

Affirmed and Memorandum Opinion filed May 4, 2017.



In The

Fourteenth Court of Appeals

NO. 14-15-00994-CV

BOMA ALLISON, Appellant

V.

SERVICE LLOYDS INSURANCE COMPANY, Appellee

**On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Cause No. 67540**

M E M O R A N D U M O P I N I O N

The appellant challenges the trial court's ruling on her petition in intervention and the assessment of sanctions against her. The lack of a reporter's record truncates the appellate process. Because we presume the omitted reporter's record supports the trial court's judgment, we overrule appellant's issues and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In a prior appeal, this court reversed the trial court's summary judgment in favor of appellee/plaintiff Service Lloyds Insurance Company and against appellant/intervenor Boma Allison on her petition in intervention to recover attorney's fees and expenses under subsection (a) or subsection (c) of Labor Code section 417.003. *See Allison v. Serv. Lloyd's Ins. Co.*, 437 S.W.3d 589, 596–97 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

On remand, the trial court set Allison's petition in intervention for an evidentiary hearing, but Allison failed to appear. According to the trial court's sanctions order, Allison also failed to give timely notice of her inability to attend the hearing. The trial court imposed sanctions against Allison based on attorney's fees, airfare, car rental, and parking costs incurred by Service Lloyds.

Allison moved for reconsideration of the sanctions order. In her motion, Allison urged the trial court to excuse her failure to appear, arguing that she was sick and that she had informed the court of her inability to attend the evidentiary hearing more than an hour before the hearing was set to begin. Service Lloyds opposed Allison's motion for reconsideration and later filed a motion to dismiss Allison's petition due to her failure to comply with the sanctions order.

The record reflects that the trial court held an evidentiary hearing on Allison's petition in intervention, Allison's motion for reconsideration, and Service Lloyds's motion to dismiss. The trial court denied both motions and signed a final judgment denying Allison all of the relief requested in her petition in intervention. Allison has not requested the preparation of any reporter's record from any of the hearings related to this appeal.¹ No record of any hearings has been filed in this

¹ In her docketing statement, Allison indicated that she has not requested the preparation of any reporter's record.

appeal.

ANALYSIS

Allison asserts that the trial court erred in denying her the relief she requested in her petition in intervention, in determining that she was not entitled to attorney's fees, and in imposing sanctions against her for her failure to appear at the first evidentiary hearing. Although the trial court held evidentiary hearings, our record does not contain any reporter's record.

The lack of a reporter's record often strikes a fatal blow to the appeal, though there are a few exceptions to this rule. *See King's River Trail Ass'n, Inc. v. Pinehurst Trail Holdings, L.L.C.*, 447 S.W.3d 439, 449–51 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); *Middleton v. Nat'l Fam. Care Life Ins. Co.*, No. 14-04-00428-CV, 2006 WL 89503, at *2 (Tex. App.—Houston [14th Dist.] Jan. 17, 2006, pet. denied) (mem. op.). One exception allows a court — without a reporter's record — to decide strict issues of law that do not require a review of the evidence. *See Segrest v. Segrest*, 649 S.W.2d 610, 611–12 (Tex. 1983). Another exception allows courts to decide appeals on a partial reporter's record under the procedures outlined in Texas Rule of Appellate Procedure 34.6. *See* Tex. R. App. P. 34.6(c). Neither exception applies to this appeal.

In her appellant's brief, Allison asserts that the trial court erred (1) in denying the relief requested in her petition in intervention, (2) in finding she was not entitled to the money she sought in her petition, (3) in finding no Texas statute permits Allison to recover attorney's fees, and (4) in imposing sanctions and denying her motion to reconsider the sanctions. None of these issues present a strict question of law that does not require a review of the evidence. *See King's River Trail Ass'n, Inc.*, 447 S.W.3d at 449–51. Each issue goes to Allison's particular case and cannot be decided without reference to the particular facts of

the dispute.

Even though Allison's issues require a review of the evidence, Allison did not invoke the partial-record-appeal procedures outlined in Rule 34.6(c). The record does not contain any written request by Allison for a partial reporter's record, nor does the record reflect that Allison submitted a statement of points or issues to be presented on appeal, as required by Rule 34.6(c). *See* Tex. R. App. P. 34.6(c); *Bennett v. Cochran*, 96 S.W.3d 227, 229–30 (Tex. 2002) (per curiam). We do not have a record of the evidence presented at the hearing. When an appellant completely fails to file a statement of points or issues, we must presume that the omitted portions of the record are relevant to the disposition of the appeal and that they support the trial court's judgment. *See Bennett*, 96 S.W.3d at 229–30; *King's River Trail Ass'n, Inc.*, 447 S.W.3d at 449. Under these presumptions, Allison cannot possibly prevail in this appeal. *See King's River Trail Ass'n, Inc.*, 447 S.W.3d at 449–51.

We overrule Allison's issues and affirm the trial court's judgment.

/s/ Kem Thompson Frost
 Chief Justice

Panel consists of Chief Justice Frost and Justices Jamison and Wise.