Affirmed in Part, Reversed in Part, and Memorandum Opinion filed August 18, 2022.

In The

Fourteenth Court of Appeals

NO. 14-21-00327-CV

REGGIE JOHNSON, JACKIE JOHNSON, LINDA WILLIAMS, JESSE PATRICK, KAREN ROBINSON, AND DERRICK REED, Appellants

V.

GREEN VALLEY PLACE COMMUNITY IMPROVEMENT ASSOCIATION D/B/A GREEN VALLEY ESTATES COMMUNITY IMPROVEMENT ASSOCIATION, INC., Appellee

On Appeal from the 458th District Court
Fort Bend County, Texas
Trial Court Cause No. 20-DCV-271969

MEMORANDUM OPINION

Appellants Reggie Johnson, Jackie Johnson, Linda Williams, Jesse Patrick, Karen Robinson, and Derrick Reed bring this interlocutory appeal from the trial court's May 26, 2021 order denying their motion to dismiss the claims of appellee Green Valley Place Community Improvement Association d/b/a Green Valley

Estates Community Improvement Association, Inc. under the Texas Citizens Participation Act (TCPA).[1] *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(12) (interlocutory appeal of denial of TCPA motion to dismiss). In three issues, appellants argue the trial court reversibly erred (1) because they did not receive notice of the hearing on their TCPA motion, (2) by awarding Green Valley $7,400 in attorney's fees, and (3) by denying their TCPA motion on the merits. We overrule issues 1 and 3, sustain issue 2, and reverse the award of attorney's fees. We otherwise affirm the trial court's order.

I. ANALYSIS

A. Lack of notice

In issue 1, appellants contend they did not receive notice of the hearing on their own TCPA motion. Appellants, however, did not present this argument to the trial court, and accordingly they did not preserve error as to this issue. Tex. R. App. P. 33.1(a).[2]

We overrule issue 1.

B. Merits of TCPA motion

We next address issue 3, in which appellants contend the trial court erred by denying their TCPA motion on the merits, as it would provide more relief to appellants than issue 2, which challenges the attorney's fees awarded by the trial court. *See Bradleys' Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 677 (Tex. 1999) ("Generally, when a party presents multiple grounds for reversal of a

[1] While the appellee is identified as "doing business as" a corporation, this identification is not a contested issue in the appeal. *See generally Kahn v. Imperial Airport, L.P.*, 308 S.W.3d 432, 438 (Tex. App.—Dallas 2010, no pet.) (DBA is no more than assumed or trade name, and as such has no legal existence).

[2] We note it was appellants' responsibility as the TCPA movant to notice the hearing. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.003(d).

judgment on appeal, the appellate court should first address those points that would afford the party the greatest relief.") (citing Tex. R. App. P. 43.3).

We review a trial court's ruling on a TCPA motion to dismiss de novo. *See Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015) (per curiam); *Cox Media Group, LLC v. Joselevitz*, 524 S.W.3d 850, 859 (Tex. App.—Houston [14th Dist.] 2017, no pet.). The TCPA provides a multistep process for the dismissal of a "legal action" to which it applies. *Montelongo v. Abrea*, 622 S.W.3d 290, 295–96 (Tex. 2021). The movant first must demonstrate that the "legal action" is "based on or is in response to" conduct within the scope of the statute. Tex. Civ. Prac. & Rem. Code Ann. § 27.005(b). If the movant meets that burden, the nonmovant may avoid dismissal by establishing "by clear and specific evidence a prima facie case for each essential element of the claim in question." Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c).

After reciting TCPA standards, appellants argue "it is clear the TCPA applies to this case" as follows:

> Here, this matter was based on, relate to, or are in response to the exercise of their rights of (a) free speech, (b) freedom of association, and (c) freedom to petition. For a few examples, the Association's new pleading alleges the same issues that have been or was presented in other cases, which majority of the cases originated out of the 458th District Court on March 26, 2018. (1 C.R. 310-422).

Appellants do not specify what conduct they contend falls within the scope of the TCPA. Their sole substantive argument appears to be that Green Valley's "pleading alleges the same issues that have been or was presented in other cases." How this might relate to TCPA-protected conduct is left unexplained; indeed, appellants do not even specify which prong of the TCPA purportedly applies. The other portions of the argument—discussion of the scope of the statute and a blanket

citation to 112 pages of the clerk's record—provide nothing for our review. Tex. R. App. P. 38.1(i) ("The [appellant's] brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.").

We overrule issue 3 as inadequately briefed. *See id.*

C. Attorney's fees

In issue 2, appellants challenge the trial court's award of attorney's fees in the amount of $7,400 to Green Valley. Under the TCPA, "[i]f the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party." Tex. Civ. Prac. & Rem. Code Ann. § 27.009(b). Appellants do not dispute the trial court's finding that their motion "is frivolous and was filed solely to delay the case." Instead, appellants challenge the sufficiency of the evidence to support the amount of the attorney's fees awarded by the trial court.

The parties agree that the fees in this case were presented under the lodestar method, which applies when the claimant puts on evidence of reasonable fees by relating the hours worked multiplied by hourly rates for a total fee. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 495–96 (Tex. 2019). Legally-sufficient evidence supporting attorney's fees under the lodestar method must include, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services. *Id.* at 502.

At the hearing on the TCPA motion, Green Valley's lawyer requested that the trial court award $7,400 in attorney's fees:

> [GREEN VALLEY'S LAWYER:] My client, including today, has incurred $7,400 in attorney's fees, and we're asking that the Court award that against the parties that filed this frivolous motion to dismiss.
>
> THE COURT: Well, all right. If you'll file a request for that along with the time.
>
> [GREEN VALLEY'S LAWYER]: Yes, sir. I'll file—I'll provide the Court a breakdown of my time that was involved responding to all of this.
>
> THE COURT: Okay. All right. I will award subject to getting—getting assigned a bill. I'll award $7,400 in attorney's fees.

No evidence of attorney's fees was presented at the hearing. After the hearing, Green Valley filed a letter attaching its lawyer's billing records. No affidavit authenticating the records or providing information about fees incurred was included with the letter. The next day, the trial court signed its order denying appellants' TCPA motion and awarding Green Valley $7,400 in attorney's fees.

Under these circumstances, the evidence of attorney's fees is legally insufficient. As above, no evidence was admitted at the hearing, and the records filed after the hearing were not offered or admitted into evidence. As a result, we cannot consider them. *See Nelson v. Neal*, 787 S.W.2d 343, 346 (Tex. 1990) ("Exhibits tendered but not admitted into evidence are not part of the record and cannot be considered on appeal."). At least one of our sister courts has reached the same conclusion in a TCPA appeal, reasoning that the evidence was legally insufficient to support an award of attorney's fees when "[a]ppellees did not attach to any of their pleadings documents supporting the award of attorney's fees and costs, nor did they prove their entitlement to fees and costs at the hearing on their motion to dismiss," and although they offered the affidavit of their lawyer at the TCPA hearing, the affidavit was never admitted into evidence. *Alphonso v. Deshotel*, 417 S.W.3d 194, 201 (Tex. App.—El Paso 2013, no pet.), *disapproved*

of on other grounds by In re Lipsky, 460 S.W.3d 579 (Tex. 2015). Likewise, we conclude that the evidence of attorney's fees is legally insufficient in this case.

We sustain issue 2.

II. CONCLUSION

Having sustained issue 2, we consider the proper remedy. When evidence of attorney's fees is legally insufficient under the lodestar method, the proper remedy is to reverse the award and allow the trial court to conduct further proceedings as to attorney's fees. *See Long v. Griffin*, 442 S.W.3d 253, 255–56 (Tex. 2014) (when, "under the lodestar method, no legally sufficient evidence support[ed] the amount of attorney's fees the trial court awarded," attorney's fees award was reversed and remanded for redetermination, regardless of whether statutory fees were to be awarded on mandatory or discretionary basis). Accordingly, we reverse without prejudice the portion of the trial court's interlocutory order awarding Green Valley $7,400 in attorney's fees, and affirm the remainder of the trial court's interlocutory order as challenged on appeal.[3]

/s/ Charles A. Spain
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Spain.

[3] Because this is an interlocutory appeal of the trial court's order denying appellants' TCPA motion, only that order is before this court—not the entire trial-court case. We do not remand the case to the trial court because the case is not before us. *See Chappell Hill Sausage Co. v. Durrenberger*, No. 14-19-00897-CV, 2021 WL 2656585, at *5 n.6 (Tex. App.—Houston [14th Dist.] June 29, 2021, no pet.) (mem. op.).