

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00088-CV

NOELIA AYALA SUNESARA, Appellant

V.

**GEORGE J. PRAPPAS, ROBERT J. CONNER, BARKAT ALI KHOJA,
AND SULTAN ALI KHOJA, Appellees**

**On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-188,841**

MEMORANDUM OPINION

Noelia Ayala Sunesara (“Noelia”) appeals from the trial court’s final judgment in favor of appellees after a bench trial in Noelia’s suit for alleged fraud, breach of contract, and violations of the Deceptive Trade Practices Act (“DTPA”). In two issues, Noelia argues that (1) the trial court erred when it imposed sanctions on her and (2) the trial court erred by denying her request for a jury trial. We affirm the trial court’s judgment.

PROCEDURAL BACKGROUND

On November 19, 2010, Noelia filed her original petition against George J. Prappas and Robert J. Connor, seeking damages for alleged fraud, breach of contract, and deceptive trade practices. On December 8, 2010, Noelia amended her petition and added Barkat Ali Khoja and Sultan Ali Khoja as defendants. According to Noelia's amended petition, Prappas filed a Final Decree of Divorce on behalf of Zulfikarali Jafar Sunesara ("Jafar"), to which Noelia was the respondent. Noelia pleaded that although a waiver of citation, notarized by Connor, was included with the divorce papers, "she did not sign this document nor was [she] aware she was asked for a divorce." Noelia further pleaded that she had initiated divorce proceedings after losing contact with Jafar. According to Noelia's petition, her divorce attorney located a copy of a final decree of divorce, filed in Jefferson County, Texas, and saw the signature that purported to be Noelia's on the waiver of citation.

Appellees filed an original answer, in which they asserted that Sultan Ali Khoja died in 1981 and that Jafar died in 2004. Appellees asserted that Noelia's marriage to Jafar was void *ab initio* because Jafar was married to another woman when he purportedly married Noelia. Appellees also pleaded that their counsel advised Noelia's counsel that Noelia's claims are barred by limitations, and they

asserted a counterclaim, in which they alleged that Noelia's lawsuit was brought in bad faith and in an effort to extort funds from appellees to settle the case. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 10.001, 10.004(a), (c)(3) (West 2017). In addition, appellees asserted in their counterclaim that Noelia's causes of action were groundless and brought for the purpose of harassment, and they sought sanctions and attorney's fees. While Noelia's lawsuit was pending, a suggestion of Prappas's bankruptcy was filed, which automatically stayed the proceeding until April 23, 2015, when the Bankruptcy Court signed an agreed order granting relief from the automatic stay with respect to any professional liability insurance coverage Prappas possessed, but not as to Prappas's estate. On November 12, 2015, a notice of death was filed, which indicated that Prappas had died on November 1, 2015.

On February 11, 2016, Noelia filed a jury demand. Appellees objected to the jury demand because the case was set for bench trial on February 16, 2016. According to appellees, Noelia's jury demand is "untimely, comes on the eve of trial when this case has been a non-jury case on every trial docket . . . , and [this] was a non-jury case when the case was specially set for trial." The trial court found that Noelia's request for jury trial was untimely and denied the request, and the case proceeded to a non-jury trial on February 16, 2016.

EVIDENCE ADDUCED AT TRIAL

Noelia testified that she met Jafar when Jafar and his brother came to Freeport. According to Noelia, one of her friends had married one of Jafar's friends for a "lump sum money . . . so he could get married into the [c]ountry. So they asked me about that. And so we got married. . . . [H]e, like, started telling me. . . that I would be well-taken care of and that I would[] want for nothing, my kids would be well[-]taken care of." Jafar and Noelia married on February 11, 1997, in Jefferson County, Texas. Noelia testified that she "actually loved" Jafar.

Noelia explained that Jafar did not tell her that he was already married, and she would not have married him if she had known he was married. A copy of a memorandum of marriage between Jafar and another woman, which memorialized a marriage that took place in India on July 2, 1989, was introduced into evidence, and Noelia stipulated that Jafar had married someone in 1989. The memorandum of the 1989 marriage was dated March 25, 2011. Noelia testified that she lived with Jafar "off and on [for] almost a year." According to Noelia, she eventually lost contact with Jafar, and she hired an attorney to help her locate him and to institute divorce proceedings. Noelia testified that she eventually learned that Jafar had divorced her, and she testified that her signature on the waiver of citation was forged, possibly by her sister, who resembles Noelia and had access to Noelia's

identification. A copy of a final decree of divorce, dated January 17, 2003, was entered into evidence, and Noelia testified that her attorney showed her the divorce decree sometime in 2010.

Noelia explained that she later learned that Jafar had married her “[s]o he could live in this country.” Noelia testified that in 2001, Jafar contacted her and flew her to Houston to meet with the immigration authorities, and Noelia testified that Prappas told her what to say to the immigration authorities. According to Noelia, Jafar named her as the beneficiary of his \$50,000 life insurance policy, and she testified that she was unaware that Jafar had designated someone else as beneficiary. Noelia testified that whenever she and Jafar met with Prappas, Barkat was there, but she did not know what part Barkat played or why he was there. The record established that Jafar died in 2004.

Barkat, who is Jafar’s uncle, testified that he leased a convenience store to Jafar. Barkat denied going to Prappas’s office with Jafar and Noelia. Barkat testified that he did not know that Jafar had married Noelia until Jafar’s wife came over from India, and Jafar told Barkat that Noelia was a “rental wife” that he had married to obtain a green card. Barkat testified that by 1999, he knew Jafar had committed fraud by marrying Noelia. Barkat denied having any knowledge of Prappas facilitating fraudulent marriages, and Barkat testified that Prappas did not know that the

marriage between Noelia and Jafar was fraudulent. Barkat testified that two weeks before Jafar died, Jafar told him that he had a life insurance policy, and Barkat explained that Jafar made him the beneficiary of Jafar's life insurance policy because Jafar owed Barkat money. Barkat denied making any misrepresentations to Noelia.

Connor testified that he performed paralegal services for Prappas on a contract basis. Connor testified that he did not specifically recall notarizing Noelia's signature, but that he always asks for government-issued identification when acting as a notary. Connor explained that he kept a notary book, but the book was destroyed by Hurricane Ike in 2008. Connor testified that a number of Indian people retained Prappas's services for help with their immigration status, but Connor was unaware of any allegations that Prappas was involved with fraudulently filing marriage licenses. According to Connor, if Noelia's sister appeared before him and had Noelia's identification, he would have no way of knowing that she was not who she claimed to be. At the conclusion of Connor's testimony, the trial court admitted the transcripts of two depositions into evidence. One of the depositions was of Jafar's son, Asif Sunesara, who testified that his parents were married in India, and they never divorced. Defense counsel testified regarding attorney's fees and introduced his time sheets into evidence.

THE TRIAL COURT'S JUDGMENT

In its final judgment, the trial court rendered judgment in favor of appellees and ordered that Noelia take nothing as to her claims. The trial court found, among other things, that (1) the marriage between Jafar and Noelia was void and ended upon Jafar's death on August 1, 2004;¹ (2) Noelia failed to prove that any of the appellees falsely represented a material fact to her regarding the divorce; (3) Noelia failed to prove that she was a consumer of any services offered by appellees; (4) Noelia failed to answer appellees' counterclaim, which asserted that her cause of action was groundless and was brought in bad faith; (5) Noelia's cause of action was not warranted by any existing law or a good faith argument for extension, modification, or reversal of existing law; and (6) Noelia persisted with her suit after appellees established that the marriage "was void from the beginning[.]" The trial court ordered that Connor and Khoja recover attorney's fees and costs from Noelia and her counsel.

ISSUE ONE

In her first issue, Noelia argues that the trial court erred by imposing sanctions on her in the form of awarding costs and attorney's fees to Connor and Khoja. We review a trial court's award of sanctions for abuse of discretion. *Low v. Henry*, 221

¹ We are cognizant of the inconsistency in the first finding.

S.W.3d 609, 614 (Tex. 2007). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *Welborn v. Ferrell Enters., Inc.*, 376 S.W.3d 902, 906 (Tex. App.—Dallas 2012, no pet.). A trial court does not abuse its discretion if its decision is supported by some evidence. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 365 (Tex. 2014). In determining whether an imposition of sanctions was just, an appellate court must ensure that a direct nexus exists between the improper conduct and the sanction imposed, and the sanction imposed must not be excessive. *21st Mortg. v. Hines*, No. 09-15-00354-CV, 2016 WL 7177697, at *2 (Tex. App.—Beaumont Dec. 8, 2016, pet. denied) (mem. op.). “Findings of fact in a case tried to the court have the same force and dignity as a jury’s verdict.” *Id.*

The evidence at trial established that when Jafar married Noelia, he was already married to another woman. Therefore, the marriage between Jafar and Noelia was void under Texas law. *See* Tex. Fam. Code Ann. § 6.202(a) (West 2006) (providing that “[a] marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.”). Although Noelia asserted claims for breach of contract, fraud, and violations of the DTPA, Noelia failed to adduce evidence that any contract existed, that any of the appellees made a false representation to her, or that she is a consumer of services from any of the appellees. *See* Tex. Bus. & Com.

Code Ann. §§ 17.45(4), 17.50(a)(1) (West 2011) (defining “consumer” as an individual who seeks or acquires by purchase or lease any goods or services and providing that “[a] consumer” may maintain an action for deceptive trade practices); *Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998) (holding that the elements of fraud are that the defendant made a material false representation that the defendant either knew was false or made the representation recklessly, the defendant made the representation with the intent that the plaintiff act on the representation, the plaintiff relied on the representation, and the representation injured the plaintiff); *Hackberry Creek Country Club, Inc. v. Hackberry Creek Home Owners Ass’n*, 205 S.W.3d 46, 55 (Tex. App.—Dallas 2006, pet. denied) (holding that the first element of a breach of contract claim is proving that a valid, enforceable contract exists).

Section 10.001 of the Texas Civil Practice and Remedies Code provides that the signing of a pleading “constitutes a certificate by the signatory” that after reasonable inquiry, the signatory has concluded that each allegation or other factual contention in the pleading is supported by evidence or is likely to have evidentiary support after investigation or discovery. Tex. Civ. Prac. & Rem. Code Ann. § 10.001(3). If the trial court determines that a person has signed a pleading in violation of section 10.001, the trial court “may impose a sanction on the person, a party represented by the person, or both[,]” and the sanction may include “an order

to pay the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees." *Id.* § 10.004(a), (c)(3).

As discussed above, appellees asserted in their counterclaim, which was originally filed in December of 2010, that the marriage between Jafar and Noelia was void because Jafar was already married, and that Noelia's lawsuit was brought in bad faith and in an effort to extort funds from appellees to settle the case. The trial court found that Noelia persisted in pursuing her case even after appellees demonstrated that her marriage to Jafar was void. As mentioned above, the memorandum of marriage between Jafar and his first wife, which took place in 1989, was dated March 25, 2011. In addition, the deposition of Jafar's son, who testified that his parents were married in India and never divorced, took place on June 21, 2011. Noelia pursued her case to trial in February 2016, yet she produced no evidence supporting any of the causes of action she asserted against appellees. We conclude that the trial court did not abuse its discretion by ordering these sanctions against Noelia. *See id.* §§ 10.001, 10.004(a), (c)(3). We therefore overrule issue one.

ISSUE TWO

In her second issue, Noelia contends that the trial court erred by refusing to grant her request for jury trial. Noelia concedes that she "did not make her jury

demand in a timely manner[,]” but argues that the trial court nevertheless abused its discretion by denying her request because a jury trial would not have interfered with the trial court’s docket, delayed the trial, or prejudiced appellees.

We review the trial court’s denial of a jury demand for abuse of discretion. *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex. 1996). We must examine the entire record, and we will conclude that the trial court abused its discretion only if its decision was arbitrary, unreasonable, and made without reference to guiding principles. *Id.* As Noelia states in her brief, in a civil case, the right to a jury trial arises only when a party files a written jury request not less than thirty days before the date the case is set for trial and pays the jury fee. Tex. R. Civ. P. 216. A trial court does not abuse its discretion by denying a jury trial when a request was not timely made. *Huddle v. Huddle*, 696 S.W.2d 895, 895 (Tex. 1985).

As discussed above, Noelia filed her jury demand five days before the date the case was specially set for a bench trial. Appellees filed an objection to Noelia’s jury demand, in which they noted that the demand was untimely, the case had always been docketed as a non-jury case, appellees had already made arrangements to appear for trial, and the trial court had already allocated three days for a bench trial. Noelia’s jury demand was untimely under Rule 216 of the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 216. In addition, the record reflects that Noelia waived

any error because she failed to object when the trial court proceeded with a bench trial. *See In the Interest of D.R.*, 177 S.W.3d 574, 580 (Tex. App.—Houston [1st Dist.] 2005, pet. denied) (“[A] perfected right to a jury trial in a civil case may be waived by a party’s failure to act when the trial court proceeds with a bench trial.”). We conclude that the trial court did not abuse its discretion by denying Noelia’s untimely jury demand. *See* Tex. R. Civ. P. 216; *Huddle*, 696 S.W.2d at 895; *Interest of D.R.*, 177 S.W.3d at 580. Accordingly, we overrule issue two and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on March 27, 2017
Opinion Delivered June 22, 2017

Before McKeithen, C.J., Kreger and Johnson, JJ.