

Affirmed; Opinion Filed May 31, 2018.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00976-CV

JOSEPH ABUZOID, Appellant

V.

**EFYU JO, L.L.C., AS ASSIGNEE AND SUCCESSOR IN INTEREST TO MODJARRAD
& ASSOCIATES, P.C., D/B/A MAS LAW FIRM, Appellee**

**On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-06551**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Myers

Joseph Abuzaid appeals the trial court's order granting the motion for turnover order filed by EFYU JO, L.L.C., as assignee and successor in interest to Modjarrad & Associates, P.C., d/b/a MAS Law Firm. Abuzaid brings one issue on appeal asserting the trial court erred by granting the turnover order because appellee failed to show it was the owner of the judgment sought to be enforced with the turnover order. We affirm the trial court's judgment.

BACKGROUND

Abuzaid sued Muamar Anani. Abuzaid hired several sets of attorneys during the course of the litigation, including Modjarrad & Associates (MAS). Abuzaid eventually fired MAS before the conclusion of the *Anani* lawsuit, and MAS sent him a bill for its services. When Abuzaid failed to pay, MAS filed suit against him. Abuzaid did not answer the suit timely, and MAS obtained a default judgment against him for damages of \$225,947.33 and prejudgment interest of \$24,525. A

few months later, the trial court rendered judgment for Abuzaid in the *Anani* lawsuit, awarding Abuzaid damages of \$894,000 and attorney's fees of \$512,794.94. The *Anani* suit is now on appeal before this Court.

At some point, appellee received an assignment of the default judgment against Abuzaid. In July 2017, appellee filed the motion at issue in this case seeking a turnover order requiring Abuzaid to turn over the *Anani* judgment to the county sheriff or constable for sale with the proceeds of the sale to be applied to the default judgment. Attached to the motion for turnover order was the affidavit of MAS's "lead attorney" and appellee's "lead counsel," Carlos Cortez. The next day, the trial court signed the order on appeal, which required Abuzaid to turn over the *Anani* judgment to the sheriff or constable for sale. Abuzaid appealed the turnover order to this Court. On August 18, 2017, he filed an affidavit of net worth in lieu of supersedeas bond "to suspend execution of the sale of the judgment that was turned over and assigned to [appellee] during the course of an appeal." See TEX. R. APP. P. 24.2(a)(1), (c). We ordered the turnover order and its enforcement, including a pending sheriff's sale of the *Anani* judgment, stayed until further order of this Court.

On November 14, 2017, this Court affirmed MAS's default judgment against Abuzaid, and we issued the mandate on April 18, 2018. See *Abuzaid v. Modjarrad & Assocs., P.C.*, No. 05-16-00777-CV, 2017 WL 5559591 (Tex. App.—Dallas Nov. 14, 2017, no pet.) (mem. op.).

TURNOVER ORDERS

In his issue on appeal, Abuzaid contends the trial court erred by granting the motion for turnover relief because appellee failed to prove it was the judgment creditor of the default judgment.

Section 31.002 of the Texas Civil Practice and Remedies Code provides,

A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction

on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a) (West Supp. 2017).

Standard of Review

We review the trial court's issuance of a turnover order for an abuse of discretion. *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). A trial court may be reversed for abusing its discretion only when the court of appeals finds the court acted in an unreasonable or arbitrary manner, meaning that it acted without reference to any guiding rules and principles. *Id.* We look at the evidence submitted to the trial court in the light most favorable to the ruling, draw all reasonable inferences from the evidence in favor of the ruling, and defer to the trial court's resolution of conflicting evidence. *INEOS Group Ltd. v. Chevron Phillips Chem. Co., L.P.*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.). Whether there is evidence to support the turnover order is a relevant consideration in determining if the trial court abused its discretionary authority in issuing the order. *Id.* A trial court abuses its discretion by entering a turnover order if there is no evidence of a substantive and probative character that supports the trial court's decision. *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 324 (Tex. App.—Dallas 1997, writ denied).

Appellee sought to establish its judgment-creditor status through Cortez's affidavit, which stated,

1. I served as the lead attorney for Modjarrad & Associates, P.C., d/b/a MAS Law Firm ("MAS Law Firm") in the trial proceedings in this case. I am also lead counsel for the Movant, EFYU, JO LLC ("Movant") and accordingly, I am familiar with what is stated herein and have personal knowledge regarding the matters contained in this Declaration.

2. Movant is the assignee and the successor-in-interest of the MAS Judgment.

Abuzaid asserts Cortez's affidavit fails to establish appellee's judgment-creditor status because the affidavit does not show how Cortez had personal knowledge of any assignment of the default

judgment from MAS to appellee. Abuzaid also argues Cortez's statement that appellee is the assignee and successor in interest of the default judgment is a factual and legal conclusion and could not be used as evidence to support the turnover order.

Personal Knowledge

Abuzaid argues that Cortez's affidavit does not show Cortez had personal knowledge to support his statement that appellee was "the assignee and the successor-in-interest of the MAS Judgment." Texas Rule of Evidence 602 provides, "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." TEX. R. EVID. 602. However, an affiant's statement that he has personal knowledge of the statements in the affidavit is inadequate unless the affidavit contains other statements that reveal how the affiant has personal knowledge. *Villanova v. Fed. Deposit Ins. Corp.*, 511 S.W.3d 88, 96 (Tex. App.—El Paso 2014, no pet.). The personal knowledge requirement is satisfied if the affidavit sufficiently describes the relationship between the affiant and the case so that it may be reasonably assumed that the affiant had personal knowledge of the facts stated in the affidavit. *Stucki v. Noble*, 963 S.W.2d 776, 780 (Tex. App.—San Antonio 1998, pet. denied). In this case, Cortez stated he is "lead attorney for [MAS] in the trial proceedings in this case" and "also lead counsel" for appellee. Although Cortez did not set forth his specific duties in those positions and how those duties provided him knowledge of the assignment of the default judgment, the trial court could infer from Cortez's position as lead attorney for MAS in the proceedings leading to the default judgment, and from Cortez's position as lead counsel for appellee in this proceeding to enforce the default judgment, that Cortez had personal knowledge of the default judgment and of any transfers of the judgment from MAS until it reached its current assignee, appellee.

Abuzaid cites three cases in support of his argument that the trial court could not conclude Cortez had personal knowledge of the statements in his affidavit. Two of those cases involve summary judgments. See *Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (per curiam); *Mathis v. Bocell*, 982 S.W.2d 52, 60 (Tex. App.—Houston [1st Dist.] 1998, no pet.). In a motion for summary judgment, no inferences are indulged in favor of the movant. See *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005). Thus, for an affidavit to support summary judgment, the affidavit must set forth the basis for the affiant’s personal knowledge without reliance on inferences. When reviewing the trial court’s order in a proceeding reviewed for an abuse of discretion, the appellate court indulges all reasonable inferences in favor of the trial court’s ruling. *INEOS*, 312 S.W.3d at 848. Thus, inferences concerning an affiant’s personal knowledge are permissible in a matter reviewed for abuse of discretion even if they would not be permissible in support of a summary judgment. Compare *Tregellas v. Archer*, 507 S.W.3d 423, 429 (Tex. App.—Amarillo 2016, pet. pending) (in bench trial, trial court could infer that makers of document correcting a right-of-first-refusal document had personal knowledge of the county in which their property was located), with *Valenzuela v. State & Cty. Mut. Fire Ins. Co.*, 317 S.W.3d 550, 552–55 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (summary judgment affidavit that stated affiant’s employment position and that she had personal knowledge of the facts stated in the affidavit was insufficient to show how her position provided personal knowledge of the information in the affidavit).

Abuzaid also cites *Marks v. St. Luke’s Episcopal Hospital*, 319 S.W.3d 658 (Tex. 2010). That case did not involve a summary judgment. In that case involving a health care liability claim, the plaintiff did not timely provide an expert report. *Id.* at 664–65. The report was due 180 days after the plaintiff filed suit, and the plaintiff’s second lawyer provided the report more than 500 days after the suit was filed. The plaintiff’s first lawyer represented him for seven months but

never provided the expert report. The plaintiff's second lawyer asked for an enlargement of time due to accident or mistake, stating in an affidavit that his failure to provide the expert report timely was due to his mistake in thinking that the case did not implicate the expert-report requirement. *Id.* at 665. The second lawyer also stated he believed the first lawyer also mistakenly thought the case did not raise the expert-report requirement. *Id.* The trial court denied the request for an enlargement of the time to file the expert report. *Id.* The supreme court stated the affidavit provided no personal knowledge to support the second lawyer's statements about the first lawyer's failure to provide an expert report.

Affidavits, however, must be based on personal knowledge, not supposition. An affidavit not based on personal knowledge is legally insufficient. Because Doyle [the second lawyer and the affiant] had no personal knowledge of the first lawyer's intent, . . . there is no evidence of mistake or accident and thus no basis for the requested grace period. Accordingly, the trial court did not abuse its discretion in denying [the plaintiff's] motion for grace period

Id. at 666 (citations omitted). Thus, in that case, the affidavit provided no information showing the second lawyer had personal knowledge of the first lawyer's intention.

In this case, however, Cortez's statement that he was lead attorney for MAS in the trial proceedings and lead counsel for appellee provides the basis for his personal knowledge that appellee "is the assignee and successor-in-interest of the MAS judgment." Moreover, this case is in the opposite posture from *Marks* concerning the reviewing court's ability to indulge inferences. In *Marks*, the trial court denied the motion for enlargement of time, so the appellate courts' review of that decision for an abuse of discretion could not make any inferences in support of the attorney's personal knowledge because the inferences would be contrary to the trial court's decision. In this case, where the trial court's decision was to grant the motion for turnover, the reviewing courts must consider all reasonable inferences from the evidence, such as the inference that Cortez's lead attorney and lead counsel positions with MAS and appellee gave him personal knowledge of the assignment of the default judgment.

We conclude Abuzaid has not shown Cortez lacked personal knowledge.

Whether the Affidavit is Conclusory

Abuzaid also argues the statement, “Movant is the assignee and the successor-in-interest of the MAS Judgment,” is not evidence because it is a legal or factual conclusion. “A conclusory statement is one that does not provide the underlying facts in support of the conclusion.” *Riner v. Neumann*, 353 S.W.3d 312, 321 (Tex. App.—Dallas 2011, no pet.). Here, if the sentence contains a conclusion, it is that appellee is the successor in interest to MAS concerning the default judgment. That statement is supported by the stated fact that appellee is the assignee of the default judgment, which necessarily implies that appellee received ownership of the default judgment through an assignment. Thus, the affidavit provides the underlying facts in support of the conclusion. Abuzaid points out that Cortez did not attach a copy of the assignment or explain when the assignment occurred or whether appellee gave any consideration for the assignment. While this information would provide more information about the assignment, it is not necessary to make Cortez’s testimony non-conclusory.

We conclude Abuzaid has not shown the trial court abused its discretion by signing the turnover order. We overrule Abuzaid’s issue on appeal.

CONCLUSION

We affirm the trial court's judgment. We lift the stay imposed by our order of August 28, 2017.

/Lana Myers/
LANA MYERS
JUSTICE

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

JUDGMENT

JOSEPH ABUZAID, Appellant

No. 05-17-00976-CV V.

EFYU JO, L.L.C., AS ASSIGNEE AND
SUCCESSOR IN INTEREST TO
MODJARRAD & ASSOCIATES, P.C.,
D/B/A MAS LAW FIRM, Appellee

On Appeal from the 95th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-16-06551.
Opinion delivered by Justice Myers.
Justices Lang-Miers and Boatright
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**. The stay imposed by the order of August 28, 2017 is **LIFTED**.

It is **ORDERED** that appellee EFYU JO, L.L.C., AS ASSIGNEE AND SUCCESSOR IN INTEREST TO MODJARRAD & ASSOCIATES, P.C., D/B/A MAS LAW FIRM recover its costs of this appeal from appellant JOSEPH ABUZAID.

Judgment entered this 31st day of May, 2018.