**Reversed and Remanded in Part and Affirmed as Modified in Part and Memorandum Majority Opinion filed September 22, 2022.**


**In The**

# Fourteenth Court of Appeals

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**NO. 14-21-00311-CV**

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**VIVIEN IWEANYA, Appellant**

**V.**

**NATIONAL ALUMNI ASSOCIATION OF QUEEN'S SCHOOL ENUGU USA, INC. AND CHINWE NWABUDE, Appellees**

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**On Appeal from the 270th District Court**
**Harris County, Texas**
**Trial Court Cause No. 2020-65568**

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## M E M O R A N D U M  M A J O R I T Y  O P I N I O N

Vivien Iweanya appeals a summary judgment granting declaratory relief in appellees' favor. During the coronavirus pandemic, a dispute arose between the National Alumni Association of Queen's School Enugu USA, Inc. and some of the Association's members, including appellant Iweanya. The dispute arose after the Association postponed its 2020 biennial convention due to crowd and travel restrictions imposed by federal, state, and local authorities. During the convention,

the organization's members vote to elect its officers. Due to the postponement, the then-serving officers extended their four-year terms by an additional year, until summer 2021. Iweanya did not agree that the Association had the authority to postpone the Association's convention or to allow then-serving officers to extend their terms until the postponed convention occurred, and she expressed that belief in an online forum to other members.

The Association sued Iweanya, among others, seeking declaratory relief that the organization's governing document permitted the challenged actions. The trial court signed a declaratory judgment in the Association's favor and awarded the Association its attorney's fees. Iweanya challenges the trial court's summary judgment in five issues: (1) the controversy is moot; (2) the Association did not conclusively prove its attorney's fees; (3) the trial court erred in dismissing Iweanya's claim for indemnity; (4) Iweanya's defenses precluded summary judgment; and (5) there is no legal basis for awarding post-judgment attorney's fees. We agree that the Association did not prove its attorney's fees as a matter of law, and we reverse the trial court's order in that respect and remand for further proceedings. We overrule Iweanya's remaining issues and affirm the trial court's judgment in all other respects.

## Background

The Association, a non-profit corporation, is the umbrella organization for numerous chapters in the United States of alumni from the Queen's School Enugu in Nigeria. The Association's governing document is its Constitution, and its governing body is its Board of Directors. The Constitution calls for a national convention to be held every biennium, usually in late July. The Constitution provides that the Association's officers are to be elected at the national convention.

As relevant here, a convention was scheduled for July 2020, but the Board determined in May 2020 that health and safety concerns due to the COVID-19 pandemic required postponement to July 2021. Postponing the convention also meant postponing the election of officers, which the Board unanimously agreed to in May 2020. The Board agreed that the current officers would continue to serve until the July 2021 convention.

According to the Association, after the postponement decision, "a small number of disgruntled Association members," including Iweanya,[1] "attempted to undermine the Board and/or interfere with those decisions." Specifically, those members repeatedly asserted on the Internet-based "Queenites Worldwide Chat Forum" that the current officers could not remain in their positions past July 2020, that the postponement violated the Association's Constitution, and that the Association was required to conduct a virtual election. The Association also asserted that the disgruntled members, including Iweanya, circulated false information to other members "that the Board has been dissolved and that the Executives are no longer in office."

The Board held an emergency meeting in August 2020 to address "pertinent issues . . . in order to maintain the integrity of the association." The Board voted "to reaffirm the decisions reached [in May 2020] and again categorically stated that the Board wants and appoints . . . all [] officers to continue to run the full affairs of [the Association] until July 19, 2021." A month later, the Association's Resolution Committee made the following finding: "The committee reviewed the minutes of May 2, 2020 and other documents. Since all the members that were

[1] Iweanya is the Association's founding president and served as its immediate past president from 2010 to 2016.

present at the meeting voted to move the convention and election to 2021, members of the [committee] felt that this matter was properly handled."

On the same day as the August 2020 emergency meeting, the Association and its president, Chinwe Nwabude (collectively, the Association), sued Iweanya, and two other members, Nkoli Stella Uwechie and Dr. Patricia Ugwu, who are not parties to this appeal. The Association sought declarations under the Uniform Declaratory Judgment Act (UDJA) regarding the construction of the Constitution and the actions taken by the Association's Board pursuant to the Constitution. The Association also asserted, but later nonsuited, a breach of contract claim against Iweanya for violating the Constitution. Iweanya's live pleading denied the Association's allegations and included a "Request for Attorney's Fees": "Defendants have incurred considerable legal expenses in defending this lawsuit against Plaintiffs. Defendants request the recovery of reasonable and necessary attorney's fees from Plaintiffs under contract, and at the court's discretion, under Texas Declaratory Judgment Act." Each side moved for injunctive relief against the other.

The Association moved for traditional summary judgment on its declaratory judgment claim. The Association conditionally moved for summary judgment on its breach of contract claim but asserted that it would dismiss that claim if summary judgment was "otherwise granted" on the declaratory judgment claim.

Iweanya moved to dismiss the Association's suit for lack of a justiciable controversy. According to Iweanya, the Association sought a declaration "of the validity of an action [it has] already taken and is settled and to which there is no real and substantial challenge." Specifically, Iweanya contended that the Association "ratified" the postponement through the August 2020 meeting and

September 2020 Resolution Committee finding, thus vitiating any legal dispute that a declaratory judgment would settle.

Iweanya also filed her own motion for summary judgment. In that motion, Iweanya repeated her arguments that the Association's suit was moot and non-justiciable. Iweanya also argued that her conduct was privileged, that the Association failed to prove its breach of contract claim, and that she was entitled to indemnity of her attorney's fees from the Association.

In its final judgment, the trial court determined that a justiciable controversy existed between the parties, denied Iweanya's motion for summary judgment, and granted the Association's motion for summary judgment. The trial court made the following declarations:

> 1. Pursuant to its authority under the Bylaws and Certificate of Formation, the Board had the authority to and did validly postpone the Association's national convention;
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> 2. Pursuant to its authority under the Bylaws and Certificate of Formation, the Board had the authority to and did validly postpone Association officer elections;
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> 3. Pursuant to its authority under the Bylaws and Certificate of Formation, the Board had the authority to and did validly postpone Board elections;
>
> 4. Pursuant to its authority under the Bylaws and Certificate of Formation, the Board had the authority to and did validly extend Association officer terms by one year;
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> 5. Pursuant to its authority under the Bylaws and Certificate of Formation, the Board had the authority to and did validly extend Board terms by one year;
>
> 6. Chinwe Nwabude's term as President of the Association was validly extended for one year by the Board pursuant to the Board's authority under the Bylaws and Certificate of Formation. As such, Chinwe Nwabude is the acting President of the Association;

> 7. Pursuant to Article 6.1 of the Bylaws, the election of Association officers must occur at the national convention. As such, Association officers cannot be elected via a virtual election, and any attempt to do so by Defendants was and is invalid;
>
> 8. Pursuant to Article 8.1 of the Bylaws, an amendment to the Bylaws can only be adopted at the national convention. As such, any attempt to amend the Bylaws by the Defendants outside of the national convention was and is invalid.
>
> 9. Pursuant to Article 5.4 of the Bylaws, Chinwe Nwabude, as President of the Association, had the authority to initiate this legal proceeding.

The court awarded the Association $40,000 in attorney's fees under the UDJA. The court also awarded the Association post-judgment and appellate fees. Iweanya filed a motion for new trial, which the trial court denied, and she now appeals from the trial court's judgment.

## Analysis

We review summary judgments de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). Under this familiar standard, we take all evidence favorable to the nonmovant as true, indulging every reasonable inference and resolving any doubts in her favor. *Id.*

One of Iweanya's five issues challenges the trial court's jurisdiction. We address that issue first.

### A. Justiciability

In her first issue, Iweanya argues that the trial court should have dismissed the Association's declaratory judgment suit because the claim is non-justiciable. Specifically, Iweanya contends that, because the Association exercised its powers and authority through the May, August, and September 2020 meetings to postpone

the biennial convention and election of new officers, there was no legal controversy regarding these issues.

The UDJA permits a person interested under a written contract to have determined any question of construction or validity arising under the contract and to obtain a declaration of rights, status, or other legal relations thereunder, in order "to settle and to afford relief from uncertainty and insecurity." Tex. Civ. Prac. & Rem. Code §§ 37.002(b), 37.004(a). "A declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993)). In order to constitute a justiciable controversy, "there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute." *Id.* (citations omitted).

A case becomes moot when a justiciable controversy between the parties ceases to exist or when the parties cease to have a legally cognizable interest in the outcome. *See Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). Mootness occurs when events make it impossible for the court to grant the relief requested or otherwise affect the parties' rights or interests. *See Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). When a case becomes moot, the court loses jurisdiction, because any decision would constitute an advisory opinion that is "outside the jurisdiction conferred by Texas Constitution article II, section 1." *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016).

But a case "is not rendered moot simply because some of the issues become moot." *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005) (orig. proceeding). If only some claims or issues become moot, the case remains "live"

as to the claims or issues that are not moot. *See id.* We analyze mootness based on the claims pleaded. *See id.* (although part of case became moot, court determined that a "live controversy" still existed, based on claims pleaded in petition); *Albert Lee Giddens, APLC v. Cuevas*, No. 14-16-00772-CV, 2017 WL 4159263, at *5 (Tex. App.—Houston [14th Dist.] Sept. 19, 2017, no pet.) (mem. op.).

The Supreme Court of Texas has recognized that, in some cases, "a claim for attorney's fees 'breathes life' into a suit that has become moot in all other respects." *State ex rel. Best v. Harper*, 562 S.W.3d 1, 7 (Tex. 2018). Whether a claim for attorney's fees breathes life into an otherwise moot appeal depends first on whether the claimant seeks fees under a statute that authorizes fees only for a prevailing party or, alternatively, under a statute that permits fees based on equitable principles regardless of who prevails. *Id.*

The UDJA's attorney-fee provision is not a prevailing-party statute, and a trial court has discretion to award attorney's fees to the prevailing or non-prevailing party or decline to award fees at all. *See* Tex. Civ. Prac. & Rem. Code § 37.009 ("In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just."). Because the statute allows a party to recover fees under equitable principles, an unresolved claim for fees always breathes life into a declaratory judgment case that has otherwise become moot because the trial court must always consider the relative merits of the parties' positions (among other factors) when exercising its discretion to award fees to either party.[2] *See Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 643 (Tex. 2005).

[2] This is in contrast to fee claims based on prevailing-party statutes; in those instances, the determination whether the fee claim is moot depends on whether the party prevailed before the underlying substantive claim became moot. *See Best*, 562 S.W.3d at 7.

Iweanya contends that, at the latest, the dispute became moot in August and September 2020, when the Association's Board and Resolution Committee "reaffirm[ed]" and "ratified" the May decision of postponement. Even presuming that the Association's substantive claim for declaratory relief became moot in September 2020, the Association's claim for attorney's fees under the UDJA remained pending. Thus, we conclude that the trial court retained jurisdiction over the case when it awarded attorney's fees to the Association. *See Best*, 562 S.W.3d at 7; *Allstate*, 159 S.W.3d at 642-43; *see also Hansen v. JP Morgan Chase Bank, N.A.*, 346 S.W.3d 769, 774-75 (Tex. App.—Dallas 2011, no pet.) (holding that in a declaratory judgment case, as long as a claim for attorney's fees under the UDJA is pending, the suit is not moot).[3]

We overrule Iweanya's first issue.

## B. Sufficiency of the Evidence of Trial Attorney's Fees

In her second issue, Iweanya argues that the evidence of the Association's trial attorney's fees was conclusory and insufficient.

To determine the amount of attorney's fees to be awarded, Texas follows the lodestar method, which is essentially a "short hand version" of the *Arthur Andersen* factors.[4] *See Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 496 (Tex. 2019). The lodestar method requires the fact finder to derive reasonable attorney's fees by first determining the reasonable hours spent by counsel in the case and the reasonable hourly rate for counsel's work. *See El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760 (Tex. 2012). The fact finder then

[3] The substantive dispute is undoubtedly moot now, as the postponed convention and election were scheduled to take place in summer 2021. Thus, we need not, nor have we been asked to, address any issue regarding the validity of the trial court's declarations because those are beyond our jurisdiction to address.

[4] *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997).

multiplies the number of hours counsel worked on the case by the applicable rate, the product of which is the base fee or lodestar. *Id.*[5]

It is the fee claimant's burden to provide sufficient evidence of both the reasonable hours worked and the reasonable hourly rate. *Rohrmoos Venture*, 578 S.W.3d at 498. Sufficient evidence includes, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services. *See id.*; *see also City of Laredo v. Montano*, 414 S.W.3d 731, 736 (Tex. 2013) (per curiam) ("In *El Apple*, we said that a lodestar calculation requires certain basic proof, including itemizing specific tasks, the time required for those tasks, and the rate charged by the person performing the work.").

Conclusory or general testimony devoid of specifics will not support a fee award. The Supreme Court of Texas consistently has held that evidence of attorney's fees was insufficient under the lodestar method when counsel failed to indicate how the aggregate time spent in the case was devoted to any particular tasks or category of tasks. *See Rohrmoos Venture*, 578 S.W.3d at 505; *Long v. Griffin*, 442 S.W.3d 253, 255 (Tex. 2014) (per curiam); *Montano*, 414 S.W.3d at 736; *El Apple*, 370 S.W.3d at 763.

The Association submitted an unsworn declaration from its attorney, Edward P. Watt, who opined on the Association's reasonable and necessary attorney's fees. Watt stated that: it was his opinion that the legal services performed were reasonable and necessary; it was his opinion that the billing rates and time spent

[5] The base fee is presumed to reflect the reasonable and necessary attorney's fees, though the fact finder may adjust the lodestar up or down if relevant factors indicate an adjustment is necessary to reach a reasonable fee in the case. *Rohrmoos Venture*, 578 S.W.3d at 500-01.

were reasonable and customary; Watt and his associate worked a total of 149.40 hours; the billing rates ranged from $180.00 to $450.00; and the billing rates for the attorneys were reasonable and necessary charges in Harris County for legal services in litigation matters. As for the services performed by counsel, Watt stated generally that the work included responding to Iweanya's counterclaims and injunction request with extensive exhibits and affidavits and preparing and filing the Association's motion for summary judgment. Watt asserted that the Association incurred a total of $51,732 in attorney's fees, which he offset by $5,000 to account for time spent on the Association's abandoned breach of contract claim. Watt further reduced the total amount to $40,000 to reflect "the fact that [he] provided reduced fees . . . as a special accommodation because [the Association is] trying to protect the integrity of a valuable charitable organization with worthwhile causes."

Like in *Rohrmoos Venture* and *El Apple*, Watt did not indicate how the hours he and his associate spent in the aggregate were devoted to any particular task or category of tasks. *Rohrmoos Venture*, 578 S.W.3d at 505; *El Apple*, 370 S.W.3d at 763-65. Moreover, Watt did not present time records or otherwise substantiate the specific tasks performed, the time required for those tasks, and the rate charged by each person performing that work.[6] *El Apple*, 370 S.W.3d at 765. In sum, Watt's unsworn declaration is too general to establish that the requested fees and expenses were reasonable and necessary. *Rohrmoos Venture*, 578 S.W.3d at 505.

[6] The Association submitted billing records in response to Iweanya's motion for new trial. On appeal, however, the Association states, "The Judge . . . denied the Motion for New Trial without reopening the evidence and did not indicate in any manner that she considered the billing records in doing so." Based on this representation, we likewise do not consider the billing records as evidence supporting the Association's fee request.

We hold that the Association failed to conclusively prove the reasonableness and necessity of its attorney's fees. We therefore sustain Iweanya's second issue and reverse the part of the trial court's judgment awarding $40,000 in trial court attorney's fees.

## C. Indemnity

In her third issue, Iweanya argues that the trial court erred in dismissing her claim for attorney's fees because she is entitled to reimbursement of her attorney's fees from the Association. According to Iweanya, she "made a claim for attorney's fees based on the Association's Constitution." In her motion for summary judgment below, Iweanya sought to "recover on [her] claim for reimbursement of attorney's fees." Specifically, Iweanya pointed to Article 16.3 of the Association's Constitution in support of her claim for indemnity:

> To the extent that a person who is, or was, an officer, member or other agents of this association has been successful on the merits in defense of any civil, criminal, administrative or investigative proceedings brought to procure a judgment against such person by reason of the fact that she is, or was, an officer or agent of the corporation, or has been successful in defense of any claims, issue or matter, therein, such person shall be indemnified to the fullest extent as provided for under the Texas state Non-profit Public Benefit Corporation Law against expenses actually and reasonably incurred by the person in connection with such proceeding.

Iweanya requested in her motion, "Should the court find that Defendants are successful in their motion for summary judgment, Defendants seek an enforcement of Article 16.3." But Iweanya was not successful in her summary judgment motion. Thus, the trial court did not err in refusing to award Iweanya attorney's fees for an unsuccessful summary judgment motion. *See, e.g.*, *Wibbenmeyer v. TechTerra Commc'ns, Inc.*, No. 03-09-00122-CV, 2010 WL 1173072, at *11 (Tex.

App.—Austin Mar. 26, 2010, pet. denied) (mem. op.) (because appellees were not successful, they were not entitled to attorney's fees under agreement).

On appeal, Iweanya relies on a different paragraph of the Constitution, which provides:

> If such person either settles any such claim or sustains a judgment against her, then indemnification against expenses, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by the association but only to the extent allowed, and in accordance with the requirements of Texas state Non-profit Public Benefit Corporation law.[7]

According to Iweanya, this provision "required the Association to reimburse Appellant's legal fees - win or lose." Iweanya did not rely on this provision in the trial court and thus cannot rely on it as a basis for reversal on appeal. *See Comm'r of Gen. Land Office v. SandRidge Energy, Inc.*, 454 S.W.3d 603, 625 (Tex. App.—El Paso 2014, pet. denied) (citing Tex. R. Civ. P. 166a(c)).

We overrule Iweanya's third issue.

**D. Affirmative Defenses**

In her fourth issue, Iweanya argues that the trial court erred in granting summary judgment in the Association's favor because Iweanya presented evidence raising a fact issue on her defenses of privilege and justification. According to Iweanya, she "had the privilege and was justified in her exercise of her First Amendment right to comment on an ongoing discussion in the Association [to] which she belonged."

[7] The Association disputes the authenticity of the version of the Constitution on which Iweanya relies. The version relied upon by the Association does not contain the language quoted above.

In her summary judgment response, Iweanya argued, "To the extent that Plaintiffs allege that any of Defendants' conduct constitute grounds for filing for a declaratory judgement cause of action, that claim infringes on each of defendants' First Amendment right to petition, speak or associate freely. [The] Texas legislature even went so far as to enact the Texas Citizens Participation Act (TCPA) which safeguards the constitutional rights of a person to petition, speak and associate freely."[8] Iweanya cited chapter 27 of the Civil Practice and Remedies Code, which is the codification of the TCPA, and cases brought under the TCPA.

Iweanya did not move to dismiss the Association's claim under the TCPA, nor could she, as she first mentioned the TCPA outside of the statutory deadline in which to invoke it. *See* Tex. Civ. Prac. & Rem. Code § 27.003(b) ("A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action."). To the extent that Iweanya intended, instead, to assert a First Amendment affirmative defense, such a defense would not be grounds for denying summary judgment on the Association's UDJA claim. The Association's request for a determination of its own rights and authority under the governing document in no way prohibits Iweanya from any constitutionally protected activity. In other words, we see no incompatibility between the Association's UDJA suit and Iweanya's alleged First Amendment rights. *Accord, e.g.*, *Gilani v. Rigney*, No. 02-21-00314-CV, 2022 WL 714700, at *4 (Tex. App.—Fort Worth Mar. 10, 2022, pet. denied) (mem. op.) (TCPA did not apply to UDJA

[8] "The TCPA contemplates an expedited dismissal procedure applicable to claims brought to intimidate or silence a defendant's exercise of the rights to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law without impairing a person's right to file meritorious lawsuits for demonstrable injury." *Patriot Contracting, LLC v. Mid-Main Properties, LP*, ---S.W.3d---, 2022 WL 1251236, at *3 (Tex. App.—Houston [14th Dist.] Apr. 28, 2022, pet. filed).

suit: "Rigney and RFS's UDJA claims seek a determination of the legal principles that the parties should apply in resolving their various legal disputes; they are not based on or in response to Gilani's petition [or free speech] rights.").

We overrule Iweanya's fourth issue.

**E. Post-Judgment Attorney's Fees**

In her fifth and final issue, Iweanya argues that the trial court erred in awarding the Association $5,000 in post-judgment attorney's fees "in the event the Defendants, or any of them, file a motion for new trial or other post-trial motion." According to Iweanya, there is "no legal authority to award attorney's fees . . . for post-judgment work that is performed after the final judgment has been rendered." This is incorrect.

As with appellate attorney's fees, an award of post-judgment attorney's fees is designed to compensate the prevailing party for the expense of having to defend the trial court's judgment. *See, e.g.*, *Condit v. Gonzales*, No. 13-04-426-CV, 2006 WL 2788251, at *13 (Tex. App.—Corpus Christi Sept. 28, 2006, pet. denied) (mem. op.) (post-judgment attorney's fees compensate prevailing party for cost of defending award); *accord also Law Offices of Windle Turley, P.C. v. French*, 164 S.W.3d 487, 492-93 (Tex. App.—Dallas 2005, no pet.) (holding that "the appellate attorney fees award was designed to compensate appellees for the expense of having to defend its sanctions award in the event appellant pursued an unsuccessful appeal"). However, if the award is not conditioned on the new-trial motion or subsequent appeal being unsuccessful, such an award potentially results in a chilling effect on the nonmovant's right to pursue post-judgment motions and appeals. *See In re Ford Motor Co.*, 988 S.W.2d 714, 718, 722 (Tex. 1998) (orig. proceeding) (concluding that because the sanctions award ordered Ford to pay $25,000 in attorney's fees if Ford sought mandamus review of the sanctions order

and was not conditioned on Ford's failure to obtain relief, it effectively was a monetary penalty against Ford for exercising its legal rights).

Therefore, to the extent Iweanya challenges the award of post-judgment attorney's fees on the ground that it is not conditioned on an unsuccessful post-judgment motion, we conclude that the trial court erroneously awarded post-judgment trial attorney's fees without conditioning them on Iweanya being unsuccessful in pursuing her new-trial motion following a response by the Association. However, we also conclude the error is harmless as to the motion for new trial because Iweanya did not succeed on the merits.

In her brief, Iweanya expressly challenges only the $5,000 awarded for post-judgment attorney's fees, not the attorney's fees awarded to the Association if Iweanya files an appeal in the court of appeals, which she has done. To the extent that we construe Iweanya's issue as relating to the attorney's fees for an appeal to this court, we also consider the failure to condition the award on Iweanya's being unsuccessful to be harmless, as we have not granted her substantive relief. However, in the interest of justice, we modify the judgment to provide that the Association will be entitled to recover additional attorney's fees should Iweanya appeal to the Texas Supreme Court, as set out in the trial court's judgment, only if Iweanya does not prevail in that court. *See Condit*, 2006 WL 2788251, at *13.

## Conclusion

We reverse the portion of the trial court's judgment awarding the Association $40,000 in trial attorney's fees, and we remand solely for redetermination of trial attorney's fees and expenses in accordance with this opinion. We modify the judgment to reflect that the Association shall recover its additional appellate attorney's fees only if Iweanya's appeal to the supreme court, if any, is unsuccessful. *See id.* We affirm the judgment in all other respects.

/s/ Kevin Jewell
Justice

Panel consists of Justices Jewell, Zimmerer, and Hassan. (Hassan, J., concurring without opinion)