NO. 12-12-00165-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THOMAS L. SMITH, APPELLANT	*§*	***APPEAL FROM THE 273RD***
V.	*§*	***JUDICIAL DISTRICT COURT***
RYAN MCDANIEL AND GEORGE GREER, APPELLEES	*§*	***SABINE COUNTY, TEXAS***

MEMORANDUM OPINION

Thomas L. Smith appeals the trial court's judgment in favor of Ryan McDaniel. In two issues, Smith challenges the sufficiency of the evidence to support the trial court's affirmative finding of fraud against him, and also challenges several findings of fact and conclusions of law in the trial court's judgment. We affirm.

BACKGROUND

In 1999, shortly after Smith's debts were discharged in bankruptcy, he met Bruce Greer, who was McDaniel's step-great-grandfather. Smith bought cows from Greer and leased land from him to maintain cattle operations. Smith became close to Greer when Greer's wife fell ill because Smith assisted Greer in dealing with the hardships of his wife's illness and subsequent death. Over time, Greer gave Smith increasing control over his assets,[1] including portions of nearly one million dollars in payments made to Greer under a 2008 oil and gas lease on his land.

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[1] For instance, in 2007, Greer executed a durable power of attorney appointing Smith as his attorney in fact. Greer never revoked the power of attorney. Moreover, in 2009, Greer executed a new will, naming Smith as his independent executor. However, Smith declined the appointment after a will contest was instigated that resulted from his quarrels with the surviving members of Greer's family. The will also bequeathed property to Smith. But McDaniel was the primary beneficiary in the will.

Beginning in December 2008, and continuing into December 2009, Smith used Greer's assets to engage in the transactions that gave rise to this lawsuit. During this time, Smith wrote checks from Greer's accounts totaling over $358,000.00, and Smith, his businesses, or his creditors were the beneficiaries of those funds. Greer signed all of the checks. In December 2009, Greer became ill and passed away.

McDaniel discovered these transactions, became suspicious of the nature of the payments, and ultimately filed suit.[2] McDaniel argued that Smith acted fraudulently to obtain those funds. Smith contended that the funds were gifts from Greer as a sign of Greer's affection for Smith and his family. The case was tried to the court. The trial court, in its judgment, found that Smith "obtained the amount of $358,481.10 from Bruce Greer by false pretenses, false representations, and actual fraud." The court also found that Greer's will had been admitted to probate, that McDaniel was the residuary devisee under the will, and that McDaniel was entitled to a money judgment for that amount. The trial court issued findings of fact and conclusions of law as timely requested by Smith. In them, the trial court identified each transaction and stated how Smith committed fraud with respect to each transaction. This appeal followed.

STANDING

As an initial matter, we determine whether McDaniel has standing to sue for the alleged fraud committed against Greer.[3] Suits for wrongful acquisition of property by fraud or deceit survive the death of the defrauded party. ***Vial v. Gas Solutions, Ltd.***, 187 S.W.3d 220, 227 (Tex. App.—Texarkana 2006, no pet.). In addition, although a personal representative of the estate usually has the sole authority to bring such an action, there is an exception when the personal representative's interests are antagonistic to those of the estate, in which case, the heirs or beneficiaries of the will, as the case may be, are vested with standing to sue. *See* ***In re Estate of Preston***, 346 S.W.3d 137, 162-63 (Tex. App.—Fort Worth 2011, no pet.); ***Mayhew v. Dealey***,

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[2] Bruce Greer's step-grandson, George Greer, also joined the suit, seeking fee simple title to property that was allegedly bequeathed to him by Bruce Greer. This issue was also before the trial court, and the trial court ruled in George Greer's favor. However, Smith has not appealed that portion of the trial court's judgment.

[3] Standing is implicit in the concept of subject matter jurisdiction, and it is never presumed, cannot be waived, and may be raised by the parties or the reviewing court for the first time on appeal. ***Tex. Ass'n of Bus. v. Tex. Air Control Bd.***, 852 S.W.2d 440, 445-46 (Tex. 1993). Thus, although none of the parties have raised a question as to McDaniel's standing to sue, we address it here. *See* ***id***. at 445-46.

143 S.W.3d 356, 370-71 (Tex. App.—Dallas 2004, pet. denied). Here, Smith was named in the will as the personal representative of Greer's estate, although he ultimately declined the appointment, and he is the alleged fraudulent actor. Therefore, we hold that the exception applies, and McDaniel, as residuary beneficiary under Greer's will, has standing to sue.

SUFFICIENCY OF THE EVIDENCE

In his first issue, Smith contends that the evidence is "legally and factually insufficient to support a claim of fraud because there is no evidence of reliance by Bruce Greer on any statement made by Smith." In his second issue, Smith argues that the trial court erred in making several of its findings of fact and conclusions of law, because, according to Smith, they are unsupported by legally or factually sufficient evidence. Specifically, Smith argues as follows:

> The trial court erred when it determined that Smith committed fraud when he sold the tractor after the death of Bruce Greer.
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> In light of the evidence presented at trial, the trial court erred when it determined that Smith indicated to Bruce Greer that he was contributing $96,000 to the church, that Smith only provided $40,000 worth of benefits and retained $56,000[,] and that such actions constitute fraud.
>
> In light of the evidence presented at trial, the trial court erred when it determined that Smith committed fraud by indicating to Bruce Greer that the $38,485.41 check to Capital One was in payment of the debt owed by Bruce Greer.
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> In light of the evidence presented at trial, the trial court erred when it determined that Smith indicated to Bruce Greer that the miscellaneous checks were for the payment of bills owed by Bruce Greer or as payment for the purchase of equipment or farm implements to be owned by Bruce Greer.
>
> In light of the evidence presented at trial, the trial court erred when it determined that Smith committed fraud by indicating that the $17,000 check was for work done or to be done by Smith for Bruce Greer.
>
> In light of the evidence presented at trial, the trial court erred when it determined that Smith committed fraud by indicating to Bruce Greer that the 100 hours check was for work done or to be done by Tom Smith for Bruce Greer.
>
> In light of the evidence presented at trial, the trial court erred when it determined that the total amount of money obtained by Tom Smith from Bruce Greer by false pretenses, false representations and actual fraud was $358,481.10.

Because these issues are related, and all of them require a review of the legal and factual sufficiency of the evidence, we address them together.

<u>Standard of Review</u>

In an appeal of a judgment rendered after a bench trial, a trial court's findings of fact have the same weight as a jury's verdict, and we review the legal and factual sufficiency of the evidence used to support them just as we would review a jury's findings. ***Catalina v. Blasdel,*** 881 S.W.2d 295, 297 (Tex. 1994); ***Daniel v. Falcon Interest Realty Corp.***, 190 S.W.3d 177, 184 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

In conducting a legal sufficiency review of the evidence, we must consider all of the evidence in the light most favorable to the verdict and indulge every reasonable inference that would support it. ***City of Keller v. Wilson,*** 168 S.W.3d 802, 822 (Tex. 2005). In determining whether legally sufficient evidence supports the finding under review, we must consider evidence favorable to the finding, if a reasonable fact finder could consider it, and disregard evidence contrary to the finding, unless a reasonable fact finder could not disregard it. ***Id.*** at 827; ***Brown v. Brown,*** 236 S.W.3d 343, 348 (Tex. App.—Houston [1st Dist.] 2007, no pet.). However, if the evidence at trial would enable reasonable and fair-minded people to differ in their conclusions, the fact finder must be allowed to do so. ***City of Keller,*** 168 S.W.3d at 822; *see also* ***King Ranch, Inc. v. Chapman,*** 118 S.W.3d 742, 751 (Tex. 2003). When a party attacks the legal sufficiency of an adverse finding on which it did not have the burden of proof, it must demonstrate that there is no evidence to support the adverse finding. ***Croucher v. Croucher,*** 660 S.W.2d 55, 58 (Tex. 1983); ***Bellino v. Comm'n for Lawyer Discipline,*** 124 S.W.3d 380, 385 (Tex. App.—Dallas 2003, pet. denied). We will sustain a legal sufficiency or "no evidence" challenge if the record shows one of the following: (1) a complete absence of evidence of a vital fact, (2) rules of law or evidence bar the court from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a scintilla, or (4) the evidence establishes conclusively the opposite of the vital fact. ***City of Keller,*** 168 S.W.3d at 810.

In reviewing a factual sufficiency challenge, we consider and weigh all of the evidence supporting and contradicting the challenged finding and set aside the finding only if the evidence is so weak as to make the finding clearly wrong and manifestly unjust. *See* ***Plas–Tex, Inc. v. U.S. Steel Corp.***, 772 S.W.2d 442, 445 (Tex. 1989); ***Cain v. Bain,*** 709 S.W.2d 175, 176 (Tex. 1986). When a party attacks the factual sufficiency of an adverse finding on an issue on which it did not have the burden of proof at trial, it must show that there is insufficient evidence to

support the adverse finding. ***Vongontard v. Tippit,*** 137 S.W.3d 109, 112 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

"[W]hen one or more elements [of a cause of action] have been found by the trial court in the court's findings of fact and conclusions of law, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment." TEX. R. CIV. P. 299. Thus, when the trial court makes express findings on at least one element of a claim, implied findings on the omitted unrequested elements are deemed to have been made in support of the judgment. *See* ***Vickery v. Comm'n for Lawyer Discipline,*** 5 S.W.3d 241, 252 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). It is the appellant's duty to attack the express and implied findings. ***Long v. Long***, 234 S.W.3d 34, 42 (Tex. App.—El Paso 2007, pet. denied). Moreover, if a court in a bench trial makes findings of fact and conclusions of law, but inadvertently omits an essential element of a ground of recovery or defense, the presumption of validity will supply the omitted element by implication. *See* ***Monasco v. Gilmer Boating & Fishing Club***, 339 S.W.3d 828, 837 (Tex. App.—Texarkana 2011, no pet.). Finally, if the findings are not as definite and specific as they should be, a reviewing court will consider not only the facts expressly found, but those that are implied from those expressly found. *See* ***F. R. Hernandez Constr. & Supply Co., Inc. v. Nat'l Bank of Commerce of Brownsville***, 578 S.W.2d 675, 678 (Tex. 1979) (holding that because of trial court's finding that lesser sum of attorney's fees was a reasonable fee, finding that earlier fee award was unreasonable was implied although not expressly made); ***Burnside Air Conditioning & Heating, Inc. v. T.S. Young Corp.***, 113 S.W.3d 889, 892-93 (Tex. App.—Dallas 2003, no pet.) (holding that where trial court's findings state that contract existed between parties, Rule 299 supplies elements of contract by implication to findings of fact and conclusions of law); ***Am. Life & Acc. Ins. Co. v. Smith***, 380 S.W.2d 36, 39 (Tex. Civ. App.—Tyler 1964, no writ) (holding that trial court's general findings of fact and conclusions of law contained implied findings to support judgment).

We review a trial court's conclusions of law de novo, and we will uphold the conclusions if the judgment can be sustained on any legal theory supported by the evidence. ***BMC Software Belgium, N.V. v. Marchand,*** 83 S.W.3d 789, 794 (Tex. 2002); ***In re Moers,*** 104 S.W.3d 609, 611 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Although a trial court's conclusions of law may not be challenged for factual sufficiency, we may review the legal conclusions drawn from the facts to determine whether the conclusions are correct. ***BMC Software Belgium, N.V.,*** 83

S.W.3d at 794; ***Holloway–Houston, Inc. v. Gulf Coast Bank & Trust Co.,*** 224 S.W.3d 353, 357 (Tex. App.—Houston [1st Dist.] 2006, no pet.). If we determine that a conclusion of law is erroneous, but the trial court nevertheless rendered the proper judgment, the error does not require reversal. ***BMC Software Belgium, N.V.,*** 83 S.W.3d at 794.

Finally, we note that the trial court acts as fact finder in a bench trial and is the sole judge of the credibility of witnesses. *See* ***Murff v. Murff,*** 615 S.W.2d 696, 700 (Tex. 1981); ***HTS Servs., Inc. v. Hallwood Realty Partners, L.P.,*** 190 S.W.3d 108, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

Applicable Law

The elements of common law fraud are (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. ***Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.***, 341 S.W.3d 323, 337 (Tex. 2011).

"Material means a reasonable person would attach importance to and would be induced to act on the information in determining his choice of actions in the transaction in question." ***Id.*** "Pure expressions of opinion are not representations of material fact," and, as such, cannot give rise to a fraud claim. ***Id.*** at 337–38. "Whether a statement is an actionable statement of 'fact' or merely one of 'opinion' often depends on the circumstances in which a statement is made." ***Id.*** at 338 (citing ***Transport Ins. Co. v. Faircloth***, 898 S.W.2d 269, 276 (Tex. 1995)). Relevant circumstances include the statement's specificity, the speaker's knowledge, the comparative levels of the speaker's and the hearer's knowledge, and whether the statement relates to the present or the future. ***Transport Ins. Co.***, 898 S.W.2d at 276; *see also* ***Italian Cowboy Partners*, *Ltd.***, 341 S.W.3d at 338 ("Special or one-sided knowledge may help lead to the conclusion that a statement is one of fact, not opinion."). Additionally, there are exceptions to this general rule that an opinion cannot support an action for fraud. ***Italian Cowboy Partners, Ltd.***, 341 S.W.3d at 337–38. For example, when an opinion is based on past or present facts, special knowledge may support a fraud claim. ***Id.***; *see also* ***Transport Ins. Co.***, 898 S.W.2d at 277 ("Superior knowledge by one party may also provide the occasion for fraud.").

To recover on a fraud claim, a plaintiff must show actual and justifiable reliance. ***Grant Thornton LLP v. Prospect High Income Fund***, 314 S.W.3d 913, 923 (Tex. 2010). To determine whether reliance is justifiable, "we must inquire whether, 'given a fraud plaintiff's individual characteristics, abilities, and appreciation of facts and circumstances at or before the time of the alleged fraud[,] it is extremely unlikely that there is actual reliance on the plaintiff's part.' " ***Id.*** (quoting ***Haralson v. E.F. Hutton Grp., Inc.***, 919 F.2d 1014, 1026 (5th Cir. 1990) (applying Texas law)). A plaintiff "may not justifiably rely on a representation if there are 'red flags' indicating such reliance is unwarranted." ***Id.***

Although a party's intent to defraud is determined at the time the party made the representation, it may be inferred from the party's subsequent acts after the representation is made. ***Anderson, Greenwood & Co. v. Martin***, 44 S.W.3d 200, 215 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). Because intent to deceive or defraud is not susceptible to direct proof, it invariably must be proven by circumstantial evidence. *See* ***id.*** (citing ***Spoljaric v. Percival Tours, Inc.***, 708 S.W.2d 432, 435 (Tex.1986)). Reasoning from circumstantial evidence often involves linking apparently insignificant and unrelated events to establish a pattern. *See* ***Lozano v. Lozano***, 52 S.W.3d 141, 149 (Tex. 2001) (Phillips, C.J., concurring and dissenting). A court, therefore, must not view each piece in isolation, but in view of all known circumstances. *See* ***id.*** Nevertheless, "circumstantial evidence requires a logical bridge between the proffered evidence and the necessary fact." ***Id.*** at 152 (citing ***Joske v. Irvine***, 91 Tex. 574, 44 S.W. 1059, 1064 (1898)).

Although proving fraud for exemplary damages requires proof by clear and convincing evidence, proving common law fraud at trial for actual damages requires only proof by a preponderance of the evidence. *See* ***Browder v. Eicher,*** 841 S.W.2d 500, 502 (Tex. App.—Houston [14th Dist.] 1992, writ denied); *see also* ***Frankfurt v. Wilson,*** 353 S.W.2d 490, 496 (Tex. Civ. App.—Dallas 1961, no writ); *cf.* TEX. CIV. PRAC. & REM. CODE ANN. § 41.003(a) (West Supp. 2012) (stating that exemplary damages are authorized when claimant proves by clear and convincing evidence that harm results from fraud, malice, or gross negligence).

Discussion

Smith's main contention is that the evidence is insufficient because the only evidence before the court is that the funds were paid to Smith as gifts. Essentially, he claims that because Greer is not alive to establish his reliance on Smith's representations, McDaniel cannot establish

fraud. However, this ignores that the checks are documentary evidence, and that inferences can be made from Smith's pattern of conduct based upon the representations on the checks and the underlying circumstances of the transactions. *See* ***Foley v. Parlier***, 68 S.W.3d 870, 878 (Tex. App.—Fort Worth 2002, no pet.) (noting that checks are documentary evidence, and can contain representations to support fraud findings); *see also* ***Anderson, Greenwood & Co.***, 44 S.W.3d at 215 (stating that proving fraud often requires inferences based upon circumstantial evidence). Smith wrote a date, a payee, and a stated purpose in the memorandum section of each check at issue. Smith, his businesses, or his creditors were payees on all of the checks. Smith admitted that many of the checks contained false representations in the memorandum section. In addition, Smith presented each check to Greer, and Greer signed each check.

Turning to the specific transactions themselves, Smith prepared a check on December 19, 2008, made payable to him for $69,000 that had the notation "tractor and trailer." Smith said he paid $14,000.00 as a down payment on a tractor that cost over $60,000.00, and $3,000.00 for a trailer out of those funds. He sold the tractor after Greer died. Smith testified at trial that the funds used to purchase the tractor were a gift to him. McDaniel testified that he discussed the ownership of the tractor with Greer prior to his death, that Greer believed he owned it, and that he wanted McDaniel to have the tractor in the event of his death. During oral argument, counsel conceded that there might be some evidence of fraud as to the $69,000.00 check.

On the next day, Smith wrote a check made payable to Farm Services, a company owned by Smith for $96,000.00, with the notation "cemetery/church." Smith testified that the check was for repairs and improvements to the church Greer attended. He testified that Greer gave the church money in the past that it had misappropriated. So in this instance, Smith testified, Greer wanted Farm Services to hold the funds, to perform work on the property, and to deduct funds when work was completed by Smith. According to Smith, Greer told Smith as follows:

> I'm just going to start having you do work, keep that money over there and start, and just go until we don't have any more money. And there came a point where the church issued him a $600 water bill, and he just kind of said -- he said he felt that he wasn't appreciated for what he was doing over there, and there was a point where he just said, "How much money do we have left?" I told him, he said, "Call it your profit. We're done over there."

Smith provided approximately $40,000.00 in benefits to the church, and kept the remaining funds for himself.

On August 24, 2009, Smith presented five checks to Greer, which Greer signed. The first check was in the amount of $38,485.41 payable to "Capital One." Smith admitted that these funds were used to pay his personal credit card debt. The second check was drawn in the amount of $10,000.00, made payable to TLS Farm Services.[4] The third was made payable to "Farm Plan" for $6,845.69. Smith stated that this check was used to pay his personal debt on a revolving credit card for purchasing farm implements.[5] The fourth was written to "Card Services" for $1,600.00. The fifth check Greer signed that day was made to Chrysler Financial in the amount of $10,000.00. Smith used those funds to purchase a pickup truck for himself. Smith testified that Greer gave him all five checks as gifts.

Next, Smith wrote three checks for farming equipment, but the equipment was never purchased. The first check was dated on October 5, 2009, made payable to Smith for $45,000.00, with the notation "Trackhoe." The second check was dated October 23, 2009, also made payable to Tom Smith for $7,878.00, with the notation "Rhino 15' Mower." The third check was dated November 2, 2009, also made payable to Tom Smith for $31,655.00, with the notation "Case 580 Backhoe." Smith testified that the notations on the checks were all part of the "game" to "throw off" whoever allegedly was accessing Greer's account. Specifically, Smith explained as follows:

> A. Early in the years, Bruce's account was compromised. And there were -- it was through the bank, it got back that people knew what his checks were being written. And he was, you know, quizzed about them.
>
> So then, every time we would write a check, he'd say put something down there, this will throw them off. And, you know, it became a whatever we put on there because that's -- whatever we put on the bottom of the checks would always find their way back to the room. And so the annotations at the bottom of the checks --
>
> Q. Didn't really mean anything?
>
> A. No, sir.

Smith explained that there were concerned citizens in their local community, who were either related to Greer or had access to his account, and he implied that Greer did not appreciate their spreading rumors around their community about how he was spending his money.

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[4] According to Smith, he owns both Farm Services and TLS Farm Services, they are two different entities, and TLS Farm Services had become "inactive" around the time of these transactions.

[5] The trial court's judgment incorrectly states that this payment was made to "Farm Place" on August 27, 2009. But it is clear from the record that it meant the check to "Farm Plan," dated August 24, 2009.

Finally, Smith drafted two other checks that were allegedly part of the "game" or "joke" to fool wrongdoers. The first was executed on May 12, 2009, payable to Smith in the amount of $17,000.00 for "40 hfrs." or "40 hrs." The second was issued on June 10, 2009, also payable to Smith in the amount of $65,000.00, for "100 hfrs." or "100 hrs." The notations on the checks are unclear as to whether they refer to a number of hours or to heifers. Smith argues in his brief for the first time that the notations refer to heifers. At trial, he initially contended that the notations referred to a number of hours worked for reimbursement, but later testified that it was really all part of the game they allegedly played. Specifically, Smith testified as follows:

> A. It wasn't any hours of labor. You know, that was just, like, you know.
>
> Q. I believe your testimony at your deposition was that you told him to keep track of his time.
>
> A. That was a joke. When I first started, you know, employing people, you know, we didn't have people divided into pay rates, operators and stuff. And so we go off to do a job, and, you know, the guys would say am I going to be running the backhoe or am I going to be doing this on this job? And I'd say, yeah. And he'd say what am I .-- just keep up with your hours. We'll settle it later.
>
> Well, I got in a habit of saying that, and one day I asked Bruce to do something and it was a joke between us. And Bruce said I'm going to go down here and do this. I said, "Well, just keep up with the hours," you know, and it was a joke. And I said that off the cuff to him. You know, I am keeping up with my hours, you know.
>
> Q. So was that a notation of the time he spent, or notation of your time or just another joke?
>
> A. Just another joke. All it was.

Smith testified that the $65,000.00 check was a gift. Counsel did not specifically ask detailed questions concerning the $17,000.00 check's purpose, although it was implied that the $17,000.00 check was similar to the $65,000.00 check. In any event, the trial court found that both checks were executed as part of Smith's fraudulent scheme. *See* ***Lozano***, 52 S.W.3d at 149. Both checks had the same notations and were signed close in time. Only the amount of the check and the time expended were different. The trial court could have disbelieved that Smith and Greer "joked" about the notations, and the suspicious circumstances and pattern of conduct by Smith was part of his scheme to defraud Greer. *See* ***Murff***, 615 S.W.2d at 700; ***HTS Servs., Inc.***, 190 S.W.3d at 111.

All of the transactions arose from checks written by Smith on Greer's bank accounts. Smith wrote notations on each check, representing how the funds were to be utilized. Smith

presented all of the checks to Greer and obtained his signature. Smith testified that all of the funds were gifts provided to him or his businesses, or on his behalf to pay his creditors, and that some of the notations on the checks were false, and were used to fool wrongdoers who were allegedly accessing Greer's accounts. As we have stated, the trial court could have disbelieved Smith's testimony, and could have believed that Smith acted fraudulently to obtain the funds. *See* ***Maritime Overseas Corp. v. Ellis***, 971 S.W.2d 402, 407 (Tex. 1998) (stating appellate court may not pass upon the witnesses' credibility or substitute its judgment for that of fact finder, even if the evidence supports a different result); ***Dyer v. Cotton***, 333 S.W.3d 703, 709 (Tex .App.—Houston [1st Dist.] 2010, no pet.) (stating fact finder may believe one witness and disbelieve another, and it may resolve inconsistencies in any testimony); ***HTS Servs., Inc. v. Hallwood Realty Partners, L.P.***, 190 S.W.3d 108, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (stating trial court, as fact finder in bench trial, is sole judge of credibility of witnesses).

The circumstances behind the transactions are suspicious, and when viewed together, establish a pattern of conduct on Smith's part that a fact finder could conclude amounted to fraud. *See* ***Lozano***, 52 S.W.3d at 149 (stating generally that reasoning from circumstantial evidence often involves linking apparently insignificant and unrelated events to establish a pattern). Greer was an elderly gentleman who received a large amount of money from an oil and gas lease. Smith was a man who had been bankrupt shortly before meeting Greer. Most of the transactions occurred in the year prior to Greer's death. Smith admitted that certain notations on the checks were false, and the trial court could have concluded that Smith lied when explaining his purpose in making the false notations and Greer's desire to give Smith such large sums of his money. Smith's writing and notations on the checks could be considered material false representations about how the money was to be used, and could also be considered evidence that he used his position of trust and his relationship to Greer to defraud him of his money. Greer signed the checks, which is an act demonstrating his reliance on the representations made by Smith. Greer lost a significant sum of money, which harmed Greer, and ultimately affected McDaniel's inheritance.

In conclusion, when viewing the evidence in the light most favorable to the trial court's judgment, along with the findings of fact, the inferred fact findings supporting the express findings, and the court's conclusions of law, a reasonable fact finder could conclude that (1) Smith made material false representations to Greer, (2) Smith knew the representations were

false, (3) he made them with the intent that Greer act upon them, and (4) Greer relied upon them to his detriment. This is evident from the checks themselves, along with the attendant circumstances surrounding the transactions, as detailed above. Also, when viewing the entire record in a neutral light, we cannot say that the judgment is clearly wrong or manifestly unjust. We overrule Smith's first and second issues.

DISPOSITION

Having overruled both of Smith's issues, we ***affirm*** the judgment of the trial court.

BRIAN HOYLE
Justice

Opinion delivered May 22, 2013.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 22, 2013

NO. 12-12-00165-CV

THOMAS L. SMITH,
Appellant
V.
RYAN MCDANIEL AND GEORGE GREER,
Appellees

Appeal from the 273rd Judicial District Court
of Sabine County, Texas. (Tr.Ct.No.12,663)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.