

AFFIRM; and Opinion Filed July 29, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00894-CV

**ERNEST K. BANKAS, Appellant
V.
MAUREEN BANKAS, Appellee**

**On Appeal from the 301st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-13-23136**

MEMORANDUM OPINION

**Before Justices Lang-Miers, Evans, and Brown
Opinion by Justice Brown**

In this divorce case, appellant Ernest K. Bankas (“Husband”) appeals an order denying his bill of review. In six issues, Husband generally contends the trial court erred in failing to set aside the petition for divorce because he was not properly served. For the following reasons, we affirm the trial court’s order.

Maureen Bankas (“Wife”) filed a petition for divorce. On June 1, 2010, the trial court signed a final divorce decree. The divorce decree recites Husband received service of process by substituted service, that he did not answer, and appeared only through a court-appointed attorney ad litem.

Almost four years later, in December 2013, Husband filed a petition for bill of review seeking to set aside the divorce decree. In his petition, Husband complained that Wife had him served by publication even though she knew he was out of the country for his father’s funeral

and attending to his father's estate. Husband said he did not discover that the divorce decree had been entered until July 2011. Following a hearing on the bill of review, the trial court signed an order stating, "[a]fter hearing the argument and evidence of the parties, the Court denies the Bill of Review." Husband appealed.

We subsequently sent appellant a letter stating the court reporter had notified us that she had not received a request to prepare a reporter's record in this case. As a consequence, we requested appellant to provide us with his request to the court reporter, if any, and written verification that he had paid or made arrangements to pay her fee or written documentation that he had been found to be entitled to proceed without payment of costs. We specifically cautioned appellant that if we did not receive the requested documentation within the time specified, we "may order the appeal submitted without the reporter's record." See TEX. R. APP. P. 37.3(c). Appellant did not respond to our request and we ordered the appeal to be submitted without a reporter's record. *See id*; *see also Lyons v. Polymathic Props, Inc.*, 05-15-00408-CV, 2016 WL 3564210, at *1 (Tex. App.—Dallas June 29, 2016, no. pet. h.).

Appellant subsequently filed his brief asserting seven issues, all of which are based on his complaint that he was not properly served with the petition for divorce.

A bill of review is an equitable proceeding, brought by a party seeking to set aside a prior judgment that is no longer subject to challenge by a motion for a new trial or direct appeal. *Mabon Ltd. v. Afri-Carib Enters., Inc.*, 369 S.W.3d 809, 812 (Tex. 2012). Generally, bill of review relief is available only if a party has exercised due diligence in pursuing all adequate legal remedies against a former judgment and, through no fault of its own, has been prevented from making a meritorious claim or defense by the fraud, accident, or wrongful act of the opposing party. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 927 (Tex. 1999). If legal remedies were available but ignored, relief by equitable bill of review is unavailable. *Id*; *see Gold v. Gold*, 145

S.W.3d 212, 214 (Tex. 2004) (“If a motion to reinstate, motion for new trial, or direct appeal is available, it is hard to imagine any case in which failure to pursue one of them would not be negligence.”).

Initially, we note the divorce decree was signed on June 1, 2010 and shows appellant appeared only through a court-appointed attorney at litem. As a consequence, appellant had two years, or until June 1, 2012 to file a motion for new trial. *See* Tex. R. Civ. P. 329. The face of Husband’s bill of review shows he received notice of the decree no later than July 2011, well in time to file a motion for new trial. A litigant who fails to pursue legal remedies is not entitled to the equitable remedy of a bill of review. *See French v. Brown*, 424 S.W.2d 893, 895 (Tex. 1967); *McCurdy v. Oeftering*, 05-14-01353-CV, 2016 WL 688067, at *2 (Tex. App.—Dallas Feb. 19, 2016, no pet.).

Regardless, as noted above, we do not have a reporter’s record of the bill of review proceedings. In the absence of a reporter’s record, we must presume the missing reporter’s record supports the decisions of the trial court. *See Bennett v. Cochran*, 96 S.W.3d 227, 230 (Tex. 2002) (absent a complete record on appeal court of appeals must presume the omitted items support the trial court’s judgment.). Specifically, when there is no reporter’s record and findings of fact and conclusions of law are neither requested nor filed, we imply the trial court made all the necessary findings to support its order. *See Waltenburg v. Waltenburg*, 270 S.W.3d 308, 312 (Tex. App.—Dallas 2008, no pet.). In addition, without a reporter’s record, we cannot determine whether the trial court committed error or whether error was preserved. *See Walnut Villa Apartments, L.L.C. v. City of Garland*, 05-02-00005-CV, 2003 WL 42409, at *1 (Tex. App.—Dallas Jan. 7, 2003, pet. denied); *Budd v. Gay*, 846 S.W.2d 521, 523 (Tex. App.—Houston [14th Dist.] 1993, no writ). We conclude the record before us is insufficient to enable us to conclude the trial court erred in denying Husband’s bill of review. *See Luna v. Luna*, 13-

11-00259-CV, 2012 WL 1073377, at *2 (Tex. App.—Corpus Christi Mar. 29, 2012, no pet.)
(summarily denying bill of review for lack of reporter’s record). Therefore, we resolve
Husband’s issues against him and affirm the trial court’s order.

/Ada Brown/

ADA BROWN
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ERNEST K. BANKAS, Appellant

No. 05-15-00894-CV V.

MAUREEN BANKAS, Appellee

On Appeal from the 301st Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DF-13-23136.

Opinion delivered by Justice Brown. Justices
Lang-Miers and Evans participating.

In accordance with this Court's opinion of this date, the trial court's order is
AFFIRMED.

It is **ORDERED** that appellee MAUREEN BANKAS recover her costs of this appeal
from appellant ERNEST K. BANKAS.

Judgment entered this 29th day of July, 2016.