In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-20-00047-CV

MARK EDWARD ATHANS, Appellant

V.

CHARITY ATHANS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 19-09-13162-CV

MEMORANDUM OPINION

We issued a memorandum opinion affirming the trial court's judgment in this cause on January 13, 2022. Appellant Mark Edward Athans ("Mark") timely filed a motion for rehearing. We now withdraw our previous memorandum opinion and judgment issued on January 13, 2022, substitute the following memorandum opinion and judgment in their place, and overrule Mark's motion for rehearing. *See* Tex. R.

App. P. 19.1(b) (stating that our plenary power over a judgment expires thirty days after all timely filed motions for rehearing are overruled).

In his sole issue on appeal, Mark argues that the trial court erred by *sua sponte* dismissing his lawsuit to have a marriage declared void because of bigamy for want of jurisdiction. We affirm the trial court's judgment.

BACKGROUND

In March 2019, the County Court at Law Number 3 (hereafter referred to as the "CCL 3 trial court") of Montgomery County, Texas, granted Mark's petition for divorce against Charity Athans ("Charity"), and in the Final Decree of Divorce, the CCL 3 trial court denied Mark's request for an annulment based on fraud and awarded Charity certain property and monies.[1] In April 2019, a Montgomery County grand jury indicted Charity for bigamy, and the indictment alleged that Charity was still legally married to another man when she married Mark in August 2017. In June 2019, the CCL 3 trial court entered an Order on Motion for Temporary Orders

[1]We note that this Court has had two other matters before it that relate to the Athans's divorce. In July 2019, this Court granted Mark Athans's motion to dismiss his appeal from the County Court at Law No. 3. *See Athans v. Athans*, No. 09-19-00152-CV, 2019 WL 3330591, at *1 (Tex. App.—Beaumont July 25, 2019, no pet.). In April 2020, this Court conditionally granted Mark's petition seeking mandamus relief, in which Mark requested that the trial court vacate its order granting Charity Athans's motion to enforce the property division provisions and holding Mark in contempt. *See In re Athans*, No. 09-20-00074-CV, 2020 WL 1770903, at *1, *3 (Tex. App.—Beaumont Apr. 9, 2020, orig. proceeding).

Pending Appeal, ordering Mark to pay Charity's attorney's fees as well as spousal support. In July 2019, Charity filed a First Amended Petition for Enforcement of Property Division and Enforcement of Temporary Orders Pending Appeal in the CCL 3 trial court.

In September 2019, Mark filed an Original Petition and Application for Temporary Restraining Order and Temporary Injunction ("Mark's 2019 Original Petition") against Charity, alleging that the 284th Judicial District Court had jurisdiction under section 6.307 of the Texas Family Code to declare his marriage with Charity void because (1) the purported marriage was contracted in Texas, and (2) both he and Charity are domiciled in Texas. *See* Tex. Fam. Code Ann. § 6.307. According to Mark's 2019 Original Petition, when he and Charity purportedly married on August 7, 2017, Charity was still legally married to at least two other men, resulting in his marriage to Charity as being void under section 6.202 of the Texas Family Code. *See id.* § 6.202. Mark alleged that he did not know Charity was married to the other men when he filed for divorce in 2018 or when the CCL 3 trial court entered its Final Decree of Divorce in March 2019. Mark also alleged that the Final Decree of Divorce and the June 2019 Reformed Order on Motion for Temporary Orders Pending Appeal are void and must be set aside because his purported marriage to Charity is void under section 6.202 of the Family Code and

has no legal effect in Texas. *See id.* According to Mark, since his marriage is void, the CCL 3 trial court did not have jurisdiction to grant him a divorce or divide the community estate.

On January 14, 2020, Charity pleaded guilty to bigamy and was placed on deferred adjudication community supervision for a period of four years and assessed a $500 fine. On January 29, 2020, the 284th District Court entered an Amended Show Cause Order on the Court's Motion to Dismiss for Want of Prosecution, ordering the parties to appear and show cause why Mark's 2019 Original Petition should not be dismissed for want of jurisdiction. On February 3, 2020, Charity filed an Original Answer to Mark's 2019 Original Petition, entering a general denial and raising the affirmative defense of res judicata. On February 6, 2020, Mark filed a Response to the Amended Motion to Show Cause, arguing his lawsuit in the 284th District Court is a collateral attack on a void divorce decree because of bigamy and that the CCL 3 trial court lacked subject-matter jurisdiction to grant the divorce. Attached to Mark's response is a December 2019 Order for Decree of Nullity entered by the Fourth Judicial Circuit Court of South Dakota, ordering that: (1) Mark had no knowledge of Charity's prior marriages when he married Charity in Lawrence County, South Dakota on August 7, 2017; and (2) the marriage between Mark and Charity is null and void from the beginning. Mark argued that the 284th District Court has

jurisdiction to declare the Final Decree of Divorce void and requested the court vacate, set aside, and otherwise not enforce the Final Decree of Divorce or any enforcement orders.

On February 7, 2020, the 284th District Court signed an Order Dismissing Case for Want of Jurisdiction and found that it is undisputed that the CCL 3 trial court had jurisdiction over Mark's Petition for Divorce and the authority to sign the Final Decree of Divorce and that the voidness of the marriage does not translate into the voidness of any judgment. The 284th District Court noted that the proper remedy in cases where a final judgment has been obtained and certain facts were fraudulently withheld is to file a bill of review. The 284th District Court then dismissed Mark's 2019 lawsuit for want of jurisdiction.

ANALYSIS

On appeal, Mark contends that the 284th District Court erred by *sua sponte* dismissing his lawsuit for want of jurisdiction. In three sub-issues, Mark questions whether (1) the CCL 3 trial court had subject-matter jurisdiction to render the Final Decree of Divorce, (2) he was required to file a bill of review to attack the Final Decree of Divorce, and (3) section 6.307 of the Family Code invoked or provided jurisdiction to the 284th District Court.

The question of whether a court has subject-matter jurisdiction is a question of law, and a trial court's order dismissing a cause for want of jurisdiction is reviewed *de novo*. *See Graber v. Fuqua*, 279 S.W.3d 608, 631 (Tex. 2009) (Wainwright, J., dissenting); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). A plaintiff's petition must state facts which affirmatively show the jurisdiction of the court in which the action is brought. *Richardson v. First Nat'l Life Ins. Co.*, 419 S.W.2d 836, 839 (Tex. 1967); *see also Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). When reviewing a trial court's order dismissing a case for want of jurisdiction, we construe the pleadings in favor of the plaintiff and look at the pleader's intent. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446 (citations omitted).

A judgment may be challenged as void through a direct or collateral attack. *In re Thompson*, 569 S.W.3d 169, 172 (Tex. App.—Houston [1st Dist.] 2018, orig. proceeding). A direct attack may take the form of (1) a pleading filed under the original cause number while the trial court has plenary power, or (2) after the trial court loses plenary power, a pleading filed under a new cause number that qualifies as a bill of review and is filed within four years of the judgment. *Id.*; *see also* Tex. R. Civ. P. 329b (providing the timelines that a trial court has plenary power to vacate, modify, correct, or reform the judgment within thirty days after the judgment is

signed). Once plenary power has expired, generally, a trial court cannot set aside a judgment in a direct attack except by a bill of review. *See* Tex. R. Civ. P. 329b(f); *Cottone v. Cottone*, 122 S.W.3d 211, 213 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (stating that a bill of review in the court rendering the judgment is the exclusive remedy to attack the judgment). After the time period to bring a direct attack has expired, the petitioner may only attack the judgment collaterally by initiating a new case under a different cause number that challenges the effect of the original judgment. *In re Thompson*, 569 S.W.3d at 172.

"As with other final, unappealed judgments which are regular on their face, divorce decrees and judgments are not vulnerable to collateral attack." *Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex. 2009) (citation omitted). "Although a final judgment may be erroneous or voidable, it is not void and thus subject to collateral attack if the court had jurisdiction of the parties and subject matter." *Berry v. Berry*, 786 S.W.2d 672, 673 (Tex. 1990) (citations omitted). Thus, errors other than lack of jurisdiction over the parties or the subject matter render the judgment voidable and may be corrected only through a direct attack. *In re Thompson*, 569 S.W.3d at 172; *Hagen*, 282 S.W.3d at 902.

A bill of review is an equitable proceeding brought by a party seeking to set aside a prior judgment that is not void on the face of the record and is no longer

subject to challenge by a motion for new trial or appeal. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003); *Caldwell v. Barnes*, 975 S.W.2d 535, 537 (Tex. 1998). A bill of review is a separate and independent suit, brought in the same court that entered the judgment being attacked under a different cause number. *In re Thompson*, 569 S.W.3d at 173-74. Generally, to set aside a judgment by a bill of review, a petitioner must plead and prove (1) a meritorious defense to the cause of action alleged to support the judgment, (2) that he was prevented from making by the fraud, accident of wrongful act of his opponent, and (3) unmixed with any fault or negligence on petitioner's part. *Chapman*, 118 S.W.3d at 752; *Caldwell*, 975 S.W.2d at 537.

> Where the suit attacking a former judgment is commenced in the wrong court, but there is an order transferring the cause to the proper court and invoking the jurisdiction of the court which entered the improper judgment, jurisdiction is properly in that court and the jurisdiction relates back to the original filing of the suit.

Ragsdale v. Ragsdale, 520 S.W.2d 839, 841, 844 (Tex. Civ. App.—Fort Worth 1975, no writ) (citations omitted) (explaining that the district court entered an order transferring the case back to the Domestic Relations Court No. 1 on the grounds that the cause of action constituted a collateral attack on the prior divorce decree).

First, we note that Mark cannot collaterally attack the Final Decree of Divorce because he has not shown that it is void due to the CCL 3 trial court not having

jurisdiction over the parties and subject matter or acting outside of its capacity as a court. *See Hagen*, 282 S.W.3d at 902; *In re Thompson*, 569 S.W.3d at 172; *Cottone*, 122 S.W.3d at 214. Second, since Mark failed to show that the Final Decree of Divorce is void and thus subject to a collateral attack, section 6.307 of the Family Code, which gives a trial court jurisdiction to declare a marriage void in a collateral proceeding, does not apply in this case. *See* Tex. Fam. Code. Ann. § 6.307; *Berry*, 786 S.W.2d at 673. Moreover, since the plenary power of the CCL 3 trial court has expired, a bill of review filed in the original trial court is Mark's exclusive remedy for directly attacking the Final Decree of Divorce. *See* Tex. R. Civ. P. 329b(f); *Hagen*, 282 S.W.3d at 902; *In re Thompson*, 569 S.W.3d at 172; *Cottone*, 122 S.W.3d at 213.

Even if in the interest of justice, we construed the pleadings in Mark's 2019 Original Petition to be sufficient to seek relief under a bill of review, Mark's lawsuit was not filed in the original trial court rendering the Final Decree of Divorce.[2] *See* Tex. R. Civ. P. 71; *In re Thompson*, 569 S.W.3d at 173-74; *Cottone*, 122 S.W.3d at

[2]We note that the clerk's record appears to show that Mark's counsel attempted to file Mark's Original Petition and Application for Temporary Restraining Order and Temporary Injunction "In the County Court at Law Number _____[,] Montgomery County, Texas[.]" Once filed, the Montgomery County District Clerk's Office filed Mark's 2019 Original Petition in the 284th Judicial District Court; however, the petition should have been filed in the County Court at Law Number 3, which was the court of original jurisdiction.

213; *Ragsdale*, 520 S.W.2d at 841, 844. Since the 284th District Court did not render the Final Decree of Divorce, it did not have jurisdiction to set aside the Final Decree of Divorce. *See Cottone*, 122 S.W.3d at 213; *see also Ragsdale*, 520 S.W.2d at 841, 844. Accordingly, we conclude that the trial court did not err by *sua sponte* dismissing Mark's lawsuit for want of jurisdiction. We overrule Mark's sole issue and affirm the trial court's judgment.

AFFIRMED.

_____
W. SCOTT GOLEMON
Chief Justice

Submitted on August 10, 2021
Opinion Delivered April 29, 2022

Before Golemon, C.J., Horton and Johnson, JJ.