Opinion issued February 17, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-09-00588-CV

JOHN HATTON, Appellant

V.

DANIEL D. GRIGAR, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Case No. 06-DCV-152034

MEMORANDUM OPINION

John Hatton appeals a final judgment in favor of Daniel D. Grigar and an order imposing sanctions. Hatton filed a trespass to try title action to determine the rights to a road across his property. Grigar moved for summary judgment on the

grounds of res judicata. The trial court granted the summary judgment and granted Grigar's motions for sanctions against Hatton.

In four issues, Hatton contends that the trial court abused its discretion and denied him due process and equal protection under the law when it transferred his case from the 240th to the 268th District Court; dismissed his trespass to try title suit with prejudice; granted a summary judgment to Grigar on the affirmative defense of res judicata; granted a summary judgment on Grigar's motion for sanctions; and granted Grigar a void order for enforcement and injunction. We conclude that any error concerning the transfer is waived, the trial court properly granted summary judgment, and the trial court did not abuse its discretion in imposing sanctions. We also conclude that we lack jurisdiction over the portion of Hatton's appeal pertaining to the motion for enforcement and injunction. Finally, we conclude that Hatton has waived any error relating to his assertions of due process and equal protection violations. We affirm.

Background

This is not the first appeal involving these parties. As the Fourteenth Court of Appeals summarized,

> This appeal arises from a longstanding dispute over the ownership of a road. In 1997, Daniel D. Grigar sought a declaratory judgment that the gravel road abutting John Hatton's property, which provided access to Grigar's landlocked property, constituted a public easement. On June 23, 2000, after a bench trial, the trial court entered a judgment in favor of Grigar (the "2000 judgment"), finding that: (1)

> Grigar's land was in fact landlocked, (2) the road constituted a public road, and (3) an easement of ingress and egress existed by necessity, prescription, and implication in favor of Grigar. Hatton appealed the judgment to this court, and we affirmed. *See Hatton v. Grigar*, 66 S.W.3d 545, 557 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Although not detailed by the parties in this appeal, the same facts underlying the 2000 judgment and our decision in *Hatton* have apparently given rise to several proceedings in other state and federal courts.

Hatton v. Grigar, No. 14-05-01053-CV, 2006 WL 3365494, *1 (Tex. App.—Houston [14th Dist] Nov. 21 2006, no pet.). In that case, despite having previously appealed the adverse 2000 judgment, Hatton attempted to file a bill of review to attack the 2000 judgment a second time. *Id.* The Fourteenth Court affirmed the trial court's grant of summary judgment for Grigar. *Id.* As part of that case, Hatton also appealed the trial court's imposition of sanctions against him and his attorney, Robert Wallace, for frivolously filing the bill of review. *Id.* The Fourteenth Court affirmed the sanctions. *Id.*

One of the other proceedings referenced by the Fourteenth Court was a trespass to try title action—the same claim Hatton brings in this cause—filed in the District Court for the Southern District of Texas.[1] There, as here, Grigar sought

[1] In his brief, Hatton asserts that when he learned of the transfer from the 240th to the 268th District, which he contends was done "without cause, without notice, and without a hearing," he filed the suit in federal court described above, "seeking relief and instructions under 42 USC Sections 1981 and 1983 in regard to the biased and improper transfer" of his case. However, as described above, the federal court characterized Hatton's suit as a trespass to try title action. Hatton's pleading in federal court was entitled "Plaintiff's Trespass to Try Title and

dismissal based on res judicata. Grigar asserted that the "2000 judgment" was res judicata of Hatton's current claim for trespass to try title. *Hatton v. Grigar*, No. H-06-3981, 2007 WL 624343, *1 (S.D. Tex. Feb. 22, 2007). Citing the Fourteenth Court's opinion, the federal district court concluded that Hatton's trespass to try title claim raised the same issues as the claims adjudicated in the 2000 judgment—namely, whether the road was a public road and whether Grigar had a right to use the road.[2] *Id.* The district court granted Grigar's motion to dismiss, and the Fifth Circuit Court of Appeals affirmed. *Hatton v. Grigar*, 258 Fed. Appx. 706, 707, 2007 WL 4370888 (5th Cir. 2007). The Fifth Circuit explained that Hatton was attempting to have his title in the road be confirmed but that Hatton had raised the same issue in the prior case and the trial court rejected it, finding instead that the road was a public road. *Id.* The Supreme Court of the United States denied the petition for writ of certiorari. *Hatton v. Grigar*, 129 S. Ct. 411 (2008).

Application for a Restraining Order, Temporary Injunction, and Permanent Injunction." The relief sought by Hatton was to "prevent [Grigar] . . . from entering upon" the road and that the 2000 judgment "be declared invalid and unlawful and [Hatton] be awarded judgment for title to and possession of" the road.

[2] The district court also explained that, "[i]n a later judgment entered December 20, 2002, Hatton was enjoined from obstructing the public road. In September 2003, Hatton was held in contempt and ordered to remove barricades and obstructions from the public road in question. The Texas Court of Appeals dismissed Hatton's appeal as frivolous and sanctioned him and his attorney. *See Hatton v. Grigar*, 2004 WL 583045 (Tex. App.—Houston [14th Dist.] 2004[, no pet.])." *Hatton v. Grigar*, No. H-06-3981, 2007 WL 624343, *1 n.2 (S.D. Tex. Feb. 22, 2007).

In this case, Hatton filed a trespass to try title suit in the 240th District Court in Fort Bend County. Pursuant to local rules, the 240th District Court transferred the case to the 268th District Court because it was a "filing involving substantially related parties and claims" as the previous suit in the 268th District Court. Grigar moved for summary judgment on the grounds that res judicata barred this suit. Grigar also moved for sanctions against Hatton and his attorney, Wallace. The trial court granted Grigar's motion for summary judgment and also imposed sanctions against Hatton, but not Wallace, for $14,325 for filing a frivolous pleading and $7,500 for Grigar's attorney's fees.

Transfer of Case

In his first issue, Hatton contends that the trial court abused its discretion by transferring his case from the 240th to the 268th District Court. Within this issue, Hatton recites the appropriate standard of review for abuse of discretion. However, Hatton cites no authority concerning a trial court's discretion to transfer a case to another district court in the same county pursuant to local rules. After reciting the standard of review for abuse of discretion, Hatton asserts, "The issue in this case is whether the Trial Court abused its discretion in dismissing [Hatton's] Trespass to Try Title action." The merits of the case are a different issue than whether the trial court abused its discretion by transferring the case. Hatton also asserts—without citation to any authority—that he "was entitled to have his title to

this road tried in the United States District Court for the Southern District of Texas or sent back to the 240th Judicial District Court" because Judge Elliott, the judge of the 268th District, signed the 2000 judgment that granted Grigar an easement and declared the road a public road.

Texas Rule of Appellate Procedure 38.1(i) requires that an appellant's brief "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). "Rule 38 requires [a party] to provide us with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Id.* "Issues on appeal are waived if an appellant fails to support his contention by citations to appropriate authority . . . ." *Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Similarly, appellate issues are waived when the brief fails to contain a clear argument for the contentions made. *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 322 (Tex. App.—Houston [1st Dist.] 2010, pet. struck). Because Hatton's argument within this issue cites no relevant authority concerning the transfer of cases, we conclude the issue is waived due to inadequate briefing. *See Abdelnour*, 190 S.W.3d at 241.

We overrule Hatton's first issue.

Summary Judgment on Hatton's Trespass to Try Title Claim

In his second issue, Hatton contends that the trial court abused its discretion by granting Grigar's motion for summary judgment. In this issue, the crux of Hatton's argument is that the trial court, by signing the 2000 judgment, divested Hatton of title in the road. Therefore, Hatton argues, until that moment, he had no right to file a trespass to try title action. Hatton concludes that res judicata based on the 2000 judgment cannot bar this suit.

Hatton misapprehends the applicable law. In the prior lawsuit, the trial court found, and the court of appeals affirmed the finding, that Hatton's predecessors in title had impliedly dedicated a road for public use. *Hatton*, 66 S.W.3d at 557. Among the cases discussed by the Fourteenth Court were *Scott v. Cannon*, 959 S.W.2d 712 (Tex. App.—Austin 1998, pet. denied) and *Las Vegas Pecan & Cattle Co. v. Zavala County*, 682 S.W.2d 254 (Tex. 1984). Both cases make clear that an implied dedication of a public road theory grants an easement. *Las Vegas*, 682 S.W.2d at 257; *Scott*, 959 S.W.2d at 718–20. An easement does not divest title from the landowner. *Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653, 658 (Tex. 2007) ("An easement does not convey title to property."); *see also State v. Brownlow*, 319 S.W.3d 649, 652 (Tex. 2010) (stating that under Texas property law concerning easements, the owners of land subject to an easement remain the

title holders of the land) (citing *Brunson v. State*, 418 S.W.2d 504, 506 (Tex. 1967)). In fact, part of the Supreme Court's holding in *Las Vegas* was that the trial court erred in awarding title to Zavala County because, under an implied dedication of a public road theory, only an easement is at issue, not title. *Las Vegas*, 682 S.W.2d at 257. Because the prior judgment awarded the public an implied dedication of a roadway easement and did not divest Hatton's title, there is no question of title to be tried in a trespass to try title suit.

Furthermore, stripped of the erroneous assertion that the 2000 judgment divested him of his title in the road, a review of Hatton's petition and argument in this case makes clear that he is seeking to prohibit Grigar's use of the road in question. This issue has been determined before. *See Hatton*, 66 S.W.3d at 554–57. Hatton has also tried to assert the same issue in his improperly filed bill of review, *see Hatton*, 2006 WL 3365494 at *1, and in federal court, *see Hatton*, 2007 WL 624343, at *1. To the extent Hatton is seeking a determination of Grigar's (or the public's) right to use the road, this issue has been fully litigated between these same parties to a final judgment in a court of competent jurisdiction. "At their core, Hatton's present claims rest on exactly the same issue litigated before the state court; whether the road at issue is a private or public road." *Hatton*, 258 Fed. Appx. at 707, 2007 WL 4370888 at *1. The trial court did not err by granting Grigar's motion for summary judgment on res judicata grounds. *See Igal v.*

Brightstar Info. Tech. Grp., Inc. 250 S.W.3d 78, 86 (Tex. 2008) (stating elements of res judicata: "(1) a prior final judgment on the merits by a court of competent jurisdiction; (2) the same parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action").

We overrule Hatton's second issue.

Sanctions

In his third issue, Hatton contends that the trial court abused its discretion by imposing sanctions against him. Specifically, Hatton contends that his filing of this trespass to try title action was done in good faith because, as discussed above, once the trial court signed the 2000 judgment, an issue concerning the title to the road arose and, therefore, he had to file a trespass to try title action to resolve the title issue.

We review a trial court's imposition of sanctions for an abuse of discretion. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). In reviewing the sanctions order, we review the entire record to determine whether the trial court abused its discretion. *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006).

Under rule 13, a court may impose sanctions if a pleading is "not groundless and brought in bad faith or groundless and brought for the purpose of harassment." TEX. R. CIV. P. 13. A pleading is "groundless" when it has "no basis in law or fact

and [is] not warranted by good faith argument for the extension, modification, or reversal of existing law." *Id.* Bad faith involves conscious wrongdoing for a dishonest, discriminatory, or malicious purpose. *Hatton*, 2006 W L 3365494, at *7 (citing *Elkins v. Stotts-Brown*, 103 S.W.3d 664, 669 (Tex. App.—Dallas 2003, no pet.)). "'Harass' is used in a variety of legal contexts to describe words, gestures, and actions that tend to annoy, alarm, and verbally abuse another person." *Id.* (citing *Elkins*, 103 S.W.3d at 664). "When making its determination to award sanctions on the grounds that a case is frivolous or legally invalid, a trial court should consider the entire history of the case." *Id.* (citing *Falk & Mayfield L.L.P. v. Molzan*, 974 S.W.2d 821, 824–27 (Tex. App.—Houston [14th Dist.] 1998, pet. denied)).

As discussed above, well-established Texas precedent shows that the trial court's 2000 judgment did not divest Hatton of title. Therefore, there is no basis in law for Hatton's contention that the instant suit is not another in a series of attempts to re-try the issue of Grigar's right to use the road— a right the trial court determined over 10 years ago after a full trial on the merits. Based on the record before us, the long history of this dispute, and the long-standing precedent contrary to Hatton's arguments, we cannot conclude that the trial court erred by imposing sanctions.

We overrule Hatton's third issue.

Motion for Enforcement and Injunction of 2000 Judgment

In his fourth issue, Hatton contends that the trial court abused its discretion by granting Grigar's motion for enforcement and injunction. We note that the motion for enforcement and injunction and the order granting it were filed in trial court cause number 97-DCV-098376, the lawsuit that resulted in the 2000 judgment. Hatton filed a notice of appeal in trial court cause number 06-DCV-152034. The clerk's record before this Court in this cause does not contain the order appealed from or a notice of appeal filed in trial court cause number 97-DCV-098376. Absent a timely-field notice of appeal, this Court lacks jurisdiction and we must dismiss the appeal. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997). Accordingly, we dismiss that portion of this cause that attempts to appeal the order granting the motion for enforcement and injunction in trial court cause number 97-DCV-098376.

Due Process and Equal Protection

Within all four of his issues, Hatton contends that, in addition to abusing its discretion, the trial court "denied [Hatton] due process and equal protection under the law." Within his first issue, Hatton argues,

> Pursuant to **Peralta v. Heights Medical Center, Inc.,** 485 U.S. 80, 86; 108 S. Ct. 896, 899–900 (1988) and **Lopez v. Lopez,** 757 S.W.2d 721, 723 (Tex. 1988), [Hatton] was denied the most basic and fundamental right of due process which was notice to avail himself of his Constitutional right to preserve and protect his valuable real

> property rights from being taken without due process and equal protection under the law.

This is Hatton's entire argument concerning due process and equal protection.[3] He does not identify what act or acts the trial court committed to deprive him of due

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[3] We acknowledge that within other issues, Hatton makes numerous conclusory statements that the trial court denied him due process and equal protection, without making any substantive analysis or argument. A typical excerpt follows:

> The Honorable Judge further abused his discretion and denied the Plaintiff, **JOHN HATTON**, due process and equal protection under the law pursuant to Article 1, Section 13, of the Texas Constitution and the Fourteenth Amendment to the United States Constitution when the Honorable Judge granted the Defendant, **DANIEL D. GRIGAR'S**[,] Motion for Sanctions since the Plaintiff, **JOHN HATTON**, and his Attorney, **ROBERT T. WALLACE**, had signed Plaintiff's Trespass to Try Title And Application For A Restraining Order, Temporary Injunction, And Permanent Injunction in **No. 06-DCV-152034** in good faith and for the purpose of determining Title to **HATTON ROAD** which was renamed **GRIGAR ROAD** by the Trial Court, since the Plaintiff, **JOHN HATTON**, was entitled to file Plaintiff's Trespass to Try Title And Application For A Restraining Order, Temporary Injunction, And Permanent Injunction in **No. 06-DCV-152034** in the **240th JUDICIAL DISTRICT COURT** of Fort Bend County, Texas, pursuant to Section 22.001 of the Texas Property Code which states that "a trespass to try title action is the method for determining title to lands, tenements, or other property" and pursuant to **Martin v. Amerman,** 133 S.W.3d 262, 264 (Tex. 2004), wherein the Texas Supreme Court has held that the trespass-to-try[-title]-statute governs the parties[']substantive claims in this case. That statute expressly provides that it is "the method for determining title to . . . real property."

Because this excerpt and the others similar to it do not attempt to analyze the trial court's order granting the motion for sanctions in light of any relevant authority concerning due process or equal protection, any review of the issue is waived. *See Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (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).

process.[4] Hatton makes no assertion and cites no authority concerning what process was due and that he was denied that process or concerning his equal protection rights.[5] Although he cites two cases, he makes no attempt to analyze or explain the cases or how the cases apply to his situation. We conclude that this issue is waived due to inadequate briefing. *See Abdelnour*, 190 S.W.3d at 241.

We overrule Hatton's four issues to the extent they assert a violation of due process or equal protection.

Conclusion

We affirm the trial court's judgment and the trial court's order imposing sanctions.

Harvey Brown
Justice

Panel consists of Justices Jennings, Higley, and Brown.

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[4] To the extent Hatton is complaining of the proceedings that resulted in the 2000 judgment, we note that Hatton already appealed that judgment and filed a frivolous bill of review in an attempt to collaterally attack that judgment. That proceeding is not at issue in this appeal.

[5] Furthermore, to the extent Hatton complains of the proceedings that resulted in the 2000 judgment, that judgment was entered after a trial during which Hatton was represented by counsel, presented evidence, and cross-examined the witnesses for Grigar. Hatton does not explain how he was deprived of due process or equal protection during the prior trial.