Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00453-CV

JON UIW-DE DOE,
Appellant

v.

UNIVERSITY OF THE INCARNATE WORD, University of the Incarnate Word School of Osteopathic Medicine, and Sophia E. Piña,
Appellees

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 2018CI24056
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Luz Elena D. Chapa, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 17, 2020

AFFIRMED

Appellant Jon UIW-De Doe ("Doe") appeals the trial court's order dismissing his lawsuit for failure to comply with Rules 79 and 47 of the Texas Rules of Civil Procedure. We affirm the trial court's order.

BACKGROUND

"Jon UIW-De Doe" is the pseudonym of a former medical student who was expelled from the University of Incarnate Word School of Osteopathic Medicine at an unspecified time. Doe sued University of Incarnate Word, University of Incarnate Word School of Osteopathic Medicine,

and Sophia E. Piña (collectively, "appellees") alleging various causes of action. Doe's original petition did not disclose his name or current place of residence. Instead, he asserted he had a right to use a pseudonym because he feared retaliation from appellees. He did not identify the authority upon which he relied for that assertion.

Appellees specially excepted to Doe's petition, contending his refusal to disclose his name violated Rule 79 of the Texas Rules of Civil Procedure. Appellees also argued Doe's refusal to disclose his name denied them fair notice of his claims in violation of Rule 47 of the Texas Rules of Civil Procedure. Doe amended his petition to modify his causes of action, but he again asserted that his fear of retaliation allowed him to proceed pseudonymously under unspecified Texas law.

On April 10, 2019, the trial court granted appellees' special exceptions. It ordered Doe to amend his petition to state his name and place of residence by May 24, 2019. The trial court warned Doe it would dismiss his lawsuit with prejudice if he failed to comply. Doe did not comply with the trial court's order.

On June 13, 2019, appellees filed a Motion to Enforce Prior Order and Dismiss with Prejudice. On June 20, 2019, Doe filed a motion for reconsideration of the trial court's April 10 order, arguing: (1) an unpublished federal district court opinion applying the Federal Rules of Civil Procedure supported allowing him to proceed under a pseudonym; and (2) his amended petition contained sufficient facts to give appellees fair notice of his claims. He also requested a protective order, which he contended "would provide some protection to [Doe] while allowing [appellees] to proceed." On June 21, 2019, the trial court signed an order dismissing Doe's lawsuit with prejudice. Doe now appeals.

ANALYSIS

Standard of Review and Applicable Law

Special exceptions allow a party "to compel clarification of pleadings that are not sufficiently specific or are vague and indefinite." *De los Santos v. Comm'n for Lawyer Discipline*, 547 S.W.3d 640, 650 (Tex. App.—San Antonio 2017, pet. denied). If a trial court grants special exceptions, the pleader may either amend his petition to cure the defect or "stand on the pleadings and test the trial court's decision on appeal." *Ford v. Performance Aircraft Servs., Inc.*, 178 S.W.3d 330, 336 (Tex. App.—Dallas 2005, pet. denied). "If the pleader fails or refuses to amend the pleading, the trial court may dismiss the case." *Id.* "A trial court has broad discretion in ruling on special exceptions." *Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 635 (Tex. 2007).

Application

In his first issue, Doe contends the trial court misapplied Rules 79 and 47 of the Texas Rules of Civil Procedure when it dismissed his lawsuit. Appellees argue Doe waived this argument by failing to properly brief it.

In this court, Doe argues, "Nothing in Rule 79 prohibits a party from proceeding anonymously." We note, however, that Rule 79 plainly requires a petition to state the parties' names. TEX. R. CIV. P. 79. It is undisputed that "Jon UIW-De Doe" is not Doe's name. While Doe's petition referred to—but did not identify—"applicable tests (created by Texas jurisprudence)" that purportedly authorize him to keep his name private, he has not raised any argument or cited any authority regarding the proper application of those tests in this court. *See* TEX. R. APP. P. 38.1. Furthermore, although Texas courts occasionally permit plaintiffs to proceed under a pseudonym, Doe's brief presents no argument and cites no authority showing the trial court was required to do so under these facts. Because "[b]are assertions of error, without argument or authority, waive error," Doe has not preserved his claim that the trial court's application of Rule

79 was an abuse of discretion. *See CoTemp, Inc. v. Hous. W. Corp.*, 222 S.W.3d 487, 495 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

Doe also argues the trial court misapplied Rule 47 because the facts stated in his petition were sufficient to allow appellees to prepare a defense. Texas Rule of Civil Procedure 47 requires all petitions to contain "a short statement of the cause of action sufficient to give fair notice of the claim involved." TEX. R. CIV. P. 47. "The test for determining whether a pleading gives adequate notice is whether an opposing attorney of reasonable competence, with the pleadings before him, can ascertain the nature and the basic issues of the controversy and the testimony probably relevant." *De los Santos*, 547 S.W.3d at 650 (internal quotation marks omitted). While Doe asserted in the trial court that appellees can prepare a defense because "the facts are well known to [them]," he did not identify any evidence supporting that contention in either the trial court or this court. Nor has Doe explained how appellees can adequately prepare a defense if they do not know who sued them.[1] Doe's appellate argument on this point consists solely of verbatim recitations of the allegations in his live petition, followed by unsupported claims that those allegations satisfy Rule 47. Other than those conclusory references to Rule 47, he cites no authority and provides no substantive analysis regarding the trial court's application of Rule 47. *See In re Estate of Aguilar*, No. 04-13-00038-CV, 2014 WL 667516, at *8 (Tex. App.—San Antonio Feb. 19, 2014, pet. denied) (mem. op.). Because Doe's brief presents nothing for our review on the trial court's application of either Rule 79 or Rule 47, we overrule his first issue. TEX. R. APP. P. 38.1; *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.).

In his second issue, Doe argues the trial court abused its discretion by failing to rule on his motion for reconsideration and by not allowing him to proceed with his lawsuit under the

[1] In his brief, Doe claims, "Appellees have always been well aware of who [he] is." In their own brief, appellees respond, "[Doe] is not the only student who has been dismissed from the medical program."

protective order he requested in that motion. However, the appellate record Doe provided this court does not indicate that he ever set that motion for a hearing. Doe cites no authority showing a trial court abuses its discretion by refusing to consider a motion for reconsideration or by enforcing its previous order under these circumstances, and "we have no duty—or even right—to perform an independent review of the . . . applicable law to determine whether there was error." *Tchernowitz v. The Gardens at Clearwater*, No. 04-15-00716-CV, 2016 WL 6247008, at *1 (Tex. App.—San Antonio Oct. 26, 2016, no pet.) (mem. op.). We overrule Doe's second issue.

CONCLUSION

We affirm the trial court's order dismissing Doe's lawsuit.

Beth Watkins, Justice