Affirmed; Petition for Writ of Mandamus Denied as Moot, and Memorandum Opinion filed April 18, 2017.

In the

Fourteenth Court of Appeals

NO. 14-16-00336-CV

MASSOOD DANESH PAJOOH, Appellant

V.

MEHDI ABEDI, Appellee

On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 2015-05195

NO. 14-16-00351-CV

IN RE MASSOOD DANESH PAJOOH

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
234th District Court
Harris County, Texas
Trial Court Cause No. 2015-05195

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

The trial court imposed sanctions against plaintiff Massood Danesh Pajooh under rule 13 of the Texas Rules of Civil Procedure, awarding defendant Mehdi Abedi $8,365 in attorney's fees for defending against Pajooh's slander case. *See* Tex. R. Civ. P. 13, 215.2(b)(8). The trial court also awarded Abedi $20,000 if Pajooh filed an unsuccessful appeal in the court of appeals and $10,000 if Pajooh filed a petition for review not granted by the Supreme Court of Texas or if Pajooh filed a petition for review that was granted but ultimately unsuccessful.

Pajooh filed both an appeal and a petition for writ of mandamus. On its own motion, this court consolidated Pajooh's appeal (No. 14-16-00336-CV) and original proceeding (No. 14-16-00351-CV). We affirm the trial court's judgment and deny Pajooh's petition for writ of mandamus as moot.

I. BACKGROUND

In January 2015, Pajooh filed suit pro se against Abedi for making a "libelous and slanderous" statement. Pajooh alleged that Abedi told Gus Parvizian that Pajooh "suffers from HIV positive" or "Aids [sic]." Pajooh alleged $250,000 in damages. Abedi filed an original answer. Within his answer, Abedi alleged: "This suit is groundless and brought in bad faith and for purposes of harassment." Abedi requested that he be awarded his attorney's fees "as sanctions."

Pajooh filed a notice of nonsuit on October 21, 2015. That same day, the trial court signed an "Order of Non-Suit with Prejudice." On October 30, 2015, Abedi filed a motion to award attorney's fees. On November 18, 2015, Abedi filed a motion for new trial requesting that the trial court grant a new trial of the portion of the trial court's order dismissing Pajooh's claims with prejudice without awarding Abedi his incurred attorney's fees.

The trial court held an evidentiary hearing in January 2016. The trial court signed a final judgment on January 25, 2016. The trial court ordered that the matter was dismissed with prejudice, with costs assessed against each party. The trial court ordered that Abedi recover as sanctions from Pajooh $8,365 for Abedi's reasonable attorney's fees and expenses in defending the matter. The trial court further ordered an award of conditional attorney's fees of $20,000 for an unsuccessful appeal to the court of appeals and $10,000 for an unsuccessful appeal to the Supreme Court of Texas.

On February 24, 2016, Pajooh filed a motion for new trial. Abedi filed a response and a proposed amended final judgment. On April 21, 2016, the trial court signed its amended final judgment, dismissing the matter with prejudice and awarding the same attorney's fees to Abedi as the original final judgment. That same day, Pajooh filed his notice of appeal. On April 28, 2016, Pajooh filed a petition for writ of mandamus. On its own motion, this court consolidated Pajooh's appeal and original proceeding.

II. ANALYSIS

A. The trial court had jurisdiction to order sanctions.

In his first issue, Pajooh argues that the trial court's judgment awarding sanctions is void because under rule 162 of the Texas Rules of Civil Procedure the court "lacked jurisdiction to act" after Pajooh's nonsuit and failed to reinstate the cause. In his second issue, Pajooh contends that the trial court could not award sanctions against him because Abedi did not assert any claim for affirmative relief before Pajooh filed his notice of nonsuit. Pajooh asserts that Abedi's answer was "purely defensive and limited to a resistance of plaintiffs' [sic] claims." We consider these related issues together and find no merit in either one.

Under rule 162, a plaintiff may nonsuit a claim at any time before introducing all of the plaintiff's evidence other than rebuttal evidence. Tex. R. Civ. P. 162; *Epps v. Fowler*, 351 S.W.3d 862, 868 (Tex. 2011). "A nonsuit terminates a case from the moment the motion is filed." *Epps*, 351 S.W.3d at 868 (citing *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862 (Tex. 2010) (internal quotation marks omitted)). However, "[a] plaintiff's nonsuit does not affect an opponent's pending claims for affirmative relief, attorney's fees, or sanctions." *Stroman v. Tautenhahn*, 465 S.W.3d 715, 717 (Tex. App.—Houston [14th Dist.] 2015, pet. dism'd w.o.j.); *see* Tex. R. Civ. P. 162 ("A dismissal under this rule shall have no effect on any motion for sanctions, attorney's fees or other costs, pending at the time of dismissal, as determined by the court."); *Epps*, 351 S.W.3d at 868; *see also Crites v. Collins*, 284 S.W.3d 839, 842 (Tex. 2009) (per curiam) (sanctions request may be affirmative claim for relief that survives voluntary nonsuit).

A sanctions request for filing a frivolous lawsuit survives nonsuit because otherwise "imposition [of sanctions] would rest completely in the plaintiff's hands, defeating its purpose." *CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc.*, 390 S.W.3d 299, 300 (Tex. 2013) (per curiam) (citing *Scott & White Mem'l Hosp. v. Schexnider*, 940 S.W.2d 594, 596–97 (Tex. 1996) (per curiam)); *see Villafani v. Trejo*, 251 S.W.3d 466, 470–71 (Tex. 2008). Because a sanctions request is a claim that survives nonsuit, a judgment is not final and appealable until the trial court specifically disposes of the sanctions request or issues an order with sufficient finality language. *See Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 95–97 (Tex. 2009) (per curiam) (order of dismissal did not dispose of sanctions motion and thus was not final and appealable); *Crites*, 284 S.W.3d at 840–41 (citing *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 199–200 (Tex. 2001)).

We conclude that Abedi requested sanctions against Pajooh prior to the nonsuit. We disagree with Pajooh that Abedi's pleading was merely defensive. *See* Tex. R. Civ. P. 71 (misnomer of pleading); *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980) (courts should acknowledge substance of relief sought despite formal styling of pleading); *Mercer v. Band*, 454 S.W.2d 833, 835–36 (Tex. Civ. App.—Houston [14th Dist.] 1970, no writ) (substance "is to be gleaned from the body of the instrument and its prayer for relief").

Within the body of his original answer, Abedi included a section alleging a general denial under rule 92 of the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 92. Also within the body of his answer, Abedi included a separately numbered section wherein he alleged that Pajooh's suit was "groundless and brought in bad faith and for purposes of harassment." *See* Tex. R. Civ. P. 13 ("The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not *groundless and brought in bad faith or groundless and brought for the purpose of harassment*." (emphasis added)). Within the prayer for relief of his answer, Abedi expressly requested that "he be awarded his costs of court and attorney's fees expended herein as sanctions."

The trial court's order of nonsuit with prejudice did not dispose of Abedi's request for his attorney's fees as sanctions. The order specifically addressed Pajooh's claims against Abedi—dismissing them with prejudice—but did not mention anything about Abedi's request for attorney's fees as sanctions against Pajooh. *See Crites*, 284 S.W.3d at 840–41. Nor did the order of nonsuit state "with unmistakable clarity that it is a final judgment as to all claims and all parties." *Lehmann*, 39 S.W.3d at 192–93; *see Crites*, 284 S.W.3d at 840–41.

Therefore, the trial court retained jurisdiction over the case to consider and award sanctions.

We overrule Pajooh's first two issues.[1]

B. The trial court did not abuse its discretion in sanctioning Pajooh pursuant to rule 13.

In his third issue, Pajooh argues that the trial court abused its discretion because it "fail[ed] to point out in its order a sufficiently good cause for the imposition of sanctions." Pajooh also complains that the trial court "ignored [his] evidence and arbitrarily ruled against him." We disagree.

The party who moves for sanctions bears the burden to establish a right to relief by proving its assertions. *G.T.E. Commc'ns Sys. v. Tanner*, 856 S.W.2d 725, 729 (Tex. 1993) (orig. proceeding). Rule 13 authorizes a trial court to impose sanctions against an attorney or a party who signs a pleading or motion that is: (1) groundless and (2) either brought in bad faith or for the purpose of harassment. Tex. R. Civ. P. 13; *Tanner*, 856 S.W.2d 725, 730–31. The chief purpose of rule 13

[1] Even if we had concluded that Abedi's answer did not include a request for sanctions and that the order of nonsuit was a final, appealable judgment, the trial court retained plenary jurisdiction to consider Abedi's timely post-judgment motion to award attorney's fees as sanctions and motion for new trial seeking an award of attorney's fees. "[T]he signing of an order dismissing a case . . . is the starting point for determining when a trial court's plenary power expires." *In re Bennett*, 960 S.W.2d 35, 38 (Tex. 1997) (per curiam). The Supreme Court of Texas has concluded that rule 162 does not limit the trial court's power to act on motions for sanctions filed after nonsuit while the trial court retains plenary jurisdiction. *Schexnider*, 940 S.W.2d at 596 ("A trial court's power to decide a motion for sanctions pertaining to matters occurring before judgment is no different than its power to decide any other motion during its plenary jurisdiction."). The trial court has plenary power to act in a case for thirty days after the judgment is signed. *See* Tex. R. Civ. P. 329b(d). When a timely motion for new trial is filed, the trial court retains plenary power for thirty days until after such motion is overruled by order or by operation of law. *Id.* 329b(a), (e). Moreover, a post-judgment motion for sanctions seeking to change a judgment by adding an award of attorney's fees constitutes a rule 329b(g) motion to modify, correct, or reform a judgment, which extends the trial court's plenary power in the same manner as a motion for new trial. *See id.* 329b(g); *Lane Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 313–14.

sanctions is to check further abuses in the pleading process. *Falk & Mayfield L.L.P. v. Molzan*, 974 S.W.2d 821, 823 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). "Groundless" means having "[n]o basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law." Tex. R. Civ. P. 13; *Molzan*, 974 S.W.2d at 824 ("groundless" means that "there is no *arguable* basis for the cause of action" (emphasis in orig.)). Courts examine the facts available to the party or counsel and the circumstances that existed when the document was signed and filed. *See Harrison v. Harrison*, 363 S.W.3d 859, 863 (Tex. App.—Houston [14th Dist.] 2012, no pet.). In deciding whether a pleading or motion was brought in bad faith or for the purpose of harassment, the trial court must consider the acts or omissions of the party or counsel, not merely the legal merit of the pleading. *Parker v. Walton*, 233 S.W.3d 535, 539 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

In addition to proving groundlessness, the party seeking sanctions also must prove that the challenged document was signed in bad faith or for the purpose of harassment. *See* Tex. R. Civ. P. 13; *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 362 (Tex. 2014). The party seeking sanctions must rebut the presumption that signed papers are filed in good faith with competent evidence. *See* Tex. R. Civ. P. 13; *Tanner*, 856 S.W.3d at 731. To establish bad faith, the movant must show conscious wrongdoing, which is more than mere negligence or bad judgment. *See Parker*, 233 S.W.3d at 540. Harassment means that the pleading was intended to annoy, alarm, and abuse another person. *Id.*; *see* Black's Law Dictionary 831 (10th ed. 2014).

We review a trial court's order imposing sanctions under rule 13 for an abuse of discretion. *See Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007); *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006) (per curiam). A

trial court abuses its discretion when it acts without reference to any guiding rules or principles such that the challenged ruling was arbitrary and unreasonable. *See Am. Flood*, 192 S.W.3d at 583. Legal sufficiency of the evidence is relevant in determining whether the trial court abused its discretion by imposing sanctions. *Yuen v. Gerson*, 342 S.W.3d 824, 827 (Tex. App.—Houston [14th Dist.] 2011, pet. denied).

At the evidentiary hearing, Abedi testified that he rents showrooms at a design center to sell his rugs. Parvizian sells his rugs at a showroom not located at the design center. Abedi described his 20-year history with Parvizian, including instances of physical and verbal abuse in order to "disrupt [Abedi's] business." On January 28, 2015, two of Parvizian's business representatives showed up uninvited to promote Parvizian's rug business at an invitation-only interior design event held at the design center where Abedi is a tenant. The owner and the manager of the design center asked the representatives to leave the event, but they refused to leave. Abedi also asked the representatives to leave. Abedi had two heated phone conversations with Parvizian but never mentioned Pajooh, much less talked about Pajooh being HIV positive or having AIDS. Abedi testified that his last contact with Pajooh was in 2005, when he told Pajooh that he would not falsely testify for him in an insurance case involving appraisal of a rug. Pajooh told Abedi that Parvizian had hired Pajooh to investigate Abedi. Abedi had "concerns" about Pajooh's "bullying."

According to Pajooh, after Abedi told Parvizian that Pajooh had HIV, Pajooh suffered damages because Parvizian refused to sell Pajooh's property having a total value of $325,000. Pajooh acknowledged that there was no business contract in place with Parvizian. There was only an unsigned financing agreement that was to be effective February 1, 2015, between County Investment LP as seller

and Parvizian Rug and Home as buyer, whereby Parvizian was to take delivery of certain items (furniture, paintings, and rugs) owned by County Investment "for resale purposes." Either party would have the right to terminate the agreement prior to delivery. Pajooh stated he knew at the time he filed the lawsuit against Abedi that the unsigned financing agreement was not with Pajooh personally. Pajooh's financial statement from 2014 included personal property assets valued at only $20,000 and did not list any item in the unsigned financing agreement. Pajooh insisted that his "negligent" behavior in filing the lawsuit was not "frivolous." Pajooh acknowledged a federal bankruptcy judge had determined that Pajooh had engaged in fraudulent transfers of property and that Pajooh and Parvizian were business associates. Pajooh also acknowledged his "continuing habit" of filing lawsuits that have been dismissed, including for want of prosecution, but Pajooh denied they were for the purpose of harassment.

During the hearing, Parvizian insisted that he was invited to the design event. According to Parvizian, in the heated phone discussion with Abedi, Parvizian brought up Pajooh's name, which is when Abedi told Parvizian that Pajooh was HIV positive. Parvizian acknowledged that he has a history of multiple business deals with Pajooh involving rugs and real estate. Parvizian has testified for Pajooh in other lawsuits. According to Parvizian, he decided not to do any more business deals with Pajooh because of Abedi's statement. Parvizian did not request that Pajooh take an HIV test. Parvizian stated he currently was storing rugs at his showroom for Pajooh, including certain ones listed in the unsigned financing agreement. Pajooh also prepared Parvizian's affidavit in this case and was present when Parvizian signed it. Shahpar Razman, Parvizian's representative at the marketing event, also testified at the hearing. Razman stated he overheard Abedi tell Parvizian in a heated phone call that Pajooh was HIV positive. Razman

acknowledged that the manager of the design center asked him to leave the event.

At the end of the hearing, the trial court stated that it was concerned about the credibility of Pajooh's witnesses, that Pajooh's story did not "make any sense," and that there was no evidence to support liability or any damages. The trial court stated that it would review the record to make sure that "sanctions are appropriate." On January 25, 2016, the trial court rendered its final judgment, finding:

> [B]ased upon the evidence presented and the testimony of the witnesses [the court] found that the allegations of the Plaintiff's petition had no evidentiary support, with respect to claims of liability and damages, and that this case was groundless and filed in bad faith and for the purposes of harassment.

The trial court ordered Pajooh to pay Abedi's attorney's fees "in order to deter Plaintiff . . . from such conduct in the future."

In his motion for new trial, Pajooh complained that the trial court's findings in its final judgment were "conclusory" and did not comply with rule 13's requirement to state the particularities upon which sanctions have been issued. Pajooh also challenged the existence of facts justifying sanctions. In his response, Abedi argued that the final judgment and the record supported the trial court's decision to impose sanctions. Abedi attached a proposed amended final judgment with additional details. On April 21, 2016, the trial court rendered its amended final judgment, expressly finding:

1. At the time that he filed his original petition, Plaintiff knew that he had sustained no damages[;]
2. The allegations of slander contained in the original petition, even if true, would not have caused the damages alleged[;]
3. Plaintiff filed this action as a part of and in furtherance of a course of harassment conducted by Pajooh's business associate, Gus

Parvizian, against Mehdi Abedi, who is Parvizian's business competitor[;]

4. Plaintiff non-suited his case when it became apparent that he could no longer continue his course of harassment because of his inability to produce documentation of his damages[;]
5. Plaintiff has previously filed numerous suits in Texas state and federal courts that have been dismissed or abandoned[; and]
6. Awarding Mehdi the attorney's fees he incurred in defending this suit and any appeal of this order would deter Massood Pajooh from filing in the future groundless suits and abusing the judicial process[.]

To the extent that Pajooh complains on appeal about the particularity of the findings included in the amended final judgment, he did not object to the form of this judgment in the trial court. Therefore, we conclude that he failed to preserve this issue for our review. *See* Tex. R. App. P. 33.1(a)(1)(A); *Olibas v. Gomez*, 242 S.W.3d 527, 532 (Tex. App.—El Paso 2007, pet. denied); *Birnbaum v. Law Offices of G. David Westfall, P.C.*, 120 S.W.3d 470, 475–76 (Tex. App.—Dallas 2003, pet. denied).

In any event, the trial court made the essential findings necessary under rule 13 to support the sanctions—that Pajooh signed a groundless pleading and was motivated to do so by harassment.[2] Specifically, the trial court found: Pajooh knew he had suffered no damages when he filed his suit; even if true, the allegations of slander would not have caused Pajooh's alleged damages; Pajooh filed the suit against Abedi as part of a course of harassment conducted by Parvizian, Abedi's business competitor; Pajooh nonsuited when he realized he could no longer harass Abedi because of his inability to provide documentation of damages; Pajooh has filed numerous lawsuits in Texas state and federal suits that

[2] Unlike the original final judgment, the amended final judgment does not include the term "bad faith."

have been dismissed or abandoned; and awarding Abedi his attorney's fees would deter Pajooh from filing groundless lawsuits in the future and abusing the judicial process. *See Molzan*, 974 S.W.2d at 827 (trial court's written findings that plaintiffs filed lawsuit less than one day after defendant put a sign up outside his restaurant to ask him about lawsuit abuse, lawsuit abuse is a vague term and hyperbolic expression of opinion, sign may have offended plaintiffs but was not actionable, and plaintiffs should not have filed lawsuit which was groundless, in bad faith, and harassing satisfied rule 13 particularity requirements).

With regard to the merits, Pajooh argues that "[t]he trial court effectively ignored . . . Pajooh's sworn witnesses who unequivocally confirmed the allegations contained in Pajooh's petition" and that the record proves Pajooh did not engage in sanctionable conduct. But it is Pajooh who ignores the hearing evidence presented by Abedi with regard to Pajooh's lack of damages, Pajooh's and Parvizian's history of harassing Abedi, Pajooh's and Parvizian's relationship before and after the alleged slander, and Pajooh's history of filing and then dismissing or abandoning lawsuits. A trial court does not abuse its discretion where it bases its decision to impose rule 13 sanctions on conflicting evidence. *Randolph v. Walker*, 29 S.W.3d 271, 278 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The rationale for this rule is that the trial court is in the best position to resolve "contested issues related to whether the claims made in [the plaintiff's] pleadings were, at the time they were filed, factually well grounded and legally tenable." *Id.* Considering all of the evidence in the light most favorable to the findings and indulging every reasonable inference that supports them, *see Yuen*, 342 S.W.3d at 827–28 (citing *City of Keller v. Wilson*, 168 S.W.3d at 802, 820 (Tex. 2005)), we conclude that the trial court's findings are supported by the pleadings and the evidence, and that the trial court did not abuse its discretion in assessing rule 13

sanctions. *See Randolph*, 29 S.W.3d at 278; *Molzan*, 974 S.W.2d at 827.

We overrule Pajooh's third issue.

C. Pajooh's request for mandamus relief is moot.

Generally, when a trial court imposes monetary sanctions on a party, that party has an adequate remedy by appeal. *See Street v. Second Court of Appeals*, 715 S.W.2d 638, 639–40 (Tex. 1986) (per curiam). Here, in Pajooh's petition for writ of mandamus, he requested that this court declare the sanctions order void and presented the same arguments as in his first and second issues on appeal; namely, that based on rule 162 and the lack of a pending request for sanctions, there was no jurisdiction for the trial court to award attorney's fees as sanctions. Because we address the trial court's sanctions order by appeal, we deny Pajooh's petition for writ of mandamus as moot. *See Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992).

III. CONCLUSION

Having overruled all of Pajooh's issues on appeal, we affirm the trial court's judgment awarding sanctions. We deny Pajooh's petition for writ of mandamus as moot.

/s/ Marc W. Brown
Justice

Panel consists of Chief Justice Frost, and Justices Brown and Jewell.