Opinion issued February 23, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00010-CV

RODRIGO APESTEGUI FIATT, Appellant

V.

ROBERT FLORSHEIM AND RF MANAGEMENT LLC, Appellee

On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2014-50297

MEMORANDUM OPINION

Appellant, Rodrigo Apestegui Fiatt, appeals a default judgment rendered in favor of appellees, Robert Florsheim and RF Management, L.L.C. In this appeal, we consider whether the trial court had subject-matter and personal jurisdiction. We affirm.

BACKGROUND

Florsheim and RF Management [collectively, "Florsheim"] filed suit in Harris County, Texas, against Fiatt, a resident of Costa Rica, alleging that Fiatt "wrongly induced Plaintiffs to invest and loan more than $5 million to open a franchise for multiple Chili's Restaurants in Costa Rica." Florsheim asserted causes of action for negligent misrepresentation and fraud.

Fiatt was personally served, but did not file an answer.

Twice Florsheim moved for sanctions and contempt because of Fiatt's failure to respond to discovery, and twice the trial court granted Florsheim's motion for sanctions and contempt. Fiatt appeared at one of sanctions hearings via telephone.[1] In the second contempt order, the trial court found that Fiatt was deemed to have admitted all of Florsheim's requests for admissions and waived all of his objections to Florsheim's discovery requests. The trial court further ordered Fiatt to provide written responses to discovery within 15 days of the order and to pay Florsheim $2500 in attorney's fees.

[1] It appears from the record that Fiatt had a man named "Stern" or "Stang" call in purporting to represent Fiatt at one of the sanctions hearings, and again at the post-default hearing on damages. The trial court admonished the man that he was "not authorized to appear in this court." Thereafter, Fiatt spoke for himself at the damages hearing.

When Fiatt did not respond within the time in which he was ordered to do so, Florsheim filed a Motion for Contempt, Sanctions, and Entry of Default Judgment.

Fiatt, who had not filed an answer, nonetheless filed a motion for rehearing, requesting that the trial court set aside its sanctions order.

On April 24, 2015, the trial court granted Florsheim's motion, finding as follows:

> After considering Plaintiffs' Motion for Contempt, Sanctions, and Entry of Default Judgment, the response, and arguments of counsel, the pleadings and evidence on file, the Court finds that Defendant Rodrigo's Apestegui Fiatt's continued discovery abuse and failure to comply with the Court's Orders and lesser sanctions warrant a presumption that his defenses lack merit. The Court also finds that Defendant Rodrigo Apestegue Fiatt has failed to file an Answer or assert any defenses to the claims against him. The Court herby [sic] GRANTS the Motion in its entirety.

The trial court then held a hearing on Florsheim's claim for unliquidated damages. According to the final judgment, "Defendant Rodrigo Apestegui Fiatt appeared [at the damages hearing] via telephone[,]" and "[a]ll matters in controversy were submitted to the Court for its determination."

After the hearing, the trial court signed a final judgment in Florsheim's favor, awarding him $2,202,518.00 in damages, plus pre- and post-judgment interest and costs.

This appeal followed.

ISSUES ON APPEAL

Fiatt's appellate brief purports to raise 11 issues on appeal. However, none of his issues are supported by citations to the record or any legal authority. Texas Rule of Appellate Procedure 38.1(i) requires an appellant's brief to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i).

Issues waived

Conclusory statements are simply not enough to raise an issue on appeal. *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 321–22 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (brief containing "conclusory statements, unsupported by legal citations" and no "clear argument" inadequate (internal quotations omitted)); *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (holding complaint waived because brief contained "conclusory statements, unsupported by legal citations"); *Sullivan v. Bickel & Brewer*, 943 S.W.2d 477, 486 (Tex. App.—Dallas 1995, writ denied) (holding points not supported by argument and authority waived). If a party fails to advance a viable argument on appeal with citations to appropriate authority, an appellate court is not required to review independently the record and applicable law to determine whether the alleged error occurred. *Happy Harbor Methodist Home, Inc. v. Cowins*, 903 S.W.2d 884, 886 (Tex.

App.—Houston [1st Dist.] 1995, no writ) ("We will not do the job of the advocate."). A party who fails to brief a complaint adequately waives his issue on appeal. *Washington v. Bank of N.Y.*, 362 S.W.3d 853, 854–55 (Tex. App.—Dallas 2012, no pet.); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994).

Because Fiatt's brief contains no citations to the record or legal authorities, he has waived his issues on appeal. Although Fiatt has not directed us to any legal authority supporting his positions, we will, in the interests of justice and judicial economy, address what appears to be his main complaint, i.e., jurisdiction. *See Celestine v. Dep't of Family & Protective Servs.*, 321 S.W.3d 222, 233 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (addressing waived issue "in the interests of justice and judicial economy").

Jurisdiction

In his original petition, Florsheim alleges that Fiatt "is an individual doing business in Texas, and residing in Costa Rica." He further alleges that he and Fiatt "participated in an intensive two-day conference in Texas, in which the terms and conditions of being a Chili's franchisor were discussed," and that "[d]uring these meetings, [Fiatt] again recited his ostensibly extensive restaurant management background." Finally, Florsheim pleaded that, during the meeting, Fiatt

"personally guaranteed" to Brinker "his compliance with the rules and regulations in the Development Agreement."

In his brief, Fiatt alleges that he "is not a US resident, [and] has never worked nor has had any business in the United States." Fiatt also asserts that he and Florsheim "both met in Costa Rica, did all negotiations, agreements, corporations and business in Costa Rica where [Florshiem] also lives, [and has] businesses and a house where he lives at 249 Maynard Street, Excazu, San Jose, Costa Rica." We construe these allegations as a challenge to the jurisdiction of trial court; thus we address both components of jurisdiction—subject-matter and personal.

A. Subject-Matter Jurisdiction

This case was brought in the 189th District Court of Harris County, Texas. District courts are tribunals of general jurisdiction with exclusive, appellate, and original jurisdiction in all causes unless the domain has been constitutionally or statutorily specified elsewhere. *See It's the Berrys, L.L.C. v. Edom Corner, L.L.C.*, 271 S.W.3d 765, 770 n.4 (Tex. App.—Amarillo 2008, no pet.) (citing 1 Roy W. McDonald & Elaine A. Grafton Carlson, *TEXAS CIVIL PRACTICE: COURTS* § 3:30 n.1 (2d ed. 2004)); *see also* TEX. CONST. art. V, § 8; TEX. GOV'T CODE ANN. § 24.008 (West 2004). For "courts of general jurisdiction, . . . the presumption is that they have subject-matter jurisdiction unless a showing can be made to the contrary."

Dubai Petroleum Co. v. Kazi, 12 S.W.3d 71, 75 (Tex. 2000). Here, Fiatt has made no showing that the trial court lacked subject-matter jurisdiction.

B. Personal Jurisdiction

"Personal jurisdiction, a vital component of a valid judgment, is dependent 'upon citation issued and served in a manner provided for by law.'" *In re E.R.*, 385 S.W.3d 552, 563 (Tex. 2012) (quoting *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990)). Here, the record shows personal service on Fiatt at his home in Costa Rica.

To the extent that Fiatt is claiming that the trial court lacked personal jurisdiction because he did not have the necessary minimum contacts with Texas, we note that he never filed a special appearance, but he did appear, by telephone, at several hearings before the trial court's final judgment, including the damages hearing. Additionally, Fiatt also filed a motion for rehearing, asking that the trial court reconsider its sanctions order. In these appearances, he did not challenge the facts alleged to support personal jurisdiction over him in Texas.

"When a party generally appears, the trial court can exercise jurisdiction of the party without violating the party's due process rights." *Dawson-Austin v. Austin*, 986 S.W.2d 319, 329 (Tex. 1998); *see Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 201 (Tex. 1985). A party enters a general appearance when he (1) invokes the judgment of the court on any question other than the court's

jurisdiction, (2) recognizes by his acts that an action is properly pending, or (3) seeks affirmative action from the court. *Exito Elecs. Co. v. Trejo*, 142 S.W.3d 302, 304 (Tex. 2004).

Here, Fiatt recognized that an action was property pending when he appeared by telephone at several hearings without questioning jurisdiction, and when he sought affirmative action from the trial court by filing a motion for rehearing of its sanctions order. As such, Fiatt has made a general appearance and waived any challenge to the trial court's exercise of personal jurisdiction over him. *See, e.g.*, *Hilburn v. Jennings*, 698 S.W.2d 99, 100 (Tex. 1985) (holding challenge to personal jurisdiction may be waived by general appearance).

Having determined that the trial court had jurisdiction—both subject-matter and personal—over Fiatt, we overrule his jurisdictional issues.

CONCLUSION

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Jennings and Bland.