Opinion issued March 17, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00038-CV

KNAPP CHEVROLET, INC., Appellant

V.

FROST BANK, N.A., U.S. AUTO INSURANCE D/B/A U.S. AUTO, AND THE SPURLOCK LAW FIRM, Appellees

---

On Appeal from the County Court at Law No. 4
Harris County, Texas
Trial Court Cause Nos. 828065003

MEMORANDUM OPINION

Appellant, Knapp Chevrolet, Inc. ("Knapp"), challenges the trial court's rendition of a take-nothing judgment against it and in favor of appellees, Frost Bank, N.A., U.S. Auto Insurance Services, Inc. D/B/A U.S. Auto, and the Spurlock Law Firm, in Knapp's garnishment suit against appellees, in which Knapp sought to recover appellate attorney's fees incurred in a prior appeal. In two issues, Knapp contends that the trial court erred in denying its application for writ of garnishment.

We affirm.

Background

The background facts are more fully discussed in an opinion that we issued in an appeal arising from a prior proceeding in the trial court. *See Benavides v. Knapp Chevrolet, Inc.*, No. 01-08-00212-CV, 2009 WL 349813, at *1–4 (Tex. App.—Houston [1st Dist.] Feb. 12, 2009, no pet.). As summarized therein, in December 2004, Eric Preston, a non-party to this appeal, filed a petition against Giovanni A. Benavides, alleging that Benavides negligently caused a car collision. Benavides filed a third-party petition against Knapp, the owner of the car that Preston was test-driving at the time of the collision. Preston obtained a judgment against Benavides for $6,045.00, and Benavides obtained a default judgment against Knapp for the amount of the judgment and attorney's fees.

Knapp subsequently filed a motion for new trial, answer, summary-judgment

motion, and a motion for sanctions. The trial court granted Knapp's motion for new trial and summary-judgment motion, and it also imposed sanctions, jointly and severally, in the amount of $12,000, against Benavides; Benavides's trial counsel, Spurlock; and Benavides's insurance carrier, U.S. Auto. The trial court also ordered that, in the event that Benavides, Spurlock, or U.S. Auto appealed the sanctions order, Knapp would be entitled to recover "from the appealing party" additional appellate attorney's fees in the amount of $12,000 if Knapp "prevail[ed] at the appellate level."

Only Benavides filed a notice of appeal of the sanctions order; Spurlock and U.S. Auto did not. Accordingly, in the prior appeal, we only considered the merits of Benavides's challenge to the sanctions order against him. *Id*. at *3 (citing TEX. R. APP. P. 25.1(c); *Alaska Flight Servs. v. Dallas Cent. Appraisal Dist.*, 261 S.W.3d 884, 886 (Tex. App.—Dallas 2008, no pet.); *City of Houston v. Boyle*, 148 S.W.3d 171, 175 n.5 (Tex. App.—Houston [1st Dist.] 2004, no pet.)). We held that there was no evidence to support the imposition of sanctions against Benavides, and we reversed the order imposing sanctions against Benavides. *Id*. at *4–7. In our judgment, we ordered Knapp to pay all appellate costs. Thereafter, U.S. Auto paid the $12,000 sanction award to Knapp.

Following this payment, Knapp initiated the proceedings that give rise to this appeal. Knapp filed an application for writ of garnishment against garnishee

Frost Bank. In its application, Knapp acknowledged that it had been paid $12,000, but it contended that it remained entitled to recover the additional $12,000 from U.S. Auto and Spurlock, jointly and severally, in light of the trial court's previous order awarding appellate attorney's fees in the prior appeal.[1] U.S. Auto and Spurlock filed an objection to the writ of garnishment, arguing that because our Court had previously held that they were not proper parties to the prior appeal and were not entitled to challenge the trial court's sanctions order in the prior appeal, Knapp was not entitled to recover from them an additional $12,000 in attorney's fees. The trial court denied Knapp's application, and it awarded Frost Bank $500 for attorney's fees.

"Appealing Party"

In two issues, Knapp argues that the trial court erred in denying its application for a writ of garnishment, in which it sought to recover its appellate attorney's fees from the prior, related appeal, because it "prevailed" in its appeal against U.S. Auto and Spurlock and both U.S. Auto and Spurlock should be considered "appealing parties within the meaning" of the trial court's prior judgment.

The trial court, in its prior judgment, imposed sanctions in the amount of

[1] Frost Bank answered, agreeing that it was indebted to U.S. Auto in an amount exceeding $24,000.

$12,000 against Benavides, Spurlock, and U.S. Auto, jointly and severally, and it also provided, in pertinent part,

> Additionally, in the event that [Benavides], his counsel [Spurlock], or his insurer, U.S. Auto, shall appeal this award of sanctions, Knapp Chevrolet, Inc. shall have and recover from the appealing party its reasonable and necessary attorney's fees totaling $12,000 in the event this matter is appealed to the court of appeals and Knapp Chevrolet, Inc. prevails at the appellate level . . . .

In our opinion in the prior appeal arising from the trial court's $12,000 sanctions order, we determined that neither Spurlock nor U.S. Auto were parties to that appeal. Although we held that no evidence supported the sanctions award, because of our determination on the question of which parties were properly before the Court, we rendered a take-nothing judgment against Knapp only in favor of Benavides. By limiting our holding to Benavides, the sanctions award remained standing against U.S. Auto and Spurlock.

The terms of the trial court's original judgment plainly provide that Knapp would only be entitled to recover an additional $12,000 in appellate attorney's fees against an "appealing party." Because Spurlock and U.S. Auto were not "appealing part[ies]" in the prior appeal, we hold that the trial court did not err in denying Knapp's application for writ of garnishment.

We overrule Knapp's first and second issues.[2]

Conclusion

We affirm the judgment of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Higley, and Brown.

[2] We do not suggest that a party would necessarily be foreclosed from recovering its appellate attorney's fees when an appeal is dismissed or is resolved on procedural grounds. However, here, it is clear, as reflected in our prior opinion, that neither U.S. Auto nor Spurlock filed a notice of appeal in the prior appeal. And, Benavides, who did appeal the sanction order, prevailed in the prior appeal, as we reversed the sanctions order as to him. Under these circumstances, and in light of the language of the prior trial court's judgment, we conclude that the trial court properly denied Knapp Chevrolet's application for a writ of garnishment.