

Opinion issued May 26, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-14-00710-CV

LEA PERCY MCLAURIN, Appellant
V.
SCOTT SUTTON MCLAURIN, Appellee

On Appeal from the 309th District Court
Harris County, Texas
Trial Court Case No. 2009-06775

MEMORANDUM OPINION

Lea McLaurin filed suit alleging that her ex-husband, Scott McLaurin, had failed to comply with provisions of their divorce agreement awarding her various items of property. Trial was to the bench, which entered a take-nothing judgment on Lea's claims and sanctioned her for pursuing groundless claims in bad faith. Lea

contends that the proof is factually insufficient to support the take-nothing judgment, and that the trial court abused its discretion by imposing sanctions and specifying a deadline for payment. We affirm.

Background

The challenges to the factual sufficiency of the evidence and sanctions require a detailed review of the procedural history of this dispute and the resulting trial. A final decree was entered in Lea and Scott's divorce in September 2010. The parties contemporaneously entered into an agreement incident to their divorce. This agreement divided certain property interests between them. It provided that Lea would receive:

- 50 percent of any bonuses or reimbursements Scott received through April 30, 2010, net of taxes;
- a diamond given to her by Patrick Brannan;
- a diamond Scott had given to her that was in his possession;
- certain real property in Oklahoma;
- an insurance policy insuring her life;
- 50 percent of the balance in a Lincoln Investment account as of the close of business on April 21, 2010 with any interest, dividends, gains, or losses since that date;
- specified savings bonds;
- a 2006 Lexus GX 470, its keys, and title;
- all contents of two safe-deposit boxes;

- certain Christmas ornaments and related items;
- access to family photographs and videos for the purpose of duplication upon request;
- any information necessary to prepare federal income tax returns for 2010 upon request and access to financial records concerning the former community estate; and
- certain coins.

In January 2011, Lea, represented by new counsel, filed a suit to enforce the final decree and agreement. She alleged that Scott had not complied with several provisions of the agreement. The lawsuit was nonsuited in March 2011, before an answer was filed.

Within days of filing her notice of nonsuit, Lea filed another lawsuit. It again sought enforcement of the decree and agreement. Lea again alleged that Scott had not complied with several of the agreement's provisions. In particular, Lea alleged that she had not received:

- her share of bonus and reimbursement payments;
- the Brannan diamond;
- a quitclaim deed for the Oklahoma real property;
- her life insurance policy;
- her portion of the Lincoln Investment account;
- transfer documents for nine savings bonds;
- the keys to the 2006 Lexus GX 470;

- the contents of one of the safe-deposit boxes;
- the Christmas ornaments and related items;
- the family photographs and videos;
- 2009 tax documentation; and
- certain coins.

Before trial, Lea amended her petition several times. She filed a first amended petition in November 2012. In that filing, Lea alleged that of the two diamonds she was entitled to receive under the divorce agreement, Scott had returned one to her, although she did not specify which one. She alleged that Scott was withholding the other diamond. She dropped from this pleading her claim relating to the 2009 tax documentation, and she added a claim for conversion regarding the property that she alleged Scott was withholding from her.

Lea filed a second amended petition in March 2013, in which she alleged that Scott had returned the Brannan diamond but was withholding the other diamond, which was last seen in a safe-deposit box. She dropped her claims relating to the Oklahoma property, insurance policy, Lincoln Investment account, Lexus keys, contents of one of the two safe-deposit boxes, Christmas ornaments, and family photographs and videos.

Later in March 2013, Lea filed a third amended petition. Lea reasserted her claim for the Brannan diamond, alleging that the diamond that had been returned

was instead the diamond that last had been seen in a safe-deposit box. Otherwise, this petition did not materially differ from the preceding one.

Lea proceeded to trial on her fourth amended petition, which also was filed in March 2013. By this time she had narrowed her claims to just three. She alleged that (1) she had not received her share of bonus and reimbursement payments; (2) she had not received either the Brannan diamond or another diamond to which she was entitled; and (3) Scott had converted this property to his own use.

Scott proceeded to trial on his second amended answer. He generally denied Lea's allegations. He also alleged that her suit was groundless, pursued in bad faith, and filed without reasonable inquiry. Scott, therefore, sought to recover his attorney's fees as sanctions.

The parties tried the case to the bench in September 2013. Three fact witnesses testified at trial—Lea, Scott, and Scott's brother, Ross McLaurin. Except for testimony from counsel about Scott's attorney's fees, the parties did not introduce any additional witness testimony at trial.

As outlined in their opening statements, the parties' overarching positions were straightforward. Lea's lawyer contended that he nonsuited the original suit after discussing the case with opposing counsel, but he refiled once it became clear that some property subject to the divorce agreement still had not been transferred. He argued that the fact that Lea did not receive some of this property until after she filed

the suit demonstrated its merit. And he asserted that Lea dropped those claims that were not tenable when discovery prompted her to do so.

Scott's counsel contended that Lea was a difficult person who initiated the lawsuit without any prior contact with her ex-husband regarding her claims. He claimed that Scott had attempted to transfer the property at issue to Lea, but she would not cooperate. The essence of Scott's position was that, to the extent that Lea did not have all of the property to which she was entitled under the divorce agreement, she was to blame and therefore her suit was groundless and brought in bad faith.

Lea and Scott each offered limited testimony about the origin of the suit, attempts to resolve their disputes, and the narrowing of her claims prior to trial.

Lea testified that she attempted to obtain all of the property to which she was entitled under the divorce agreement before retaining counsel and filing suit. She stated that she requested these items by telephone and in writing, repeatedly. But she was not sure whether her attorney made any written demand for these items before filing suit. Lea testified she had "no idea" what inquiries she made regarding whether Scott had the disputed items before filing suit. She also indicated that she did not look at her pleadings before they were filed.

Scott testified that Lea did not inform him of her complaints prior to filing suit. He said that he and Lea do not communicate directly; all communications occur

through their lawyers. Scott further testified that he tried to resolve the lawsuit after learning of it. He had attempted to divide the property according to the divorce agreement. His lawyer wrote to Lea's divorce lawyer, outlining steps the parties needed to take to get their property divided. Another letter to Lea's trial lawyer requested investigation of the related claims that she was asserting. These and other letters from Scott's counsel were admitted into evidence for the limited purpose of showing that Scott authorized the communications to be made. He further testified that he never refused to sign anything Lea's lawyers sent to him with respect to transferring property to her, and he signed documents to effect the transfer of property. He also testified that he attempted multiple times to settle this suit.

Lea conceded both that efforts were made to transfer the property before she filed suit and that she refused to sign some documents, including papers relating to the transfer of her share of the savings bonds and the Lincoln Investment account. She acknowledged that she dropped claims during the course of the litigation and that the only two issues she was pursuing at trial were her share of bonuses and reimbursements and the Brannan diamond. Lea testified that Scott had given her some of the items during the pendency of the suit and that she had amended her pleadings to remove these claims once they were satisfied. She also testified that she dropped other claims when Scott stated in discovery that he did not have the items in question.

I. Bonuses and reimbursements

In her fourth amended petition, Lea alleged that she had not received her share of bonuses and reimbursements and was owed between \$8,526.31 and \$75,310.89 in addition to other sums totaling \$31,618.95. At trial, Lea explained that she thought she was entitled to half of all of Scott's bonuses and reimbursements for the period from the date she filed for divorce through April 30, 2010. She testified that she had received a single check for \$6,800 for her share of bonuses, had received no payment whatsoever with respect to reimbursements, and was not provided with an accounting. She testified that the single bonus check she received was not for the right amount. In support of her claimed damages, Lea testified about some of Scott's paystubs. She also testified about additional bonuses and reimbursement payments not reflected by payroll stubs, particularly a reimbursement for a trip Scott took to Aspen for continuing medical education.

On cross-examination, Lea was asked to explain how she derived the specific damage figures alleged in her fourth amended petition relating to bonuses and reimbursements, and she was unable to do so. She believed some of the sums comprising the \$31,618.95 figure were derived from a deposition, but she did not offer this deposition into evidence at trial. In her testimony, she claimed she was entitled to about \$98,000 in damages, but she could not explain the basis for this figure and stated she would need to see deposition testimony and documents to do

so. She also stated that she did not know whether she ever had itemized her bonus- and reimbursement-related claims. She conceded that the paystubs put into evidence did not provide a complete identification of the payments at issue, and she could not identify all of the payments necessary to make a complete calculation of her damages. In addition, she acknowledged that she could not identify any language in the divorce agreement that supported her position that she was entitled to half of all bonuses and reimbursements made beginning on the date on which she filed for divorce. Nor could she identify any other specific basis for this contention.

Scott testified that it was his understanding of the agreement that the provision pertaining to bonuses and reimbursements was limited to payments he received during the first quarter of 2010.¹ He received a single bonus during this period and gave Lea a little more than half of it, inadvertently overpaying what he owed her by several hundred dollars. He testified that he had received other bonuses between the time Lea filed for divorce and the first quarter of 2010, and that they had been deposited into the community estate. Scott testified that any other payments he received during the first quarter were draws, rather than bonuses. He testified that he could not and did not have any bonus improperly designated as a distribution in order

¹ The provision of the divorce agreement regarding bonuses and reimbursements addresses all payments received by Scott “through April 30, 2010.” The discrepancy between Scott’s testimony (“first quarter”) and the agreement (first four months) is not material to the issues on appeal.

to avoid the scope of the divorce agreement. At some point, Scott learned that money had been withheld from one of the prior bonus payments to fund his 401(k), which would have resulted in Lea or the community estate being shorted, so he and his lawyer recalculated what he owed and wrote a check for this amount. To his knowledge, Lea had not cashed this check.

Scott's testimony was not always clear or consistent, particularly with respect to reimbursements. At one point, Scott testified that he believed he still owed Lea money with respect to bonuses and reimbursements. But during questioning on this subject by opposing counsel, Scott stated that he owed Lea nothing further for bonuses and testified only to a single specific reimbursable expense in the amount of \$150, for which Lea had not received her half. He agreed that he owed Lea half of any reimbursements he received during the first quarter of 2010, which would have included expenses associated with continuing medical education and other expenses necessary to maintain a medical practice. In this regard, Scott testified that he may have traveled to Aspen for continuing medical education and did not believe that he had written a check to Lea for any reimbursements connected with this trip. A receipt for payments made to Scott by his employer in early 2010 corroborated the existence of these Aspen- and mileage-related reimbursements. When questioned about this document, Scott said that he received these particular payments from his employer. He also said that Lea had not demanded any Aspen- or mileage-related

reimbursements prior to trial. However, because the Aspen-related sums ostensibly owed to Lea amounted to less than \$2,500, he would have immediately paid them upon demand. In general, however, Scott testified that he could not recall any reimbursable expenses relating to Aspen.

Some documents in the trial record appear to show reimbursements paid to Scott in the first quarter of 2010 and before. He also testified that he failed to seek reimbursement of all reimbursable expenses, and that it was possible that this included expenses incurred during the first quarter of 2010.

II. Brannan diamond

Lea contended that she was awarded three diamonds in the divorce agreement: her diamond engagement ring from Scott; a loose diamond that Scott had given her as a gift; and the so-called Brannan diamond. She testified that as of the time of trial she had two of these diamonds. She testified that the diamond engagement ring had been in her possession since the engagement and that she had received a loose diamond from Scott during the pendency of the litigation. But she contended that Scott still had the Brannan diamond.

Lea testified that she originally received the Brannan diamond from Patrick Brannan in an engagement ring around 1995, and she had it appraised at that time. That diamond subsequently was removed from its setting, and Scott put the loose stone in a safe-deposit box. Lea said it was stored there with the other loose diamond.

Though she had received a loose diamond from Scott during the pendency of the suit, she testified that it was not the Brannan diamond. She initially thought Scott had sent the Brannan diamond to her attorney, but changed her mind after the stone was appraised. She contended that the stone that Scott returned to her was the other loose diamond. Lea testified that the last time she saw the Brannan diamond, it was in Scott's possession. To her knowledge it had never left his possession.

On cross-examination, Lea conceded that she could not point to any provisions of the divorce agreement or any other document that expressly identified three distinct diamonds to which she was entitled. The appraisal documents on which Lea based her conclusion that the diamond turned over to her was not the Brannan diamond were excluded from the evidence, and she conceded that she did not have any specialized knowledge or expertise about diamonds, particularly with regard to distinguishing one diamond from another or appraising their value. She said the Brannan diamond was a round one, but she could not distinguish it from any other round diamond. She testified that she was unsure whether she could verify the accuracy of the description of the Brannan diamond included in her fourth amended petition. Lea also testified she had seen the loose diamond given to her by Scott only once, and she had not held it for more than a minute.

Opposing counsel also questioned Lea regarding the descriptions of the diamonds in two separate appraisals—one of which was of the loose diamond that

Scott returned to Lea during the litigation and the other of which was ostensibly of the Brannan diamond. Counsel sought to demonstrate that the two stones identified in these appraisals were really the same diamond by seeking Lea's agreement that the two appraisals described the characteristics of the stones—shape and cut, size or measurements, weight, clarity, color—in a reasonably similar fashion. Lea disagreed that the appraisals described the same stone. Opposing counsel also questioned Lea as to whether she previously had alleged that Scott also had possession of her diamond engagement ring. Lea agreed that she had done so after the divorce agreement was signed and conceded that she in fact had the ring at the time and that it had been in her possession ever since Scott originally gave it to her.

Scott agreed that he previously had a diamond in his possession, which he believed was the Brannan one, that he turned over to Lea during the pendency of this suit. He testified that he initially did not know he had this diamond in his possession, but he looked for it multiple times after the divorce was mediated and eventually located it in a safe-deposit box several months before trial. He also testified that he disclosed its existence when he discovered it. He testified that he did not have any other diamond that belonged to Lea. However, Scott later testified that he had returned two different diamonds to Lea during the course of this suit.

Scott further testified that, at the time the divorce agreement was entered, he believed that Lea claimed he had just one diamond to which she was entitled. He

stated that her claims changed over time and that she eventually claimed he had two or three diamonds that belonged to her. But some of his other testimony on the subject was less certain or inconsistent. He initially testified that, though he did not recall giving Lea another loose diamond that was stored in a safe-deposit box, it was possible that this did in fact occur. He conceded that he may have had such a loose diamond and that it was possible that he could have given it to Lea as a gift. He likewise conceded that it was possible that there could be three distinct diamonds at issue—the one in the engagement ring he gave to Lea, a loose diamond that he gave to Lea as a gift, and the Brannan diamond.

Scott subsequently disputed that he had ever given Lea a loose diamond as a gift. Without conceding that Lea owned or otherwise had a right to it, Scott did confirm that another loose diamond had been in his possession during the pendency of the suit. He testified that this other diamond was in fact the one that Lea claimed he had given her as a gift. This diamond had not been turned over to Lea during the course of the litigation. And he testified that this stone had been removed from its box multiple times during the pendency of this suit and was now lost.

III. Lea's abandoned claims

Because Scott asserted that the lawsuit was groundless and filed in bad faith, the parties also put on evidence about the claims Lea had abandoned.

A. Oklahoma property

Lea testified that she requested several times that Scott execute a quitclaim deed or some other kind of deed relating to the Oklahoma property. She claimed to have given a copy of this document directly to Scott and to his lawyer. As far as she knew, he never executed it. On cross-examination she conceded that she did not have a copy of the document that she tendered to Scott for execution with her. Nor did she know whether Scott or his attorney responded to her request before she filed suit. She testified that she had abandoned her request that Scott sign a deed relating to the Oklahoma property, and she did not explain why she abandoned this claim.

Scott testified that he did not withhold a deed from Lea. He testified that he received a proposed deed relating to the property from her and was willing to sign it but that Lea ultimately did not want him to sign a deed.

B. Insurance policy

Lea testified that she was not provided with the documentation regarding the policy insuring her life, was unable to obtain it from the insurance company, and still did not have it. She testified that she requested policy-related documents from Scott, but he withheld it as revenge or out of spite. She abandoned this claim because Scott stated in discovery that he did not have this documentation. On cross-examination, Lea conceded that she had removed some documents from the family

home when their marriage ended, but she did not recall how many boxes of documents she took.

For his part, Scott testified that he did not have the policy, and that he and his lawyer informed Lea of this fact. He testified that, when their marriage ended, Lea took almost all of their financial files with her. He also stated that he never received any documents to transfer or assign any interest in this insurance policy over to Lea. The record, however, contains an assignment relating to the policy signed by Scott in September 2010, when the divorce was finalized.

C. Lincoln Investment account

Lea testified that Ross McLaurin, Scott's brother, managed the investment account and that he divided the account between Lea and Scott. She stated she had no management rights, and she was not provided with an accounting prior to filing this suit in spite of repeated requests. She testified that she requested an accounting to establish her percentage of the account and finally received one in May 2012. She testified that she did not accept the division of the account because she did not have a good relationship with Ross and did not trust him. Lea stated that once she received an accounting, which she received only as a result of this suit, she then made the arrangements necessary to transfer her share out of the account and afterward abandoned her claims relating to the Lincoln Investment account. She nonetheless insisted that she had not received all of the money from the account to which she

was entitled. She contended that Scott previously had impeded transfer of her share of the account, testifying that at one point he had offered to transfer her portion of the account only if she would drop any other claims she made against him.

On cross-examination, Lea agreed that she refused to sign transfer documents relating to her share of the account. She also conceded that she did not give her own financial advisor necessary information regarding an account to which her share could be transferred. She admitted that she did not supply such account information until or after August 2012. But she explained that she had not known she would need to provide account information to effect the transfer. She also testified that Scott subsequently did not provide the fully executed transfer documents necessary to complete the transfer until November 2012. She believed that her share of the account was transferred in January 2013, and she testified that Scott was to blame for this additional period of delay between November 2012 and January 2013. Lea could not identify any document she got from Scott after he executed the papers in November 2012 that was necessary to transfer her portion of the investment account. With respect to Ross, she conceded that he also had overseen a retirement account of hers for an extended period of time.

Scott's testimony on the Lincoln Investment account was brief. He agreed that he did not provide an accounting within the timeframe from January through mid-May 2011. He did not recall the date when he signed the necessary transfer

documents, but did testify that he signed the paperwork. He did not know why the necessary transfer documents were not sent to Lea until November 2012.

Scott's brother, Ross, also testified on the subject of the Lincoln Investment account. He testified that he is a broker-dealer with various professional licenses, acts as an independent contractor for Lincoln Investment, and performs management services for his brother. His brother had accounts with him that were affected by the divorce, and it was his job to manage the necessary account-related changes. Ross testified that he divided the brokerage account as specified in the divorce agreement, and that Lea's financial advisor approved of his method of division. He also testified that, even before Lea's portion was transferred to her, he removed Scott's share from the account and managed Lea's share as her separate half before the necessary transfer-related paperwork was completed.

Ross testified that, in order to transfer Lea's portion of the account to her, he needed information regarding an account to which she wanted it transferred. He testified that it took almost two years from the date of the divorce to get this information from her. He also testified that Lea's advisor told him that she would not sign any paperwork and was uncooperative. Ross stated that he had asked Lea's current attorney to expedite the transfer, but counsel declined. In contrast, Ross testified that Scott executed the necessary paperwork about a week after Lea supplied the information necessary to transfer her share. He stated there was some

subsequent, unexplained paperwork-related delay after that, but none that was attributable to Scott. Ross stated that on Scott's end, they completed any necessary paperwork within a day or two. He also testified that throughout this process he provided Lea's agents with any documents they requested, but he did not supply documents directly to her because the account was not hers until the securities at issue were registered in her name.

On cross-examination, Ross agreed that he and Lea did not have a cordial relationship. He acknowledged that he had removed dividends and management fees from the account before Lea's share was transferred, and that she did not authorize the fees. Indeed, Ross stated that he did not communicate these management fees to Lea. He also conceded that he previously had said that one of the reasons he charged these management fees was to encourage Lea to get the funds transferred. Although he testified that he had supplied Lea's advisor with any information requested, he agreed that the dividends and management fees were removed from the account after he provided an accounting.

Ross also conceded on cross-examination that he decided how the account would be divided between Lea and Scott in terms of who received which stocks and that there were other ways in which these stocks could have been divided. He testified that the actual division of the account slightly differed from the proposal that he had presented to Lea's advisor. Ross reiterated that he believed Lea was

responsible for delaying the transfer of her share of the Lincoln Investment account. He conceded that he did not have any personal knowledge regarding the cause of any delay on her part and further conceded that one possible reason Lea may have chosen not to execute the paperwork necessary for the transfer of her share of the account was disagreement with the manner in which the account had been divided. He testified that Lea did not protest the manner in which the account was divided with Lincoln Investment or him, but he conceded that she did complain about the deduction of management fees.

Ross acknowledged that he owed a fiduciary responsibility to Scott, rather than Lea, but he testified that he tried to be impartial in dividing the account, and he clarified on redirect that any dividends, gains, or losses associated with Lea's share of the account remained with her portion. He also testified that he charged Lea about \$500 in management fees, that this figure does not reflect his usual rate, and that Lea still requested that he transfer her portion of the account regardless of any complaint about fees. He stated that he would have received about 90 percent of those management fees, with the remainder going to Lincoln Investment. Finally, Ross testified that he previously had managed an IRA rollover account that belonged to Lea from the late 1990s until the divorce and that she had not complained about his competency, honesty, or fees during that period.

D. Savings bonds

Lea testified that she requested the savings bonds at issue before filing suit, but Scott did not execute the necessary paperwork until after she filed suit. She said the only paperwork she received before suit would have transferred her bonds to Scott, so she refused to sign it. She also testified that Scott had offered to sign the necessary bond-related paperwork only if she agreed to drop the remainder of her claims. Lea testified that as of trial she had received all of the bonds to which she was entitled.

Scott initially could not recall the date when he signed paperwork to transfer or assign the bonds to Lea. He denied that any proposed assignment paperwork would have improperly assigned Lea's bonds to him. He appeared to concede that the paperwork that finally effected transfer of the bonds was signed during the pendency of this suit, but he also testified that he signed bond-related transfer documents tendered to him by Lea's divorce lawyer around the time the divorce was finalized. He later identified a document from September 2010 which assigned these bonds to Lea. Another letter transmitted a second proposed assignment to Lea's divorce lawyer in October 2010 regarding bonds to which he was entitled. He testified that he did not do anything to prevent the bonds from being transferred, never had possession of them, and signed everything he was asked to sign regarding

the bonds. According to Scott, Lea took the actual bonds themselves when their marriage broke up.

E. Lexus title and keys

Lea testified that Scott took a duplicate set of car keys, and when she filed suit she believed he still had those keys and the car's title. She said she asked for the keys more than once, but she did not receive them. She testified that Scott took both the duplicate keys and the title when he emptied the contents of a safe-deposit box. But she later clarified that the title would not have been in the safe-deposit box. She testified that she abandoned this claim for the keys and title, to the extent that she was seeking the title, because Scott stated in discovery that he did not have them.

On cross-examination, Lea stated that she did not know whether Scott or his attorney had sent her a letter stating that he did not have the keys. She also testified on cross-examination that she did not know the value of the missing keys and had not attempted to replace them because she has the other set. She conceded that she did not have any written correspondence with her that documented her requests for the keys.

Scott testified that he did not have the keys or the title to the Lexus. He and his lawyer had told Lea that they did not have the keys.

F. Safe-deposit box and coins

Lea testified that she did not receive the contents of one of the two safe-deposit boxes she was awarded in the divorce decree. She claimed that Scott took the contents of that box. She testified that she repeatedly requested its contents—coins and stamps (in addition to the Lexus keys)—before she filed suit, but she could not recall a date or timeframe for these requests or how many times she requested these items, nor did she know whether she had any letters to Scott in which she requested the coins and stamps. Like her claim regarding the Lexus keys, she abandoned this claim because Scott stated in discovery that he did not have these items.

Scott testified that he did not know what coins Lea was referring to in connection with this claim, and that he did not believe he had any coins covered by the divorce agreement.

G. Christmas ornaments

Lea testified that she received some, but not all, of the Christmas ornaments and related items she was entitled to receive, and she received these only after filing suit. She claimed to have sent Scott many requests for these items, mostly by typewritten letter. However, she testified that she either did not have copies of any of these letters or else did not bring them with her at trial. She could not recall when she sent these letters to Scott. She testified that she had abandoned this claim.

Scott testified that he had not tried to keep Christmas-related items from Lea and that he actually had made them available to her before she filed suit. According to him, these items sat at his house for many months, and he then sent them to his lawyer because Lea would not retrieve them from his home.

H. Family photographs and videos

Lea testified that, after she filed suit, she got copies of some of the family photographs but none of the videos. As with the Christmas ornaments, she testified about having made many written demands, but she had no copies of the demand letters.

I. Tax information

Lea testified that she required 2009 tax documentation from Scott in order to take advantage of certain tax credits awarded to her. Despite her requests, she did not receive this documentation until after she filed suit. Having received the necessary information, she testified that she abandoned this claim. On cross-examination, she conceded that the divorce agreement awarded her a specified dollar amount with respect to her 2009 taxes, which she received.

IV. Scott's attorney's fees

Scott's attorney, Richard Flowers, testified about the fees that his client incurred in this suit. Three itemized invoices totaling \$68,844.25 in fees were admitted into evidence during his testimony. These invoices identify particular tasks

and the time increments associated with them. Flowers also briefly summarized the legal services underlying these fees, and he testified that they were reasonable and necessary. Flowers further testified that a conservative estimate of the additional fees incurred in connection with trial would be \$25,000.

* * *

The trial court rendered judgment several months after trial. It denied all relief sought by Lea. It also found that the allegations stated in her fourth amended petition were groundless and made in bad faith, in violation of Rule 13 of the Texas Rules of Civil Procedure.

Lea requested that the trial court separately enter findings of fact and conclusions of law. The court filed findings of fact and conclusions of law with particular findings regarding Lea's claims relating to savings bonds, diamonds and coins, Christmas ornaments and related items, family photographs and videos, bonus funds, Oklahoma property, and the Lincoln Investment account. It also found that Lea, by and through her attorney, failed to make a reasonable inquiry into the facts concerning the allegations of each of her pleadings.

Lea timely filed a notice of appeal. She has not superseded the judgment pending appeal. *See* TEX. R. APP. P. 24.

Analysis

I. Sufficiency of the evidence

Lea contends that the trial court erred by entering a take-nothing judgment on the claims she pursued at trial. She argues that it was undisputed at trial that Scott had neither given her half of the relevant bonuses and reimbursements nor the Brannan diamond, and that the trial court's contrary judgment is against the great weight and preponderance of the evidence. Scott contends that the evidence the trial court heard is sufficient to support a take-nothing judgment.

A contention that findings are against the great weight and preponderance of the evidence is a challenge to the proof's factual sufficiency. *In re United Servs. Auto. Ass'n*, 446 S.W.3d 162, 172 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding); *Firestone Tire & Rubber Co. v. Battle*, 745 S.W.2d 909, 914 (Tex. App.—Houston [1st Dist.] 1988, writ denied). Accordingly, we review Lea's complaint about the denial of the relief she sought at trial under the standard of review governing challenges to the factual sufficiency of the evidence.

When a party challenges the factual sufficiency of an adverse finding on an issue for which she carried the burden of proof in the trial court, she must show that the finding is against the great weight and preponderance of the evidence. *Mitchell v. Garza*, 255 S.W.3d 118, 122 (Tex. App.—Houston [1st Dist.] 2007, pet. denied). If trial was to the bench, the trial court's findings of fact are not conclusive when, as

here, there is a complete reporter's record. *Puntarelli v. Peterson*, 405 S.W.3d 131, 134 (Tex. App.—Houston [1st Dist.] 2013, no pet.). Instead, we must consider all of the evidence in the record and may set aside a finding only if it is so contrary to the overwhelming weight of the proof that the finding is clearly wrong and unjust. *Id.* at 135. We cannot reverse merely because we think that the proof preponderates toward an affirmative answer, nor can we substitute our opinion for that of the factfinder on the basis that we might have reached a different conclusion. *Honeycutt v. Billingsley*, 992 S.W.2d 570, 578 (Tex. App.—Houston [1st Dist.] 1999, pet. denied). The fact that there is some evidence in the record from which the factfinder could have reached a different conclusion does not render a finding against the overwhelming weight of the evidence. *Ritchey v. Crawford*, 734 S.W.2d 85, 87 (Tex. App.—Houston [1st Dist.] 1987, no writ).

In a bench trial, the trial court acts as the factfinder and evaluates and resolves any inconsistencies in witness testimony. *Mohammed v. D. 1050 W. Rankin, Inc.*, 464 S.W.3d 737, 744 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The trial court is the sole judge of the credibility of the witnesses. *McDonald v. S. Cty. Mut. Ins. Co.*, 176 S.W.3d 464, 469 (Tex. App.—Houston [1st Dist.] 2004, no pet.). It decides the weight to accord testimony, and it may accept or reject all or any part of the testimony, based on the record before it. *Lee v. Lee*, 981 S.W.2d 903, 906 (Tex. App.—Houston [1st Dist.] 1998, no pet.). If the evidence is subject to reasonable

disagreement, this court will not reverse the trial court. *Mohammed*, 464 S.W.3d at 744–45.

A. Bonuses and reimbursements

The divorce agreement required Scott to give Lea half of “any bonuses or reimbursements” received “through April 30, 2010.” The agreement, which was entered in September 2010, did not explicitly identify the initial date from which this obligation ran. Lea contended that Scott’s obligation ran from the date she filed for divorce. Scott maintained that his obligation under this provision extended only to bonuses and reimbursements received during the first quarter of 2010. The parties also disputed whether Scott had fulfilled his payment obligations, even if they were limited to the first quarter.

Scott disputed Lea’s claim for additional payment for bonuses and reimbursements. At one point, Scott testified that he believed he still owed Lea money with respect to bonuses and reimbursements. But during questioning on this subject by opposing counsel, Scott stated that he owed Lea nothing further for bonuses, and he described a single reimbursable expense in the amount of \$150 for which Lea had not received her half. He testified that he had overpaid her by more than \$150 in connection with a bonus, and documents support this testimony. Thus, taken as a whole, Scott testified that he paid Lea more than he owed her with respect to bonuses and reimbursements.

Scott testified that he may have traveled to Aspen for continuing medical education and did not believe that he had written a check to Lea for any reimbursements connected with this trip. A receipt to Scott from his employer regarding Aspen- and mileage-related expenses in early 2010 corroborates the existence of these reimbursements. When questioned about this document, Scott said he received the payments. In addition, other documents appear to show reimbursements paid to Scott prior to and during the first quarter of 2010. But Scott could not recall any reimbursable expenses relating to Aspen. Scott further testified that Lea had not requested a share of any Aspen- or mileage-related reimbursements prior to trial. Considering that the sums allegedly owed to Lea relating to this Aspen trip amount to less than \$2,500, Scott stated he immediately would have paid them had she requested payment.

Lea testified that she was entitled to \$98,000 for her half of bonuses and reimbursements, but she could not explain the basis for this figure or the damages alleged in her petition. Lea testified that some of these damages could be derived from a pretrial deposition taken in this case. However, this deponent was not called as a witness, and Lea did not offer this testimony into evidence. Some of Scott's paystubs were in evidence, and Lea testified about them in support of her claimed damages. She conceded that the damages she alleged could not be derived from these paystubs.

With respect to Scott's apparent trip to Aspen in the first quarter of 2010, Lea stated that she had not received her half of this reimbursement payment. She testified that she was not sure whether she had ever requested that Scott pay her half of the reimbursement associated with this trip once she received documents indicating that this trip took place. She also testified that she was not sure whether she ever had itemized the reimbursement payments to which she claims entitlement more generally. Lea, however, stated she could not identify all of the reimbursements to which she was entitled, because Scott did not provide her with the necessary documentation about the reimbursements that he had received. Nevertheless, she could not identify any unanswered discovery requests. On appeal, Lea does not complain that she was denied relevant discovery.

Most of the damages that Lea claims for bonuses and reimbursements relate to payments Scott received outside of the first quarter of 2010. The divorce agreement's language regarding bonuses and reimbursements does not necessarily support her position that she is entitled to a share of sums Scott received outside of this period. Lea has not made any legal argument on appeal regarding the proper interpretation of the divorce agreement. At trial, she acknowledged that she could not identify any language in the agreement that supports her position that she is entitled to a share of payments made outside of the first quarter of 2010. Nor could she articulate any other basis for her position on bonuses and reimbursements when

questioned about it. Scott testified that bonuses other than the single one for which he wrote Lea a check for half were paid into the community estate.

In summary, little documentation regarding Scott's bonuses and reimbursements was introduced into evidence, and the proof primarily consisted of the parties' contradictory testimony. As factfinder, the trial court was entitled to weigh the testimony, assess the witnesses' credibility, and resolve any inconsistencies. *Mohammed*, 464 S.W.3d at 744. Based on our review of the testimony and the minimal documentary evidence in the record, we conclude that the trial court's rejection of Lea's claim for additional bonuses is not so contrary to the overwhelming weight of the proof that its finding is clearly wrong and unjust. *See Puntarelli*, 405 S.W.3d at 134.

The reimbursements present a closer question. There is some documentary proof supporting Lea's claim for additional reimbursement payments, even if her claims are confined to the first quarter of 2010. Scott testified that he did not believe he had written Lea a check for her share of any reimbursements associated with a first-quarter trip to Aspen. But the existence of some proof supporting a claim does not render an adverse finding against the overwhelming weight of the evidence, even if we think the proof generally supports the claim. *Honeycutt*, 992 S.W.2d at 578; *Ritchey*, 734 S.W.2d at 87. Given the record as a whole and the uncertain or tentative nature of Scott's admissions regarding reimbursements in particular, as well as the

deference we must accord the trial court's assessment of the witnesses' credibility, we conclude that the trial court's rejection of Lea's claim for additional reimbursements is not so contrary to the overwhelming weight of the proof that its finding is clearly wrong and unjust. *See Puntarelli*, 405 S.W.3d at 134.

B. Brannan diamond

Scott testified that he gave Lea the Brannan diamond before trial. He testified that he located the stone in a safe-deposit box several months prior to trial and turned it over to her. Thus, Lea's contention on appeal that it is undisputed that Scott has not given her the Brannan diamond is incorrect. The proof on this subject is in conflict.

Lea testified that the diamond Scott returned is not the Brannan diamond. She testified that she initially thought that the diamond he returned to her was the Brannan diamond but subsequently concluded that it was another stone to which she also is entitled under the parties' divorce agreement, specifically another loose diamond that Scott had given her as a gift that was stored in the same safe-deposit box. Lea testified that appraisals show that the stone she received is not the Brannan diamond. Appraisal documents that Lea sought to introduce into evidence were excluded. Lea conceded that she had no expertise in distinguishing one diamond from another. She also testified that she was unsure whether she could independently verify the accuracy of the description of the Brannan diamond contained in her

pleadings, and she could not distinguish the Brannan diamond from any other round diamond. Moreover, she testified that she had only seen the other loose diamond that Scott allegedly gave her as a gift on one occasion and for a minute or less.

Scott's testimony regarding the other loose diamond was inconsistent. At one point, he conceded that he may have had a loose diamond and that it was possible that he could have given it to Lea as a gift. He subsequently disputed that he had ever given Lea a loose diamond as a gift. He also testified that he had a second loose diamond in his possession during the pendency of this suit, but that it had since become lost. He represented that this lost stone was the loose diamond that Lea contended he had given her as a gift, rather than the Brannan diamond, which he contended he had turned over to her.

Scott further testified that Lea's claims about the diamonds to which she was entitled evolved over time. He testified he initially understood Lea to be claiming entitlement to a single diamond when the divorce agreement was entered, but that she changed her claims under the agreement to include three distinct diamonds—the Brannan diamond, the other loose diamond previously discussed, and the diamond engagement ring he had given to her. He also testified that Lea previously had falsely claimed that he had possession of her diamond engagement ring.

Lea conceded that she previously claimed that Scott had the engagement ring even though it was in her possession. She also conceded that she could not point to

any provisions of the divorce agreement that expressly identified the three distinct diamonds to which she claimed she was entitled at trial.

In sum, the proof regarding the Brannan diamond almost exclusively consisted of Lea's and Scott's contradictory testimony. As factfinder, the trial court was entitled to weigh their testimony, assess their credibility, and resolve any inconsistencies. *Mohammed*, 464 S.W.3d at 744. Based on our review of their testimony, which includes an admission from Lea that she previously had claimed Scott had another diamond that in reality was in her possession, we conclude that the trial court's rejection of Lea's claim for the Brannan diamond is not so contrary to the overwhelming weight of the proof that its finding is clearly wrong and unjust. *See Puntarelli*, 405 S.W.3d at 134.

II. Sanctions

Lea contends that the trial court abused its discretion by sanctioning her because her claims were neither baseless in fact nor brought in bad faith. She also contends that she made a reasonable inquiry into the facts before filing her enforcement motions and abandoned claims as discovery or intervening events disposed of them. Lea challenges the trial court's contrary findings of fact and conclusions of law. She also contends that, if the trial court's sanctions are affirmed, this court should modify the judgment to strike the deadline for paying the sanctions award.

Scott contends that sanctions were proper because Lea's claims were groundless, brought in bad faith, and filed without making a reasonable inquiry about the basis for the claims.² He also contends that her abandonment of several claims prior to trial is not a defense to sanctions because she would not have made these claims if she had made a reasonable inquiry into the facts before asserting them. Finally, Scott contends that by failing to supersede the trial court's judgment, Lea cannot now complain about the deadline for the payment of sanctions.

When a trial court imposes sanctions under a particular rule, either by referencing the rule or tracking its language, this court assesses the propriety of sanctions under that rule. *Houtex Ready Mix Concrete & Materials v. Eagle Constr. & Envtl. Servs., L.P.*, 226 S.W.3d 514, 521 (Tex. App.—Houston [1st Dist.] 2006, no pet.). The trial court explicitly invoked Rule 13 of the Texas Rules of Civil Procedure, so we confine our analysis to that rule. *See id.* In general, under Rule 13, a trial court may sanction a party who without making a reasonable inquiry files a pleading that is both groundless and made in bad faith. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 369 (Tex. 2014); *Houtex*, 226 S.W.3d at 522.

² Scott suggests that Lea waived any error regarding sanctions by failing to object to a lack of particularity in the sanctions order in the trial court. *See Alexander v. Alexander*, 956 S.W.2d 712, 714–15 (Tex. App.—Houston [14th Dist.] 1997, pet. denied). Lea does not complain of a defect in the form of the trial court's order. Instead, she contends that the record contradicts the trial court's findings that her allegations were generally false, groundless, and brought in bad faith.

This court reviews the imposition of sanctions for abuse of discretion. *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006) (per curiam). In reviewing sanctions orders, the trial court’s findings of fact and conclusions of law are not binding on appeal. *Id.* Instead, this court must independently review the entire record. *Id.*; *Levine v. Steve Scharn Custom Homes, Inc.*, 448 S.W.3d 637, 661–62 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). This includes the evidence, arguments of counsel, discovery on file, and the circumstances of the alleged misconduct. *Daniel v. Kelley Oil Corp.*, 981 S.W.2d 230, 234 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (en banc). We cannot substitute our judgment for that of the trial court. *Thielemann v. Kethan*, 371 S.W.3d 286, 294 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). Given the discretion conferred on it, the trial court does not err “in making factual determinations regarding contested issues in a Rule 13 proceeding.” *Randolph v. Jackson Walker, L.L.P.*, 29 S.W.3d 271, 277 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). An abuse of discretion “is not shown where the trial court bases its decision on conflicting evidence.” *Id.* at 278. The mere fact that a sanctioned party can point to some evidence in the record supporting her claims therefore is not a basis for reversal. *See Levine*, 448 S.W.3d at 647, 661–64. Reversal is appropriate only if the record shows that the trial court’s ruling was based on an erroneous view of the law or a clearly erroneous assessment of the evidence. *Keith v. Keith*, 221 S.W.3d 156, 166 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

A trial court's assessment of the evidence is clearly erroneous only if the evidence permits just one conclusion and this conclusion is contrary to the one drawn by the court. *See Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997); *see also Tanner v. Black*, 464 S.W.3d 23, 29 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (reversing because there was “no evidentiary support for a sanction”).

A. Rule 13 groundlessness

A pleading is groundless if it has no basis in law or fact. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007); *Houtex*, 226 S.W.3d at 522. Accordingly, a claim is groundless if its proponent knows that it lacks any factual basis whatsoever when she asserts it. *E.g.*, *Zeifman v. Nowlin*, 322 S.W.3d 804, 809–11 (Tex. App.—Austin 2010, no pet.); *Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 348–49 (Tex. App.—San Antonio 2006, pet. denied); *Meek v. Bishop Peterson & Sharp, P.C.*, 919 S.W.2d 805, 809–10 (Tex. App.—Houston [14th Dist.] 1996, writ denied). The existence of genuine issues of fact resulting from conflicts in witness testimony or other proof does not necessarily preclude a finding that a claim has “no basis in fact.” *See Splettstosser v. Myer*, 779 S.W.2d 806, 807–08 (Tex. 1989) (per curiam) (rejecting proposition that a claim cannot be groundless as a matter of law whenever a motion for directed verdict is denied). This is so because Rule 13 “requires weighing evidence and judging credibility.” *N.Y. Underwriters Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 856 S.W.2d 194, 205 (Tex. App.—Dallas 1993, no writ);

see also Owen v. Jim Allee Imports, Inc., 380 S.W.3d 276, 289–90 (Tex. App.—Dallas 2012, no pet.) (under Rule 13 “the trial court judges the credibility of the witnesses and may resolve any conflicting testimony”). Because it may make factual determinations on contested issues, the trial court may find that a claim has no basis in fact even if its proponent testifies or offers other proof in support of the claim. *E.g.*, *Levine*, 448 S.W.3d at 661–64; *Keith v. Solls*, 256 S.W.3d 912, 918 (Tex. App.—Dallas 2008, no pet.); *Keever v. Finlan*, 988 S.W.2d 300, 309–14 (Tex. App.—Dallas 1999, pet. dism’d).

Courts must examine “the facts available to the litigant and the circumstances” when she filed the offending pleading. *Harrison v. Harrison*, 363 S.W.3d 859, 863 (Tex. App.—Houston [14th Dist.] 2012, no pet.); *Neely v. Comm’n for Lawyer Discipline*, 976 S.W.2d 824, 828 (Tex. App.—Houston [1st Dist.] 1998, no pet.). Whether the party and counsel made a reasonable inquiry into the legal and factual basis of the claim and what this inquiry disclosed are therefore relevant considerations in assessing groundlessness. *See Harrison*, 363 S.W.3d at 863.

The trial court ruled that Lea’s claim regarding the savings bonds had no basis in fact, finding that Scott had executed paperwork to transfer the nine bonds at issue and gave the executed paperwork to Lea’s former counsel before she filed her enforcement action. The record supports this finding. Lea contends she refused to sign this paperwork because it would have transferred these nine bonds to Scott. The

transfer paperwork in the record refutes this contention. The trial court was entitled to discount Lea's inaccurate testimony given the proof to the contrary. *See Levine*, 448 S.W.3d at 661–64 (affirming finding of groundlessness based on trial court's finding that plaintiffs' claim that their signatures had been forged was false).

The trial court also ruled that several of Lea's other claims had no basis in fact, finding for example that:

- Scott made the Christmas ornaments available to Lea before suit, but she refused to take possession of them until afterward;
- the divorce agreement requires Scott to give Lea access to family photos and videos for copying, but Lea did not seek access before suit; and
- Lea did not present a quitclaim deed or other conveyance document concerning the Oklahoma property before suit.

Scott's testimony was consistent with these findings. Lea's testimony was to the contrary. She testified that she made many written demands for the Christmas ornaments, family photos and videos, and other items before filing suit. Lea also testified that she requested execution of conveyance documents for the Oklahoma property several times, giving a proposed deed directly to Scott and sending it to his counsel. She conceded that she either did not have copies of the written demands or else did not have them with her at trial. She likewise conceded that she did not have a copy of the proposed deed.

Lea failed to support her testimony with documentary evidence, from which the trial court could have inferred that her testimony was false. In light of the

deference we must afford to credibility determinations, we cannot say that the trial court abused its discretion in finding these claims had no basis in fact. The trial court's "choices among merely conflicting pieces of evidence cannot be an abuse of discretion." *Keever*, 988 S.W.2d at 314.

The trial court also found that the allegations in Lea's live pleading at the time of trial were "generally false." By that time Lea had dropped all claims but those for the Brannan diamond and her share of bonus and reimbursement payments. The proof on these claims was controverted. Because the proof to a large degree consisted of the parties' conflicting testimony, their credibility was paramount. As previously discussed, documentary evidence proved that another of Lea's claims, the one regarding bonds, was false. Lea also admitted she had falsely claimed that Scott had possessed her diamond engagement ring during their divorce proceedings. The trial court reasonably could have concluded that Lea's allegations generally were not credible. *See Davis v. Christensen*, 247 S.W. 303, 306 (Tex. Civ. App.—Galveston 1922) (though courts and juries are not invariably bound to apply it, the "adage 'false in one thing, false in all,' is often very persuasive"), *writ ref'd*, 278 S.W. 1114 (Tex. 1923) (per curiam).

Outright falsehoods were not the only circumstance detracting from Lea's credibility. She was unable to introduce any of the presuit written demands she claimed to have sent to Scott and his counsel. She indisputably vacillated regarding

whether the Brannan diamond had been returned to her during the course of the litigation. She could not explain the basis for allegations in her live pleading that were stated with some particularity. In assessing whether a litigant's claims have a basis in fact, the trial court was entitled to weigh the evidence and judge Lea's credibility. *Owen*, 380 S.W.3d at 289–90; *N.Y. Underwriters*, 856 S.W.2d at 205. In light of the multiple circumstances detracting from her credibility, the large role played by witness credibility in evaluating her claims, and the deference afforded to the trial court's assessment of credibility, we cannot say that trial court abused its discretion in finding her allegations were “generally false.”

Lea argues that she amended her pleadings over time to omit claims once it became apparent that they were factually unsustainable (or else satisfied). It is true that Rule 13 does not permit sanctions merely because a claim proves unsuccessful or is abandoned. *See GTE Comm'ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993). However, the relevant question for purposes of groundlessness is whether there was a basis in fact for Lea's claims at the time they were asserted in her various pleadings. The trial court concluded that there was not. Moreover, while Rule 13 does not “require an attorney to be right,” it does “require an attorney to make a reasonable inquiry.” *In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008). The trial court found that Lea, by and through her counsel, failed to do so. As discussed in more detail in connection with bad faith below, Lea's testimony and her counsel's

refiling of the same claims just four days after dismissing her first enforcement action, support this finding.

In conclusion, deferring as we must to the trial court's assessment of credibility and resolution of conflicting evidence, we hold on this record that the court did not abuse its discretion by finding that Lea's claims were groundless.

B. Rule 13 bad faith

Bad faith is not mere negligence or bad judgment, but rather consists of conscious wrongdoing for dishonest, discriminatory, or malicious purposes. *Thielemann*, 371 S.W.3d at 294. Lack of merit alone, therefore, does not evidence bad faith. *Id.* at 295. Good faith is presumed, and the party seeking sanctions must overcome this presumption. *Id.* at 294. The court looks at the facts available to the litigant at the time the pleading was filed when assessing bad faith. *Id.*

An inquiry into a party's state of mind turns on motives and credibility. *Gomer v. Davis*, 419 S.W.3d 470, 478 (Tex. App.—Houston [1st Dist.] 2013, no pet.). A finding of bad faith may be based on circumstantial evidence. *Zuehl Land Dev. LLC v. Zuehl Airport Flying Cmty. Owners Ass'n Inc.*, No. 01-14-00562-CV, 2015 WL 1827570, at *10 (Tex. App.—Houston [1st Dist.] Apr. 21, 2015, no pet.). The trial court may draw its own conclusions about the credibility of the witnesses and the weight of their testimony. *Daniel*, 981 S.W.2d at 232–33. “[M]otions and arguments

of counsel do not constitute evidence in regard to rule 13.” *Thielemann*, 371 S.W.3d at 295.

Bad faith is indicated by the assertion of allegations one knows to be false. *Keith*, 221 S.W.3d at 165–67. A party also “acts in bad faith if it has been put on notice that its understanding of the facts may be incorrect and the party does not make reasonable inquiry before pursuing the claim further.” *Mann v. Kendall Home Builders Constr. Partners I, Ltd.*, 464 S.W.3d 84, 93 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Likewise, a party acts in bad faith when it makes factual allegations that a reasonable inquiry would have disproven. *Bradt v. Sebek*, 14 S.W.3d 756, 767–68 (Tex. App.—Houston [1st Dist.] 2000, pet. denied); *see also Thottumkal v. McDougal*, 251 S.W.3d 715, 717–18 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

The parties were divorced and executed their divorce agreement in September 2010. Lea filed an enforcement action in January 2011. At defense counsel’s urging, she nonsuited the initial suit in March 2011, and she filed another enforcement action four days later. Her allegations in the new action were identical to those made in the nonsuited one.

After Lea filed the initial enforcement action, Scott’s counsel wrote her counsel, contending that her counsel had not made any investigation prior to filing suit and failed to make the presuit inquiry required by the rules. At trial, defense

counsel asked Lea what presuit inquiry or investigation she made about her claims that Scott was withholding her property from her. Her response indicated that she made no inquiry or investigation:

Q. What inquiries did you make into whether or not Mr. McLaurin had your things before you sued him about it?

A. I have no idea.

When asked about what presuit inquiry or investigation she made with respect to her allegations about the Brannon diamond in particular, Lea responded, “Nothing.” She also testified that she did not review her pleadings before they were filed. In short, the record reveals that Lea did nothing to ensure that the allegations and claims she made had a basis in fact before she made them.

What constitutes “reasonable inquiry” varies from case to case depending on the circumstances. *Mattly v. Spiegel, Inc.*, 19 S.W.3d 890, 897 (Tex. App.—Houston [14th Dist.] 2000, no pet.). However, a complete lack of inquiry will seldom, if ever, be reasonable. During the course of the suit, Lea abandoned several claims, including those regarding the Oklahoma property, her insurance policy, title and keys to the Lexus, and coins and stamps contained in a safe-deposit box. She offered no explanation for her abandonment of her claim regarding the Oklahoma property. She testified that she dropped the others because Scott stated in discovery that he did not have these items. The record supports a conclusion that even a cursory presuit investigation would have revealed that Scott denied he had these items.

Similarly, Lea sued Scott to recover nine savings bonds, contending that the transfer paperwork he tendered prior to suit would have transferred them to him. But the evidence at trial supported the finding that Scott provided paperwork to transfer these nine bonds to her before suit. Scott did tender paperwork that would have transferred other bonds to him; however, this paperwork concerned bonds that were awarded to him in the divorce. In other words, the record supports a conclusion that a reasonable presuit inquiry would have shown that Scott had attempted to transfer the nine bonds at issue to Lea, and he was not refusing to do so.

A party cannot avoid sanctions under Rule 13 by claiming she was not aware of facts making her claim groundless if she did not reasonably inquire about their factual basis. *Monroe v. Grider*, 884 S.W.2d 811, 819 (Tex. App.—Dallas 1994, writ denied). This is precisely what Lea seeks to do here. She persisted in reasserting claims that defense counsel told her lawyer were unfounded. She later dropped several of these claims based solely on Scott's representation that he did not have the items in question, a fact that a reasonable inquiry would have revealed. A reasonable inquiry also would have disproven her claim that Scott refused to transfer the bonds. Under these circumstances, Lea's failure to make any inquiry whatsoever supports a finding of bad faith. *Mann*, 464 S.W.3d at 93; *Bradt*, 14 S.W.3d at 767–68.

Lea argues that a party does not act in bad faith by dropping claims in response to the development of the evidence. She is right that “it is not sanctionable to dismiss a claim when discovery establishes that the claim is not viable.” *Shilling v. Gough*, 393 S.W.3d 555, 562 (Tex. App.—Dallas 2013, no pet.). Nevertheless, a party must to the best of her “knowledge, information, and belief formed after reasonable inquiry” think that her claims have a basis in fact at the outset. TEX. R. CIV. P. 13. Claims based on “unfounded suspicions or belief” do not satisfy Rule 13. *Childs v. Haussecker*, 974 S.W.2d 31, 43 (Tex. 1998). Several of Lea’s claims were not viable from the beginning, a fact she would have learned through reasonable inquiry. Lea cannot avoid sanctions by disclaiming awareness of facts making her claims groundless when she did not make a reasonable inquiry about their factual basis. *Monroe*, 884 S.W.2d at 819.

Deferring as we must to the trial court’s assessment of credibility and resolution of conflicting evidence, we conclude on this record that it did not abuse its discretion by finding that Lea’s claims were made in bad faith.

C. Sanctions deadline

Lea also contends that the trial court abused its discretion by ordering that the sanctions imposed on her be paid by a deadline about two months after the date the judgment was signed. In support of this contention, Lea relies upon *Highland Church of Christ v. Powell*, 640 S.W.2d 235 (Tex. 1982), for the proposition that a

judgment debtor who voluntarily satisfies a judgment thereby waives the right to appeal. *Highland Church*, 640 S.W.2d at 236. However, both *Highland Church* and subsequent decisions of the Supreme Court of Texas provide that a judgment debtor may pay a judgment and still appeal, so long as the judgment debtor makes clear its intent to pursue its appellate rights. *Id.* at 236–37; *Marshall v. Hous. Auth. of City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006); *BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 770–71 (Tex. 2005); *Miga v. Jensen*, 96 S.W.3d 207, 211–12 (Tex. 2002). “The Texas rule is not, and never has been, simply that any payment toward satisfying a judgment, including a voluntary one, moots the controversy and waives the right to appeal that judgment.” *Miga*, 96 S.W.3d at 211. Therefore, *Highland Church* does not support Lea’s position.

Lea also references her prior briefing from a related habeas proceeding in support of her position that the trial court abused its discretion by ordering the sanctions to be paid before the judgment becomes final on appeal. In the habeas proceeding, we held that the sanctions could not be enforced by incarcerating Lea pursuant to the court’s contempt powers. *In re McLaurin*, 467 S.W.3d 561, 564–66 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding). Our prior decision did not hold that the trial court abused its discretion by making payment of sanctions due before the conclusion of appellate proceedings or that the trial court’s sanctions order, including its deadline for payment, was unenforceable by means other than

incarceration for contempt. The mere filing of an appeal does not suspend enforcement of a judgment. To suspend enforcement of a judgment, one must file a supersedeas bond or take some other action authorized by the appellate rules. TEX. R. APP. P. 24.1(a), (f); *In re Crow-Billingsley Air Park, Ltd.*, 98 S.W.3d 178, 179 (Tex. 2003) (per curiam). Lea did not do so. In other words, the Rules of Appellate Procedure provide a remedy for the harm about which she complains, but she failed to avail herself of it.

We therefore conclude that the trial court did not abuse its discretion by ordering sanctions and specifying a deadline for paying the sanctions award under the circumstances of this case.

Conclusion

We hold that the evidence is factually sufficient to support the trial court's take-nothing judgment and that the trial court did not abuse its discretion by imposing sanctions against Lea. We overrule Lea's first, second, and third issues, and we affirm the trial court's judgment.

Michael Massengale
Justice

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