Reversed and Rendered in part; Remanded in part and Opinion Filed February 13, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-22-00439-CV

HOLLY BONE-MARTIN AND BRIAN MARTIN, Appellants
V.
DAVID TYLER MOSS, ET AL., Appellees

On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-09893

MEMORANDUM OPINION

Before Justices Goldstein and Breedlove[1]
Opinion by Justice Goldstein

Holly Bone-Martin and Brian Martin appeal the trial court's judgment awarding David Tyler Moss and Fidelissimus, Inc. monetary awards, permanent injunctive relief, and legal and equitable ownership of certain YouTube channels and the videos contained on those channels. In four issues, Holly and Brian argue the trial court's judgment and permanent injunction must be vacated because appellees' claims are barred by the statute of repose, the trial court lacked

[1] The Honorable Justice Carlyle was originally a member of this panel but did not participate in this opinion because his term expired on December 31, 2024.

jurisdiction to divest Holly and Brian of their federal copyrights, the trial court lacked jurisdiction to assign ownership of the YouTube channels, and the evidence is legally insufficient to support the damages awarded to appellees. We conclude appellees' claims are not barred by the statute of repose, the trial court was preempted to the extent it transferred ownership of the copyrighted videos, and there was no evidence of damages on appellees' claims for civil conspiracy, aiding and abetting, money had and received, conversion, common law fraud, and statutory fraud in a real estate transaction. We reverse and render judgment that appellees take nothing on those claims and remand for further proceedings consistent with this opinion.

BACKGROUND[2]

On April 15, 2016, the United States District Court for the Northern District of Texas entered judgment against Brian and awarded appellees $18,600,000. On June 4, 2019, Holly and Brian were married in Collin County, Texas.

The record indicates that appellees filed the underlying case in July 2020, in what we discern is essentially a debt collection case.[3] On October 15, 2020, the trial

[2] The following facts are drawn from the second amended petition.

[3] This is not the first proceeding emanating from the underlying dispute. The Original Petition filed July 21, 2020, is the domesticated federal final judgment, and the docket sheet reflects consolidation of Judgment Creditors' filing of their Original Petition for Fraudulent Transfer, Application for Temporary Restraining Order, and Temporary and Permanent Injunction and Motion to Consolidate Cases on September 15, 2020. *See Bone v. Moss*, No. 05-21-00436-CV, 2022 WL 484312 *1 (Tex. App.—Dallas, February 17, 2022) (appeal and mandamus related to interlocutory orders in collection action of domesticated federal judgment).

court entered a temporary injunction restraining Holly and Brian from "withdrawing, receiving, disbursing, transferring, or otherwise disposing of any funds generated by the following YouTube Channels and their associated Google AdSense accounts:" FuturisticHub, CreamWorks Animations, Top Trends, and Blocktastic. Brian had previously created approximately eighty Minecraft videos and uploaded them to the FuturisticHub YouTube channel between June 2018 and December 2020.

Holly and Brian were also enjoined from selling certain real property in Frisco, Texas, but Holly conveyed the property to JMC Property Group in November 2020. In December 2020, Holly and/or Brian redirected the approximately eighty videos on the FuturisticHub YouTube channel to the WildCraft channel, which "'looks and feels' identical to the FuturisticHub channel." Holly "appear[ed] to be the alleged owner of the WildCraft channel," but Holly and/or Brian "took the content which was on the FuturisticHub channel and redirected it to the WildCraft channel."

Also in December 2020, appellees served Google, the owner of YouTube, with a writ of garnishment seeking to "execute on all the monetization revenue from the videos which were on the FuturisticHub channel." The garnishment, "to aid in the collection of the Judgment," resulted in Google depositing $290,947.46 into the registry of the court during February and March 2021.

In March 2022, appellees filed their second amended petition for fraudulent transfer and application for temporary restraining order and temporary and

permanent injunctions. Appellees' petition alleged Brian "developed a scheme by placing his videos on the WildCraft channel which was not contained in the first Temporary Injunction Order." The petition described the "scheme" as follows:

> on or about September 23, 2020, Holly Bone-Martin created Wild MC Limited, which is an United Kingdom company. Ms. Bone-Martin is the sole officer, director, and shareholder of this company. The purpose of this new company is to transfer the videos/WildCraft channel from Holly Bone-Martin's name to Wild MC Limited. Allegedly, all the monetization revenue of the videos on the WildCraft channel is received by Google and then paid to Elite Alliance, which is a multichannel network for Wild MC Limited. Then, the revenue is paid to Wild MC Limited. This is another attempt by Brian D. Martin and Holly Bone-Martin to transfer the videos and the revenue therefrom to another entity in the event a judgment is awarded against her.

The petition alleged multiple fraudulent transfers: (1) transfers of videos from FuturisticHub to Wild MC Limited, (2) $710,863.80 transferred to Brian and FuturisticHub from Paypal and then "fraudulently diverted" from appellees in an unspecified manner, (3) the purchase of a home in Frisco by Holly using $339,984.98 transferred to Holly by Brian's mother and the subsequent sale of the home by Holly for $250,000, and (4) the creation of an August 2021 post-marital agreement between Holly and Brian that provided no community estate would arise during the remainder of their marriage.

In addition to the fraudulent transfer claims, the petition alleged claims of civil conspiracy, aiding and abetting, money had and received, conversion, common law fraud, and statutory fraud in a real estate transaction. The petition also sought declaratory judgment that:

> all the property standing in the name of, claimed or possessed by Holly Bone-Martin as her separate property, or property acquired with community credit, including all the property described herein, is either the separate property of Brian D. Martin or the joint management, disposition, and control community property of Brian D. Martin and is subject to execution, turnover, and other remedies in aid of execution of the Judgment held by Judgment Creditors.

Following a three-day bench trial in April 2022, the trial court signed a judgment providing that appellee "shall recover and have a judgment entered against" Brian and Holly on appellees' claims for fraudulent transfers, civil conspiracy, aiding and abetting, conversion, common law fraud, and statutory fraud in a real estate transaction. The judgment awarded appellees each $4,563,980.04 from Brian and $2,808,662.87 from Holly. The judgment also ordered that the FuturisticHub, WildCraft Animations, CreamWorks Animations, Top Trends, and Blocktastic YouTube channels, the videos they contained, the content management system, content id, and Google AdSense accounts for all of the videos were immediately transferred to appellees, and appellees were given "legal and equitable ownership and title to" these channels, videos, systems, and accounts. The judgment further ordered that Holly's purported transfer of videos and assets to Wild MC Ltd. was void because it was a fraudulent transfer. Holly and Brian were also ordered to refrain from removing any videos from the named YouTube channels and to refrain from filing any copyright strikes, "BOT attacks," or "artificial BOT views" in an attempt to remove videos from the named YouTube accounts. This appeal followed.

ANALYSIS

A. Issue 1: Statute of Repose: TUFTA

In their first issue, Holly and Brian argue the trial court's judgment and permanent injunction must be vacated because appellees' claim is barred by the statute of repose.

The trial court entered judgment in favor of appellees on all their claims.[4] The damages awarded on appellees claims for fraudulent transfers, civil conspiracy, aiding and abetting, conversion. common law fraud, and statutory fraud in a real estate transaction consisted of more than $14 million[5] and legal and equitable title to, and control of, the YouTube channels controlled by Holly and Brian, along with all the videos contained on those channels.

The purpose of the Texas Uniform Fraudulent Transfer Act (TUFTA) is to prevent debtors from prejudicing creditors by improperly moving assets beyond their reach. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 89 (Tex. 2015). Under TUFTA,

[4] With the exception of the claimed fraudulent transfer of the Frisco home, appellees' claims were primarily based on the alleged fraudulent transfers surrounding the YouTube channels and video content. Appellees' civil conspiracy claim was based on an alleged conspiracy involving the YouTube channels and the revenue they generated. The aiding and abetting claim alleged Holly assisted Brian in making unspecified "fraudulent transfers described herein." The money had and received claim alleged it was "unjust and inequitable" for Holly and Brian to profit from their YouTube channels and to purchase and hold a property worth more than $300,000 when the underlying judgment remained unsatisfied. The conversion claim alleged appellees had the right to possession of the funds earned from the YouTube channels at issue. The common law fraud claim alleged fraud associated with the transfers of the YouTube channels. Finally, appellees' claim of fraud in a real estate transaction related to the purchase and sale of the Frisco home, resulting in unspecified "injuries and damages" to appellees.

[5] It appears from the record that the 14 million awarded is over and above, separate and apart from, the original federal judgment debt of 18 million.

a transfer made with actual or constructive intent to defraud any creditor may be avoided to the extent necessary to satisfy the creditor's claims:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. & COM. CODE § 24.005(a); *accord id.* § 24.006(a) (transfer is fraudulent as to present creditor if debtor is insolvent or made insolvent by a transfer and debtor did not receive reasonably equivalent value); *see also id.* § 24.008 (creditor remedies for fraudulent transfer).

TUFTA provides that an asset transferred with "actual intent to hinder, delay, or defraud" a creditor may be reclaimed for the benefit of the transferor's creditors unless the transferee "took [the asset] in good faith and for a reasonably equivalent value." *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 562 (Tex. 2016) (quoting TEX. BUS. & COM. CODE §§ 24.005(a)(1), .009(a)).

In TUFTA section 24.010, entitled "Extinguishment Of Cause Of Action," the Legislature has provided that:

> a cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought . . . within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

Id. § 24.010(a)(1); *Nathan v. Whittington*, 408 S.W.3d 870, 872–73 (Tex. 2013). Section 24.010 is a statute of repose, rather than a statute of limitations. *Nathan*, 408 S.W.3d at 874. "[W]hile statutes of limitations operate procedurally to bar the enforcement of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of liability after a specified time." *Id.* (citing *Methodist Healthcare Sys. of San Antonio, Ltd. v. Rankin*, 307 S.W.3d 283, 287 (Tex. 2010) (quoting *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 866 (Tex. 2009)). Statutes of repose are of an "absolute nature," and their "key purpose . . . is to eliminate uncertainties under the related statute of limitations and to create a final deadline for filing suit that is not subject to any exceptions, except perhaps those clear exceptions in the statute itself." *Id.* (quoting *Rankin*, 307 S.W.3d at 286–87). Unlike statutes of limitations, which are intended primarily to encourage diligence on the part of plaintiffs, statutes of repose may serve other purposes and may run from some event other than when the cause of action accrued. *Id.*; *see Nelson v. Krusen*, 678 S.W.2d 918, 926 (Tex. 1984) (Robertson, J., concurring).

Holly and Brian had the burden to prove all elements of their affirmative defense of the statute of repose. *Walker v. Anderson*, 232 S.W.3d 899, 910 (Tex. App.—Dallas 2007, no pet.). Whether a fraudulent-transfer claim is extinguished

by the statute of repose ordinarily presents a question of fact for the fact-finder to resolve. *Id.* at 909. The issue can be resolved as a matter of law, however, if reasonable minds could not differ on the conclusion to be drawn from the facts in the record. *Id.*

Here, under the heading "Fraudulent Transfer 1," appellees' second amended petition alleged that Brian formed an entity called FuturisticHub, L.L.C. with the Texas Secretary of State on June 7, 2016. The petition also averred that the formation of this entity occurred "two months after" the $18 million federal court judgment and that Brian had already created a FuturisticHub YouTube channel in 2012. The petition alleged that, after Brian created the FuturisticHub, L.L.C. entity, he "continued posting videos, gained a significant following, and began earning significant revenue." In opening argument at trial, appellees' counsel stated that the June 7, 2016 date was "important" because it was "the beginning of Brian Martin attempting to protect his assets through videos." Significantly, the petition did not allege that a first fraudulent transfer occurred on June 7, 2016 when Brian formed the new legal entity, FuturisticHub, L.L.C. Instead, the petition alleged that the "animation style, voice acting, and subject matter of the videos posted on the FuturisticHub YouTube channel were the same or substantially similar to the videos which were later fraudulently redirected to the WildCraft channel on or about December, 2020." Although Holly and Brian argue that appellees' petition constituted a judicial admission that June 7, 2016 was the date of the "first transfer"

from which we calculate the four-year statute of repose, we conclude the record does not support this characterization. Moreover, to the extent Holly and Brian suggest a first fraudulent transfer was the creation of FuturisticHub LLC, we know of no authority, and the parties have cited us to none, that supports the conclusion that the statute of repose as to Holly ran from that date. Under these circumstances, we conclude the record does not reflect that Holly and Brian met their burden to prove all elements of their affirmative defense of the statute of repose. *See id.* We overrule Holly and Brian's first issue.

B. Issue 2: Federal Copyright

In their second issue, Holly and Brian argue the trial court lacked jurisdiction to divest them of their federal copyrights. Specifically, they complain of the trial court's award "divesting [Holly and Brian] of their federal copyrights of the Minecraft Videos [because they] fall within the scope of the exclusive rights set out in the Federal Copyright Act, thereby voiding the transfer in the final judgment." Holly and Brian seek to void transfer of the copyright ownership as a matter of preemption but do not otherwise challenge the asserted causes of action as claims under copyright law.[6] Appellees argue, and the trial court concluded, that the asserted state law claims do not arise under the Copyright Act. There is no dispute, and we assume without deciding, that the videos are material subject to copyright

[6] In fact, Holly and Brian concede that the "Copyright Act does not preempt state law tort claims"; rather, they aver that the rights granted "fall within the exclusive rights of the scope of the Copyright Act."

protections. We discern that the crux of the argument is whether the trial court had jurisdiction to determine the ownership of, and thereafter transfer exclusive rights to, the copyrighted material. We conclude that the trial court lacked jurisdiction to divest Holly and Brian of ownership of the copyrighted material and transfer ownership to appellees. We note that this is distinct from the trial court's ability to address monetization of the copyrighted asset for purposes of satisfying a judgment.

Applicability of Federal Copyright Act to Ownership and Transfer Rights

The Copyright Act provides in pertinent part that:

> (a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

28 U.S.C.A. § 1338. The United States Constitution vests Congress with the exclusive authority to regulate copyrights and patents. U.S. CONST. Art. I, § 8, cl. 8. Congress amended the Copyright Act in 1976 to clarify the relationship between the Act and state law:

> On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

17 U.S.C. § 301(a). "Thus, § 301(a) preempts state law claims if the rights granted under state law are equivalent to any exclusive rights within the scope of federal copyright as set out in 17 U.S.C. § 106." *Advance Mag. Publishers, Inc. v. Leach*, 466 F. Supp. 2d 628, 635 (D. Md. 2006) (quoting *Rosciszewski v. Arete Assocs.*, Inc., 1 F.3d 225, 229 (4th Cir.1993)).

The purpose of this statute is to prevent piecemeal litigation. *Rockwell Mfg. Co. v. Evans Enters.*, 95 F. Supp. 431, 433 (W.D.N.Y. 1950), *adhered to on reconsideration sub nom. Rockwell Mfg. Co. v. Evans Enters., Inc.*, No. 4592, 1951 WL 81537 (W.D.N.Y. Jan. 9, 1951) The Fifth Circuit Court of Appeals has established a two-part test to determine if a state law claim is preempted: (1) whether the claim falls within the subject matter of copyright; and (2) whether the claim protects rights equivalent to any of the exclusive rights of a federal copyright. *Daboub v. Gibbons*, 42 F.3d 285, 288–89 (5th Cir. 1995). This inquiry requires a comparison of the nature of the rights protected under the Copyright Act with the nature of the state law rights being asserted. *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 787 (5th Cir. 1999). A state law cause of action is equivalent to the rights granted by the Copyright Act if "the mere act of reproduction, distribution, or display infringes it." *Taquino v. Teledyne Monarch Rubber*, 893 F.2d 1488, 1501 (5th Cir. 1990). In other words, a state law claim is equivalent to federal copyright law rights if the elements of the state law cause of action would not establish

qualitatively different conduct by the defendant than the elements for an action under the Copyright Act. *Alcatel*, 166 F.3d at 787; *Daboub*, 42 F.3d at 290.

The core of almost all of appellees' claims against Holly and Brian were not equivalent to the enumerated rights set out in section 106 of the Copyright Act.[7] Specifically, the nature of appellees' state law claims,[8] without detailing the specific elements of each claim, do not involve the wrongful copying, distribution, or performance of Holly and Brian's videos. *See generally Butler v. Continental Airlines, Inc*., 31 S.W.3d 642, 651 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (preemption of claims for conversion and misappropriation of macro computer programs). Section 301(a)'s express preemption of any state law granting equivalent rights to those set forth in section 106 does not apply to appellees' state law claims. *Daboub*, 42 F.3d at 289–90 (preempting state law claims for conversion and misappropriation of trade secrets); *see also Data Gen. Corp. v. Grumman Sys. Support Corp*., 795 F. Supp. 501, 505 (D. Mass. 1992), *aff'd*, 36 F.3d 1147 (1st Cir. 1994) (conversion claim was preempted); *Gemcraft Homes, Inc. v. Sumurdy*, 688 F. Supp. 289, 295 (E.D. Tex. 1988) (claims for conversion and tortious interference with contract are preempted).

[7] Section 106 grants the holder of a copyright the exclusive right to reproduce, distribute, perform, and display the copyrighted work. 17 U.S.C. § 106 (1994 & Supp. IV 1998).

[8] Appellees' state law claims, aside from fraudulent transfer, include claims of civil conspiracy, aiding and abetting, money had and received, conversion, common law fraud, and statutory fraud in a real estate transaction. We note without further discussion that, although a state law claim of conversion may implicate the Copyright Act, on the record before us the conversion claim relates to the real estate transaction and not the videos and, therefore, the conversion claim is not preempted.

This does not exhaust our inquiry. As previously stated, section 301(a) preempts state-law claims if "the rights granted under state law are equivalent to any exclusive rights within the scope of federal copyright as set out in 17 U.S.C. § 106." *Rosciszewsk*i, 1 F.3d at 229 (emphasis added) (quoting *Ehat v. Tanner*, 780 F.2d 876, 878 (10th Cir. 1985), cert. denied, 479 U.S. 820 (1986). Here, the ownership rights transferred as a remedy under state law, the termination of Holly and Brian's interests in the videos, and the award of the videos to appellees were "exclusive rights within the scope of federal copyright" and were therefore preempted. *See id.*

Section 201(e) of the federal copyright act, "which prohibits involuntary transfer of copyrights," provides:

> When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

17 U.S.C. § 201(e). The legislative history of section 201(e) explains that "[t]he purpose of this subsection is to reaffirm the basic principle that the United States copyright of an individual author shall be secured to that author, and cannot be taken away by any involuntary transfer." H.R. Rep. 94–1476, at 123 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5739.

The trial court in this case found that Holly and Brian had previously transferred the copyrighted videos to YouTube and/or Google:

> The Court has heard evidence that the "individual author" of these videos transferred the videos in violation of the underlying judgment and to others who are not Brian D. Martin. Accordingly, §201(e) does not apply where the videos have previously been transferred voluntarily by Brian D. Martin. The Court ordering that Google take certain actions pertaining to "videos" on a YouTube channel solely pertain to property that is presently vested in Google and not the "individual author." Defendants Brian D. Martin and Holly Bone have already voluntarily transferred such exclusive rights to YouTube and have transferred related rights to other entities. Because some of these exclusive rights have been transferred by agreement, this Court may order the transfer of these rights.

The trial court determined section 201(e) was inapplicable to protect the copyrighted materials based upon the voluntary transfer. In their brief, appellees reassert that Brian and Holly previously transferred their "rights to the copyrighted material to YouTube." We conclude that the trial court lacked subject matter jurisdiction, as do we, to determine whether a voluntary transfer occurred in this case. To the extent the parties invite us to determine what might constitute a transfer in the context of uploading of videos to a virtual platform for purposes of copyright protection, we decline to do so based upon the exclusive jurisdiction of the federal courts. As this issue is not raised on appeal, we do not address the trial court's right to redirect monies generated from the channels pursuant to court order (garnishment) and to freeze or unfreeze the channels for purposes of restricting the exercise of control by Holly or the other defendants.

Based upon applicable authority, we conclude the trial court had no jurisdiction to determine the ownership of the videos and whether the purported transfer of videos to Google or another virtual platform was a "voluntary transfer"

under the Copyright Act. Such determinations belong to the exclusive jurisdiction of federal courts.

Moreover, we find no authority to support the trial court's jurisdiction to permanently transfer legal and equitable title and ownership of the copyrighted videos from Holly and Brian to appellees. We sustain Holly and Brian's second issue to the extent they argue that the trial court's award transferring legal and equitable title and ownership of the videos at issue was preempted by federal copyright law.[9]

C. **Issue Three: Ownership of the YouTube Channels**

In their third issue, Holly and Brian assert that the trial court lacked subject matter jurisdiction to assign ownership of the YouTube channels because Holly and Brian never had ownership of the channels. Holly and Brian do not assert copyright pre-emption for the channels; therefore, we conclude this is not a matter of subject matter jurisdiction. Rather we discern from the argument that Holly and Brian challenge the trial court's ability to assign "ownership" of the identified channels. Holly and Brian argue that, under the YouTube terms of service, using the YouTube platform does not grant ownership rights to the channels themselves. Specifically,

[9] To the extent the judgment and permanent injunction order that Brian and Holly desist and refrain from removing any videos from the channels, filing copyright strikes against any videos on the channels, filing any BOT attacks in an attempt to remove videos, filing any artificial BOT views in an attempt to remove videos, and filing any content id claims against the videos, we conclude that these actions may be consistent with state law collection proceedings not subject to determination by the Copyright Act and therefore may not be pre-empted.

the YouTube terms of service provide that users retain ownership rights to content posted on YouTube, but YouTube retains exclusive rights to remove videos, indicating that users do not own the channels themselves.

YouTube's Terms of Service outlines the parameters of the relationship. The "Service" is defined collectively as "the YouTube platform and the products, services and features we make available to you as part of the platform." Google LLC is identified as the "entity providing the Service." Additional pertinent provisions are as follows:

> Content is the responsibility of the person or entity that provides it to the Service. YouTube is under no obligation to host or serve Content.
>
> With a Google account, you may be able to like videos, subscribe to channels, create your own YouTube channel, and more.
>
> Creating a YouTube channel will give you access to additional features and functions, such as uploading videos, making comments or creating playlists (where available).
>
> If you have a YouTube channel, you may be able to upload Content to the Service. You may use your Content to promote your business or artistic enterprise.
>
> You retain ownership rights in your Content. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below [license to YouTube, License to Others, Right to Monetize].
>
> You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. Starting November 18, 2020, any payments you may be entitled to receive from YouTube under any other

> agreement between you and YouTube (including for example payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties. If required by law, Google will withhold taxes from such payments.

Finally, YouTube provides "information to help copyright holders manage their intellectual property."

Holly's February 2022 response to appellees' application for a TRO and temporary injunction is consistent with the YouTube Terms of Service:

> To clarify the distinction between the ownership of the channels and the ownership of the videos, one might think of the channels as little TV stations, where the owner of the TV station can broadcast what the owner chooses to show. The fact that a show is on a television station, does not mean that the owner of the station owns the programs shown. The ability of the TV station to broadcast is governed by regulations and contractual arrangement. The ownership of the programs it shows is determined by copyright law.
>
> Similarly, the ability of a YouTube channel owner to show videos or other things is a matter governed by YouTube's Terms and Conditions. The ownership of the intellectual property shown on the channels is a matter of copyright law.

Based upon the record, there is no evidence that Holly or Brian owned the channels for purposes of transferring ownership as opposed to utilizing standard debt collection tools to reach nonexempt property in the hands of a non-party. It is clear from the record that the trial court and all parties understood the distinction between ownership of the videos, actual or constructive possession of the videos due to uploading, and the varying degrees of control over the uploaded videos as reflected

in prior orders and hearings involving nonparty Google and related entities.[10] Regardless of Holly's and Brian's purported "ownership" interests in the YouTube channels, it is clear that they are able to exercise control over the content, including removing and transferring the videos, with the concomitant revenue stream, a specific remedy sought by the injunction for fraudulent transfer. However, the final judgment inextricably intertwines the transfer of the content management system, content id and Google AdSense Accounts with the legal and equitable ownership and title to the videos.[11] We sustain Holly and Brian's third issue to the extent they argue the trial court erred in transferring their ownership interests in the subject YouTube channels to appellees as the same are specifically tied to the transfer of legal and equitable ownership and title to the videos.[12]

D. **Issue Four: Damages**

[10] Google specifically sought clarification for the purpose of complying with the trial court's order granting the temporary injunction relative to freezing control of the channels pursuant to the order which enjoined Holly and Brian from "requesting transfer, effecting transfer, assisting in transfer or taking any action whatsoever to transfer ownership ***or control"*** of these channels." (emphasis in record). Google explained "freezing" the channels "has prevented anyone from uploading or deleting content" on the channels, which subsequently caused a significant decrease in revenue "likely due to the lack of new content." Further, while Google may be able to unfreeze the channels, the "systems were not designed for these types of modifications"; therefore, "technical issues could arise." Google specifically advised that "[u]pon unfreezing the channels, Google might not be able to prevent [Holly or Brian] from receiving, disbursing, transferring, or otherwise disposing of any revenues generated by the [channels] and will not be able to prevent [Holly or Brian] from requesting transfer, effecting transfer, assisting in transfer, or taking any action whatsoever to transfer ownership or control of the [channels]."

[11] We do not address the issue of control over those channels for the purpose of receiving monies generated from the platforms. As further addressed below, the trial court awarded purported tangible assets in the form of videos and video platforms without consideration of the limitation attributed to satisfaction of the judgment, monetary value of the asset, or monetization of the use of the asset.

[12] We do not, by sustaining issue number three, prevent the trial court from determining what constitutes monetization of the assets as opposed to the pre-empted divestment and transfer of ownership.

In their fourth issue, Holly and Brian argue the evidence is legally insufficient to support the damages awarded to appellees. Specifically, they complain that appellees "failed to produce any evidence regarding the value of the disputed videos as required under TUFTA" and "failed to produce any evidence showing that they are entitled to monetary damages and ownership of the videos, and the district court improperly allowed a double recovery."[13]

When reviewing a case tried to the bench where findings of fact and conclusions of law have been entered, findings of fact have the same force and effect as jury findings. *Buckeye Ret. Co., LLC v. Bank of Am., N.A.*, 239 S.W.3d 394, 399 (Tex. App.—Dallas 2007, no pet.). The applicable standard of review is the same as that applied in the review of jury findings. *Id.* When an appellant attacks the legal sufficiency of an adverse finding for which it did not have the burden of proof, it must demonstrate there is no evidence to support the adverse finding. *Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983); *Doyle v. Kontemporary Builders, Inc.*, 370 S.W.3d 448, 453 (Tex. App.—Dallas 2012, pet. denied). Such a challenge fails if there is more than a scintilla of evidence to support the finding. *Doyle*, 370 S.W.3d at 453. Evidence does not exceed a scintilla if it is so weak as to do no more than

[13] In their fourth issue, Holly and Brian also argue that appellees "failed to produce any evidence showing they are entitled to 'lost profits' from the video revenue." However, as the trial court's judgment, findings of fact, and conclusions of law do not address the issue of lost profits, we conclude we need not further address this issue.

create a mere surmise or suspicion that the fact exists. *See Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788, 793 (Tex. 2006).

A creditor affected by a fraudulent transfer can seek equitable remedies under section 24.008 of the business and commerce code or money damages under section 24.009(b). TEX. BUS. & COM. CODE §§ 24.008, 24, 24.009(b); *Chu v. Hong*, 249 S.W.3d 441, 446 (Tex. 2008) ("[T]he Act provides for equitable remedies to rescind the fraudulent transfer, or a damage assessment limited to the amount of the property transferred."). The equitable remedies allowed under section 24.008 are "avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim" (TEX. BUS. & COM. CODE § 24.008(a)(1)); "an attachment or other provisional remedy against the asset transferred or other property of the transferee" (§ 24.008(a)(2)); "an injunction against further disposition . . . of the asset transferred or of other property" (§ 24.008(a)(3)(A)); "appointment of a receiver" (§ 24.008(a)(3)(B)); "any other relief the circumstances may require" (§ 24.008(a)(3)(C)); or, if the creditor has obtained a judgment against the debtor, permission to "levy execution on the asset transferred or its proceeds" (§ 24.008(b)).

A creditor affected by a fraudulent transfer may seek money damages from the person for whose benefit the transfer was made, the first transferee, or any subsequent transferee who did not take it in good faith and for value. *Id.* § 24.009(b). The measure of damages is the lesser of "the amount necessary to satisfy the

creditor's claim" or "the value of the asset transferred . . . at the time of the transfer, subject to adjustment as the equities may require." *Id.* § 24.009(b), (c)(1).

The amount necessary to satisfy the creditor's claim is measured as of the time judgment is rendered under section 24.009(b), even if this amount is greater than or less than the amount that would have satisfied the creditor's claim at the time of the fraudulent transfer. *Citizens Nat'l Bank of Tex. v. NXS Construction, Inc.*, 387 S.W.3d 74, 90–91 (Tex. App.—Houston [14th Dist.] 2012, no pet). But the amount necessary to satisfy the creditor's claim includes only amounts necessary to satisfy the claim itself, not reimbursement for costs incurred in the course of pursuing the claim, such as court costs. *Id.*

Here, Holly was not a party to the federal litigation that resulted in appellees' $18 million judgment against Brian; she is not a judgment debtor. Liability against Holly is sought under appellees' numerous state law claims, including TUFTA. The record is unclear as to whether the damages assessed are for independent liability under the various state law claims or as a clawback of fraudulent transfers under TUFTA.

In their brief, Holly and Brian argue that appellees "wholly failed to present any evidence of the value of the videos" contained on the various YouTube channels and that such evidence was required under TUFTA regardless of the remedy elected by appellees. Holly and Brian cite the testimony of Brandon Keating, a manager of Fidelissimus who assigned to Fidelissimus his interest in the judgment against Brian,

that the FuturisticHub channel alone earned "approximately $1,080,000" each year. Keating testified that this calculation was based on Holly's testimony that "since April 15, 2016 to the present, that that channel was earning approximately $80- to $100,000 per month." Holly and Brian complain that this testimony constituted no evidence of the videos' fair market value, and the trial court's award of the videos "in addition to $14,745,285.80 in monetary damages" constituted a double recovery.[14] We agree.

There is no distinction made by the trial court between the monetary value of the videos and the monetization of the videos through income generation. It is clear from the record that the value was the monetization of the videos in that the trial court issued a writ of garnishment, an ex parte turnover order, and a temporary injunction under which Google deposited over $290,000 into the registry of the court. There is no evidence of the monetary value of the videos themselves; while the evidence relative to income generation is a scintilla, the procedurally correct tools for debt collection were not utilized. Keating's testimony regarding the approximate income produced by the FuturisticHub channel from April 2016 until the time of trial and for WildCraft for fifteen months was based solely on Holly's

[14] With regard to the monetization of the WildCraft channel, based upon Holly's trial testimony the channel earns "approximately $30,000 to $40,000 per month." Using an average of $35,000 per month to calculate economic damages concerning the WildCraft channel commencing January 2021, multiplied by 15 months, Keating confirmed he was asking the court to award "economic damages in the amount of "$525,000 concerning the WildCraft channel." Keating testified he was asking the court to award $6,480,000 from the FuturisticHub channel, in addition to damages for the sale of the house in the amount of $340,000, for an aggregate total of $7,345,000. Keating further requested that the email addresses and passwords be turned over and that Brian be enjoined from operating the five channels.

testimony and no other evidence. Assuming that Keating's testimony was some evidence of the income produced by the FuturisticHub and WildCraft channels during that relevant time, we conclude his testimony was no evidence of the fair market value of the videos themselves. At most, Keating's testimony is evidence that the videos on the FuturisticHub and WildCraft channels generated an income stream that appellees might have attempted to garnish in order to satisfy the judgment against Brian as they successfully garnished revenue from the videos on the FuturisticHub channel in February and March 2021. Without evidence of the videos' value, the trial court erred in permanently vesting ownership of the videos with appellees.[15] *See Hong*, 249 S.W.3d at 446 ("[T]he Act provides for equitable remedies to rescind the fraudulent transfer, or a damage assessment limited to the amount of the property transferred."). We agree with Holly and Brian that the award of the videos "in addition to $14,745,285.80 in monetary damages" constituted a double recovery, as the testimony was in the amount of $7,345,000 and the evidence was legally insufficient to support the damages awarded. *See id.*; *Doyle*, 370 S.W.3d at 453. Further, there is no evidence of the basis of the apportionment of damages between Holly and Brian, no evidence of the measure of damages as between the various legal theories asserted and combined in the damages awarded, and no distinction between the damages attributed to the equity clawback provisions under

[15] This holding does not negate the lack of subject jurisdiction over the determination of the ownership or transfer of the videos; rather, the damages analysis is purely to address legal insufficiency and double recovery.

TUFTA and the independent claims asserted. In reaching this conclusion, we note that the absence of evidence of the independent damages herein awarded does not mean appellees are not entitled to collect on the underlying judgment. We sustain Holly and Brian's fourth issue.

CONCLUSION

We overrule appellants' first issue, sustain the second issue to the extent we determine that the trial court lacked subject matter jurisdiction to award legal and equitable title of the videos, sustain the third issue to the extent that the trial court erred in transferring ownership interest in the YouTube channels to appellees, and sustain appellant's fourth issue that there was no evidence of damages to support an award based upon the state law claims.

We reverse the trial court's judgment, render judgment that appellees take nothing on their claims for civil conspiracy, aiding and abetting, money had and received, conversion, common law fraud, and statutory fraud in a real estate transaction, and remand for further proceedings under the Texas Uniform Fraudulent Transfer Act consistent with this opinion.

/Bonnie Lee Goldstein//
BONNIE LEE GOLDSTEIN
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

HOLLY BONE-MARTIN AND BRIAN MARTIN, Appellants

No. 05-22-00439-CV V.

DAVID TYLER MOSS, ET AL., Appellees

On Appeal from the 68th Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-20-09893. Opinion delivered by Justice Goldstein. Justice Breedlove participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED**, judgment is **RENDERED** that David Tyler Moss and Fidelissimus, Inc. take nothing on their claims for civil conspiracy, aiding and abetting, money had and received, conversion, common law fraud, and statutory fraud in a real estate transaction, and this cause is **REMANDED** for further proceedings under the Texas Uniform Fraudulent Transfer Act consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 13th day of February, 2025.