Affirmed and Memorandum Opinion filed October 5, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00635-CV

ANGLO-DUTCH ENERGY, LLC, EXPLORER INVESTMENTS, LLC, AND SAXTON RIVER CORPORATION, Appellants

V.

CRAWFORD HUGHES OPERATING COMPANY, CRAWFORD ENERGY OPERATING COMPANY, AND CRAWFORD ENERGY, INC., Appellees

On Appeal from the 152nd District Court
Harris County, Texas
Trial Court Cause No. 2010-36322

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

This appeal arises from an oil and gas dispute between Anglo-Dutch Energy, LLC, Explorer Investments, LLC, and Saxton River Corporation (collectively, the "working interest appellants") and Crawford Hughes Operating Company, Crawford Energy Operating Company, and Crawford Energy, Inc. (collectively, the "Crawford appellees"). This dispute began as an argument over bills for operating expenses incurred under multiple joint operating agreements. This appeal focuses on one

limited aspect of the original argument — namely, recovery of attorney's fees in connection with the parties' dispute regarding the joint operating agreements. We affirm the trial court's May 17, 2016 final judgment because we conclude that we lack appellate jurisdiction to review the working interest appellants' challenge to the trial court's partial new trial orders addressing attorney's fees; the Crawford appellees adequately pleaded defensive attorney's fees; and attorney's fees are recoverable from appellants Explorer Investments, LLC and Saxton River Corporation.

BACKGROUND

I. The Parties' Joint Operating Agreements

Crawford Hughes Operating Company[1] served as the operator under two joint operating agreements dated January 31, 2005, and April 1, 2005. Anglo-Dutch Energy, LLC, a working interest owner, signed both agreements as a non-operator. Explorer Investments, LLC and Saxton River Corporation did not sign these agreements.[2]

In an exhibit to the April 2005 agreement, Explorer Investments is identified

[1] Crawford Hughes Operating Company was formerly named Crawford Energy Operating Company.

[2] The working interest appellants assert on appeal that the parties operated under two agreements: the January 2005 agreement and the April 2005 agreement. The Crawford appellees assert that there were three joint operating agreements, two of which were dated January 31, 2005. The record includes two joint operating agreements signed on January 31, 2005, that are substantially the same. Both rely on the A.A.P.I. Form 610 – 1989 Model Form Operating Agreement; exclude the same model form provisions; incorporate the same land descriptions; apply to the Delacroix No. 1 Well in the Bayou Gentilly; and rely on the same accounting procedures. The two documents differ only as to the entities listed as working interest owners; Anglo-Dutch is listed as a working interest owner under both agreements, and neither lists Explorer Investments or Saxton River as a working interest owner. The parties referred to all joint operating agreements collectively in the trial court; accordingly, we will treat both versions of the January 31, 2005 agreement as a single contract for the purposes of the issues raised in this appeal.

as an investor and a working interest owner. The agreement states that fractional interest owners are "parties to [the] [April 2005] agreement."

Explorer Investments executed the first amendment to the January 2005 agreement and signed in its capacity as a non-operator.

Explorer Investments assigned its assets to Saxton River, including its interests under the joint operating agreements, on July 23, 2010. Both agreements address a transfer of interests and state that "[e]very sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement . . . and any transferee of an ownership interest in any Oil and Gas Lease or Interest shall be deemed a party to this agreement . . . ."

II. Breach of the Agreements and the Underlying Action

As operator, Crawford Hughes sent the working interest owners bills each month for their respective share of the operating expenses. Anglo-Dutch and Explorer Investments disputed certain bills and sued the Crawford appellees for breach of the joint operating agreements.[3] Anglo-Dutch and Explorer Investments asserted identical claims against the Crawford appellees for breach of contract, conversion, unjust enrichment, and negligence per se, in addition to other claims.

The Crawford appellees acknowledged the validity of the 2005 joint operating agreements in their answer and requested that the trial court award them their defensive attorney's fees incurred in the action. Crawford Hughes filed an individual counterclaim against Anglo-Dutch and Explorer Investments for unpaid expenses due under the terms of the agreements; Crawford Hughes's counterclaim

[3] The working interest appellants' original and amended petitions invoked only the January 2005 joint operating agreement. However, their proposed jury instructions defined "Joint Operating Agreements" to include both the January 2005 and the April 2005 agreements. The working interest appellants' briefing on appeal also references both agreements.

also included a request for attorney's fees. Both joint operating agreements include the following provision addressing attorney's fees:

> In the event any party is required to bring legal proceedings to enforce any financial obligation of a party hereunder, the prevailing party in such action shall be entitled to recover all court costs, costs of collection, and a reasonable attorney's fee, which the lien provided for herein shall also secure.

The agreements do not define the term "prevailing party."

Anglo-Dutch and Explorer Investments added Saxton River as a plaintiff in their first amended petition. The Crawford appellees opposed Saxton River's addition and filed a motion to strike. In response to the motion to strike, the working interest appellants stated as follows:

- "On or about July 23, 2010 (but effective July 1, 2009) Explorer Investments, LLC assigned its assets to Saxton River Corporation."
- "Jerry D. Dumas, Sr. was the principal for both Explorer Investments, LLC and Saxton River Corporation."
- "Anglo Dutch Energy, LLC's claims are identical to those of Explorer Investments, LLC and Saxton River Corporation, so no new claims were added by the addition of Saxton River Corporation."

The trial court denied the Crawford appellees' motion to strike the joinder of Saxton River.

The parties proceeded to a jury trial in December 2014. The jury found against the working interest appellants on their claims and found in favor of Crawford Hughes on its counterclaim. The jury awarded $42,053.13 in actual damages against Anglo-Dutch and $2,631.18 in actual damages against Explorer Investments and Saxton River. The jury also awarded Crawford Hughes its

offensive and defensive attorney's fees incurred in the action.[4] Crawford Hughes did not segregate its attorney's fees among the individual working interest appellants.

The trial court signed a final judgment on February 11, 2015, awarding actual damages to Crawford Hughes in accordance with the jury's findings. The trial court denied Crawford Hughes its recovery of attorney's fees because "[Crawford Hughes] did not segregate the attorney's fees between the claims prosecuted and defended against[,] and the claims among Anglo Dutch Energy, L.L.C., Explorer Investments, L.L.C., and Saxton River Corporation . . . ."

III. The New Trial Orders

The Crawford appellees moved to modify the trial court's February 11, 2015 final judgment to include an award of attorney's fees as found by the jury or, in the alternative, for a new trial on the amount of legal fees Crawford Hughes was entitled to recover. The trial court granted the Crawford appellees' motion to modify and ordered a partial new trial "on the sole issue of segregating the award of attorney's fee against each of the non-prevailing plaintiff [sic]."

The working interest appellants requested that the trial court modify its new trial order to specify the reasons for granting a new trial on attorney's fees. The trial court signed an order on June 1, 2015, clarifying its reasoning.

The working interest appellants filed a petition for writ of mandamus in this Court challenging both new trial orders. We denied the petition and concluded the working interest appellants did not show "that the trial abused its discretion in granting a new trial of real parties' claims for attorney's fees." *In re Anglo Dutch*

[4] Crawford Hughes acknowledges on appeal that it is the only appellee entitled to recover attorney's fees.

Energy LLC, No. 14-15-00794-CV, 2015 WL 6692235, at *1 (Tex. App.—Houston [14th Dist.] Nov. 3, 2015, orig. proceeding) (per curiam) (mem. op.). The working interest appellants' petition for writ of mandamus filed with the Supreme Court of Texas was also denied.

After mandamus was denied, the parties stipulated to the amount of attorney's fees attributable to each of the working interest appellants. The parties' stipulation also addresses preservation of error:

> . . . Nothing herein shall be construed to waive, prejudice, or otherwise affect (a) [Anglo-Dutch's] and Saxton's rights to challenge, object to, and/or appeal all or any portion of any award of attorneys' fees against any or all of them on any grounds other than the reasonableness of the amounts stipulated herein; or (b) [Anglo-Dutch's] and Saxton's rights to challenge, object to, and/or appeal the grant of a new trial in this matter on the amount of attorneys' fees to be recovered by [Crawford Hughes].
>
> . . . [Anglo-Dutch] and Saxton are deemed to have properly preserved error with respect to any challenge to, objection to, or appeal of (a) all or any portion of any award of attorneys' fees against any or all of them on any grounds other than reasonableness of the amounts as stipulated herein, or (b) the grant of a new trial in this case on the limited issue of the amount of attorneys' fees to be recovered by [Crawford Hughes].

The trial court signed a second final judgment on May 17, 2016, and awarded attorney's fees to Crawford Hughes in accordance with the parties' stipulation. The working interest appellants timely filed this appeal.

ANALYSIS

The working interest appellants assert that (1) the trial court committed clear error or abused its discretion in granting the Crawford appellees' request for new trial to permit the segregation of Crawford Hughes's attorney's fees; (2) the Crawford appellees failed to properly plead defensive attorney's fees; and

(3) Explorer Investments and Saxton River are not parties to a contract that would support an award of attorney's fees. We address each contention in turn.

I. This Court Lacks Appellate Jurisdiction to Consider the Working Interest Appellants' Challenge to the Trial Court's New Trial Orders

Trial courts may order a new trial "for good cause" and enjoy broad discretion in doing so. *In re Bent*, 487 S.W.3d 170, 175 (Tex. 2016) (orig. proceeding); *see also* Tex. R. Civ. P. 320.

Except in limited circumstances, an order granting a motion for new trial signed within the trial court's plenary power is not subject to appellate review. *Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex. 2005); *Cummins v. Paisan Constr. Co.*, 682 S.W.2d 235, 236 (Tex. 1984) (per curiam). This prohibition is a limit on appellate jurisdiction. *See Coinmach, Inc. v. Aspenwood Apt. Corp.*, 98 S.W.3d 377, 382 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Mandamus review of a new trial grant is permitted if the trial court (1) signed the order after losing plenary power, resulting in a void order; (2) erroneously concluded that the jury's answers to special issues were irreconcilably in conflict; (3) did not state specific reasons for granting a new trial in its order; or (4) stated reasons for a new trial that are not supported by the record. *See In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d 746, 755-58 (Tex. 2013) (orig. proceeding); *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 688-89 (Tex. 2012) (orig. proceeding); *Wilkins*, 160 S.W.3d at 563 (citing *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985) (orig. proceeding)).

The working interest appellants' arguments on appeal do not invoke any of the scenarios in which appellate review is permitted. Appellants assert that the trial court erred in granting a new trial on attorney's fees, thereby allowing a party to fix its own strategic errors in its presentation of evidence after failing to segregate

attorney's fees. Because this challenge does not fall within one of the narrow exceptions identified by the Supreme Court of Texas, we lack appellate jurisdiction to entertain the working interest appellants' challenge to the new trial orders. *See Hou-Scape, Inc. v. Conway Hall Sprinkler Co.*, No. 14-14-00075-CV, 2015 WL 3984029, at *1-2 (Tex. App.—Houston [14th Dist.] June 30, 2015, no pet.) (mem. op.) (court lacked appellate jurisdiction to review new trial order where appellant did not argue any exception to the general rule of non-reviewability); *Cort v. McKinney*, No. 14-14-00569-CV, 2014 WL 4088696, at *1 (Tex. App.—Houston [14th Dist.] Aug. 19, 2014, no pet.) (per curiam) (mem. op.) (same); *Rebector v. Angleton Danbury Hosp. Dist.*, No. 14-08-00811-CV, 2010 WL 2681721, at *2 (Tex. App.—Houston [14th Dist.] July 8, 2010, pet. denied) (mem. op.) (same).[5]

The working interest appellants assert that the parties' stipulation preserves for appeal their challenge to the new trial orders. The parties' stipulation states:

> [Anglo-Dutch] and Saxton are deemed to have properly preserved error with respect to any challenge to, objection to, or appeal of . . . (b) the grant of a new trial in this case on the limited issue of the amount of attorneys' fees to be recovered by [Crawford Hughes].

On its face, this stipulation addresses preservation rather than reviewability. In any event, appellate jurisdiction cannot be conferred by the parties' consent or waiver. *Castle & Cooke Mortg., LLC v. Diamond T Ranch Dev., Inc.*, 330 S.W.3d 684, 687 (Tex. App.—San Antonio 2010, no pet.); *Texaco, Inc. v. Shouse*, 877 S.W.2d 8, 11 (Tex. App.—El Paso 1994, no writ) ("Appellate jurisdiction cannot be created by the court or the litigants by consent, stipulation, or waiver."). Therefore, the parties' stipulation cannot create appellate jurisdiction where none exists. Because the

[5] Because this case does not involve circumstances in which appellate review of an order granting a new trial has been allowed, we do not address the availability of appellate review after a final judgment has been signed. *Cf. United Scaffolding, Inc. v. Levine*, 60 Tex. Sup. Ct. J. 1515, 2017 WL 2839842, at *13 (June 30, 2017).

working interest appellants' challenge falls outside of the limited circumstances in which appellate review of a new trial order is allowed, it is not reviewable.

The working interest appellants point to the recent expansion of mandamus review of new trial orders in inviting us to address the merits of their contention. *See In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d at 758. This expansion, appellants contend, indicates that new trial orders no longer warrant the "extreme deference" that would preclude our consideration of their arguments.

We decline the invitation because *In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d at 758, extends no further than review of the record aimed at ensuring that the trial court's articulated reasons for a new trial are adequately supported. The working interest appellants' arguments do not invoke this basis for appellate review; further, this limited expansion does not permit us to disregard altogether the standards that prescribe limited jurisdiction for appellate review of new trial orders.

Because the working interest appellants' challenge to the new trial orders does not fall within one of the recognized exceptions to the prohibition of appellate review, we do not consider the working interest appellants' first issue.

II. The Crawford Appellees Sufficiently Pleaded Defensive Attorney's Fees

In their second issue, the working interest appellants contend that the Crawford appellees' pleadings do not support a recovery of defensive attorney's fees.[6] Their challenge focuses on Crawford Hughes's first amended counterclaim and the counterclaim's specific request for offensive attorney's fees:

> Pursuant to Section 38.001, *et. seq.*, of the Texas Civil Practice & Remedies Code, and the terms of the [Joint Operating Agreement],

[6] The working interest appellants concede that Crawford Hughes's pleadings support its recovery of offensive attorney's fees.

> [Crawford Hughes] is entitled to recover its reasonable and necessary attorneys' fees and costs incurred in the prosecution of this counterclaim.

Separate from Crawford Hughes's counterclaim, the Crawford appellees filed an answer to the working interest appellants' petition. The Crawford appellees' third amended answer acknowledged the validity of the joint operating agreements and included a general request for attorney's fees.[7] The Crawford appellees' answer is sufficient to support an award of attorney's fees under the joint operating agreements' attorney's fee provisions.

The purpose of pleadings is to give adverse parties notice of each party's claims and defenses, as well as notice of the relief sought. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896-97 (Tex. 2000); *Herrington v. Sandcastle Condo. Ass'n*, 222 S.W.3d 99, 102 (Tex. App.—Houston [14th Dist.] 2006, no pet.). A trial court cannot enter judgment on a theory of recovery not sufficiently set forth in the pleadings or otherwise tried by consent. *Herrington*, 222 S.W.3d at 102; *see also* Tex. R. Civ. P. 301 ("[t]he judgment of the court shall conform to the pleadings"). For purposes of our review, a pleading is sufficient if it "gives fair and adequate notice of the facts upon which the pleader bases his claim." *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982); *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

A general request for attorney's fees is sufficient under the notice pleading standard. *Dean Foods Co. v. Anderson*, 178 S.W.3d 449, 453 (Tex. App.—Amarillo 2005, pet. denied); *see also Tull v. Tull*, 159 S.W.3d 758, 762 (Tex. App.—Dallas 2005, no pet.) ("A general request for attorney's fees in the prayer of the pleading is itself sufficient to authorize the award of attorney's fees.").

[7] The Crawford appellees' third amended answer was their live pleading at the time of trial.

Similarly, a pleading's general invocation of an agreement that provides for attorney's fees is sufficient to support an award of attorney's fees under that agreement. *See Bancservices Grp., Inc. v. Strunk & Assocs., L.P.*, No. 14-03-00797-CV, 2005 WL 2674985, at *5-6 (Tex. App.—Houston [14th Dist.] Oct. 20, 2005, pet. denied) (plaintiff's pleading detailed alleged breach of parties' agreement and included a general request for attorney's fees; pleading sufficient to support award of attorney's fees under parties' agreement).

Here, the Crawford appellees' answer requested that the trial court "award [the Crawford appellees] their reasonable and necessary attorney's fees and costs incurred in this case." The answer also invoked the joint operating agreements and stated that they are "valid and enforceable contracts." The answer's request for attorney's fees and its reference to the joint operating agreements support an award of defensive attorney's fees; this request is not limited by the statements made in Crawford Hughes's separate counterclaim. *See id*. The Crawford appellees' pleadings satisfy the fair notice standard and support an award of defensive attorney's fees.

III. The Joint Operating Agreements Provide for an Award of Attorney's Fees; the Working Interest Appellants Judicially Admitted That They Are Parties to These Agreements

In their third issue, the working interest appellants assert that there is no contract to support an award of attorney's fees against Explorer Investments and Saxton River.

A. The Joint Operating Agreements Provide for an Award of Attorney's Fees to the "Prevailing Party"

Both joint operating agreements include the following provision addressing attorney's fees:

> In the event any party is required to bring legal proceedings to enforce any financial obligation of a party hereunder, the prevailing party in such action shall be entitled to recover all court costs, costs of collection, and a reasonable attorney's fee, which the lien provided for herein shall also secure.

The agreements do not define the term "prevailing party." When a contract does not define a term, we presume the parties intended its ordinary meaning. *Cherokee Cty. Cogeneration Partners, L.P. v. Dynegy Mktg. & Trade*, 305 S.W.3d 309, 313-14 (Tex. App.—Houston [14th Dist.] 2009, no pet.). In a contractual attorney's fee provision, the "prevailing party" is the party "who successfully prosecutes or defends against an action, prevailing on the main issue." *4901 Main, Inc. v. TAS Auto., Inc.*, 187 S.W.3d 627, 634 (Tex. App.—Houston [14th Dist.] 2006, no pet.). The determination of whether a party is the "prevailing party" is based upon success on the merits. *Id*.

Here, the Crawford appellees successfully defended against the working interest appellants' claims and Crawford Hughes successfully prosecuted its counterclaim. Therefore, the Crawford appellees are the "prevailing parties" under the joint operating agreements' attorney's fee provisions. *See id*.

B. The Working Interest Appellants Judicially Admitted That They Are Parties to the Joint Operating Agreements

A judicial admission is a clear, deliberate, and unequivocal assertion of fact that is conclusively established in live pleadings, making the introduction of other pleadings or evidence unnecessary. *Horizon/CMS Healthcare Corp.*, 34 S.W.3d at 905.

To constitute a judicial admission, a statement must be (1) made in the course of a judicial proceeding; (2) contrary to a fact essential for the party's recovery or defense; (3) deliberate, clear, and unequivocal; (4) in accordance with public policy

if given conclusive effect; and (5) consistent with the opposing party's theory of recovery. *In re Estate of Guerrero*, 465 S.W.3d 693, 705-06 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). A judicial admission dispenses with the production of evidence on an issue and cannot be disputed by the admitting party. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 568 (Tex. 2001).

In the trial court, the working interest appellants repeatedly stated that Explorer Investments and Saxton River were parties to the joint operating agreements. The working interest appellants' second amended petition stated that they "are parties to that certain Exploration Agreement and that certain Joint Operating Agreement ("JOA") dated on or about January 31, 2005 with respect to certain wells . . . ." The petition also stated that, "[u]nder the terms of the Agreements, [Crawford Hughes] serves as Operator of the oil and gas property covered thereby, and [the working interest appellants] holds [sic] working interests in such property."[8]

The working interest appellants' statements and representations regarding their standing as parties to the joint operating agreements comport with the relief they sought in the trial court and the manner in which the relief was pursued. The working interest appellants acted collectively in the trial court: they pled identical causes of action arising from identical facts and asserted the same defenses against Crawford Hughes's counterclaim. The working interest appellants did not suggest that certain agreements or alleged breaches of those agreements applied to anything

[8] The joint operating agreements state that ownership of interests covered by the agreements is sufficient to render an entity party to the agreements:

> Every sale, encumbrance, transfer or other disposition made by any party shall be made expressly subject to this agreement . . . and any transferee of an ownership interest in any Oil and Gas Lease or Interest shall be deemed a party to this agreement . . . .

other than all appellants collectively. Consistently representing that they were all parties to the joint operating agreements, the working interest appellants sought relief for the Crawford appellees' alleged breaches of these agreements; the working interest appellants cannot now assert that Explorer Investments and Saxton River were never parties to the joint operating agreements.

In sum, the working interest appellants' trial court statements are judicial admissions that foreclose their argument on appeal that Explorer Investments and Saxton River were not parties to the joint operating agreements. These statements were (1) made during the course of judicial proceedings; (2) contrary to the position the working interest appellants now assert on appeal; (3) deliberate, clear, and unequivocal; and (4) not destructive of the Crawford appellees' theories of recovery. *See In Estate of Guerrero*, 465 S.W.3d at 705-06. Giving these statements conclusive effect is consistent with public policy. *See id*. Therefore, the working interest appellants may not now assert that Explorer Investments and Saxton River are not parties to the joint operating agreements. As parties to the agreements, Explorer Investments and Saxton River may be held liable for Crawford Hughes's attorney's fees.

The Crawford appellees also assert that, under the terms of the joint operating agreements and the agreements' subsequent amendments, Explorer Investments and Saxton River are parties to the agreements. We need not reach the merits of this argument because the working interest appellants have judicially admitted that they are parties to the agreements and may not now assert otherwise.

CONCLUSION

We affirm the trial court's May 17, 2016 final judgment and conclude that (1) we lack appellate jurisdiction to consider the working interest appellants' challenge to the trial court's grant of new trial because the appellants' arguments on appeal do

not invoke the scenarios that permit appellate review of a new trial order; (2) the Crawford appellees' pleadings support a recovery of defensive attorney's fees; and (3) attorney's fees are recoverable from Explorer Investments, LLC and Saxton River Corporation because the working interest appellants have judicially admitted that both entities are parties to the January 2005 and the April 2005 joint operating agreements.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Jamison, and Brown.