

AFFIRM and Opinion Filed June 8, 2018



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

No. 05-18-00326-CV

MICHAEL A. RUFF, Appellant

V.

SUZANN RUFF, MATTHEW D. RUFF, AND FROST BANK, N.A., Appellees

**On Appeal from the Probate Court No. 1
Dallas County, Texas
Trial Court Cause No. PR-11-02825-1**

**MEMORANDUM OPINION ON MOTION TO REVIEW ORDER
SETTING AMOUNT OF SUPERSEDEAS BOND**

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

Before the Court is Michael A. Ruff's motion to review the supersedeas bond. We affirm the trial court's order setting the supersedeas bond.

On December 7, 2017, the arbitration panel awarded \$49,000,000 to Suzann Ruff, Michael's mother. On January 12, the probate court signed an order prohibiting Michael from moving assets in excess of \$50,000 under his control "including assets of entities of which he is the president, manager, or president or manager of the general partner . . ." On January 24, the probate court signed an order in aid of the January 12 order requiring Michael to give a list of all bank accounts where he or any of the entities he controls have accounts. The probate court confirmed the arbitration award and signed a judgment on February 5.

In an effort to supersede the judgment, Michael filed a Net Worth Declaration showing a *negative* net worth in the amount of \$2,844,268.37 and tendering a cash bond in the amount of \$1.00. Suzann filed a contest to the declaration. After conducting a hearing on the contest, the trial court signed an order finding Michael's net worth to be not less than \$49,000,000 and setting the supersedeas bond at \$24,500,000.

A judgment debtor may supersede a judgment by posting a good and sufficient bond. TEX. R. APP. P. 24.1(a)(2). When the judgment is for money, the amount of the bond must equal the sum of compensatory damages awarded, interest for the estimated duration of the appeal, and costs awarded in the judgment. TEX. CIV. PRAC. & REM. CODE ANN. § 52.006(a) (West 2015); TEX. R. APP. P. 24.2(a)(1). The amount, however, cannot exceed the lesser of fifty percent of the judgment debtor's current net worth or \$25,000,000. TEX. CIV. PRAC. & REM. CODE ANN. § 52.006(b); TEX. R. APP. P. 24.2(a)(1).

A judgment debtor who provides a bond based on his net worth must file an affidavit that states his net worth and "states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained." TEX. R. APP. P. 24.2(c)(1). An affidavit meeting these requirements is *prima facie* evidence of the debtor's net worth for the purpose of establishing the amount of the supersedeas bond. *Id.* A judgment creditor may file a contest to the debtor's net worth and conduct discovery. *Id.* 24.2(c)(2). The judgment debtor has the burden of proving net worth. *Id.* 24.2(c)(3). The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. *Id.* However, where the record reflects, and the trial court finds, that the debtor failed to offer complete and detailed information regarding his assets and liabilities from which net worth can be determined, the trial court may set the bond in accordance with section 52.006(a) of the civil practice and remedies

code and rule 24.2(a)(1). *See Bishop Abbey Homes, Ltd. v. Hale*, No. 05-14-01137-CV, 2015 WL 4456209 (Tex. App.—Dallas July 21, 2015, no pet.) (mem. op.).

We review a trial court's ruling on the amount of a supersedeas bond for abuse of discretion. *See G.M. Houser, Inc. v. Rodgers*, 204 S.W.3d 836, 840 (Tex. App.—Dallas 2006, no pet.). The trial court is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Id.*

At the contest hearing, Michael testified that shortly after the January 12 order prohibiting the transfer of assets, he resigned as manager of several entities although he could not remember all of them. He admitted that he resigned as manager of CM Resort Management, LLC which is one of the entities found by the arbitration panel to have been created with Suzann's assets. He likewise admitted that he did not fully comply with the trial court's January 24 order to turn over bank account information.

Although Michael states in his declaration that he is "familiar with the assets I currently own and my current liabilities," at the hearing he claimed there were no financial records for the various entities. He did not know why he borrowed the money in the three promissory notes listed in his declaration. He was also unable to recall what happened with the \$16 million he received from the sale of one of the entities.

Until January of this year, Michael was the trustee of two trusts. The MAR Living Trust was created by Michael in 2006. He said his wife and children are now the beneficiaries of the MAR trust. Although Michael was the trustee of the trust until January of this year, he testified that he had no knowledge of the value of the assets in the trusts and that there were no financial records related to the trust. The assets of the MAR trust consist of membership interests in limited liability companies but he could not identify those companies. Michael did testify that some money from the business entities controlled by the MAR trust has made its way to him or under

his control. He said a record of that would be in the Clayton Mountain Development bank statements. The MAR trust does not have a bank account.

The second trust, Commander Neyo Trust, was created by Michael around 2010. He likewise has no knowledge of the value of the assets in the Commander Neyo Trust and testified there are no records that would shed light on the value of this trust.

Tavistock is a company that has been owned by Jennifer Ruff, Michael's wife, for the last eight years. The arbitration panel included Tavistock as one of the entities created with assets taken from Suzann. At one point, Michael was the manager of Tavistock. Tavistock was owner of the house where Michael and Jennifer live. The house is valued at between \$2.5 and \$3.5 million. After the arbitration panel issued its award, Suzann sued Tavistock to clear title to the house. The day after that lawsuit was filed, Jennifer conveyed the house to herself in her capacity as the manager of Tavistock. Michael testified that he has never had a "direct ownership" in their house.

Michael denied owning any interest in real property. He testified that he did not own any interest in any of the entities listed on the exhibit attached to the arbitration award and admitted that he had not produced any financial statements for any of those business entities. On his declaration, Michael lists one Fidelity Investment account worth \$400.

When questioned about accounts at Community National Bank & Trust Company of Texas on which he had full signatory authority, Michael said he was "tangentially familiar with that bank" and that he may have signing authority on accounts there. These accounts are not listed on his declaration.

Michael's evasiveness continued in his responses to interrogatories served as part of the net worth discovery. When asked if he was self-employed, Michael objected to the question as harassing. He denied having any expenses that recur on a monthly basis or other regular basis that

exceed \$100. Michael likewise denied that he or Jennifer had made any payment exceeding \$500 within the past four months. He admitted that he has an IRA at Morgan Stanley, a safe deposit box at Texas Capital Bank, and a life insurance policy worth \$400,000. He refused to answer whether he held any property as trustee of any type of trust because “whether [he] holds property in a representative or trust capacity is not relevant to the issue of net worth.” He denied that he had kept any financial records within the past five years.

Counsel for Suzann subpoenaed Mark Ruff, Michael’s brother, and Jennifer for the hearing but they did not show up.

On March 19, 2018, the probate court issued its order on Suzann’s contest. In addition to adopting all findings set forth in the American Arbitration Association’s Final Award, the probate court set forth its own findings in the order. Among those findings, the probate court found that Michael:

- presented no credible evidence at the hearing on this matter as to what happened to the assets of the Ruff Management Trust . . .
- admitted in open Court and under oath that he has not complied fully with this Court’s Order Granting Emergency Motion for Order Prohibiting Movement of Assets signed January 12, 2018, the Order in Aid of Court’s January 12, 2018 Order signed January 24, 2018 and with the Court’s orders regarding disclosure of bank accounts for which he has or had authority to control.
- exhibited a disturbing pattern of noncompliance with valid orders of this Court as well as the valid orders of the American Arbitration Association arbitrators.
- exhibited a pattern of concealment of information with respect to the assets of the Ruff Management Trust, with respect to any and all real or personal property that he may have acquired utilizing the assets of the Ruff Management Trust, and with respect to any and all real and personal property owned by him, in whole or in part, or under his sole or joint control or in which he has or had any interest at any time since the inception of his fiduciary relationship with Suzann Ruff or thereafter.
- the Declaration of Net Worth Affidavit filed by Michael A. Ruff, as well as his testimony in open Court and under oath, was not complete and did not

provide sufficient detailed information to be credible. [He] provided insufficient and incomplete evidence at the hearing and in his declaration of net worth affidavit with respect to his net worth, with respect to the value of revenue from any real or personal property in his possession, owned in whole or in part by him, under his control or in which he has a pecuniary interest. He provided insufficient and incomplete evidence with respect to his personal or joint debts or liabilities affecting or existing on any and all real or personal property in his possession, owned in part or wholly by him, under his control or in which he has or had a pecuniary interest for any specific time period. His evidence with respect to any property that may be exempt as homestead property was incomplete.

- Based on the evidence offered by Michael A. Ruff, the Court finds [his] Declaration of Net Worth Affidavit is without merit and not credible.
- Michael A. Ruff retains real and personal property acquired from the Ruff Management Trust and/or Suzann Ruff. [He] retains assets from the sale or use of the assets acquired from the Ruff Management Trust and/or Suzann Ruff. [He] retains all assets subject to the constructive trust ordered by the American Arbitration Association Final Award . . .

Among the arbitration panel findings adopted by the probate court were that Michael committed fraud on Suzann, committed misapplication of fiduciary property, committed conversion of Suzann's assets, caused harm and monetary damages to Suzann, and was unjustly enriched because of his breaches of fiduciary duties.

In his motion to review, Michael asserts four grounds for reversing the supersedeas order: (1) the probate court failed to state his net worth as required by rule 24.4(c)(3); (2) the probate court failed to state with particularity the factual basis for the determination of his net worth; (3) there was no evidence presented at the hearing to support a positive net worth; and (4) the probate court improperly used the damages found by the arbitrators to determine his net worth. *Bishop Abbey Homes*, which is factually similar to this case, demonstrates why Michael's grounds for reversal lack merit.

In *Bishop Abbey Homes*, Nathan Halsey, Bishop Abbey's principal, filed a net worth affidavit showing a multi-million dollar negative net worth. *Bishop Abbey Homes*, 2015 WL 4456209 at *1. At the contest hearing, Halsey admitted there was no way to verify the amounts

listed on the balance sheet for many of the entities because “the documents don’t exist.” *Id.* at *2. Halsey admitted that he did not provide documents in response to discovery regarding his partnership interests listed on his balance sheet. He testified that he gave his wife a \$15,000 monthly allowance. An accountant testified on Halsey’s behalf stating that his balance sheet was prepared in accordance with generally accepted accounting principles. On cross-examination, the accountant admitted that he had no way to verify the numbers. *Id.* at *3, 4.

In its findings, the trial court in *Bishop Abbey* found that Halsey was “evasive and deceitful.” *Id.* at *4. The trial court found that Halsey failed to present credible evidence to determine his net worth and set the bond at \$4,199,485.50, the judgment amount. *Id.* at *5. Halsey argued that “because he presented the only evidence regarding his net worth, the trial court was required to accept it and find that his net worth was negative \$14.6 million.” *Id.* We noted that in order for a net worth affidavit to constitute prima facie evidence, the affidavit must state complete detailed information concerning the debtor’s assets and liabilities from which net worth can be ascertained. Because the record reflected, and the trial court found, that Halsey failed to offer complete and detailed information regarding his assets and liabilities from which his net worth could be determined, we concluded that Halsey failed to meet his burden of proof. *Id.* We also addressed the requirement set forth in rule 24.2(c)(3) that the trial court state the debtor’s net worth and state with particularity the basis for that determination. The appellees argued that where a debtor fails to meet its burden of proof, the trial court may set the amount of the bond in accordance with section 52.006(a) and rule 24.2(a)(1). We agreed and concluded that the trial court did not abuse its discretion in setting the bond at the amount of the judgment. *Id.* at *5-6.

The debtor in *Bishop Abbey*, produced some documents and called an accountant to testify. We upheld the trial court’s finding that the debtor was “evasive and deceitful” and that his testimony was not credible. Here, Michael openly defied probate court orders, produced very few

documents most of which related to his debts, called no witnesses, denied having any financial records, denied having any expenses over \$100 recurring on a monthly basis, and repeatedly refused to answer questions at the hearing and in response to interrogatories. In his motion, Michael asserts that he “presented uncontroverted testimony during the hearing that he did not own any of the entities or properties identified on Exhibit A to the First Amended Final Judgment.” It is true that Michael’s testimony was uncontroverted. It is equally true, however, that Michael’s testimony was not credible. A review of the record from the hearing supports the probate court’s finding that Michael did not present credible evidence regarding his assets and liabilities from which it could determine net worth. For this reason, the probate court did not abuse its discretion in setting the bond in accordance with section 52.006(a) and rule 24.2(a)(1) at the judgment amount. *See* TEX. R. APP. P. 24.2(a); TEX. CIV. PRAC. & REM. CODE ANN. § 52.006(b).

We affirm the probate court’s order.

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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