Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00374-CV

Adam **REPOSA**,
Appellant

v.

Keith **HENNEKE** and David Escamilla,
Appellees

From the 425th Judicial District Court, Williamson County, Texas
Trial Court No. 18-1071-C425
Honorable David Peeples, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: October 7, 2020

AFFIRMED

Appellant Adam Reposa appeals an order imposing $9,240.53 in monetary sanctions against him under Texas Rule of Civil Procedure 13. We affirm the trial court's order.

BACKGROUND

This is the second appeal to this court arising from proceedings that involve Reposa in different capacities. *See Beene v. Henneke*, No. 04-19-00373-CV, 2020 WL 1159042 (Tex. App.—San Antonio Mar. 11, 2020, no pet.) (mem. op.). Reposa is an attorney, and in 2017, he was held in contempt for actions he took in a Travis County Court at Law. A Travis County District Court

judge was appointed to preside over the contempt proceeding, and appellee David Escamilla, who is the Travis County Attorney, appointed appellee Keith Henneke as special prosecutor for the proceeding. After the district court convicted Reposa of criminal contempt and sentenced him to six-months' incarceration, attorney Carissa Beene filed an application for writ of habeas corpus on Reposa's behalf in Williamson County. The State of Texas, represented by Escamilla and Henneke, then filed writs of prohibition and mandamus in the Third Court of Appeals seeking to block the Williamson County habeas proceeding. The Third Court of Appeals issued an order staying the habeas proceeding.

While that stay was in effect, Beene filed a second application for writ of habeas corpus in a different Williamson County court. In this second habeas proceeding, Beene and the Williamson County District Attorney filed an agreed motion to grant Reposa a bond. After a hearing, Williamson County District Judge Robert Stem granted the motion and set a $500 bond. There is conflicting evidence about whether Judge Stem was aware of the stay imposed by the Third Court of Appeals.

The State, represented by Escamilla and Henneke, then filed a motion asking the Third Court of Appeals to stay the second habeas proceeding. As support for their motion, they filed an affidavit from Judge Stem averring that he was not aware of the appellate court's stay when he granted Reposa's request for a bond, and he would not have signed the bond if he had known about the stay. The Third Court of Appeals stayed the second habeas proceeding and ordered Beene to show cause why she should not be held in contempt. The court also referred the matter to the State Bar of Texas for investigation.

Beene ultimately sued Henneke, Escamilla, and the three justices who ordered the stays, asserting claims for abuse of process and libel. Beene alleged, inter alia, that Henneke and Escamilla, "through an agreement between all Defendants, threatened and/or coerced" Judge Stem

into signing a fraudulent affidavit "for the purpose of pursuing a grievance against [Beene]." She also claimed all five defendants filed a state bar grievance against her, and that their allegations of professional misconduct amounted to false, defamatory statements of fact about her. Reposa represented Beene in that lawsuit and signed pleadings on her behalf.

Beene eventually nonsuited her claims against the three justices. The trial court then dismissed Beene's claims against Henneke and Escamilla pursuant to the Texas Citizens Participation Act (TCPA) because it found Henneke and Escamilla "established the defense of absolute immunity." The trial court also ordered Beene to pay $9,240.53 in attorney's fees under the TCPA. We affirmed. *See id.* at *3–4.

After the trial court dismissed Beene's lawsuit, Henneke filed a motion seeking sanctions against Reposa under Texas Rule of Civil Procedure 13. That motion forms the basis of the instant appeal. In his motion, Henneke argued the allegation that he or any other defendant had threatened or coerced a district court judge into signing a false affidavit was factually groundless. He also argued that both the "threatened or coerced" allegation and the libel claim were legally groundless because he is entitled to absolute immunity for communications made in a judicial or quasi-judicial proceeding. Finally, he contended Reposa signed Beene's pleadings in bad faith and for the purpose of harassment.

After an evidentiary hearing, the trial court signed an order granting Henneke's motion for sanctions. It found: (1) the allegation that Henneke and Escamilla threatened or coerced the district court judge had no basis in fact; (2) even if that allegation was factually true, it had no basis in law because Henneke and Escamilla were entitled to absolute immunity; and (3) the libel allegation had no basis in law because "statements made in a lawsuit are absolutely privileged in a defamation case." The trial court also found Reposa made those allegations in bad faith and for harassment.

As sanctions, the court made Reposa jointly liable for the attorney's fees it ordered Beene to pay in the TCPA order. Reposa timely filed a notice of appeal.

ANALYSIS

Waiver

Before reaching the merits of Reposa's appeal, we must consider Henneke and Escamilla's contention that Reposa waived his appellate complaints by failing to properly cite the appellate record. Reposa's brief contains only a single citation to the record and therefore does not comply with Rule 38.1 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 38.1. However, the Texas Supreme Court recently held that when a brief contains defects that can be easily remedied, a court of appeals should generally decide the case on its merits rather than disposing of it on procedural waiver grounds. *See Horton v. Stovall*, 591 S.W.3d 567, 569 (Tex. 2019). Here, the appellate record is relatively short and is in a searchable electronic format. Moreover, Henneke and Escamilla's own citations are sufficient to assist us in locating the relevant portions of the record. As a result, we cannot say Reposa's failure to comply with Rule 38.1 "truly prevent[s] consideration of the merits." *Id.* at 570. Because an appellant "'should not lose [his] right to appeal based on an unduly technical application of procedural rules,'" we will consider the merits of Reposa's appeal. *Id.* (quoting *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006)).

Rule 13 Sanctions

Standard of Review

We review a trial court's imposition of sanctions under Rule 13 for abuse of discretion. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). Under this standard, we may not reverse the trial court's ruling unless the court acted arbitrarily, unreasonably, or without reference to any guiding rules or principles. *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006).

Applicable Law

Texas Rule of Civil Procedure 13 provides that an attorney's signature on a pleading certifies the attorney has read the pleading and "that to the best of [his] knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment." TEX. R. CIV. P. 13. A pleading is groundless if it has "no basis in law or fact and [is] not warranted by good faith argument for the extension, modification, or reversal of existing law." *Id.* A pleading is also groundless if "counsel failed to make an objectively reasonable inquiry into the legal and factual basis of the claims at the time the pleading was filed." *Mann v. Kendall Home Builders Constr. Partners I, Ltd.*, 464 S.W.3d 84, 92 (Tex. App.—Houston [14th Dist.] 2015, no pet.). To determine whether sanctions are appropriate, the trial court must consider the facts that were available to the litigant and the circumstances that existed when the litigant filed the pleading. *Rudisell v. Paquette*, 89 S.W.3d 233, 237 (Tex. App.—Corpus Christi–Edinburg 2002, no pet.).

"Courts shall presume that pleadings, motions, and other papers are filed in good faith." TEX. R. CIV. P. 13. A party seeking sanctions must produce competent evidence to overcome this presumption and bears a heavy burden in doing so. *Mann*, 464 S.W.3d at 92. A trial court determining whether a pleading was filed in bad faith or for harassment must consider the acts or omissions of the party to be sanctioned and not rely merely on the legal merits of the pleading or motion. *Id.* However, "direct evidence of a sanctioned person's subjective intent is not required to rebut the presumption." *Keith v. Solls*, 256 S.W.3d 912, 919 (Tex. App.—Dallas 2008, no pet.).

Application

Reasonable Inquiry

In his first issue, Reposa contends the trial court abused its discretion by imposing sanctions because there is no evidence that he failed to make a reasonable inquiry into Beene's allegations

before he signed the pleadings.[1] *See* TEX. R. CIV. P. 13. Henneke and Escamilla respond that "even cursory research would have demonstrated that Ms. Beene's libel claims were not actionable under Texas law."

"Communications in the due course of a judicial proceeding will not serve as the basis of a civil action for libel or slander, regardless of the negligence or malice with which they are made." *James v. Brown*, 637 S.W.2d 914, 916 (Tex. 1982); *see also Ross v. Heard*, No. 04-04-00110-CV, 2005 WL 357032, at *2 (Tex. App.—San Antonio Feb. 16, 2005, no pet.) (mem. op.). This privilege is absolute and "extends to any statement made by the judge, jurors, counsel, parties or witnesses, and attaches to all aspects of the proceedings, including statements made in open court, pre-trial hearings, depositions, affidavits and any of the pleadings or other papers in the case." *James*, 637 S.W.2d at 916–17. That absolute privilege also extends to quasi-judicial proceedings. *Shell Oil Co. v. Writt*, 464 S.W.3d 650, 655 (Tex. 2015).

Here, Beene's libel claim arose out of: (1) the affidavit Henneke filed in the Third Court of Appeals during the contempt proceedings; and (2) a subsequent state bar grievance partially based on that affidavit. Because it is undisputed that the contempt matter was a judicial proceeding, the statements in the affidavit were absolutely privileged in that context. *James*, 637 S.W.2d at 916–17. Furthermore, because a state bar grievance is a quasi-judicial proceeding to which absolute immunity attaches, any statements made during that matter were similarly privileged. *See Odeneal v. Wofford*, 668 S.W.2d 819, 820 (Tex. App.—Dallas 1984, writ ref'd n.r.e.). Because the

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[1] Escamilla and Henneke argue Reposa waived his first issue because he did not challenge the sufficiency of the trial court's findings below. However, their cited authority states only that a complaint about the *particularity* of a trial court's Rule 13 findings must first be raised in the trial court. *See Land & AT & S Transp., Inc.*, 947 S.W.2d 665, 666–67 (Tex. App.—Austin 1997, no writ). Because Reposa challenges the legal sufficiency of the evidence supporting the trial court's findings, not the particularity of those findings, he may properly raise that issue for the first time on appeal. *See McCain v. NME Hosps., Inc.*, 856 S.W.2d 751, 756 (Tex. App.—Dallas 1993, no writ).

statements made in both the affidavit and the grievance are absolutely privileged, they cannot support a libel claim. *See James*, 637 S.W.2d at 916–17.

Henneke bore the burden to show Reposa would have discovered the groundless nature of Beene's libel claim if he had performed a reasonable inquiry when he filed the pleading. *See Mann*, 464 S.W.3d at 92. The record shows Reposa himself told the trial court that after he filed Beene's lawsuit, he performed legal research and learned Texas law precludes a libel claim based on statements made in a state bar grievance proceeding. *See Robson v. Gilbreath*, 267 S.W.3d 401, 406 (Tex. App.—Austin 2008, pet. denied) (affirming Rule 13 sanctions because counsel's inquiry into validity of challenged claim "should have occurred before [he] filed" it). Additionally, Henneke stated that when he received Beene's petition, "it took [him] thirty minutes to find out there was an absolute bar for bringing a [libel] claim against somebody for filing a document in a judicial proceeding." This record supports a finding that a reasonable inquiry would have revealed the groundless nature of Beene's libel claim. *See Mann*, 464 S.W.3d at 92. We therefore overrule Reposa's first issue.

Groundlessness of Allegations

In his second issue, Reposa argues the trial court abused its discretion by finding the "threatened or coerced" allegation had no basis in fact or law and the libel allegation had no basis in law.[2] We disagree. We have already held that the libel claim was barred by the absolute immunity afforded to communications made in judicial and quasi-judicial proceedings. *See James*, 637 S.W.2d at 916–17. Moreover, as we noted in *Beene*, "'[d]istrict attorneys and other prosecutors are absolutely immune from liability when performing their prosecutorial functions.'" *Beene*, 2020

[2] Reposa argues that in the TCPA proceeding, "[t]he trial court found Ms. Beene had met her burden of clear and specific evidence and made a prima facie showing of each element of libel and abuse of process claims." This is not correct. The TCPA order finds Henneke and Escamilla established the defense of absolute immunity, but it does not find Beene made a prima facie showing of the elements of her claims.

WL 1159042 at *3 (quoting *Charleston v. Pate*, 194 S.W.3d 89, 90 (Tex. App.—Texarkana 2006, no pet.)). This is true "'even if the prosecutor acts in bad faith or with ulterior motives, so long as he or she acts within the scope of his or her prosecutorial functions.'" *Id.* (quoting *Charleston*, 194 S.W.3d at 90). Here, the abuse of process and libel claims arose out of actions Henneke and Escamilla took while they were representing the State in the criminal contempt proceedings. Reposa has not argued those actions fell outside the scope of Henneke's and Escamilla's prosecutorial duties.[3] *See id.* Because Henneke and Escamilla performed the challenged actions as part of their prosecutorial duties, they were immune from liability for those actions even if—as Beene's petition alleged—they acted in bad faith or with ulterior motives. *See id.* Since Henneke and Escamilla were absolutely immune from Beene's abuse of process and libel claims, those claims were groundless as a matter of law. *See James*, 637 S.W.2d at 916–17.

Additionally, Reposa points to no evidence in the record that factually supports the "threatened or coerced" allegation. TEX. R. CIV. P. 13. In the trial court, the only support Reposa offered for this allegation was his own unsupported suspicions about "what could have been said to Judge Stem" to persuade him to sign the purportedly false affidavit. Reposa's speculation on this point does not constitute competent evidence. *See Longaker v. Evans*, 32 S.W.3d 725, 734 (Tex. App.—San Antonio 2000, pet. withdrawn by agr.). Moreover, while Reposa implies the trial court improperly refused to permit discovery on the "threatened or coerced" allegation during the sanctions proceeding, he cites no authority holding he was entitled to investigate the allegation at that late date instead of—as Texas law required—before he filed it on Beene's behalf. TEX. R. CIV. P. 13; *Robson*, 267 S.W.3d at 406.

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[3] Reposa argues the claims he filed on Beene's behalf were warranted by a good faith argument for the extension, modification, or reversal of existing law because "[p]rosecutorial and [a]ttorney immunity should have limits." He has not, however, identified any of those purported limits or explained why any such limits should apply to Henneke's and Escamilla's actions in this case.

For these reasons, Reposa has not shown the trial court abused its discretion by finding the abuse of process and libel claims had no basis in law or fact. *See id.*; *see also Harlan v. Tex. Dep't of Ins.*, No. 01-14-00479-CV, 2016 WL 3476914, at *2 (Tex. App.—Houston [1st Dist.] June 23, 2016, no pet.) (mem. op.). As a result, Reposa has not shown the trial court abused its discretion by concluding those claims were groundless. TEX. R. CIV. P. 13. We therefore overrule Reposa's second issue.

Bad Faith or Harassment

While Reposa's brief does not explicitly attack the trial court's finding that he filed Beene's petition in bad faith or for the purposes of harassment, he notes that "[a] trial court may not base sanctions solely on the legal merit of a pleading or motion" and contends sanctions should only be assessed for "egregious" behavior. We will therefore consider whether the trial court abused its discretion by finding Reposa filed Beene's petition in bad faith or for the purposes of harassment.

In reviewing a Rule 13 sanctions order for abuse of discretion, we look to the particulars of good cause set out in the order. *Woodward v. Jaster*, 933 S.W.2d 777, 782 (Tex. App.—Austin 1996, no writ). Here, the trial court based its finding of bad faith and harassment on "statements made in May 2017 and August 2018 by Reposa to Henneke or in his presence, because of Henneke's service as court-appointed special prosecutor." During the sanctions hearing, Henneke presented evidence that in May of 2017 and August of 2018, Reposa: (1) approached Henneke in a courtroom and asked him, "Do you know what it feels like to have your balls cut off?"; (2) blocked Henneke from leaving a courtroom and told a bystander that "if it was the 1820s . . . [Henneke] would sell slaves but [Reposa] used the 'N' word rather than slaves"; (3) approached Henneke in a courtroom, called him a vulgar name, and then repeated the epithet to the presiding judge; (4) immediately after the vulgar name incident, followed Henneke into a second courtroom and made comments about Henneke's wife "in a tone and with a facial

expression that clearly indicated to [Henneke] that he was claiming to masturbate to the thought of [Henneke's] wife"; and (5) "accosted [Henneke] in court and demanded to know" the name and contact information of the person who was conducting Henneke's background check for a new job. Based on this evidence, the trial court did not act arbitrarily or unreasonably by finding Reposa filed Beene's groundless claims in bad faith or for the purpose of harassing Henneke. *See* TEX. R. CIV. P. 13; *Keith*, 256 S.W.3d at 918–19 (evidence litigant filed groundless motion to disqualify because he disliked attorney "and wished her off the case" supported bad faith finding); *Bradt v. Sebek*, 14 S.W.3d 756, 767–68 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) ("consistent pattern of conduct" supported bad faith finding).

CONCLUSION

We affirm the trial court's order.

Beth Watkins, Justice