

Denied and Opinion Filed December 27, 2018



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

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No. 05-18-00061-CV

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**BILLY & AUDRA DRAPER, Appellants**  
V.  
**AJ & SAL ENTERPRISES, LLC, Appellee**

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**On Appeal from the County Court at Law No. 5**  
**Dallas County, Texas**  
**Trial Court Cause No. CC-17-06758-E**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Evans, and Justice Brown  
Opinion by Justice Evans

This is an appeal from a judgment for possession of a house purchased by appellee at a first lien foreclosure sale. Pursuant to the county court at law's order, appellants posted a surety bond in the amount of \$10,800. The sureties are Jackie Lewis and Shumone Burnett. Asserting the sureties' affidavits are "suspect" because neither surety owns the property each pledged, appellee moved the county court to require a cash deposit in lieu of bond or a corporate surety. Appellee also moved for the amount of security to be increased, arguing it was insufficient because it was based on "the assumption that the appeal would take about six months." Appellee noted the appeal had already been pending for over five months, and appellant's brief had yet to be filed.<sup>1</sup> Following

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<sup>1</sup> Briefs have now been filed.

a hearing on the motion at which Lewis was the sole witness, the court denied appellee's motion. Appellee now seeks review of that ruling. *See* TEX. R. APP. P. 24.4.

### STANDARD OF REVIEW

To the extent a trial court's ruling on a motion concerning the sufficiency of security or the sureties on the bond turns on a question of fact, it is reviewed for abuse of discretion. *See Imagine Auto. Grp. Inc. v. Boardwalk Motor Cars, LLC*, 356 S.W.3d 716, 718 (Tex. App.—Dallas 2011, no pet.); *G.M. Houser, Inc. v. Rodgers*, 204 S.W.3d 836, 840 (Tex. App.—Dallas 2006, no pet.). In conducting this review, an appellate court may not substitute its judgment for the factfinder's but must bear in mind that the factfinder is the sole judge of the credibility of the witnesses and the weight to give their testimony. *See Houser*, 204 S.W.3d at 840-41.

### DISCUSSION

Appellee's arguments in the motion are the same as those presented to the county court, but appellee offers no argument as to why the county court abused its discretion. The reporter's record of the hearing reflects no exhibits were admitted, and the only evidence considered by the court was Lewis's testimony. Given that the factfinder is the sole judge of the credibility of the witnesses and the weight to give their testimony, no abuse of discretion appears to have occurred. Accordingly, we **DENY** appellee's motion to modify supersedeas bond.

/David Evans/  
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DAVID EVANS  
JUSTICE