Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00066-CV

Hugo **ALANIZ**,
Appellant

v.

Jose Maria **AGUIRRE**, Elias Aguirre Jr., Argelio Aguirre, Jose Guadalupe Aguirre, Merced Aguirre, Mauricia A. Villarreal, Elsa A. Lara, and Alma Rosa A. Trevino,
Appellees

From the 381st Judicial District Court, Starr County, Texas
Trial Court No. DC-09-71
Honorable Jose Luis Garza, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: December 27, 2017

AFFIRMED

In a prior appeal, we reversed the trial court's judgment and remanded this cause to the trial court for further proceedings in the interest of justice. In the present appeal, Hugo Alaniz argues the evidence was legally and factually insufficient to support the trial court's judgment following remand. We affirm.

BACKGROUND

Jose Maria Aguirre, Elias Aguirre Jr., Argelio Aguirre, Jose Guadalupe Aguirre, Merced Aguirre, Mauricia A. Villarreal, Elsa A. Lara, and Alma Rosa A. Trevino (collectively, "the

Aguirres") brought a trespass to try title claim against Alaniz. In their petition, the Aguirres claimed they owned a 0.1530-acre tract of land located in Starr County, Texas, by adverse possession and that Alaniz had wrongfully ousted them from the property. Following a bench trial, the trial court rendered judgment in favor of the Aguirres, declaring that they had title to the property based on adverse possession. Alaniz appealed.

In Alaniz's first appeal, he complained that (1) the evidence did not adequately or specifically describe the property in question, (2) the property description in the judgment was different from the property alleged in the petition, and (3) the metes and bounds description contained in the judgment was never introduced into evidence at trial. In our opinion, we acknowledged that discrepancies existed between the property description in the pleadings, the evidence presented at trial, and the property description in the judgment. Therefore, we reversed the judgment, and remanded the cause to the trial court for further proceedings in the interest of justice. *Alaniz v. Aguirre*, No. 04-14-00896-CV, 2015 WL 7748521, at *6 (Tex. App.—San Antonio 2015, no pet.). Specifically, we noted that the Aguirres' petition described the land as:

> A tract of land containing 0.1530 of an acre (6,664 sq. ft.) out of Share 9-D, Porcion 85, ancient jurisdiction of Camargo, Mexico, now Starr County, Texas, A. De la Rosa Original Grantee, Abstract 148.

Id. We further noted that the judgment found that the Aguirres had title to the following property by adverse possession:

> A tract of land containing .02648 OF OE [sic] ACRE (6,664 Sq.Ft.) out of Share 9-D, Porcion 85, Ancient Jurisdiction of Camargo, Mexico, now Starr County, Texas, A. De La Rosa, Original Grantee, Abstract 148 and said 0.2648 of one acre (11,534 square feet) also being more particularly described as follows:
>
> [metes and bounds description].

Id., at *6-7. We then went on to state:

> An award of title to a 0.2648 acre tract of land does not conform to pleadings alleging ownership of a 0.1530 acre tract. And, in this case, the judgment is

> internally inconsistent first describing the 0.2648 acre tract as containing 6,664 square feet, then describing the 0.2648 acre tract as containing 11,534 square feet.
>
> In addition to the problem with their pleadings, the evidence presented at trial suffered from similar deficiencies. All of the deeds introduced to show ownership of the property in dispute described a 0.1530 acre tract of land. No deed was introduced into evidence describing a 0.2648 acre tract of land. In addition, no metes and bounds description for a tract of land containing 0.2648 acres was introduced into evidence.
>
> …
>
> Because [the Aguirres] did not meet their burden of pleading or proving that they adversely possessed a 0.2648 acre tract, Alaniz's second issue is sustained.

Id., at *7. We reversed and remanded the cause to the trial court for further proceedings in the interest of justice. *Id*.

On remand, the trial court held a hearing. At this hearing, several documents were admitted into evidence and two witnesses testified. Thereafter, the trial court signed a judgment stating that the Aguirres

> are entitled to a final judgment recognizing that they have title by limitations to and based on their adverse possession of the following-described real property that had matured prior to the date of the Plaintiffs filing their court action in this cause:
>
> > A tract of land containing 0.1530 of an acre (6,664 sq. ft.) out of Share 9-D, Porcion 85, ancient jurisdiction of Camargo, Mexico, now Starr County, Texas, A. De la Rosa Original Grantee, Abstract 148, and more specifically described as follows:[]
> >
> > [metes and bounds description].

Once again, Alaniz appealed.

DISCUSSION

In the present appeal, Alaniz argues the evidence presented at the hearing on remand was legally and factually insufficient to support the trial court's finding that the Aguirres "sufficiently identified the real property that they claim to own."

In an appeal from a bench trial, we review the trial court's findings for legal and factual sufficiency of the evidence by the same standards that are applied in reviewing the evidence supporting a jury's answer. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994). The test for legal sufficiency is whether the evidence at trial would enable a reasonable and fair-minded factfinder to reach the finding under review. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). When considering whether a challenged finding is supported by legally sufficient evidence, we must credit favorable evidence if a reasonable factfinder could, and disregard contrary evidence unless a reasonable factfinder could not. *See id*. We view the evidence in the light most favorable to the finding and indulge every reasonable inference to support it. *Id*. at 822. If there is more than a scintilla of evidence to support the finding, the legal sufficiency challenge must fail. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

In considering whether factually sufficient evidence supports a challenged finding, we consider all the evidence supporting and contradicting the finding. *Plas-Tex., Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989). We set aside the judgment only if the finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

In a bench trial, the trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *See City of Keller*, 168 S.W.3d at 819. As the factfinder, the trial court may choose to believe one witness and disbelieve another. *See id*. The trial court also has the right to accept or reject any part or all of a witness's testimony, and to resolve any inconsistencies in a witness's testimony. *Dwairy v. Lopez*, 243 S.W.3d 710, 713 (Tex. App.—San Antonio 2007, no pet.).

A party claiming title by adverse possession has the burden of proving a description of the property adversely possessed at trial. *Alaniz*, 2015 WL 7748521, at *6 (citing *Coleman v. Waddell*,

249 S.W.2d 912, 913 (Tex. 1952)). Stated differently, the plaintiff must prove the location of the disputed property on the ground. *Id*. The general test for determining the sufficiency of a description of land is whether the tract can be identified with reasonable certainty. *Id*.; *Perkins v. McGehee*, 133 S.W.3d 287, 291 (Tex. App.—Fort Worth 2004, no pet.).

Bearing in mind the standards of review and the applicable law, we now consider the evidence presented at the hearing. Four documents were admitted into evidence: (1) a plat prepared by a land surveyor; (2) a general warranty deed dated January 29, 2009, in which Alicia G. Tamez and others granted 0.2648 of an acre located in Starr County, Texas, to Alaniz; (3) a metes and bounds description from a survey of a tract of land containing 0.1530 of an acre located in Starr County, Texas; and (4) the petition filed by the plaintiffs in this case. Additionally, two witnesses testified at the hearing.

The first witness, Eulalio Aguilar Jr., was a registered land surveyor. In his testimony, Aguilar described, in detail, the geographic location of the property at issue in this case. Aguilar explained that the disputed property was located four and a half miles east of the center of downtown Rio Grande City and that the property "fronted" Highway 83.

Aguilar testified that he had prepared a plat depicting the property at issue in this case and an adjoining property (Plaintiff's Exhibit 1). Aguilar explained that he had created the plat by using the metes and bounds description from a survey of the disputed property conducted in 2008 (Plaintiff's Exhibit 3) and an aerial photograph. Aguilar confirmed that he had not prepared the metes and bounds description himself; it had been prepared by another surveyor. Aguilar said there was no need for him to survey the property himself because he had looked at the metes and bounds description prepared by the other surveyor and had determined that it was correct.

Aguilar further testified that he had examined a deed (Plaintiff's Exhibit 2), in which Tamez and several other individuals purported to convey to Alaniz a tract of land in Starr County,

Texas, consisting of 0.26 acre. Aguilar explained that the plat he prepared showed the total 0.26 acre tract described in the Tamez/Alaniz deed. The plat also showed that the property at issue in this case was a 0.15 acre tract that was contained within the 0.26 acre tract.

Aguilar understood that the Aguirres were claiming that they owned part of the tract referenced in the Tamez/Alaniz deed. One of the plaintiffs in the case had told Aguilar that the plaintiffs owned part of the property described in the Tamez/Alaniz deed, 0.15 acre, but they did not own the remainder of the property described in the Tamez/Alaniz deed, which was 0.11 acre. Aguilar noted that the 0.15 acre claimed by the plaintiffs was actually comprised of two pieces of land, which were adjoining. According to Aguilar, the 0.15 "came out" of the east part of the 0.2648 acre tract. Aguilar also described the relationship between the Tamez/Alaniz deed and the metes and bounds description by stating that the metes and bounds description "encumbers the 0.2648, two tracts comprising of 0.15 out of the most easterly portion of the 0.2648."

Additionally, Aguilar testified that he had compared the legal description of the land contained in the metes and bounds description and the description of the property contained in the plaintiffs' petition. Aguilar stated that the two legal descriptions were the same. However, Aguilar also stated that he would not be able to locate the property from the description in the plaintiffs' petition alone.

The second witness to testify at the hearing was one of the plaintiffs, Jose Maria Aguirre. Like Aguilar, Aguirre testified in detail about the geographic location of the disputed property. Aguirre also identified the disputed property on the plat prepared by Aguilar. Aguirre testified that he and the other plaintiffs owned "the two lots of 0.15, both of them" and that they were not claiming to own any other property. According to Aguirre, the remaining lot depicted on the plat was owned by Alaniz.

In arguing that the evidence is legally and factually insufficient to support the trial court's finding, Alaniz directs our attention to parts of the witnesses' testimony. First, Alaniz points to an excerpt from Aguirre's testimony on direct examination in which he stated that "the 0.26 lot" was now owned by Alaniz and excerpts from Aguirre's testimony on cross-examination in which he stated that he was not claiming ownership to the property described in the Tamez/Alaniz deed. On appeal, Alaniz argues that this testimony shows that the disputed property "is vested" in him. We disagree. Immediately before making the statement on direct examination, Aguirre testified that he and the other plaintiffs were claiming an interest in 0.15 acre contained within the tract described in the Tamez/Alaniz deed. When Aguirre's statement is examined in context, it is clear that Aguirre was stating that Alaniz owned the remainder of the tract referenced in the Tamez/Alaniz deed, not that Alaniz owned the entire tract. Furthermore, the trial court had the right to accept or reject any part of Aguirre's testimony and to resolve any inconsistencies in his testimony in his favor. *See Dwairy*, 243 S.W.3d at 713. Elsewhere in his testimony, Aguirre explained that the plaintiffs owned a portion of the land referred to in the Tamez/Alaniz deed. Additionally, there was other evidence, such as Aguilar's testimony and the plat, indicating that the Aguirres were claiming an interest in part of the tract described in the Tamez/Alaniz deed.

Next, Alaniz directs our attention to Aguilar's testimony regarding the property description contained in the plaintiffs' petition. Aguilar testified that the property description contained in the plaintiffs' petition would not be acceptable for surveying principles, that he did not know if the property description contained in the plaintiffs' petition would be acceptable for court actions, and that he could not locate the disputed property based only on the property description in the plaintiffs' petition. As previously stated, the Aguirres' burden at trial was to prove the location of the disputed property on the ground. *See Coleman*, 249 S.W.2d at 913; *Alaniz*, 2015 WL 7748521, at *6. Notwithstanding the testimony cited by Alaniz, an abundance of evidence was admitted

regarding the location of the disputed property. Both Aguilar and Aguirre testified in detail about the location of the property. Additionally, the plat, the Tamez/Aguilar deed, and the metes and bounds description further demonstrated the location of the disputed property.

As previously stated, the test for determining the sufficiency of a description of land is whether the tract can be identified with reasonable certainty. *Alaniz*, 2015 WL 7748521, at *6; *Perkins*, 133 S.W.3d at 291. Viewing the evidence in the light most favorable to the judgment and employing every reasonable inference to support it, we conclude that a reasonable and fair-minded factfinder could have found that the Aguirres identified the disputed property with reasonable certainty. We further conclude that this finding was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We hold that the evidence was legally and factually sufficient to support the trial court's finding that the Aguirres sufficiently identified the disputed property. *See Perkins*, 133 S.W.3d at 291 (holding the evidence was sufficient to identify the disputed property with reasonable certainty when the record contained copies of deeds containing metes and bounds descriptions of adjoining properties, a map and an aerial photograph showing a relevant fence line, and witness testimony). We, therefore, overrule Alaniz's legal and factual sufficiency issue.

Alaniz also challenges the assessment of court costs against him in the trial court's judgment. In support of his argument, Alaniz cites Rule 139 of the Texas Rules of Civil Procedure, which governs court costs when a case is appealed. Rule 139 provides that if the appellate court's judgment is against an appellant and is "for the same or a greater amount" than the judgment in the trial court, the appellee "shall recover the costs of both courts." *See* TEX. R. CIV. P. 139; *Ashmore v. JMS Constr., Inc.*, No. 05-15-00537-CV, 2016 WL 7217256, at *15 (Tex. App.—Dallas 2016, no pet.). Here, our judgment is against Alaniz and is for the same amount as the judgment in the trial court. Therefore, the Aguirres are entitled to recover their costs both in the

trial court and on appeal. *See* TEX. R. CIV. P. 139. We overrule Alaniz's issue challenging the assessment of court costs in the trial court's judgment.

CONCLUSION

The trial court's judgment is affirmed.

Karen Angelini, Justice