Affirmed and Opinion Filed November 16, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00239-CV

ECO PLANET, LLC AND M. JAMAL MEZANAZI, Appellants
V.
ANT TRADING AND THABED AKEED, Appellees

On Appeal from the 95th District Court
Dallas County, Texas
Trial Court Cause No. DC-17-03276

MEMORANDUM OPINION

Before Justices Osborne, Partida-Kipness, and Pedersen, III[1]
Opinion by Justice Partida-Kipness

Appellants Eco Planet, LLC and M. Jamal Mezanazi appeal from a judgment for appellees ANT Trading and Thabed Akeed declaring that non-party Nazem Miznazi is a managing member of Eco Planet. In two issues, appellants contend the trial court erred in not dismissing appellees' declaratory judgment action because it was an impermissible collateral attack on a prior judgment and was barred by collateral estoppel. We affirm the trial court's judgment.

[1] Justice Pedersen, III did not participate in oral argument but participated in the resolution of this appeal. Justice Carlyle participated in oral argument but not did not participate in the resolution of this appeal.

BACKGROUND

Mezanazi, Akeed, and Miznazi founded Eco Planet in 2008 to provide hydro-mulching services in Qatar. Each person owned a one-third share of the company. Mezanazi and Miznazi were initially named as managing members of Eco Planet. According to Mezanazi, however, Miznazi forfeited his interest in Eco Planet in 2009, and, in April 2009, Mezanazi filed a certificate of amendment with the Texas Secretary of State to remove Miznazi as a managing member and add Mezanazi's wife as managing member. Mezanazi did not obtain Miznazi's consent to file the amendment. On August 11, 2015, Miznazi filed a certificate of amendment with the Texas Secretary of State, adding himself as a managing member and certifying he was not supposed to have been removed in 2009.

As part of the plan to provide hydro-mulching services in Qatar, Eco Planet entered into a contract with ANT Trading, a Qatar company owned by Akeed. A dispute arose between the entities regarding ANT Trading's alleged failure to fulfill certain contractual obligations. In July 2009, Eco Planet and Mezanazi filed suit against ANT Trading and Akeed for breach of contract in the case styled *Eco Planet, LLC et al. v. ANT Trading, et al.*, Cause No. 09-08706, in the 298th Judicial District Court, Dallas County, Texas (Underlying Lawsuit). Akeed counterclaimed against Mezanazi and brought Miznazi as a third-party defendant. In support of his counterclaims, Akeed alleged no action could be taken by Eco Planet without Miznazi's consent. The Underlying Lawsuit went to arbitration, and the arbitrator

entered an amended award in favor of Eco Planet and Mezanazi on January 28, 2015. During the arbitration, appellees again asserted that Eco Planet had not sanctioned or approved the litigation and objected to the continuation of the litigation on the basis of standing. The arbitrator denied that objection, noting that the standing issue had not been raised in court before the case was submitted to arbitration. Eco Planet and Mezanazi filed a motion to confirm the amended arbitration award in the 298th Judicial District Court on February 9, 2015. The court issued an Order Confirming Amended Arbitration Award and Judgment on March 6, 2015.

Eco Planet and Mezanazi attempted to domesticate and collect the Underlying Judgment from appellees in Qatar. In response, Miznazi sent written notice to Mezanazi on April 6, 2017, stating that "[a]s managing member," he had not authorized "any lawsuit or domestication and execution of any judgment in the United States or any other country against Thabet Akeed or ANT Trading." Miznazi stated further that he had "objected to Eco Planet, LLC domesticating the judgment" and "attempting to collect or execute on the judgment."

Appellees ANT Trading and Akeed filed the instant declaratory judgment action on March 20, 2017. In their original petition, appellees sought declaratory judgment that

1. Mezanazi "does not have legal authority" to take any of the following actions "without consent of the other Managing Member":

    a. "retain counsel on behalf of ECO PLANET, LLC";

b. "pursue legal actions or claims on behalf of ECO PLANET, LLC"; or

c. "pursue any legal action to domesticate and/or collect on the Order Confirming Amended Arbitration Award and Judgment";

2. Miznazi "has been, and still is, a Managing Member from the time the Certificate of Formation was filed on September 18, 2008[,] with the Texas Secretary of State;" and

3. "For each Managing Member that was either allegedly removed or added by MEZANAZI and/or ECO PLANET, it was done so without complying with the requirements of the Texas Business Organizations Code, that said action is void as a matter of law."

Trial was held to the bench. After receiving testimony and evidence from Mezanazi, Miznazi, and Akeed, the trial court entered judgment for appellees and rendered the declarations requested by appellees set out above. The trial court later issued findings of fact and conclusions of law, and this appeal followed.

STANDARD OF REVIEW

A declaratory judgment is a remedial measure that affords parties relief from uncertainty with respect to rights, status, and other legal relations. TEX. CIV. PRAC. & REM. CODE § 37.002(b); *Halliburton Energy Servs., Inc. v. Axis Tech, LLC*, 444 S.W.3d 251, 262 (Tex. App.—Dallas 2014, no pet.). A declaratory judgment is proper if "it will serve a useful purpose or will terminate the controversy between the parties." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 468 (Tex. 1995).

In reviewing declaratory judgments, we look to the procedure used to resolve the issue at trial to determine the appropriate standard of review. *See* TEX. CIV. PRAC. & REM. CODE § 37.010; *Berryman's S. Fork, Inc. v. J. Baxter Brinkmann Int'l Corp.*,

418 S.W.3d 172, 196 (Tex. App.—Dallas 2013, pet. denied); *MetroMarke Multifamily Dev. Fund I, L.P. v. RRAC Dev. GP, LLC*, No. 05-18-00900-CV, 2019 WL 6522181, at *2 (Tex. App.—Dallas Dec. 4, 2019, no pet.) (mem. op.). Here, judgment was rendered after a bench trial. We, therefore, apply a sufficiency-of-the-evidence review to the trial court's factual findings and review the trial court's conclusions of law de novo. *Black v. City of Killeen*, 78 S.W.3d 686, 691 (Tex. App.—Austin 2002, pet. denied); *Am. First Nat'l Bank v. Jordan-Lewis Dev., L.P.*, No. 01-09-00990-CV, 2011 WL 2732779, at *4 (Tex. App.—Houston [1st Dist.] July 14, 2011, no pet.) (mem. op.).

Appellants do not challenge the sufficiency of the evidence supporting the trial court's factual findings. Appellants contest only the trial court's legal conclusions that (1) appellees' declaratory judgment action did not constitute an impermissible collateral attack on the arbitration award and (2) collateral estoppel did not bar appellees' legal action. We evaluate these legal conclusions independently to determine whether the trial court correctly drew the legal conclusions from the facts. *Gentry v. Squires Constr., Inc.*, 188 S.W.3d 396, 402 (Tex. App.—Dallas 2006, no pet.).

ANALYSIS

In two issues, appellants contend[2] the trial court erred in adjudicating appellees' declaratory judgment action because the action constituted a collateral attack on the judgment issued in the Underlying Lawsuit and was barred by collateral estoppel. We address each issue in turn.

A. Collateral Attack

In their first issue, appellants contend that appellees' declaratory judgment action is nothing more than an attempt to avoid enforcement of the Underlying Lawsuit's judgment by having Miznazi declared a managing member of Eco Planet. "A collateral attack is an attempt to avoid the binding force of a judgment in a proceeding not instituted for the purpose of correcting, modifying, or vacating the judgment, but in order to obtain some specific relief which the judgment currently stands as a bar against." *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005). Only void judgments may be collaterally attacked. *Id.* "A judgment is void only

[2] The concurrence sets out appellants' arguments verbatim in footnotes, and a quick review of those footnotes demonstrates that appellants' briefing, though concise, sufficiently apprises the Court of appellants' issues and arguments for the contentions made. Appellants cite case law and the appellate record (through citation to their appendix). Then, for each issue, appellants apply the law to the facts. Appellants' analysis is not sophisticated or particularly compelling. But it is understandable. Although appellants failed to brief a standard of review, rule 38.1 does not require appellants to do so. *See* TEX. R. APP. P. 38.1. Further, the issues presented here are clearly legal issues to which this Court applies a de novo standard of review. Appellants' failure to set out that standard of review, though disappointing to the bench, is not fatal to appellants' appeal. *See Drury Sw., Inc. v. Louie Ledeaux #1, Inc.*, 350 S.W.3d 287, 291, n.1 (Tex. App.—San Antonio 2011, pet. denied) (no briefing waiver for failure to include standard of review where brief included arguments regarding sufficiency of the evidence). Indeed, appellants further clarified their issues, arguments, and the standard of review during oral argument. Moreover, as the concurrence concedes, we "must construe the briefing rules reasonably, yet liberally, so that the right of appeal on the merits is not lost by imposing requirements not absolutely necessary to effect the purpose of the rule." *See* TEX. R. APP. P. 38.9. We have done that here.

when it is apparent the court rendering it lacked (1) jurisdiction over the parties or property; (2) jurisdiction over the subject matter; (3) jurisdiction to enter the particular judgment; or (4) the capacity to act as a court." *Ward v. Hawkins*, 418 S.W.3d 815, 822 (Tex. App.—Dallas 2013, no pet.). Appellees do not contend the Underlying Lawsuit's judgment was void; therefore, if the declaratory judgment action is a collateral attack, it would be improper. *See Browning*, 165 S.W.3d at 346.

Appellees' original petition sought five specific declarations concerning one issue: Miznazi's status as a managing member of Eco Planet. The essence of appellees' declaratory judgment action was, thus, to clarify that Miznazi is a managing member, has never been removed as a managing member, and, as such, must approve of any legal action taken on behalf of Eco Planet. Appellants contend that this "defies" the "adjudicated fact" established in the Underlying Lawsuit that Miznazi is not a "named member" of Eco Planet. In support of this contention, appellants rely on the arbitration award's Factual Background recitation that states, "Neither Thabet Akeed (Akeed) nor Nazem Miznazi (Miznazi) nor Ant Trading were named members of the LLC [Eco Planet]." Even assuming that this statement constitutes a finding of fact, *see Fitness Evolution, L.P. v. Headhunter Fitness, L.L.C.*, No. 05-13-00506-CV, 2015 WL 6750047, at *2 n.6 (Tex. App.—Dallas Nov. 4, 2015, no pet.) (mem. op.) (assuring the parties that the court's recitation of the factual background does not constitute findings of fact), appellants do not explain

how the trial court's judgment on Miznazi's managing-member status here affects the arbitration award or judgment in the Underlying Lawsuit.

As evidence their declaratory judgment action is not a collateral attack on the Underlying Judgment, appellees argue that Mezanazi can execute on his portion of the Underlying Judgment despite the trial court's declaratory judgment. Appellees further note that even Eco Planet can execute on the Underlying Judgment, with Mezanazi's and Miznazi's consent as managing members. Although appellees are correct as to appellants' rights to execute, this does not resolve the matter. Rather, the key question is whether appellees have sought to obtain some specific relief the Underlying Judgment currently stands as a bar against. *See Browning*, 165 S.W.3d at 346. They have not.

The arbitration award specifically states that "Miznazi . . . has not sued or been sued in this litigation and is not liable to any of the Claimants or Counterclaimants for any damages[,] nor is Miznazi entitled to recover any funds from any of the Claimants or Counterclaimants." The arbitration award further explains that the claims at issue in the Underlying Lawsuit concerned only Akeed's and ANT Trading's alleged breaches of contract and all relief granted is directed to those claims. Thus, the arbitrator found Akeed and ANT Trading jointly and severally liable to both Mezanazi and Eco Planet for Akeed's breach of fiduciary duty, and ANT Trading solely liable to Eco Planet for breach of contract. The arbitration award gives no indication that Miznazi's membership status factored into

the arbitrator's liability findings. Consequently, we conclude that appellees' declaratory judgment action did not challenge the integrity of the arbitration award or judgment in the Underlying Lawsuit. *Cf. id*. at 346–47 (finding collateral attack because relief sought challenged integrity of the order at issue and turned upon determination of what underlying judgment should have been).

Because appellees' declaratory judgment action does not constitute a collateral attack on the judgment in the Underlying Lawsuit, we overrule appellants' first issue.

B. Collateral Estoppel

In their second issue, appellants contend that their collateral estoppel defense barred appellees' declaratory judgment action. Appellees contend, however, that appellants failed to introduce any evidence to support this defense.

"When asserted against a party who was actually a party in the first action, the doctrine of collateral estoppel bars relitigation of fact issues that were fully and fairly litigated and that were essential to the prior judgment." *State & Cty. Mut. Fire Ins. Co. v. Miller*, 52 S.W.3d 693, 696 (Tex. 2001). Collateral estoppel applies only to issues actually litigated in the prior proceeding, meaning "the issue was raised by the pleadings or otherwise submitted for determination and was determined by the fact finder." *Tenet Health Sys. Hosps. Dallas, Inc. v. N. Tex. Hosp. Physicians Grp., P.A.*, 438 S.W.3d 190, 203 (Tex. App.—Dallas 2014, no pet.). Thus, a party asserting collateral estoppel must establish "that (1) the facts sought to be litigated

in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action." *John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002); *MGA Ins. Co. v. Charles R. Chesnutt, P.C.*, 358 S.W.3d 808, 817 (Tex. App.—Dallas 2012, no pet.).

In support of the contention that they established all three elements of their collateral estoppel defense, appellants cite the arbitration award's recitation of Akeed's allegation that he purchased Miznazi's share of Eco Planet from the trustee in Miznazi's bankruptcy proceeding. According to appellants, this recitation shows that "questions of ownership and membership were issues in the Underlying Lawsuit and were essential to Akeed's breach of contract cause of action and standing arguments." Appellants further contend that these issues "were addressed by the Arbitrator, who found that neither Nazem [Miznazi] nor Akeed was a member or owner of [Eco Planet]," citing paragraph twenty of the arbitration award. Contrary to appellants' contention, this paragraph states only that "[n]either Miznazi nor Akeed was the record owner of an interest in [Eco Planet]." It does not address their membership. *See* TEX. BUS. ORGS. CODE § 101.102 (permitting membership in a limited liability company without making "a contribution to the company," paying "cash" or transferring "property to the company," or assuming an obligation to do so, and permitting companies with multiple owners to admit members without "a

membership interest in the company"). Appellants do not identify any evidence in the record reflecting that membership in Eco Planet required an ownership interest.

Regardless, as previously noted, the arbitrator found that Miznazi was not a party to the Underlying Lawsuit, and the arbitration award contains no indication that Miznazi's membership status was relevant to the claims at issue: Akeed's and ANT Trading's alleged breaches of contract. *See Dewhurst*, 90 S.W.3d at 288 (collateral estoppel applies only to facts that were essential to the judgment in the first action). Thus, we conclude that appellants failed to prove their collateral estoppel defense, and we overrule their second issue.

CONCLUSION

We conclude that appellees' declaratory judgment action did not constitute a collateral attack on the judgment in the Underlying Lawsuit and appellants failed to prove their collateral estoppel defense. Accordingly, we overrule both of appellants' issues and affirm the trial court's judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

Osborne, J., concurring

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ECO PLANET, LLC AND M. JAMAL MEZANAZI, Appellant	On Appeal from the 95th District Court, Dallas County, Texas Trial Court Cause No. DC-17-03276.
No. 05-19-00239-CV V.	Opinion delivered by Justice Partida-Kipness. Justices Osborne and Pedersen, III participating.
ANT TRADING AND THABED AKEED, Appellee	

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee ANT TRADING AND THABED AKEED recover their costs of this appeal from appellant ECO PLANET, LLC AND M. JAMAL MEZANAZI.

Judgment entered this 16th day of November, 2020.