



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00976-CV

JOSEPH ABUZOID, Appellant

V.

MODJARRAD & ASSOCIATES, P.C., D/B/A MAS LAW FIRM, Appellee

On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-06551

MEMORANDUM OPINION ON RULE 24.4 MOTION

Before Chief Justice Wright, Justice Francis, and Justice Stoddart
Opinion by Chief Justice Wright

Joseph Abuzaid has requested this Court to review the trial court's order striking his net worth affidavit and notice of filing a net worth affidavit in lieu of supersedeas bond. *See* TEX. R. APP. P. 24.4. For the reasons that follow, we reverse the trial court's order and remand to the trial court for further proceedings consistent with this opinion.

In 2016, Abuzaid obtained a \$1.4 million judgment against Muamar Anani and David Wittmer ("the Anani judgment"). During the course of that litigation, Abuzaid was represented by a series of attorneys. A dispute arose between Abuzaid and one of his attorneys, Carlos Cortez, about the terms of Cortez's engagement. The trial court granted Cortez leave to withdraw. After he withdrew, Cortez's law firm, Modjarrad & Associates, P.C., d/b/a MAS Law Firm ("MAS") filed a petition in intervention in the Anani lawsuit to recover for the legal

services rendered to Abuzaid. MAS obtained a default judgment against Abuzaid for over \$250,000 (“the default judgment”). On MAS’s motion, the trial court severed the default judgment, and Abuzaid timely appealed. The trial court then signed the Anani judgment, awarding Abuzaid \$1.4 million in actual damages and attorney’s fees, and Anani appealed.

On July 17, 2017, EFYU JO, LLC (“LLC”) filed an ex parte emergency motion for turnover relief in the severed intervention asserting it was the “assignee and successor in interest” of the default judgment. LLC sought to collect on the default judgment by requiring Abuzaid to turn over the Anani judgment to the Dallas County Sheriff for sale. The next day, the trial court granted LLC’s motion and ordered Abuzaid to turn over the Anani “judgment and all other documents required to effectuate the turnover” to the Dallas County Sheriff for sale and for the proceeds of that sale to be applied to satisfy the default judgment. In the order, the trial court also “transferred” the judgment to the sheriff and directed the sheriff to sell the judgment immediately.

The Dallas County Sheriff subsequently posted notice the Anani judgment would be sold at a public auction. Before the sale occurred, Abuzaid deposited \$10 with the trial court clerk and filed an affidavit stating he had a negative net worth. He also filed a notice of filing net worth affidavit in lieu of supersedeas bond, stating a writ of execution had already issued to enforce the default judgment and requesting the clerk to issue a writ of supersedeas to prevent further proceedings on that writ.

LLC filed a motion to strike the net worth affidavit, asserting Abuzaid’s efforts to supersede the default judgment were untimely. In that motion, LLC claimed the Anani judgment had already been turned over to LLC “in full and final satisfaction” of the default judgment. Because execution was “complete,” LLC asserted the district clerk could not issue a writ of supersedeas.

The district clerk nevertheless issued the writ, which halted the sheriff's sale. LLC then supplemented its objection and motion to strike Abuzaid's affidavit asserting Abuzaid's efforts were untimely because the trial court had turned the judgment over to the Sheriff in full and final "enforcement" of the default judgment. LLC also complained Abuzaid's affidavit was not sufficiently detailed to comply with Texas Rule of Appellate Procedure 24.2(c)(1) and was not prepared in accordance with "generally accepted accounting principles." LLC requested the trial court to both strike the affidavit and declare the writ of supersedeas void. Following a hearing, the trial court granted LLC's motion and struck Abuzaid's net worth affidavit on the specific grounds that it was untimely. The trial court did not make a determination regarding the sufficiency of Abuzaid's net worth affidavit or make a determination regarding Abuzaid's net worth. *See* TEX. R. APP. P. 24.2(c)(3).

A judgment debtor is entitled to supersede a judgment for money during the pendency of an appeal. *McCullough v. Scarbrough, Medlin & Assocs., Inc.*, 362 S.W.3d 847, 849 (Tex. App.—Dallas 2012, no pet.) (citing *Miga v. Jensen*, 299 S.W.3d 98, 100 (Tex. 2009)). Moreover, there is no deadline to supersede a judgment. *See generally* TEX. R. APP. P. 24; *In re Holder*, No. 09-10-00197-CV, 2010 WL 2541882, at *3 (Tex. App.—Beaumont June 24, 2010, orig. proceeding) (mem. op.) (per curiam) (rule 24 does not place a time limit on superseding a judgment); *cf. Magnolia Petroleum Co. v. McClendon*, 123 Tex. 10, 12, 65 S.W.2d 484 (1933) (under former rules, right to suspend judgment by filing supersedeas bond exists even after appeal bond and transcript have been filed). If enforcement has already begun, it must cease when the judgment is superseded. TEX. R. APP. P. 24.1(f).

LLC's motion to strike was based, in part, on its claim the net worth affidavit was filed too late to supersede the default judgment because the trial court had already turned over the Anani judgment to LLC. However, the trial court ordered Abuzaid to turn over the Anani

judgment *to the Sheriff* and directed the Sheriff to sell the judgment and for the proceeds to be applied to satisfy the default judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(b)(1) (West 2015) (under turnover statute, court may order judgment debtor to turn over nonexempt property that is in debtor’s possession or is subject to debtor’s control, together with all documents or records related to the property, to designated sheriff or constable for execution). So, at most, the order allowed the Sheriff to sell the Anani judgment “as under a writ of execution.” Moreover, the default judgment remains unsatisfied and is on appeal, and Abuzaid is entitled to supersede it and to prevent any further enforcement of it. *See* TEX. R. APP. P. 24.1(f); *see also Anderson v. Lykes*, 761 S.W.2d 831, 833 (Tex. App.—Dallas 1988, orig. proceeding) (filing of supersedeas bond to suspend underlying judgment suspends trial court’s right to enforce that judgment under the turnover statute), *disapproved on other grounds, Walker v. Packer*, 827 S.W.2d 833, 842 (Tex. 1992); *In re Bradberry*, No. 12-12-00162-CV, 2012 WL 3201928, at *1 (Tex. App.—Tyler Aug. 8, 2012, orig. proceeding) (mem. op.) (“A judgment creditor has a statutory right to have execution issued to enforce a judgment pending appeal, unless and until a valid supersedeas bond has been filed.”).

We conclude the trial court erred in striking Abuzaid’s affidavit as untimely. Because that was the sole basis of the trial court’s ruling, we need not consider appellant’s remaining complaints. *See* TEX. R. APP. P. 47.1.

We reverse the trial court's order and remand for further proceedings consistent with this opinion.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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