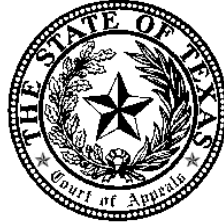


Appellant's Motion for Rehearing Denied; Majority and Concurring Opinions of December 16, 2010, Withdrawn; Affirmed and Substitute Majority and Concurring Opinions filed May 12, 2011.



In The

Fourteenth Court of Appeals

NO. 14-09-00587-CV

WILBER COLLINS, Appellant

V.

CLARENCE WALKER D/B/A BROTHERHOOD RECYCLING, Appellee

**On Appeal from the 129th District Court
Harris County, Texas
Trial Court Cause No. 2006-38481**

SUBSTITUTE MAJORITY OPINION

Appellant, Wilbur Collins's Motion for Rehearing is overruled; the majority opinion of December 16, 2010 is withdrawn, and the following substitute majority opinion is issued in its place.

This is an appeal by appellant from a judgment in favor of appellee, Clarence Walker d/b/a Brotherhood Recycling. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation arose out of a dispute involving a real estate lease. Appellant owned the real estate and evicted appellee because appellee allegedly violated terms of the lease. Appellee then filed suit against appellant alleging causes of action for breach of contract, promissory estoppel, wrongful eviction, fraud, and trespass to try title. The dispute went to trial before the court without a jury. The trial court ruled in favor of appellant on all of appellee's causes of action except promissory estoppel. On the promissory estoppel claim, the trial court found in favor of appellee and entered judgment awarding appellee \$2,796.00 in actual damages. In addition, the trial court awarded appellee \$5,600.00 in attorney's fees. The trial court entered findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff Clarence Walker d/b/a Brotherhood Recycling ("Mr. Walker") is an individual and currently the sole proprietor of Brotherhood Recycling.
2. Defendant Wilber Collins ("Mr. Collins") is an individual who formerly owned the property located at ... Crosby, Texas 77532 (the "Property").
3. Mr. Collins leased the Property pursuant to a Commercial Lease Agreement (the "Lease Agreement"), dated August 30, 1999, to David Lamon and Kenneth Washington.
4. The Lease Agreement contained certain special provisions which were typewritten into the agreement.
5. The special provisions provided that the tenants had the option to purchase the Property wherein the total rents paid would be applied toward the same.
6. The special provisions also provided that the term of the rental would be as follows: (i) 43 monthly payments in the amount of \$700 dollars and 120 monthly payments in the amount of \$467 dollars and (ii) if the tenant failed to pay rent for two consecutive months, the tenants could no longer exercise the option to purchase and would lose their deposit.

7. Originally, David Lamon, Kenneth Washington, and Mr. Walker were partners that did business as Brotherhood Recycling.

8. Mr. Walker, although a partner with Brotherhood Recycling, did not sign the Lease Agreement. The Lease Agreement also did not reference Brotherhood Recycling. The Property, however, was used by Brotherhood Recycling.

9. Not long after the execution of the Lease Agreement, David Lamon passed away. A few years later, Kenneth Washington was no longer affiliated with Brotherhood Recycling. Mr. Walker became the sole de facto tenant of the Property and as a sole proprietor of Brotherhood Recycling, he continued to make payments to Mr. Collins for the Property.

10. Mr. Collins allowed Mr. Walker to make certain excess payments under the mistaken belief that he would eventually procure title to the property [sic].

11. Mr. Walker communicated his belief that he thought he was purchasing the property [sic] from Mr. Collins as provided for under the Lease Agreement. Mr. Collins through his conduct also led him to believe that this was the case, although Mr. Walker was never a signatory to the Lease Agreement.

12. As a result of Mr. Walker's reliance on Mr. Collins promises, he paid amounts in excess of what he would have required to pay, as he believed the excess would eventually go to the purchase of the Property.

13. Attorneys' fees in the amount of \$5,600 are reasonable and necessary.

14. Any finding contained herein which is more appropriately considered a conclusion of law shall be considered as such.

CONCLUSION OF LAW

1. There was no express contract between Mr. Walker and Mr. Collins regarding the subject matter of the Property.

2. Mr. Walker detrimentally relied on the promises of Mr. Collins and that such reliance was reasonable, substantial, and foreseeable. In order to avoid injustice, Plaintiff is entitled to damages resulting from the foregoing reliance and unintentional windfall.

3. The Court finds that Plaintiff, Mr. Walker, has proven by a preponderance of the evidence that the sum of \$2,796 as damages, which, if paid now in cash, would fairly and reasonably compensate Plaintiff, Mr. Walker, for his claim of promissory estoppel.

4. The Court finds the Plaintiff, Mr. Walker, is entitled to attorneys' fees on his claim for promissory estoppel in the amount of ... Five Thousand Six Hundred Dollars (\$5,600).

5. Any conclusion of law contained herein which is more appropriately considered a finding of fact shall be considered as such.

Appellant timely requested that the trial court modify/amend its findings of fact and conclusions of law. However, appellant's request for modified or amended findings and conclusions were all requests for the trial court to omit its original findings and conclusions and to substitute them with findings and conclusions contrary to the trial court's decision in the case. Appellant's request was overruled by operation of law. This appeal followed.

DISCUSSION

Appellant brings two issues on appeal. In his first issue, appellant contends the trial court erred in rendering judgment in favor of appellee because the judgment is not supported by all necessary findings of fact and conclusions of law and the trial court erred when it refused to adopt appellant's requested additional or amended findings of fact and conclusions of law. In his second issue, appellant asserts the evidence is not legally or factually sufficient to support the trial court's judgment. We address each issue in turn.

I. Is the judgment supported by all necessary findings of fact and conclusions of law?

The judgment in this case awarded appellee damages on his promissory estoppel cause of action. The elements of promissory estoppel are: (1) a promise, (2) foreseeability of reliance by the promisor, (3) substantial and reasonable reliance by the promisee to its detriment, and (4) enforcing the promise is necessary to avoid injustice. *Sipco Servs.*

Marine v. Wyatt Field Serv. Co., 857 S.W.2d 602, 605 (Tex. App.—Houston [1st Dist.] 1993, no writ).

There is a general presumption that judgments of courts of general jurisdiction are valid. *Vickery v. Commission for Lawyer Discipline*, 5 S.W.3d 241, 251 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). In a case tried before the court without a jury, in which there are findings of fact and conclusions of law, the reviewing court will indulge every reasonable presumption in favor of the findings and judgment of the trial court. *Id.* at 252. No presumption will be indulged against the validity of the judgment. *Id.* The presumption of validity may be rebutted. *Id.* Because the presumption is always in favor of the validity of the judgment, the burden of demonstrating error rests with the appellant. *Id.*

After judgment is rendered in a bench trial, either party may request findings of fact and conclusions of law. *Id.* at 253 (citing Tex. R. Civ. P. 296). However, because findings of fact and conclusions of law can provide a basis for overcoming the presumption of validity that extends to judgments and demonstrating error on appeal, they are normally requested by the losing party. *Id.* When this occurs, the trial court will, as a matter of practice, invite the prevailing party to submit proposed findings and conclusions based upon its rulings. *Id.* Therefore, it is normally the prevailing party in the trial court and the appellee on appeal, who prepares proposed findings on specific elements necessary to support the trial court's judgment. *Id.* Following this, the losing party, normally the appellant on appeal, may request additional findings on omitted elements to prevent them from being deemed found on appeal. *Id.* at 254 (citing Tex. R. Civ. P. 298). This fits with the primary purpose of the Rules of Civil Procedure dealing with findings of fact and conclusions of law: assisting the losing party in narrowing the issues on appeal by ascertaining the true basis for the trial court's decision. *Id.* at 255. A request for negative findings contrary to the trial court's judgment has no logical or legal significance toward rebutting the presumption of validity unless the trial court is specifically alerted to the real

issue; namely, that one or more necessary elements have been omitted in the trial court's original findings. *Id.* at 256.

Here, both in the trial court and in his appellate brief, appellant has not referred this court to specific and necessary elements that were omitted from the trial court's findings of fact and conclusions of law. Instead, appellant's request for amended or modified findings of fact and conclusions of law appears to be appellant's protest that the trial court resolved disputed facts against him. Because appellant did not present any necessary elements that were omitted from the trial court's findings of fact and conclusions of law, we conclude (1) that appellant has not rebutted the presumption of validity that attaches to a trial court's judgment; and (2) that the trial court's findings of fact and conclusions of law, when viewed from that perspective, support the judgment.

In the second part of appellant's first issue, appellant complains that the trial court erred when it refused to adopt appellant's requested additional or amended findings of fact and conclusions of law. A trial court has no duty to make additional or amended findings that are unnecessary or contrary to its judgment; a trial court is only required to make additional findings and conclusions that are appropriate. *Id.* at 254. In addition, the trial court is not required to make additional findings which conflict with the original findings. *Id.* As pointed out above, all of appellant's requested additional or amended findings of fact and conclusions of law were contrary to the trial court's original judgment; therefore, we hold the trial court was not required to adopt them.

We overrule appellant's first issue.

II. Did appellant waive his second issue?

In his second issue appellant asserts the evidence is legally and factually insufficient to support the judgment. However, appellant fails to cite any legal authority under this issue. The Texas Rules of Appellate Procedure control the required contents and the organization for an appellate brief. *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex.

App.—El Paso 2007, no pet.) (citing Tex. R. App. P. 38.1). An appellant’s brief must contain a clear and concise argument that includes appropriate citations to legal authority. *Id.* This requirement is not satisfied by merely uttering brief, conclusory statements unsupported by legal citations. *Id.* Failure to cite legal authority results in waiver of the complaint. *Id.* Because appellant’s second issue does not comply with the requirements of Texas Rule of Appellate Procedure 38, he has waived it on appeal.¹ Because it has been waived, we overrule appellant’s second issue.

/s/ John S. Anderson
Justice

Panel consists of Justices Anderson, Frost, and Seymore. (Frost, J., Concurring).

¹ To the extent appellant’s second issue could be construed as complaining about the lack of a reporter’s record, we conclude that too is waived due to the failure to cite any legal authority. Tex. R. App. P. 38.