NUMBER 13-21-00330-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

SEYED M. MIRI, SLMA LLC, AND LORETTA MIRI, **Appellants,**

v.

DAVID HEMMASI, AS EXECUTOR OF THE ESTATE OF MAJID HEMMASI; AAA FIRE & SAFETY EQUIPMENT CO., INC.; RDRH HOLDINGS, INC.; RUFINA HEMMASI; MARITES JIMENEZ; AND ALAN CRAIG, **Appellees.**

On appeal from the Probate Court No. 1 of Travis County, Texas.

MEMORANDUM OPINION

Before Justices Tijerina, Silva, and Peña
Memorandum Opinion by Justice Tijerina

This appeal is from the trial court's imposition of death penalty sanctions, pursuant to Texas Rule of Civil Procedure 215, and default judgment against appellants Seyed M. Miri, SLMA LLC, and Loretta Miri and in favor of appellees David Hemmasi, as executor of the estate of Majid Hemmasi; AAA Fire & Safety Equipment Co., Inc.; RDRH Holdings, Inc.; Rufina Hemmasi; Marites Jimenez; and Alan Craig. *See* TEX. R. CIV. P. 215 (providing that the trial court may sanction a party for discovery abuse). By five issues, appellants contend the trial court abused its discretion by (1) imposing "beyond-death-penalty sanctions against [a]ppellants"; (2) appointing a special master; (3) refusing to conduct a trial de novo; (4) imposing a disproportionate sanction; and (5) imposing monetary sanctions.[1] We affirm.[2]

I. DEATH PENALTY SANCTIONS

By their first issue, appellants contend that the trial court should have denied appellees' motion for sanctions because the evidence is legally insufficient to support the trial court's finding that the receipts proffered by appellants during discovery were fraudulent and that Seyed committed perjury. Specifically, appellants argue that the trial court's sanction lacks evidentiary support and is based on "an ill-founded conclusion that Sayed forged receipts he produced during discovery by copying Majid's signature onto the receipts from recorded deeds." Appellants state that appellees failed to establish "that [(1)] the signatures on the receipts and the deeds were the same; [(2)] the deeds, rather

[1] We have reorganized and renumbered appellants' issues.

[2] This appeal was transferred to this Court from the Third Court of Appeals pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

than the receipts, contained Majid's original, penned signature; and [(3)] Seyed, rather than Majid, copied that signature from the deeds to the receipts."

A. Pertinent Facts

The deceased owned several real properties. After his death, Seyed claimed an interest in some of the deceased's real properties based on an alleged oral partnership agreement. Appellees filed this suit against appellants to quiet title to those properties, for damages, and for an accounting. Thereafter, during discovery, Seyed offered receipts to the trial court that he claimed the deceased signed proving Seyed had an interest in the properties. Appellees requested a forensic analysis of the receipts, which determined that the receipts had been fabricated. Appellees requested death penalty sanctions against appellants for "fabrication of evidence, commission of multiple acts of forgery and multiple acts of perjury" and on the basis that: (1) Seyed's sworn testimony and the receipts constituted fraud and perjury; (2) the fabricated evidence served as the basis of Seyed's claims and defenses; and (3) such fraud rose to the presumption that Seyed's contentions were in bad faith and justified death penalty sanctions.

The trial court appointed a special master "to preside over, hear, and recommend a ruling on" appellees' motion for sanctions. The special master held a hearing on the motion for sanctions wherein witnesses testified in person and by deposition and exhibits were admitted.[3] The receipts containing the disputed signatures of the deceased were admitted at the sanctions hearing as Q1, Q3, and Q4.

[3] Appellants neither objected when the trial court appointed the special master nor when the special master held the sanctions hearing.

The trial court found that appellants "fabricated evidence in the lawsuit including, without limitation, the three separate documents referred to in the Record as Q1, Q3[,] and Q4 . . . including by forging or otherwise digitally manipulating purported signatures of [the deceased]" and "committed perjury." Due to this finding, the trial court determined that Seyed had committed fraud on the trial court, committed perjury, and granted the motion for sanctions striking appellants' affirmative claims and defenses. The trial court concluded that Seyed's fraud and perjury were "material in nature" and "serve[d] as the central basis allegedly supporting [his] claims and defenses related to his alleged right and interest in the real properties at issue in this lawsuit."[4]

B. Standard of Review and Applicable Law

A trial court's sanction order is reviewed "for abuse of discretion." *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 717 (Tex. 2020). "A trial court abuses its discretion if it acts without reference to guiding rules and principles such that the ruling is arbitrary or unreasonable." *Id.* A reviewing court is "not bound by a trial court's findings or conclusions of law and must, instead, review the entire record independently to determine whether the trial court abused its discretion." *Id.*

We view conflicting evidence favorably to the trial court's decision. *Id.* A "hearing on the motion for sanctions [is] akin to a nonjury trial," in which "the trial court is the judge of the credibility of the witnesses and of the weight to be given their testimony, since [the judge] has the opportunity to observe the demeanor of the witnesses on the stand and

[4] The trial court sanctioned appellants by striking their pleadings, dismissing their claims, entering a default judgment in favor of appellees, and ordering monetary sanctions.

[the judge] may believe all, none, or part of the witnesses' testimony." *Tate v. Commodore Cnty. Mut. Ins. Co.*, 767 S.W.2d 219, 224 (Tex. App.—Dallas 1989, writ denied). Thus, "[t]he trial court's findings of fact will not be disturbed on appeal if supported by any evidence of probative force." *Id.* We are required to view the evidence in the light most favorable to the trial court's action, and to indulge every legal presumption in favor of the judgment. *Vaughn v. Tex. Emp. Comm'n*, 792 S.W.2d 139, 143 (Tex. App.—Houston [1st Dist.] 1990, no writ).

C. Discussion

Appellants merely attack the trial court's sanctions on the basis that there is no evidence to support a finding of fact that Seyed offered forged receipts to support his claims and defenses during discovery. Thus, we may only reverse if there is no evidence of a probative force supporting this finding. *See Tate*, 767 S.W.2d at 224.

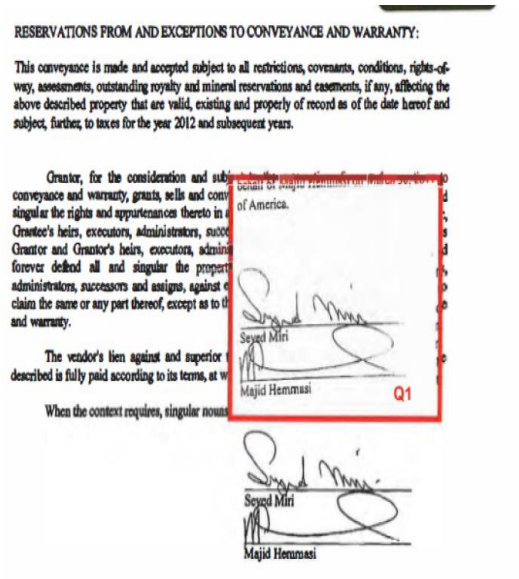
At the sanctions hearing, it was shown that in discovery Seyed offered three receipts purportedly signed by the deceased, marked as exhibits Q1, Q3, and Q4, which allegedly showed that Seyed had paid for an interest in certain properties owned by the deceased. Appellees' expert witness, Kenneth Crawford, a forensic document examiner, testified that no two actual signatures are identical and if they are identical, then one of the signatures is a copy of the other. He said, "[N]o two writings of the same material by the same person are ever going to be exactly identical due to variations that are expected in the handwriting of one person." Crawford opined, "If the signatures are exactly the same in all respects, one of them has to be a copy. And, yes, one is a copy of the other."

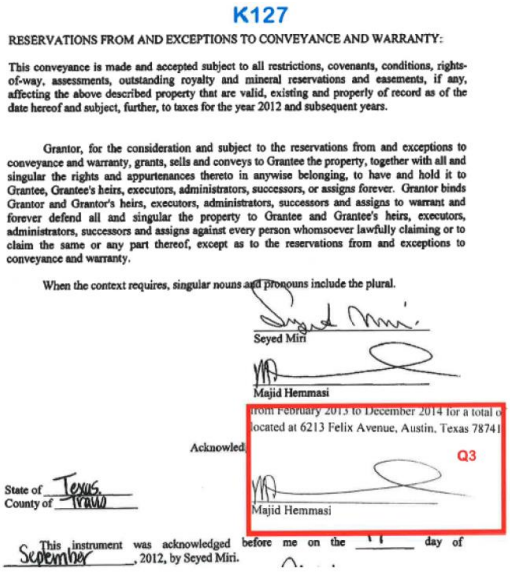
Crawford compared the signatures on the three receipts provided by Seyed with

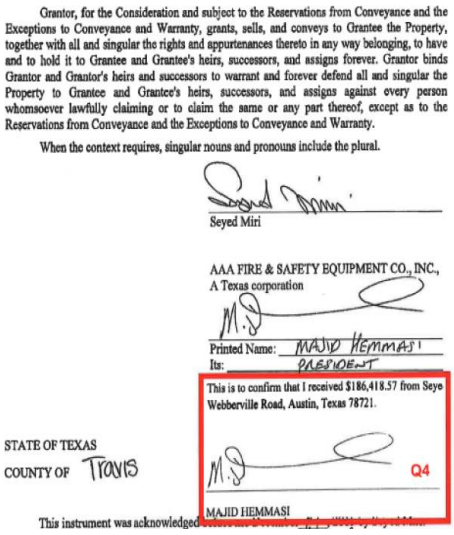
documents having known signatures of the deceased. These documents included notarized certified copies of deeds from the Travis County deed records. *See* TEX. R. EVID. 902(4) (providing that a copy of an official record or "a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by: (A) the custodian or another person authorized to make the certification" is self-authenticating, which requires no extrinsic evidence of authenticity to be admitted). Crawford explained that part of the process involved looking at each signature "point by point to see if they are the exact same confirmation of letters and line intersections all the way from one end to the other." Crawford reviewed seventy-five known examples of the deceased signature on certified copies of notarized and recorded deeds. Crawford first determined that there was not any reason to "call into question the assumption that these were all known writing of one person." Thus, Crawford concluded that the seventy-five known samples belonged to the deceased. Once he made this determination, Crawford "proceeded on with the comparisons of each of the known to each of [the] questioned documents."

Crawford testified that the deceased's known signatures show a "sufficiently wide normal range of natural variation in his handwriting . . . [and] no two of his signatures are going to be mistaken for being one signature." Thus, there were no copies of the deceased's signatures on the known samples. Crawford concluded that the signatures purporting to belong to the deceased on the receipts provided by Seyed were copies of the deceased's signatures taken from three of the known signatures. To demonstrate his opinion, Crawford took the known samples that matched the signatures on the receipts

exactly and overlay the signatures appearing on the receipts onto the known samples as follows:







Crawford explained that he "juxtaposed these signatures to make it easier to see them directly because one signature is directly above the other." As to the signature on Q1, Crawford compared it to the known sample marked K128 and said, "I found that in these two signatures [(K128 and Q1)], I have exactly the same confirmation and relative positioning of all aspects of the pen line in both questioned and known." Appellees asked,

"And in your professional opinion, is the [deceased's] signature . . . [on] Q1 an exact duplicate, copy-and-paste duplicate, of [the deceased's signature] that you see on [K128]?" Crawford replied, "Given [that K128] is a known document, yes. The signature on [K128] was either digitally or physically moved to position it onto Q1." Likewise, Crawford concluded that the deceased's signature on Q3 was a copy of the deceased's signature taken from one of the known samples marked K127. Crawford said, "[T]he signature appearing on document Q3 was an exact duplicate of the signature that appeared on the K127, which I was given as a known document." Finally, as to Q4, Crawford concluded that the signature had been "removed" from the known sample of the deceased's signature marked K97 and then "placed upon Q4."

Crawford opined that the signature comparison is "lay obvious" in that "anyone who has normal vision can see whether they are or are not in correct registration." Crawford explained, "In other words, you don't need an expert to tell that they are superimposed." On cross-examination, Crawford clarified that "[t]he statement that two signatures are identical images does not mean, the way that I'm expressing it, that they're exactly the same size. It means that they're the same conformation of letter forms and positioning."

The trial court admitted a video of appellees' witness, Benita Hudson, digitally superimposing the deceased's known signature on K128 over Q1, K127 over Q3, and K97 over Q4. Appellees asked Hudson to "describe for the Court what [she] did." Hudson said,

> Well, on the right-hand side are the K documents, which we called "knowns." And on the left are the set of documents that are Qs. And what you asked me to do was to take a snippet or a snapshot of the signature on the Ks on the right, lift it up, make the background transparent, which means

> to remove the white and isolate just the signature, and then hover it over to the left where the Qs are and sort of layer or—layer on top and line them up in order to see if they would line up and match.
>
> And because I was able to do that, at times I had to change the orientation or maybe enlarge or condense just to make it fit perfectly. But essentially you . . . asked me to do that, and then I did and I videotaped it.

While the video played, Hudson acknowledged that they were viewing that the signature from K128 was "laid directly on top of the signatures on Q1," and that the same process was repeated for K127 with Q3 and K97 with Q4. Hudson agreed with appellees that she was "able to get the two signatures to align, overlay each other, perfectly by just adjusting size and orientation" from each K document onto each Q document. On cross-examination, Hudson clarified that she had not "altered" any of the signatures, and she "simply took a snapshot of it, removed the background, and then expanded it or collapsed it to lay it on top and make it fit."

Appellees read portions of Seyed's deposition wherein Seyed testified that the deceased prepared and then signed Q1 in his presence and that the deceased gave Seyed Q3 and Q4 after preparing and signing them outside his presence.[5] Appellants did not present any witnesses at the sanctions hearing and the special master excluded some of appellants' proffered evidence at the hearing.[6] Seyed did not appear in person at the sanctions hearing.

Viewing the evidence in the light most favorable to the trial court's actions and

[5] The trial court admitted the parties' pleadings showing that originally Seyed had not mentioned that the deceased had supposedly given him an interest in some real property for approximately $186,000 until after appellees claimed Seyed stole a check for $186,000—the receipt presented by Seyed supporting this claim had been marked Q4.

[6] Appellants do not challenge the special master's exclusion of their proffered evidence.

indulging every legal presumption in favor of the judgment, we conclude that the trial court's findings that appellants provided forged documents to the trial court and committed perjury is supported by some evidence of a probative force.[7] *See Vaughn*, 792 S.W.2d at 143. We overrule appellants' first issue complaining that there is no evidence that the receipts were forged.[8]

II. SPECIAL MASTER HEARING

By their second and third issues, appellants contend that the trial court should not have appointed a special master to hear the sanctions motion because the trial court "did not find that the case was exceptional" and did not conduct a trial de novo.

A. Appointment of a Special Master

In an exceptional case and for good cause, a trial court may "appoint a master in chancery . . . who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as the master of chancery has in a court

[7] Appellants argue that the deceased could have copied his own signatures from the known samples and then placed them on Q3 and Q4, and the deceased could have copied and pasted his signatures from Q1 onto K128. However, we are not able to act as a factfinder, and we must view the evidence in the light most favorable to the trial court's findings. Therefore, we must assume that the trial court inferred from the evidence that Seyed forged the deceased's signatures from the known samples onto Q1, Q3, and Q4 because Seyed had a monetary motive for doing so. *See Vaughn v. Tex. Emp. Comm'n*, 792 S.W.2d 139, 143 (Tex. App.—Houston [1st Dist.] 1990, no writ). Appellants rely on the date noted on Q1 to make this argument; however, because the trial court believed that Q1 was a forgery, it necessarily did not believe that the deceased signed Q1 on the date indicated on the document. Instead, the trial court believed Seyed copied and pasted the deceased's signature from K128 onto Q1 and lied about the date written on Q1.

[8] Appellants further contend that the trial court abused its discretion by sanctioning Seyed's wife, Loretta with death penalty sanctions because there is no evidence that she committed fraud or perjury. Similarly, appellants claim that the trial court abused its discretion by sanctioning SLMA LLC. Appellants have not provided a clear and concise argument with citation to appropriate authority to support a conclusion that the trial court could not sanction Loretta and SLMA LLC in the same manner as it sanctioned Seyed when they both based their claims on forged documents and relied on perjury to support their claims and defenses. *See* TEX. R. APP. P. 38.1(i).

of equity." TEX. R. CIV. P. 171. "[A] party objecting to a master's appointment must make an objection not within some arbitrary time period, but before it has taken part in proceedings before the master or before the parties, the master, and the court have acted in reliance on the master's appointment." *Owens-Corning Fiberglas Corp. v. Caldwell*, 830 S.W.2d 622, 625 (Tex. App.—Houston [1st Dist.] 1991, no writ); *see also In re Gladewater Healthcare Ctr.*, No. 06-09-00086-CV, 2009 WL 3647321, at *1 (Tex. App.—Texarkana Oct. 27, 2009, no pet.) (mem. op.).

Here, appellants failed to object to the trial court's appointment of the special master before appellants participated in the sanctions hearing before the master and before the parties, the master, and the court acted in reliance on the master's appointment. *See Owens-Corning Fiberglas Corp.*, 830 S.W.2d at 625 ("[W]e conclude that a party's objection to the master's appointment is timely if filed *before the party participates in proceedings before the master*."); *see also In re Gladewater Healthcare Ctr.*, 2009 WL 3647321, at *1 (determining that "[b]y fairly extensive participation in proceeding before the special master, [the objecting party] waived their objection to the appointment of the master"). Therefore, appellants have not properly preserved their complaint that the trial court erred in appointing the special master. *See Owens-Corning Fiberglas Corp.*, 830 S.W.2d at 625; *see also In re Gladewater Healthcare Ctr.*, 2009 WL 3647321, at *1. We overrule appellants' second issue.[9]

[9] Appellants argue that they objected to the appointment of the special master. However, appellants objected as follows: we "object to the Special Master in this case making findings of fact because that's outside the purview contemplated in the order," which was limited to "discovery matters." This objection does not comport with appellants' issue on appeal—that the trial court failed to find that this is an exceptional case. *See Great N. Energy, Inc. v. Circle Ridge Prod., Inc.*, 528 S.W.3d 644, 673 (Tex. App.—Texarkana 2017, pet. denied) ("[A] party's complaint on appeal must comport with the objection made at trial." (first citing *Lee v. Holoubek*, No. 06-15-00041-CV, 2016 WL 2609294, at *5 (Tex. App.—Texarkana

B. Trial de Novo

Objections to a master's findings must be specific and tied to a particular finding of fact. *See Martin v. Martin*, 797 S.W.2d 347, 350 (Tex. App.—Texarkana 1990, no writ) ("The issues of fact that are raised by the objections are tried *de novo* before the court if no jury has been requested. . . . This means that evidence must be heard anew on issues to which there are objections."). "When objections are made to the master's report, each party has the right to present evidence on the issues specified in the objections and have the court or jury decide those issues on the basis of the evidence presented in court." *See Young v. Young*, 854 S.W.2d 698, 701 (Tex. App.—Dallas 1993, writ denied); *see also McCrory & Co., Inc. v. Avery Mays Const. Co.*, 690 S.W.2d 333, 334 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *Paul Poong Young Kim v. Bd. of Trustees of Korean Christian Church of Hous.*, No. 01-08-00970-CV, 2010 WL 2220591, at *6 (Tex. App.—Houston [1st Dist.] June 3, 2010, pet. denied) (mem. op.) ("Because they made only a general objection to the findings of fact, the objection by the parishioners was insufficient to advise the court of a fact issue that would require an evidentiary hearing."). "A party dissatisfied with the [master's] report has the burden to make specific objections before the report is adopted by the court." *McCrory & Co., Inc.*, 690 S.W.2d at 334.

May 6, 2016, no pet.) (mem. op.), then citing *Schwartz v. Forest Pharm., Inc.*, 127 S.W.3d 118, 125 (Tex. App.—Houston [1st Dist.] 2003, pet. denied))). Thus, we conclude that the above cited objections did not preserve the complaint made on appeal. *See id.*

Moreover, to the extent that appellants may assert that this objection preserved their right to a trial de novo, we conclude it did not because appellants' objection was not specific and was not tied to a specific finding of fact. *See Martin v. Martin*, 797 S.W.2d 347, 350 (Tex. App.—Texarkana 1990, no writ); *see also McCrory & Co., Inc. v. Avery Mays Const. Co.*, 690 S.W.2d 333, 334 (Tex. App.—Dallas 1985, writ ref'd n.r.e.); *Paul Poong Young Kim v. Bd. of Trustees of Korean Christian Church of Hous.*, No. 01-08-00970-CV, 2010 WL 2220591, at *6 (Tex. App.—Houston [1st Dist.] June 3, 2010, pet. denied) (mem. op.).

Here, appellants did not object to the master's report, and the trial court adopted it. *See Novotny v. Novotny*, 665 S.W.2d 171, 173 (Tex. App.—Houston [1st Dist.] 1983, writ dism'd) ("When issues are referred to and heard by a Master under Rule 171, the Master's report is conclusive on the issues considered by the Master in the absence of a proper objection."); *see also Young*, 854 S.W.2d at 701 ("The case law construing rule 171 otherwise provides that objections may be filed at any time before the trial court adopts the master's report."); *Bhatti v. Bhatti*, No. 13-08-310-CV, 2009 WL 2545057, at *4 (Tex. App.—Corpus Christi–Edinburg Aug. 20, 2009, no pet.) (mem. op.) ("We recognize the case law is clear that one is entitled to a de novo hearing on the master's recommendation if there are proper objections to the master's report."). Therefore, appellants did not apprise the trial court of their wish to have a trial de novo prior to the trial court's adoption of the master's report and findings. *See Martin*, 797 S.W.2d at 350; *see also McCrory & Co., Inc.*, 690 S.W.2d at 334.

In addition, the party must request that a trial de novo be conducted, and the trial court must rule on such a request to preserve this issue for our review. *See* TEX. R. APP. 33.1(a); *see also Bhatti*, 2009 WL 2545057, at *4 (determining that the appellant had not preserved his issue on appeal because the record did not reflect that the appellant specifically requested a trial de novo or that the trial court refused such a request prior to reviewing the master's report and entering judgment). Here, the record does not show that appellants specifically requested a trial de novo or that the trial court made a ruling on whether to conduct a trial de novo; therefore, we conclude that appellants did not preserve this issue. *See* TEX. R. APP. 33.1(a); *see also Bhatti*, 2009 WL 2545057, at *4.

Thus, appellants have not shown on appeal that they were entitled to a trial de novo on the master's recommendation.[10] *See Young*, 854 S.W.2d at 701; *see also Bhatti*, 2009 WL 2545057, at *4 (determining that appellant did not preserve error in adopting the master's recommendation because the appellant did not object to the master's report (citing TEX. R. APP. P. 33.1)). We overrule appellants' third issue.

III. DISPROPORTIONATE SANCTIONS

By their fourth issue, appellants contend that "[t]he sanctions awarded are disproportionate and give [appellees] an improper windfall." Appellees respond that appellants lack remorse and "fundamentally fail[] to acknowledge just how serious forgery and perjury are." Appellees state, "[t]his is not a matter of answering discovery late or withholding documents; [Seyed] committed fraud on the court by manufacturing the core evidence in support of his claim to [the deceased's] properties."[11]

Texas courts agree with appellees that fabrication of evidence is an egregious act taken by a party in court, and it is the type of behavior justifying death penalty sanctions. *See JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 453 (Tex. App.—Austin 2013, no pet.) ("Producing false documents in discovery and then lying about those documents in deposition undoubtedly qualifies as an abuse—flagrant, in fact—of the

[10] In their brief, appellants state that the trial court "erred by refusing to hold a [trial] de novo . . . upon [their] objections." Appellants cite to a pleading requesting a rehearing filed in the trial court after the sanctions hearing for among other reasons, failing to realize that the sanctions hearing was evidentiary, in the interest of justice, and because Seyed "was prejudiced through the denial of properly authenticated exhibits and the error of his undersigned counsel." These objections do not comport with appellants' issue on appeal—that the trial court failed to conduct a trial de novo. *See Great N. Energy, Inc*, 528 S.W.3d at 673. Moreover, appellants did not request a trial de novo in this pleading. *See id.*

[11] Having overruled appellants' issues, the trial court's findings that Seyed forged the deceased's signature to obtain title to the deceased's properties and that Seyed committed perjury are binding. *See JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 453 n.2 (Tex. App.—Austin 2013, no pet.).

discovery process, whose ultimate goal is, after all, a search for the truth."); *Vaughn*, 792 S.W.2d at 144; *see also TransAm. Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 918 (Tex. 1991) ("Sanctions which are so severe as to preclude presentation of the merits of the case should not be assessed absent a party's flagrant bad faith or counsel's callous disregard for the responsibilities of discovery under the rules."); *Pressil v. Gibson*, 558 S.W.3d 349, 360 (Tex. App.—Houston [14th Dist.] 2018, no pet.). We review whether sanctions are just under an abuse of discretion standard. *TransAm. Nat. Gas Corp.*, 811 S.W.2d at 917.

Ordinarily, there must be a direct relationship between the offensive conduct and the sanction imposed meaning "that a just sanction must be directed against the abuse and toward remedying the prejudice caused the innocent party" and "that the sanction should be visited upon the offender." *Id.* However, some courts have determined that a presumption that the party's claims lack merit is warranted when there is a flagrant abuse of the judicial process such as fabrication of evidence or perjury. *See Pressil*, 558 S.W.3d at 360 (concluding that the trial court did not abuse its discretion when it imposed death-penalty sanctions that encompassed not only the offending party's claims related to the offensive conduct but also unrelated claims because "[a]lthough the fabricated evidence did not go to a 'core element' of the claim against . . . the fabrication nevertheless gave rise to a presumption that the claims lacked merit"); *Vaughn*, 792 S.W.2d at 144 (dismissing all of the plaintiff's claims because she fabricated evidence and committed perjury during discovery); *see also Poff v. Guzman*, 532 S.W.3d 867, 872 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (affirming the trial court's dismissal of the plaintiffs'

causes of action because the trial court found that the plaintiffs' allegation of poverty in their affidavit of indigency was false); *England v. Kolbe*, No. 03-15-00409-CV, 2017 WL 1228884, at *4 (Tex. App.—Austin Mar. 30, 2017, no pet.) (mem. op.) (concluding that the trial court properly imposed death penalty sanctions pursuant to Rule 215 because "[m]aking false representations and actively concealing evidence from the requesting party certainly qualifies as an abuse of the discovery process, the ultimate goal of which is a search for the truth").

Here not only did Seyed produce the fabricated documents during discovery in an attempt to acquire over half a million dollars in real property, but he also committed perjury by lying about the documents under oath. These documents could only be used to support appellants' claims that Seyed had an interest in these properties, which goes to the heart of the appellants' proof. Thus, the trial court concluded that appellants committed fraud on the court and determined that appellants' claims and defenses lack merit. The trial court further concluded that appellants' claims and defenses relied on the forged documents and perjury. The trial court found that Seyed relied on the forged documents to support his claims that there was an oral partnership and that he had an interest in real property owned by the deceased. In addition, the trial court concluded that Seyed relied on the forged receipts to support a claim that appellants suffered damages.

"In determining whether a trial court has abused its discretion, we are required to view the evidence in the light most favorable to the trial court's action, and to indulge every legal presumption in favor of the judgment." *Vaughn*, 792 S.W.2d at 143. Accordingly, viewing the evidence in the light most favorable to the trial court's ruling, we

cannot conclude that the trial court abused its discretion by determining that appellants' claims and defenses were based on the forged receipts and perjured testimony. *See id.*

Moreover, a trial court has discretion to conclude that all of a party's claims lack merit even if the offensive conduct is not directly connected to each claim and defense. *See Pressil*, 558 S.W.3d at 360 (adopting the reasoning in *Vaughn*).

> A discovery wrongdoer does not have an absolute right, if his or her offense is detected, to avoid dismissal as a sanction by simply amending pleadings to render tainted evidence no longer material. Such an option in the offender's hands would render useless, or at least strongly dilute, the trial court's power to enforce the threefold purpose of discovery sanctions," which includes to punish and deter offensive behavior.[12]

Vaughn, 792 S.W.2d at 144. The fabrication of evidence is a third-degree felony. TEX. PENAL CODE ANN. § 37.09(a). "An act so destructive of the integrity of our judicial process, such as the fabrication of physical evidence, deserves serious punishment" and "[s]uch intentionally egregious behavior warrants punishment that places the guilty party in a worse position than that from which she began." *Daniel v. Kelley Oil Corp.*, 981 S.W.2d 230, 235 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

Therefore, the trial court could have reasonably concluded that appellants committed an act so destructive to the integrity of the judicial process and that their conduct justified a presumption that their claims had no merit so that it would be unjust to permit them to prosecute their claims under these circumstances. *See id.* Accordingly, given that the trial court has broad discretion when imposing death penalty sanctions, we

[12] "The purpose of discovery sanctions is threefold: (1) to secure the parties' compliance with the rules of discovery; (2) to deter other litigants from violating the discovery rules; and (3) to punish parties who violate the rules of discovery." *Vaughn v. Tex. Emp. Comm'n*, 792 S.W.2d 139, 142 (Tex. App.—Houston [1st Dist.] 1990, no writ).

cannot conclude that the trial court abused its discretion when it imposed death penalty sanctions in this case. *See Vaughn*, 792 S.W.2d at 142 ("In reviewing a sanction entered for discovery abuse, an appellate court cannot substitute its judgment for that of a trial court unless it finds that the trial court abused its discretion as a matter of law."); *see also Pressil*, 558 S.W.3d at 360. We overrule appellants' fourth issue.[13]

IV. MONETARY SANCTIONS

By its fifth issue, appellants contend that the trial court abused its discretion by imposing monetary sanctions in addition to the death penalty sanctions.

The trial court supported its monetary sanctions as follows:

> The Court further finds that the imposition of punitive monetary sanctions set forth above in the amount of the sums claimed by [appellants] in the Fabricated Documents is also justified as an appropriate punishment and deterrence to [appellants] and to others insofar as simply striking the [appellants'] pleadings would serve only to place [appellees] and [appellants] in the position they have demonstrated they would have been

[13] Appellants claim that the trial court failed to consider lesser sanctions as required. However, in its final judgment awarding death penalty sanctions, the trial court stated, "The Court has considered lesser sanctions against [appellants] for the above-found conduct and determined that such lesser sanctions to be inappropriate to punish [appellants] for the above-described acts and would not remedy the prejudice suffered by [appellees] and Third-Party Defendants resulting from the same." The trial court further found the following:

> an order simply disallowing the introduction of the Fabricated Documents into evidence would merely place the Parties into the exact position they were in prior to the acts of forgery and perjury herein described (ignoring the likely significant attorneys' fees and expenses incurred by [appellees] and Third-Party Defendants defending such fabricated and perjured contentions), and would permit [appellants] to attempt to introduce other additional fabricated evidence or perjured testimony—especially given the fact that [Seyed] has already proven to be willing to repeatedly fabricate evidence and provide perjured testimony (which the Court expressly finds to have occurred and to be [Seyed's] propensity). Such lesser sanction would not have effectively punished this wrongdoing, nor would such lesser sanction prevent further and additional fabrication and perjury by [appellants]. Moreover, such lesser sanction would not redress the harm suffered and to-be-suffered by [appellees] and Third-Party Defendants, because [Seyed] would still be at liberty to introduce false evidence or testimony at the trial in this matter, and [appellees] and Third-Party Defendants are particularly disadvantaged by the unavailability of [the deceased] to deny the authenticity of such false evidence or testimony, on account of [the deceased's] death.

Thus, the record reflects that the trial court considered lesser sanctions; Therefore, appellants' argument to the contrary lacks merit. *See* TEX. R. APP. P. 47.1.

> in notwithstanding the [appellants'] Fraud and Perjury, and would not serve as any punishment or a deterrence to such fraudulent conduct; and the prohibition on the conduct of future discovery and participation in the presentation of evidence in the Final Hearing is warranted on the basis of [appellants'] continuing efforts to push [appellants'] fraudulent arguments, unnecessarily increase [of] the cost of this litigation, and [introduction of] false evidence and testimony in this cause, which the Court expressly finds will be likely if [appellants] are allowed to participate in discovery or in the presentation of any of the evidence in this cause or the Final Hearing.

Relying on *Altesse Healthcare Sols., Inc. v. Wilson*, appellants argue solely that a trial court abuses its discretion when it imposes monetary sanctions in addition to death penalty sanctions. 540 S.W.3d 570, 576 (Tex. 2018) (per curiam). However, the *Altesse* court did not state that a trial court is prohibited from imposing both monetary and death penalty sanctions in cases. *Id.* Instead, the *Altesse* court stated that although the parties' behavior did not rise to that level requiring extreme sanctions because the behavior had not been offensive enough to warrant them, there may be certain cases where "extreme bad faith alone might justify extreme sanctions." *Id.* We agree with appellants that the trial court's sanctions in this case are extreme. However, without authority stating that extreme sanctions such as death penalty and monetary sanctions are prohibited, we cannot conclude that the trial court abused its discretion under these circumstances. Accordingly, we overrule appellants' fifth issue.

V. CONCLUSION

We affirm the trial court's judgment.

JAIME TIJERINA
Justice

Delivered and filed on the
31st day of August, 2023.