

Opinion issued January 31, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-08-00891-CV

**LAW OFFICES OF LIN & ASSOCIATES AND
DAWN LIN & ASSOCIATES, P.C., Appellants**

V.

**MEMORIAL HERMANN HOSPITAL SYSTEM AND
SEYED MOHAMMAD SALIMI, Appellees**

**On Appeal from County Civil Court at Law No. 1
Harris County, Texas
Trial Court Case No. 907162**

MEMORANDUM OPINION

This case involves the allocation of insurance-settlement proceeds between the claimant's former law firm and the hospital that treated him. The trial court

rendered judgment in favor of the hospital, and the law firm appeals. We modify the trial court's judgment and affirm.

Background

The appeal arises out of a traffic accident in which appellee Seyed Mohammad Salimi was injured. Salimi was a passenger in his brother's car, and the other vehicle was driven by Todd Fisher. Salimi was treated by two different hospitals associated with appellee Memorial Hermann Hospital System. As a result of his treatment, Salimi incurred \$44,808.50 in medical expenses. Memorial Hermann Northwest Hospital timely filed a hospital lien with the Harris County Clerk to secure its interest in any cause of action that Salimi might bring as a result of the accident. *See* TEX. PROP. CODE ANN. §§ 55.001–.008 (West 2007).

After his discharge from the hospital, Salimi retained a lawyer to represent him concerning his personal injuries. The lawyer negotiated a settlement agreement with Fisher's insurer to tender the policy limits of \$25,000. When Salimi refused to sign a release, that lawyer withdrew from the representation.

Salimi subsequently contacted appellant Law Offices of Lin & Associates ("Lin") about filing suit against Fisher, and Salimi signed a contingency-fee agreement with Lin. The fee proposed by Lin was "an undivided 33 1/3% interest in all money and things of value associated with Client's claims, causes of action, and requests for damages, if such are settled prior to the filing of a lawsuit." Upon

the filing of a lawsuit, Lin's fee increased to 40% of the recovery. The agreement further provided for fee increases to 45% "after a trial is commenced" and 50% "if a post-judgment remedy . . . is filed." The agreement provided in part that Lin would continue to claim its full interest in the contingency fee even if it withdrew from the representation.

One day after the fee agreement was executed, Lin filed a lawsuit against Fisher on Salimi's behalf. Fisher counterclaimed for breach of contract based on his insurer's prior acceptance of an offer to settle the claim for policy limits. Lin withdrew as Salimi's counsel, and the district court eventually rendered summary judgment that Salimi take nothing and that the insurance settlement proceeds be subject to all liens and subrogation interests.

Lin filed the current lawsuit against Salimi in county civil court at law, claiming that its former client breached his contingency-fee contract by terminating the representation. Lin originally sought a declaration that it was entitled to an unspecified assigned interest in Salimi's recovery, along with actual damages, attorney's fees, costs, and interest. Memorial Hermann intervened in the suit, asserting its lien on the insurance proceeds through a cross-claim for a declaratory judgment, as well as a cross-claim for attorney's fees. Lin filed an amended petition, in which it referred to itself as "Law Offices of Lin & Associates as assignee of Seyed Mohammad Salimi" and named Memorial Hermann as the

defendant. Lin claimed Memorial Hermann's hospital lien was defective and sought a declaration that it was entitled to \$8,333.33 of the insurance proceeds as its one-third contingency fee.

The case was tried to a jury, which rendered a verdict that Memorial Hermann's hospital lien contained all information required by statute, Memorial Hermann's reasonable expenses for providing treatment to Salimi were \$44,808.50, a valid contract for medical services existed between Memorial Hermann and Salimi, Lin and Salimi did not have a valid contingency-fee agreement, Salimi still owed Memorial Hermann \$16,666.66, and Memorial Hermann was entitled to attorney's fees. The trial court accepted the verdict and rendered judgment that Memorial Hermann had a valid hospital lien for \$48,808.50, that Memorial Hermann recover \$16,666.66 from Salimi out of the insurance proceeds, that Lin take nothing on its claims, and that Memorial Hermann recover attorney's fees from Lin. The final judgment stated that it was rendered against "Law Offices of Lin & Associates, a/k/a Dawn Lin & Associates, P.C., also appearing ostensibly as Law Offices of Lin & Associates as assignee of Seyed Mohammad Salimi." Dawn Lin & Associates, P.C. filed a postjudgment plea to the jurisdiction on the grounds that it was never named in the lawsuit, never served with process, and had never appeared. The trial court never ruled on the plea to the jurisdiction.

A notice of appeal was filed on behalf of two purported appellants, “Law Offices of Lin & Associates as assignee of Seyed Mohammad Salimi” and “Dawn Lin & Associates, P.C.” A response brief was filed by Memorial Hermann, but no response was filed by Salimi.

Analysis

I. Sufficiency of the evidence

In four of its six issues, Lin challenges the legal and factual sufficiency of the evidence to support various aspects of the trial court’s judgment. In conducting a legal sufficiency, or “no evidence” review, we consider the evidence in the light most favorable to the trial court’s judgment, disregarding all evidence and inferences to the contrary unless a reasonable fact-finder could not do so. *City of Keller v. Wilson*, 168 S.W.3d 802, 810–11 (Tex. 2005). We do not disregard contrary evidence if (a) there is no favorable evidence, or (b) contrary evidence renders supporting evidence incompetent, or (c) contrary evidence conclusively establishes the opposite. *Id.* at 810–11. In determining whether the evidence was factually sufficient to support the trial court’s judgment, we consider all the evidence and set aside the findings only if we find that they are so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

The rules of appellate procedure require that an appellant’s brief “must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.” TEX. R. APP. P. 38.1(i); *see Izen v. Comm’n for Lawyer Discipline*, 322 S.W.3d 308, 321 (Tex. App.—Houston [1st Dist.] 2010, pet. filed). Rule 38 requires a party to provide a legal argument, including a discussion of pertinent facts and supporting authorities so as to demonstrate the basis for the requested relief. *See, e.g., Morrill v. Cisek*, 226 S.W.3d 545, 548 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). In the context of a challenge to the sufficiency of the evidence, these standards require, at a minimum, a discussion of evidence related to the challenged finding and an argument directly explaining the legal or factual inadequacy of such evidence. *See Maranatha Temple, Inc. v. Enter. Products Co.*, 893 S.W.2d 92, 106 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (“When the appellant does not provide us with argument that is sufficient to make an appellate complaint viable, we will not perform an independent review of the record and applicable law in order to determine whether the error complained of occurred.”) (citing former TEX. R. APP. P. 74(f)(2)).

a. Invalid agreement

In issue two, Lin contends that the jury's finding that Salimi and Lin did not have a valid attorney-client agreement regarding fees is based on legally and factually insufficient evidence. Lin points to its written agreement with Salimi and two affidavits relating to that agreement, but Lin does not identify or substantively address the other evidence adduced at trial to support the jury's finding that this agreement was not valid. Importantly in this regard, the jury was instructed about mutual mistake and repudiation.

Lin's brief contains no briefing about legal standards for forming or repudiating a contract. The brief contends a contract was formed, but makes no contention relating to facts that may have supported a jury finding of mutual mistake or repudiation. Lin asserts only that it "did nothing wrong in representing Salimi and Salimi did not raise any affirmative defenses or provide any other evidence to show that Lin was not entitled to its assigned interest in the settlement proceeds." The only other substantive point in Lin's brief is the assertion that one witness's opinion testimony that Lin repudiated its agreement with Salimi was conclusory and therefore amounted to no evidence. We conclude that Lin's challenge to the sufficiency of the evidence is waived due to inadequate appellate briefing. *See* TEX. R. APP. P. 38.1(i). We overrule issue two.

b. Amount of hospital lien

In issue three, Lin argues that evidence to support the amount of Memorial Hermann's hospital lien is legally and factually insufficient. Lin argued in his motion for new trial, and argues now on appeal, that expert testimony was required to establish that all of the services rendered by Memorial Hermann were caused by the accident. It is undisputed that no such expert testimony was presented at trial.

Property Code section 55.002(a) provides in part that a "hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributable to the negligence of another person." TEX. PROP. CODE ANN. § 55.002(a) (West 2007). Even if it were the case that this statute imposes upon the hospital the burden of proving which of its services were necessary to treat a condition caused by the accident resulting in the hospitalization—a question which has not been adequately briefed in this appeal and which we do not decide—we conclude that any such error was not preserved in the trial court.

The question posed to the jury was as follows: "What sum of money, if paid now in cash, would fairly and reasonably compensate Memorial Hermann Hospital System for the reasonable expenses of necessary medical care provided to Seyed Mohammad Salimi as a result of the October 14, 2005 accident?" Lin informed the trial court that it had no objection to this form of charge, despite the fact that it

did not ask the jury to exclude expenses that were not legally caused by the accident. “[I]t is the court’s charge, not some other unidentified law, that measures the sufficiency of the evidence when the opposing party fails to object to the charge.” *Osterberg v. Peca*, 12 S.W.3d 31, 55 (Tex. 2000).

The evidence at trial was legally and factually sufficient to establish that Salimi incurred reasonable expenses of \$44,808.50 for necessary medical care provided by Memorial Hermann as a result of the accident. Lin does not suggest otherwise. But Lin’s complaint that Memorial Hermann’s recovery depended upon expert testimony establishing a link of causation between the accident and the medical services provided was not preserved in the trial court, and it is therefore waived on appeal. *See* TEX. R. APP. P. 33.1(a). We overrule issue three.

c. Enforcement of hospital lien

In issue four, Lin argues that evidence is legally and factually insufficient “to award Memorial an interest in the settlement proceeds,” thereby attempting to challenge the portion of the judgment that directly awards Memorial Hermann \$16,666.66 from Salimi out of the \$25,000 insurance settlement. Property Code section 55.003(a) provides:

A lien under this chapter attaches to:

- (1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services; and

(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services.

TEX. PROP. CODE ANN. § 55.003(a) (West 2007). Lin's brief does not reference this statute or discuss whether it entitles Memorial Hermann to an award directly in the judgment once it established its lien. Nor does Lin discuss how the alleged error, if any, is harmful. Instead, Lin's argument consists of a series of quotations from cases discussing liens, none of which involve hospital liens and none of which address the specific issue raised in this case. To the extent Lin contends issue four is based on legal and factual sufficiency, it makes no substantive argument based on the evidence. Lin therefore has not adequately briefed an argument based on the statutory hospital lien. *See* TEX. R. APP. P. 38.1(i). Accordingly, we overrule issue four.

d. Award of attorney's fees

In issue five, Lin argues that the evidence is legally and factually insufficient to support an award of attorney's fees to Memorial Hermann. On appeal, Lin argues that the only basis for attorney's fees was Rule 167 of the Texas Rules of

Civil Procedure, the offer of settlement rule. Lin makes no substantive legal argument based on legal and factual sufficiency of the evidence. Instead, Lin argues that Rule 167 should have not applied, but those arguments have been waived. Lin did not object on that basis to the submission of a jury question concerning attorney's fees. No argument about the application of Rule 167 was made in Lin's motion for JNOV or its motion for new trial. The complaint has been waived. *See* TEX. R. APP. P. 33.1(a). We overrule issue five.

II. Request for findings of fact and conclusions of law

In issue six, Lin contends the trial court erred in not filing findings of fact and conclusions of law. *See generally* TEX. R. CIV. P. 296. Lin's request to the trial court was nonspecific, asking the court generally "to state, in writing, its findings of fact and conclusions of law . . . with regard to any matters decided by the Court in the Judgment(s) & Order(s) signed July 25, 2008." On appeal, Lin claims the trial court was obligated to file findings and conclusions on (1) whether the agreement between Lin and Salimi was ambiguous, (2) whether Memorial Hermann was entitled to attorney's fees under Texas Rule of Civil Procedure 167, and (3) whether Memorial Hermann had a statutory hospital-lien interest in the settlement proceeds.

The purpose of Texas Rule of Civil Procedure 296 is to give a party a right to findings of fact and conclusions of law finally adjudicated after a conventional

trial on the merits before the court. *IKB Indus. (Nig.) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 442 (Tex. 1997); *see* TEX. R. CIV. P. 296 (“In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law.”). In other cases findings and conclusions are proper, but a party is not entitled to them. *IKB Indus.*, 938 S.W.2d at 442. Findings and conclusions are required when an appellate court must defer to them, i.e., a legally correct judgment based on findings of fact made after a trial on the merits cannot be set aside if the findings are supported by sufficient evidence. *Id.* When an appellate court is not obligated to give the same level of deference to the trial court, findings and conclusions are not required. *Id.* The Texas Supreme Court has also noted a practical reason for not requiring findings and conclusions—they are often unnecessary and requiring them in every case would be burdensome. *Id.*

Applying the *IKB Industries* standard to the three findings and conclusions to which Lin claims it is entitled, we hold that the trial court was not required to file them. Each of the three were either submitted to the jury in the charge, or involved a legal determination to which this Court is not required to defer to the trial court. Accordingly, we overrule issue six.

III. Validity of purported judgment against nonparty

In issue one, the appellants contend the trial court erred in rendering judgment against Dawn Lin & Associates, P.C. (“DLA”). The final judgment did not name DLA as a separate party, but instead recited that the plaintiff/cross-claim defendant was “Law Offices of Lin & Associates, a/k/a Dawn Lin & Associates, P.C., also appearing ostensibly as Law Offices of Lin & Associates as assignee Seyed Mohammad Salimi.” DLA filed a postjudgment plea to the jurisdiction, claiming that DLA was not a party to the suit and was never been served. The appellate record contains no separate order overruling this plea. Treating the plea as a motion to correct, modify, or reform the judgment, it was overruled by operation of law after the expiration of 75 days. *See* TEX. R. CIV. P. 329b(c).

Memorial Hermann asks this Court to affirm a purported finding of the trial court, supposedly memorialized in the final judgment, that DLA is the successor in interest of Law Offices of Lin & Associates. We have been directed to no evidence in the appellate record to support such a finding. Nevertheless, in support of its argument, Memorial Hermann asks this Court to take judicial notice of an assumed name certificate on file with the Harris County Clerk and articles of incorporation on file with the Texas Secretary of State which purport to establish that “Law Offices of Lin & Associates” is an assumed name of Dawn Fu-Kuei Lin and that “Dawn Lin & Associates, P.C.” is a domestic professional corporation

with a registered agent named Dawn Lin. Even if we were to take judicial notice of these alleged adjudicative facts, *see* TEX. R. EVID. 201, they do not support a conclusion that DLA is a successor-in-interest of or otherwise responsible for liabilities of Law Offices of Lin & Associates.

The trial court had no jurisdiction over DLA, and the final judgment's reference to DLA as an alias of Lin was error. Appellants request that this Court declare void the judgment against DLA. We construe this as a request for modification of the judgment to eliminate the erroneous and unsupported references to Law Offices of Lin & Associates as being "a/k/a," i.e. "also known as" Dawn Lin & Associates, P.C. So construed, we sustain issue one and grant the requested relief by modifying the judgment accordingly. *See* TEX. R. APP. P. 43.2(b); *Monk v. Pomberg*, 263 S.W.3d 199, 208 (Tex. App.—Houston [1st Dist.] 2007, no pet.) ("When an appellant raises an issue challenging a matter that may be resolved by the modification of the trial court's judgment, a court of appeals may modify the trial court's judgment.").

Conclusion

We modify the trial court's judgment to delete references to appellant Law Offices of Lin & Associates as being also known as Dawn Lin & Associates, P.C. As so modified, the judgment of the trial court is affirmed. *See* TEX. R. APP. P. 43.2(b).

Michael Massengale
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Nuchia.