v. Hyde*, 682 S.W.2d 525, 529 (Tex. 1984)). Consequently, courts have balanced the purpose of the rule with the ability to make oral agreements, resulting in recognition of certain equitable exceptions to rule 11's writing requirement. *Id.*

One exception to the writing requirement arises when the oral agreement is undisputed. *Id.* "In cases where the existence of the agreement and its terms are not disputed, the agreement may be enforced despite its literal noncompliance with the rule." *Id*. at 689. At the April 2, 2019 hearing, Kelly Nguyen, the court reporter for the trial court's proceedings on November 5, 2018, testified that although there is no reporter's record from the November 5 hearing, she listened to a back-up room audio recording made of the hearing. She testified that "at the very end of that back-up room audio recording of 17 minutes, there was an agreement that was made between

the parties and the Judge that everything would remain status quo." She testified that Douglas and his attorney both made the agreement.

Appellants argue there was no change in the status quo. They contend that title to Powell's property vested immediately upon her death, so the grantees of the deeds already "possessed ownership of their interest" when Powell died, and "[t]heir interests were merely placed on record" without any "transfer or encumbrance of any interest in the property in question." They cite *Kelley v. Marlin*, 714 S.W.2d 303, 305–06 (Tex. 1986), in support of their argument.

Trobee, the administrator, addressed appellants' arguments in his brief. He acknowledges *Kelley*'s quotation from the probate code that title "shall vest immediately in the devisees or legatees of such estate." *See id*. at 305 (quoting former probate code § 37, now TEX. EST. CODE § 101.001(a)(1)). But he argues that appellants' quotation omits the remainder of the statutory language quoted in *Kelley* that the vesting is "subject to the payment of the debts of the testator." *See Kelley*, 714 S.W.3d at 305; see also TEX. EST. CODE §§ 101.001 (estate immediately vests "subject to section 101.051"); 101.051(a)(1) (estate vests "subject to the payment of . . . the debts of the decedent"). Trobee argues that after Douglas's transfers, the only property remaining in the estate from which to pay the estate's debts—primarily the cost of subsequent administration necessitated by Douglas's malfeasance—was Robin's share. Consequently, as Trobee concludes, "[t]he deeds executed by Douglas were far more than a simply ministerial act."

Appellants do not dispute Nguyen's testimony, nor do they dispute that an agreement to maintain the status quo was made. As we have explained, appellants argue only that (1) the agreement was not in writing, and (2) Douglas's actions in conveying property to himself, Madison, and Ashley was not a change in the status quo. Because appellants do not dispute the existence of the agreement or its terms, we conclude that the exception described in *Anderson* applies. *See Anderson*, 176 S.W.3d at 688–89. And because Douglas's actions changed the status quo, there was sufficient evidence to support the trial court's order setting aside the deeds. We decide appellants' second and third issues against them.

3. Standing

In their fourth issue appellants contend Robin lacked standing to challenge the three deeds. They argue that Robin had no personal stake in the controversy because the deeds did not affect or alter her interest in the estate property; they "merely made the interests of the grantees therein a matter of public record." They argue that Robin continues to retain her forty percent interest in the property and a full right to partition, so the deeds did not cause her any harm.

Robin responds that as an "interested person" under the Estates Code she had standing to challenge the deeds. *See* TEX. EST. CODE § 22.018(1) ("interested person" means "an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered"); *see also Worley v. Avinger*, No. 05-18-00648-CV, 2019 WL 3729508, at *3 (Tex. App.—Dallas Aug. 8, 2019,

pet. denied) (mem. op.) ("In other words, an interested person is one who 'has some legally ascertained pecuniary interest, real or prospective, absolute or contingent, which will be impaired or benefitted, or in some manner materially affected by [the proceeding].'") (quoting *In re Estate of York*, 951 S.W.2d 122, 126 (Tex. App.—Corpus Christi–Edinburg 1997, writ denied)). As a devisee under Powell's will, Robin had standing to challenge the transfers of property from the estate. *See, e.g., Gutierrez v. Stewart Title Co.*, 550 S.W.3d 304, 317 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (remainderman of life estates granted in decedent's will had standing to challenge conveyances of testator's properties). We decide appellants' fourth issue against them.

4. Validity of order

In their fifth issue, appellants argue the trial court's May 22, 2019 order is void and a nullity because there can be only one final judgment in a case, and the April 30, 2019 order was the final judgment. They cite rule of civil procedure 301 and several cases in support of their argument. *See* TEX. R. CIV. P. 301 (providing in part that "[o]nly one final judgment shall be rendered in any cause except where it is otherwise specially provided by law"); *see also Moncrief v. Harvey*, 805 S.W.2d 20, 24 (Tex. App.—Dallas 1991, no writ) ("[A]fter a final judgment has been entered in a cause, the entry of a second final judgment in the same case does not vacate the first, and if there is nothing to show that the first is vacated, then the second is a nullity.").

But as the supreme court has explained, "[p]robate proceedings are an exception to the 'one final judgment' rule; in such cases, 'multiple judgments final for purposes of appeal can be rendered on certain discrete issues.'" *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (quoting *Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 192 (Tex.2001)). Here, although both orders arose from Robin's motion to set aside the deeds, the orders reflect different rulings made by the trial court after two separate hearings.[4] In the April 30 order, the trial court made findings regarding Douglas's transfers of property out of the estate. In the May 22 order, the trial court made an award of attorney's fees to Robin. And in any event, neither order disposes of all parties and all issues in the probate proceeding. *Cf. Lehmann*, 39 S.W.3d at 195 (judgment is final for purposes of appeal if it disposes of all pending parties and claims in the record). We decide Douglas's fifth issue against him.[5]

5. Attorney's fees and sanctions

In their sixth issue, appellants argue there is no legal or factual basis to support the assessment of attorney's fees against Douglas and Putnam. In their seventh issue,

[4] The May 22 order recites that Robin's request for attorney's fees "came to be heard" on May 21, 2019, that Robin's counsel and Trobee appeared, and that Putnam and Doyle did not appear. The appellate record does not include a reporter's record of this hearing, however.

[5] For the same reasons, we reject Robin's argument that "Appellants have failed to cite to any authority establishing this Court's jurisdiction to hear an appeal of interlocutory orders incident to the ongoing administration of a probate estate." The trial court's orders resolved a discrete dispute. *See De Ayala*, 193 S.W.3d at 578; *see also Gough v. Gough*, No. 05-99-00459-CV, 2000 WL 371034, at *2 (Tex. App.—Dallas Apr. 12, 2000, pet. denied) (not designated for publication) ("Although a probate court order becomes final and appealable if the order disposes of all issues and parties related to the order, such an order does not conclude the probate court's jurisdiction.").

appellants argue there is no legal or factual basis to impose sanctions against Douglas and Putnam. We consider these issues together because Robin's motion sought attorney's fees as sanctions, and the trial court made a single award of attorney's fees against Douglas and Putnam in the second of its two challenged orders.

The trial court made a specific finding in the April 30 order that "Doyle and Putnam actively participated in a conspiracy and did breach their oral agreement to maintain the status quo by their preparation, execution, notarization and subsequent recordation of three deeds purporting to transfer interests in the subject Property in the Official Public Records of Dallas County . . . ." In that order, the trial court declared that the challenged deeds were void, but the order did not include any award of attorney's fees. In the May 22 order, the trial court awarded Robin her attorney's fees in the amount of $6,148.50, ruling that the award "is a just and reasonable sanction for [Douglas's and Putnam's] bad faith breach of their enforceable oral agreement to maintain the status quo." Consequently, the trial court's award of attorney's fees was based on Putnam's and Douglas's breach of the rule 11 agreement in bad faith.

Robin argues that the trial court could impose sanctions under either Chapter 10 of the civil practice and remedies code or civil procedure rule 13. *See* TEX. CIV. PRAC. & REM. CODE §§ 10.001–10.006 (sanctions for frivolous pleadings or motions); TEX. R. CIV. P. 13 (effect of signing pleadings, motions, and other papers; sanctions). But those provisions apply to pleadings or motions filed for an improper

purpose or that lack legal or factual support (Chapter 10), or to pleadings or "other papers" that are "groundless and in bad faith, intended to harass, or are false when made." *Nath*, 446 S.W.3d at 362 (describing Rule 13). Here, the court imposed sanctions for "bad faith breach of [an] enforceable oral agreement." Consequently, neither Chapter 10 nor rule 13 applies. *See Greiner v. Jameson*, 865 S.W.2d 493, 500 (Tex. App.—Dallas 1993, writ denied) (sanctions for failure to comply with rule 11 settlement agreement could not be upheld "under the authority of a violation of any rule of civil procedure about pleading, pretrial, or discovery").

But courts also have inherent power to sanction "where necessary to deter, alleviate, and counteract bad faith abuse of the judicial process," *id.* at 499, "such as any significant interference with the traditional core functions of the court." *Union Carbide Corp. v. Martin*, 349 S.W.3d 137, 147 (Tex. App.—Dallas 2011, no pet.). The core functions of a trial court include hearing evidence, deciding issues of fact raised by the pleadings, deciding questions of law, rendering final judgments, and enforcing judgments. *Id.* In assessing sanctions under the trial court's inherent powers, the trial court must make factual findings, based on evidence, that the conduct complained of significantly interfered with the court's legitimate exercise of its core functions. *See id.* at 148. The supreme court has recently emphasized that "[b]ecause inherent powers are shielded from direct democratic controls, and because of their very potency, inherent powers must be exercised with restraint, discretion, and great caution." *Brewer v. Lennox Hearth Products, LLC*, 601 S.W.3d

704, 718 (Tex. 2020) (internal quotations and footnotes omitted). "To that end, invocation of the court's inherent power to sanction necessitates a finding of bad faith." *Id.* The court explained:

> Bad faith is not just intentional conduct but intent to engage in conduct for an impermissible reason, willful noncompliance, or willful ignorance of the facts. "Bad faith" includes conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose. Errors in judgment, lack of diligence, unreasonableness, negligence, or even gross negligence—without more—do not equate to bad faith. Improper motive, not perfection, is the touchstone.

Id. (internal quotations and footnotes omitted).

Robin was the only witness at the April 2 hearing other than the court reporter. She testified that Steve had stolen some $30,000 from Loretta through unauthorized use of Loretta's credit cards. For that reason, Loretta had filed a police report and confided to Robin that she "wanted Steve out of the will, completely." Robin testified to her subsequent agreements with Douglas and Steve that Steve would disclaim his interest in the estate in exchange for cash payments from Robin and Douglas, and Robin and Douglas would then divide the estate "50/50." She explained that she was "shocked" to learn, after she had paid Steve in accordance with the agreement, that Steve's written disclaimer of his interest in the estate was actually a transfer of Steve's interest to Douglas. She also testified that she and Douglas had never discussed any interest in the estate for Ashley and Madison, who were not named in Loretta's will. She testified that she learned of the deeds to Douglas, Ashley, and Madison only after Douglas's removal as executor.

In closing argument, Putnam contended that he did not recall any rule 11 agreement, and in any event, any agreement did not comply with rule 11's requirements. He argued that under the estates code, the effect of Steve's disclaimer was that his share would go to Madison and Ashley, so the transfers did not "affect anything about the administration of the Estate or anything that anybody has to do." Administrator Trobee disagreed, responding that the effect of the transfers was to shift all of the cost of administering the estate to Robin. Putnam made no argument on Douglas's behalf.

The trial court's orders reflect that it made the attorney's fees award as a sanction for Douglas's and Putnam's bad faith violation of the rule 11 agreement. Although there is some evidence supporting the trial court's finding that Douglas and Putnam acted in bad faith, the trial court did not also find or conclude that Douglas's and Putnam's bad faith conduct significantly interfered with the court's "legitimate exercise of its core functions." *Union Carbide Corp.*, 349 S.W.3d at 147. Consequently, we conclude the trial court abused its discretion by imposing the sanction against Douglas and Putnam. *See id.* at 147–48. We sustain appellants' seventh issue.

CONCLUSION

The trial court's award of attorney's fees as sanctions is reversed. In all other respects, we affirm the trial court's orders.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN RE ESTATE OF LORETTA POWELL, DECEASED	On Appeal from the Probate Court No. 1, Dallas County, Texas Trial Court Cause No. PR-16-01344-1.
No. 05-19-00689-CV	Opinion delivered by Justice Osborne. Justices Whitehill and Carlyle participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED AND RENDERED** in part. We **REVERSE** that portion of the trial court's judgment awarding attorney's fees to appellee Robin Christopher. In all other respects, the trial court's judgment is **AFFIRMED**.

It is **ORDERED** that appellees Robin Christopher and Ryan Trobee, as Administrator of the Estate of Loretta Powell, recover their costs of this appeal from appellants Douglas Doyle, Joe Putnam, Madison Doyle, and Ashley Doyle.

Judgment entered August 4, 2020