Opinion issued March 19, 2019

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00385-CV

ADRIENNE GALLIEN, Appellant

V.

WELLS FARGO HOME MORTGAGE INC., WELLS FARGO BANK, N.A., CRISTOBAL NIÑO, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF VERONICA CASTILLO NIÑO AND KATHY ORSAK, Appellees

---

On Appeal from the 157th District Court
Harris County, Texas
Trial Court Case No. 2015-75452

MEMORANDUM OPINION

Appellant Adrienne Gallien appeals from an order granting a temporary injunction as well as two subsequent orders, including an order requiring her to pay Wells Fargo Bank N.A. ("Wells Fargo") $5,000 as a sanction. This Court, in a

Memorandum Order dated February 27, 2018, dismissed most of Gallien's appeal, save only her challenge to the sanctions order: "The only issue remaining for adjudication on appeal is Gallien's challenge to the August 4 order imposing sanctions. . . . [T]he appeal will remain pending only as to Gallien's challenge to the sanctions award." *Gallien v. Wells Fargo Home Mortg. Inc.*, No. 01-17-00385-CV, slip mem. order at 4 (Tex. App.—Houston [1st Dist.] Feb. 27, 2018, order).

This case concerns real property on which Wells Fargo had sought to foreclose. The note and deed of trust on the property belonged to Cristobal Niño and his wife, who later passed away, but Gallien held a general warranty deed from the Niños and sought to discharge the amount owed. When the discussions between Gallien and Wells Fargo floundered, Gallien filed the underlying suit.

At a mediation ordered by the trial court, the parties reached a settlement in which Gallien agreed to pay a sum of money to Wells Fargo, and Wells Fargo agreed to release the lien on the property. Gallien also agreed that she would dismiss her claims in this suit. Gallien later paid the sum, and Wells Fargo released the lien, but Gallien did not dismiss her claims. In a hearing in the trial court, Wells Fargo confirmed that it would no longer seek to foreclose on the property.

However, Gallien continued to litigate the underlying suit. Wells Fargo filed a motion to enforce the settlement agreement and for sanctions. The trial court

signed an order enforcing the settlement agreement, dismissing all of Gallien's remaining claims, and imposing sanctions in the amount of $5,000.[1] The order that contained the sanctions order is the final judgment in the suit.

Gallien appealed, raising numerous contentions relating to the underlying lien and foreclosure dispute and to the trial court's power to have ordered the parties to mediation. This Court's February 27, 2018 memorandum order disposed of all of those contentions. Only the challenge to the order of sanctions remains.

We construe Gallien's pro se appellant's brief liberally. *See Manley v. Bank of Am., N.A.*, No. 01-18-00080-CV, 2018 WL 6696492, at *1 n.1 (Tex. App.—Houston [1st Dist.] Dec. 20, 2018, pet. filed) (mem. op.); *Corona v. Pilgrim's Pride Corp.*, 245 S.W.3d 75, 78 n.3 (Tex. App.—Texarkana 2008, pet. denied); *see also* TEX. R. APP. P. 38.9.

Wells Fargo sought sanctions under both Civil Practice and Remedies Code chapter 10 and Rule of Civil Procedure 13. Under both authorities, we review a sanctions order for an abuse of discretion. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 361 (Tex. 2014). "[W]e will not hold that a trial court abused its discretion in levying sanctions if some evidence supports its decision." *Id.*

Reading her briefing liberally, Gallien appears to raise ten contentions potentially relating to the sanctions order. First and second, Gallien appears to

[1] Wells Fargo had asked for $11,904.50 in sanctions, which was the attorneys' fees it incurred in responding to Gallien's post-settlement litigation.

contend in a single issue both that (1) any activity of hers in this Court may not form the basis of the sanctions award and (2) the settlement agreement is ineffective. She questions, in an "issue presented," "[w]hether request for appellate review of a purported mediated settlement agreement constitutes a breach of the terms and supports an award of sanctions for breach of contract when the agreement fails to meet the requirements of mediated settlement agreements pursuant to" Civil Practice and Remedies Code chapter 154 and Rule of Civil Procedure 11. She then argues that "[s]anctions for appellate review of an order are improper," citing *Courtlandt Place Historical Foundation v. Doerner*, 768 S.W.2d 924, 926 (Tex. App.—Houston [1st Dist.] 1989, no writ).

As to her first contention, filings before this Court did indeed form part of the basis of the sanctions request. Wells Fargo's motion for sanctions identified "unnecessarily filed hundreds of additional pages of documents into this Lawsuit and . . . several other filings in the Probate Action and in the Interlocutory Appeal," which Gallien had filed post-settlement. Wells Fargo argued, supported by the accompanying affidavit of its attorney, that all of these filings were "groundless, brought in bad faith, and brought for the purposes of harassment" in large part because they were filed post-settlement. Given this evidence, the trial court was within its discretion to order sanctions in an amount less than half of what Wells Fargo requested. Gallien even admits in her brief that, "despite warnings from the

trial court, [she] refused to withdraw the appeal," and that the trial court "urged Gallien to withdraw the appeals or face possible sanctions." Finally, *Courtlandt Place Historical Foundation* does not apply here. Gallien cites that case for its discussion of temporary injunctions, but issues relating to the trial court's temporary injunction are no longer before us in this appeal. We dismissed all those appellate issues in the February 27, 2018 memorandum order.

As to her second contention, Gallien does not identify which statute within Civil Practice and Remedies Code chapter 154 the settlement agreement purportedly violates. Trial courts may generally order parties to mediate, and there is no requirement that the parties agree to an order compelling mediation. *See* TEX. CIV. PRAC. & REM. CODE § 154.021. A party may object to a referral to mediation, but an objection alone does not automatically vacate the referral. *See* TEX. CIV. PRAC. & REM. CODE § 154.022(b)–(c); *Paul v. Paul*, 870 S.W.2d 349, 349–50 (Tex. App.—Waco 1994, no writ) (per curiam) ("Unless a written objection is timely filed *and th[e] court finds that there is a reasonable basis for such an objection*, the cause will be referred for resolution by an alternative dispute resolution procedure under" the statute. (emphasis added)). Gallien also does not identify how the settlement agreement purportedly violated Rule 11. We note that the agreement is in writing and is signed both by Gallien and by Wells Fargo's attorney. *See* TEX. R. CIV. P. 11. She cites *Ebner v. First State Bank of Smithville*,

27 S.W.3d 287, 297 (Tex. App.—Austin 2000, pet. denied), but it is distinguishable. In that case, one of the parties did not sign the Rule 11-subject agreement even though the agreement was "conditioned upon its execution by all parties to it." *Id.* at 294–95, 299. Here, Gallien did indeed sign the settlement agreement with Wells Fargo.

Gallien also cites *Kennedy v. Hyde*, 682 S.W.2d 525 (Tex. 1984), but that case involved "enforcement of a disputed oral settlement agreement," in contrast with the written agreement here. *Id.* at 526. She then cites other cases that discuss the proposition that void contracts lack any effect, but she does not explain why the settlement agreement is void. Finally, she cites two other cases for the general proposition that fraud or material misrepresentation may render a contract void, but she does not point to any purported fraud or misrepresentation that induced her to enter into the settlement agreement. Her first and second contentions therefore fail.

Third, Gallien contends that the settlement agreement was not properly executed because Wells Fargo's representative did not sign the settlement agreement in person or "by proxy and is not named anywhere in the document" and because Niño's counsel "signed using a nick name for Niño and did not indicate any capacity for such signature." Gallien cites no authorities to support this contention. We note that Wells Fargo's attorney indeed signed the settlement agreement on its behalf. Its attorney's signature suffices under Rule 11, and

Gallien does not show why Wells Fargo's attorney could not bind it. *See Green v. Midland Mortg. Co.*, 342 S.W.3d 686, 691 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Gallien also does not explain what, if anything, was unclear about Cristobal Niño's attorney's signing the settlement agreement as "Counsel for Defendant(s), 'Chris' Niño.'" The agreement plainly referred to the lawsuit by its name, cause number, and the court in which it was filed, and Niño was a defendant in the suit. This contention also fails.

Fourth, Gallien refers to the settlement agreement using quotation marks around "voluntary" and describes the settlement as entered into "absent consent of all parties," which we read as implicitly contending that she did not voluntarily enter into the agreement. However, she offers no explanation for why her signing the settlement agreement was involuntary. The trial court was within its power to order her to attend mediation. *See* TEX. CIV. PRAC. & REM. CODE § 154.021. And both the record and her briefing are silent about anyone ordering her to agree to a settlement at mediation or at any other time. She cites two of this Court's cases for the proposition that a trial court cannot force parties "to peaceably resolve or negotiate their differences." *See Hansen v. Sullivan*, 886 S.W.2d 467, 469 (Tex. App.—Houston [1st Dist.] 1994, orig. proceeding); *Decker v. Lindsay*, 824 S.W.2d 247, 250 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding). She misses an important nuance, however: under Civil Practice and Remedies Code chapter 154,

"[a] court cannot force the disputants to peaceably resolve their differences, *but it can compel them to sit down with each other*." *Decker*, 824 S.W.2d at 250 (emphasis added); *see also Hansen*, 886 S.W.2d at 469 (Mirabal, J., concurring). That is what happened here. This contention therefore fails.

Fifth, Gallien refers to objections that she made during a hearing on Wells Fargo's motion to withdraw property from the court's registry. We see only two objections in the record of that hearing. In the first, Gallien said "I object because I haven't had the opportunity to respond to the motion. He just filed it last night." In the second, she said only "I object on the record," and the context does not reveal what she was referring to. The record suggests that these objections did not concern Wells Fargo's later-filed motion for sanctions—the objections were made in June 2017, but the motion for sanctions was filed in July 2017. There is no reporter's record before us of an oral hearing on Wells Fargo's motion to enforce the settlement agreement and for sanctions. We cannot sustain an appellate issue that is unsupported by the record. *See, e.g.*, *Lewis v. Family Dollar, Inc.*, No. 01-10-00472-CV, 2011 WL 346290, at *3–4 (Tex. App.—Houston [1st Dist.] Feb. 3, 2011, no pet.) (mem. op.); *Newding v. GECO Geophysical Co.*, 817 S.W.2d 146, 147 (Tex. App.—Houston [1st Dist.] 1991, no writ) (per curiam). This contention therefore fails.

Sixth, Gallien argues that "payment of a judgment does not moot the right to appeal of the judgment," citing *Miga v. Jensen*, 96 S.W.3d 207 (Tex. 2002), and apparently conflating her payment to Wells Fargo under their settlement agreement with the hypothetical of her paying, under protest, a money judgment to Wells Fargo based on Wells Fargo's prevailing in a suit against her. The court in *Miga* said that "payment on a judgment will not moot an appeal of that judgment if the judgment debtor clearly expresses an intent that he intends to exercise his right of appeal and appellate relief is not futile." *Id.* at 212. There is no such clear expression here—Gallien's entering into the settlement agreement reveals the opposite, that she intended for the suit to end. This contention fails too.

Seventh, Gallien appears to contend that the trial court lacked jurisdiction to enter the sanctions order because this appeal was pending. This appeal began as an interlocutory appeal of a temporary injunction but became an appeal of a final judgment once the trial court entered the August 4, 2017 order, which disposed of Gallien's remaining claims and awarded sanctions. *See generally* TEX. R. APP. P. 27.3; *Roccaforte v. Jefferson Cty.*, 341 S.W.3d 919, 924–25 (Tex. 2011); *Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 195, 200 (Tex. 2001). The rules generally allow trial courts to retain jurisdiction of pending suits while on interlocutory appeal and to make further orders in those suits. *See* TEX. R. APP. P. 29.5. The sanctions order does not come within either of the two exceptions in

Rule 29.5. *See* TEX. R. APP. P. 29.5(a)–(b). Also, there was no stay of proceedings in the trial court. Gallien has not raised any jurisdictional bar to the trial court's entry of the sanctions order while the interlocutory appeal was pending before our Court.

Eighth, Gallien cites authorities for the proposition that indefiniteness in certain provisions or requirements of a contract can render the contract unenforceable. But she points to nothing that was indefinite in the settlement agreement. It required her to pay Wells Fargo a sum certain and to dismiss her claims in this suit, and it required Wells Fargo to release its lien. She paid the sum, and Wells Fargo released the lien, but she has failed to dismiss her claims. This contention fails.

Ninth, in her reply brief, Gallien asserts that there are no "documents, law, authority or action by Gallien that supports the assertion" that "all matters have been settled and resolved." To the contrary, the parties' settlement agreement required Gallien "to dismiss any and all Legal Actions, including but not limited to the Lawsuit, within five (5) business days of the Effective Date" of the parties' settlement agreement. The settlement agreement is part of the record, as an exhibit to Wells Fargo's motion for enforcement of settlement agreement and for sanctions, in response to which the trial court entered the final judgment and sanctions order. This contention fails.

Tenth, Gallien asserts that the transcript of the June 2017 hearing before the trial court on Wells Fargo's motion to withdraw property from the court's registry "makes it crystal clear there was not a valid settlement agreement." The lines from the transcript that Gallien refers us to address only underlying merits issues, which were dismissed by our February 27, 2018 memorandum order. This contention therefore fails too.

The remainder of Gallien's appellate briefing concerns only the underlying merits issues in the suit and the trial court's power to have ordered the parties to mediate. This Court's February 27, 2018 memorandum order disposed of those issues.

* * *

In conclusion, even under a liberal reading of Gallien's briefing, she has not made an argument for why the $5,000 sanctions order is an abuse of discretion. We note that some evidence was before the trial court to support levying a $5,000 sanction. The parties agreed to a release of all of Gallien's claims in the settlement agreement. Wells Fargo released its lien. But Gallien continued to file motions and requests in the suit. Wells Fargo proved up its attorneys' fees incurred in responding to Gallien's post-settlement litigation with an affidavit from its attorney, and the trial court awarded only less than half of what Wells Fargo proved up.

Accordingly, we conclude that Gallien has not demonstrated error in the trial court's judgment.

Conclusion

We affirm the trial court's judgment. All pending motions are dismissed as moot.

Richard Hightower
Justice

Panel consists of Justices Lloyd, Kelly, and Hightower.