



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00562-CV

Jesus Edgar **FERNANDEZ**, Abraham Fernandez and Genitza Fernandez, Heirs of Juana P.
Fernandez,
Appellants

v.

Kish **MANWANI**,
Appellee

From the 406th Judicial District Court, Webb County, Texas
Trial Court No. 2014TXA001155 D4
Honorable Elma T. Salinas-Ender, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: September 27, 2017

AFFIRMED

Appellants Jesus Fernandez, Abraham Fernandez, and Genitza Fernandez appeal the trial court's order disbursing to Kish Manwani the excess proceeds placed in the trial court's registry following the sale of real property to satisfy tax liens. In five issues, appellants argue the trial court erred by: determining the statute of limitations began running in May 2016, rather than in June 2010 when the deed of trust was executed; concluding Juana Fernandez's heirs are charged with the lien secured by the deed of trust recorded July 12, 2010; not finding Manwani is a former

owner who is barred from establishing a claim to the excess proceeds; and awarding the entire balance of the excess proceeds to Manwani. For the reasons below, we affirm the trial court's Order to Disburse Funds from the Registry of the Court.

BACKGROUND

In 2007, Mario Landa and Juana Fernandez contracted to purchase real property from Kish Manwani. Landa and Fernandez made payments pursuant to the contract until 2010, when they sought to re-execute the parties' agreement to comply with the current law pertaining to the sale of real property. To do so, on June 30, 2010, Landa, Fernandez, and Manwani executed a promissory note secured by a warranty deed with a vendor's lien and a deed of trust. The warranty deed with a vendor's lien and the deed of trust were recorded in the Webb County property records on July 12, 2010.

Fernandez passed away in 2011. Landa continued to pay on the promissory note until 2013, when he began to experience financial difficulties and became delinquent on the note, as well as on the property taxes. In November 2013, Landa advised Manwani that he wished to return the property rather than continue paying the promissory note. On January 19, 2014, Manwani and Landa properly executed a deed in lieu of foreclosure in which Landa conveyed all of his interest in the property to Manwani.¹

On October 14, 2014, the United Independent School District filed suit against Landa and Fernandez's heirs to collect delinquent taxes. The City of Laredo, Webb County, and the Laredo Community College District intervened also to collect delinquent taxes. The trial court entered a judgment for unpaid taxes in favor of the taxing authorities and ordered a Sheriff's sale of the property. Manwani purchased the property at the Sheriff's sale. After the payment of all taxes,

¹ Although the deed in lieu of foreclosure was properly executed on January 19, 2014, Manwani did not file the document until November 6, 2015, during the pendency of the action underlying this appeal.

penalties, costs, and attorney's fees, the excess proceeds which totaled \$45,787.11, were placed in the trial court's registry.

Appellants filed a motion for receipt of the excess proceeds held in the court's registry, claiming entitlement as Fernandez's heirs. Manwani filed a competing motion for receipt of the excess proceeds claiming entitlement as the property's original lienholder. Following a hearing on the competing claims, the trial court awarded the excess proceeds to Manwani.

Thereafter, appellants perfected this appeal.

ANALYSIS

Statute of Limitations

In two issues, appellants contend the trial court erred by awarding the excess proceeds to Manwani because Manwani failed to reform the deed of trust within the applicable four-year the statute of limitations. Appellants argue Manwani did not hold a valid lien on the property because the original deed of trust executed as security for the promissory note contained a fatal mutual mistake involving a material fact. Appellants identify the fatal error in the deed of trust as the incorrect reflection of the "maturity date" of the corresponding promissory note. Although appellants concede the promissory note reflected a maturity date of June 1, 2030, they point out the body of the deed of trust reflected the maturity date of the corresponding promissory note as June 30, 2010, the same date the documents were executed. Appellants assert Manwani is presumed to have known about the difference in the maturity date when the deed of trust was executed. Appellants argue the deed of trust became void when it was not reformed within four years of its execution and, therefore, cannot serve as the basis for Manwani's claim for the excess proceeds.

Manwani responds on appeal, as he argued below, that at the time he signed the documents, the deed of trust reflected the true date of the promissory note's maturity as June 1, 2030, and the

document was altered after he signed it. Manwani points out the typewritten date in the deed of trust is a different font than that in the rest of the document. Additionally, Manwani argues Landa and Fernandez's payment of the promissory note until 2013, as well as Landa's subsequent execution of a deed in lieu of foreclosure demonstrates the parties mutually understood the maturity date of the promissory note to be June 1, 2030. Manwani contends he did not become aware of the alterations made to the deed of trust until May 2016, during the pendency of the underlying proceedings when he examined the documents with his attorney, and, therefore, the four-year statute of limitations for reformation of the deed of trust did not begin to run until that time.

Standard of Review

Funds held in the registry of the trial court are subject to the control and order of the trial court, and the court enjoys great latitude in dealing with those funds. *Burns v. Bishop*, 48 S.W.3d 459, 467 (Tex. App.—Houston [14th Dist.] 2001, no pet.); *Troutman v. Interstate Promotional Printing Co.*, 717 S.W.2d 428, 430 (Tex. App.—San Antonio 1986, writ ref'd n.r.e.). We review a trial court's order disbursing funds from the trial court's registry for an abuse of discretion. *Troutman*, 717 S.W.2d at 430. An abuse of discretion occurs when the trial court acts in an arbitrary and unreasonable manner or without regard for guiding rules and principles. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012).

When reviewing a trial court's order for an abuse of discretion, the trial court's findings of fact and conclusions of law aid us in our review by providing an explanation for the trial court's decision. *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 852 (Tex. 1992); *Samuelson v. United Healthcare of Tex., Inc.*, 79 S.W.3d 706, 710 (Tex. App.—Fort Worth 2002, no pet.). However, we are not bound by a trial court's findings of fact and conclusions of law; rather, we independently

review the record to determine whether the trial court abused its discretion. *Chrysler Corp.*, 841 S.W.2d at 852. Further, when the decision under review is based on facts determined by the trial court, those facts must have some support in the evidence. *Crouch v. Tenneco, Inc.*, 853 S.W.2d 643, 649 & n.2 (Tex. App.—Waco 1993, writ denied) (op. on reh'g); *see also Haddock v. Quinn*, 287 S.W.3d 158, 182 n.2 (Tex. App.—Fort Worth 2009, pet. denied).

Application

The Trial Court Hearing

Upon its receipt of the competing claims for the excess proceeds, the trial court allowed briefing and held an evidentiary hearing, at which only Manwani testified. Through Manwani's testimony, appellants introduced into evidence the promissory note and deed of trust. The promissory note itself reflected a maturity date of June 1, 2030, and both documents reflected an altered execution date of June 30, 2010. The promissory note's maturity date, as stated in the deed of trust, was also altered to reflect the maturity date as June 30, 2010. Manwani testified that when he executed the documents, each document reflected the maturity date of the promissory note as June 1, 2030. Manwani further testified that after he signed the document, the promissory note's maturity date was altered in the deed of trust from June 1, 2030 to June 30, 2010, which was the same date the documents were signed. Manwani additionally testified it appeared the alterations in the deed of trust were made in a font different from the font used in the other documents.

The trial court allowed the submission of additional evidence following the hearing. The additional evidence consisted of a business records affidavit from Eduardo Yzaguirre, the original attorney who represented Landa and Fernandez and drafted the promissory note, warranty deed with vendor's lien, and deed of trust. Through Yzaguirre's affidavit, Manwani introduced the original, unsigned drafts of the three documents, all of which reflected the maturity date of the promissory note as June 1, 2030.

The Trial Court's Findings of Fact and Conclusions of Law

The trial court entered an order distributing the excess proceeds held in its registry to Manwani. In the order, the trial court also made the following findings of fact with regard to the statute-of-limitations/deed reformation issue:

10. All of the documents had the date of execution changed by scratching through the number 1 and inserting 30 over the date of June 1, 2010 (presumably the original contemplated closing date inserted by the attorney who prepared the documents).

11. The note reflects the date of maturity as June 1, 2030.

12. The deed of trust instrument has the date of maturity of June 1, 2010 filled in with a different type font than that of the rest of the document.

...

14. The copy of the deed of trust prepared in (sic) and provided by Mr. Yzaguirre, the Landas' attorney, reflects the same maturity date of June 1, 2030 on the deed of trust as that of the note executed on the same day and in the same font as the rest of the document.

...

18. Mr. Landa continued to make payments until 2013.

...

33. Mr. Manwani first discovered that there was a mistake in the date of maturity of the note in the deed of trust at a court hearing in June of 2016 when he was reviewing the documents with his attorney.

Based upon these findings, the trial court concluded “[t]he presumption that Mr. Manwani had immediate knowledge of a mistake or a change in the deed is rebutted by his testimony.” The trial court also found that “the statute of limitations runs from the date that Mr. Manwani discovered the mistake in the deed sometime after the competing motions to withdraw excess funds in May of 2016 were filed and originally set for hearing before the court.”

The trial court concluded the statute of limitations had not run on Manwani's ability to reform the deed of trust to reflect the correct maturity date of the promissory note and found the document was not void due to the mistake. The trial court further concluded Manwani could assert a claim to the excess proceeds held in its registry based upon his lien created by the promissory note, warranty deed, and deed of trust. Accordingly, the trial court determined appellants' claim to the excess proceeds was subject to Manwani's superior lien.

Discussion

Our review of the record shows the trial court's findings of fact are supported by Manwani's undisputed testimony as well as the admitted evidence. Therefore, our evaluation of whether the trial court followed guidelines and principles centers on the accuracy of the trial court's conclusions of law and the application of those conclusions to the determined facts.

"There is generally a rebuttable presumption that a grantor has immediate knowledge of defects in a deed that result from mutual mistake." *Cosgrove v. Cade*, 468 S.W.3d 32, 36 (Tex. 2015); *see also Sullivan v. Barnett*, 471 S.W.2d 39, 45 (Tex. 1971). The application of this presumption means the limitations period for the purpose of reforming the deed begins to run as soon as the deed is executed. *Cosgrove*, 468 S.W.3d at 36. Exceptions to this general rule "are as well-established as the rule itself." *Id.* (quoting *Sullivan*, 471 S.W.2d at 45). "[T]his presumption that a grantor or grantee has immediate knowledge of a mutual mistake contained in a deed is rebuttable, and there are various circumstances, such as subsequent conduct of the parties as though the deed had not contained the error, which will excuse a delay in discovery of the mutual mistake." *Sullivan*, 471 S.W.2d at 45. Once the presumption of immediate knowledge is rebutted, the statute of limitations will commence to run when the mutual mistake was, or in the exercise of reasonable diligence should have been, discovered. *Id.*; *Wigley v. Willems*, 07-13-00028-CV, 2014 WL 4808139, at *3 (Tex. App.—Amarillo Sept. 19, 2014, no pet.).

The record reflects the parties' actions demonstrated an understanding that the maturity date of the promissory note was not June 1, 2010. Fernandez and Landa, and Landa solely following Fernandez's death, paid the promissory note from its execution until January 2014. This alone is counter to any understanding or recognition of a June 30, 2010 maturity date. Additionally, Landa's request to return the property to Manwani is inconsistent with any understanding that the promissory note matured on the date it was executed. Further, in his undisputed testimony, Manwani stated the deed of trust reflected the promissory note's maturity date of June 1, 2030, when he executed it. Manwani's testimony that he first learned of the incorrect maturity date contained in the deed of trust during a hearing in this underlying proceeding is also undisputed. This evidence serves as basis to rebut the general presumption that Manwani had knowledge of the incorrect maturity date contained in the deed of trust. Therefore, the trial court's conclusion that the statute of limitations for Manwani to reform the warranty deed and deed of trust ran from the date Mr. Manwani discovered the mistake in 2016 is supported by both the record and relevant case law.

Accordingly, we conclude the trial court did not act without regard for guiding rules and principles or in an arbitrary and unreasonable manner when it determined the statute of limitations did not begin to run until Manwani discovered the mistaken maturity date in the deed of trust.

Issues one and two are overruled.

Erroneous Conclusion of Law

Appellants contend the trial court erred by concluding Fernandez's heirs are charged with the lien secured by the deed of trust recorded July 12, 2010.

An appellate brief must contain "a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). Although we must construe briefing requirements liberally and reasonably, parties asserting error on appeal

must put forth some specific argument and analysis showing the record and the law support their contentions. *Gonzalez v. VATR Const. LLC*, 418 S.W.3d 777, 783–84 (Tex. App.—Dallas 2013, no pet.); *San Saba Energy, EP. v. Crawford*, 171 S.W.3d 323, 338 (Tex. App.—Houston [14th Dist.] 2005, no pet.). To comply with Rule 38.1, appellants must provide such a discussion of the facts and the authorities relied upon to maintain the point at issue. *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). “This is not done by merely uttering brief conclusory statements, unsupported by legal citations.” *Tesoro Petroleum Corp.*, 106 S.W.3d at 128.

When appellants fail to discuss the evidence supporting their claim or apply the law to the facts, they present nothing for review. *See Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895–96 (Tex. App.—Dallas 2010, no pet.). Thus, failure to offer argument, provide appropriate record citations, or a substantive analysis waives an appellate issue. *Lance v. Robinson*, 04-14-00758-CV, 2016 WL 147236, at *11–12 (Tex. App.—San Antonio Jan. 13, 2016, pet. filed); *Bolling*, 315 S.W.3d at 896–96.

Appellants’ brief does not provide any discussion of the evidence or law to support the general claims presented. The brief does not specify or discuss any alleged error committed by the trial court, but contains only a conclusory statement, unsupported by legal citations. Because appellants’ brief contains only a general statement of appellants’ position on the issue, it does not present sufficient argument nor provide basis to support a conclusion the trial court erred in any way. *See Gonzalez*, 418 S.W.3d at 783–84; *Tesoro Petroleum Corp.*, 106 S.W.3d at 128; TEX. R. APP. P. 38.1.

Therefore, we conclude appellants waived this issue based upon their failure to comply with Rule 38.1.

Issue three is overruled.

Superior Position for Claim to Excess Proceeds

Appellants contend the trial court erred by failing to conclude they held a superior position over Manwani for claim to the excess proceeds held in the trial court's registry pursuant to Texas Tax Code section 34.04. Appellants argue their claim to the excess proceeds lies as heirs to any claim held by Fernandez, while Manwani's claim lies as a property lienholder. Appellants further argue that because Manwani failed to record the deed in lieu of foreclosure until after the expiration of the limitations period, he is barred from making a claim for the proceeds as a property lienholder.

Standard of Review

We review a trial court's order disbursing funds from the trial court's registry for an abuse of discretion. *Troutman*, 717 S.W.2d at 430. An abuse of discretion occurs when the trial court acts in an arbitrary and unreasonable manner or without regard for guiding rules and principles. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012).

Application

Texas Tax Code section 34.04 lists the priority in which to pay competing claims to excess proceeds from the sale of property to satisfy a tax lien. TEX. TAX CODE ANN. § 34.04(c) (West 2015). According to section 34.04, a claim asserted by "any other lienholder, consensual or otherwise, for the amount due under a lien" must be paid before any claim of an interest in the property acquired by will or intestate succession. *Id.* at § 34.04(c)(3), (5)(C).

We have already concluded the trial court did not abuse its discretion by determining Manwani held a valid lien on the subject property that was created through the promissory note from Landa and Fernandez and secured by the warranty deed with vendor's lien and deed of trust. Thus, Manwani's lien was created by the original promissory note, not the subsequent deed in lieu

of foreclosure. Appellants assert their claim to the excess funds was acquired by intestate succession of any interest Fernandez held in the subject property. Pursuant to section 34.04, Manwani's claim has priority over any claim held by appellants as Fernandez's heirs. *See id.* at § 34.04(c)(3), (5)(C).

The record indicates the excess funds of \$45,787.11 did not satisfy the debt and lien held by Manwani and obtained through the promissory note executed by Landa and Fernandez. Accordingly, the trial court's determination that the excess funds should be disbursed to Manwani and that appellants' claim was subject to Manwani's lien was neither arbitrary nor capricious. Therefore, the trial court did not abuse its discretion by ordering the excess funds held in the registry of the court be disbursed to Manwani.

Issue four is overruled.

Improper Disbursement of Excess Proceeds

Appellants identify their fifth issue on appeal as a contention that the trial court erred by failing to acknowledge appellants were entitled to fifty percent of the excess proceeds as Fernandez's legal heirs. However, the only argument appellants put forth in support of this contention is the following:

For all of the herein reasons the trial court erred in [o]rdering the entire remaining balance of the funds to Kish Manwani in total disregard of the fact that the heirs of Juana P. Fernandez are the rightful owners of 50% of the total excess proceeds.

Appellants provide no citations or further argument in support of the issue. *See* TEX. R. APP. P. 38.1 (requiring an appellate brief to provide the court with a discussion of the facts and the authorities relied upon). Because appellants' briefing on this issue provides no argument or analysis supporting their contention, the brief provides insufficient basis for us to analyze and determine this issue.

Therefore, we conclude appellants waived this issue based upon their failure to comply with Rule 38.1.

Issue five is overruled.

CONCLUSION

For the foregoing reasons, we affirm the trial court's Order to Disburse Funds from the Registry of the Court.

Irene Rios, Justice