

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-22-00045-CV

TOMMY LYNN COOPER, Appellant

V.

SUSAN CAROL BOLSTER, Appellee

**On Appeal from the 457th District Court
Montgomery County, Texas
Trial Cause No. 21-08-11490-CV**

MEMORANDUM OPINION

Appellant Tommy Lynn Cooper (Cooper) appeals the trial court's dismissal of his request to partition property that he and his stepsister, Appellee Susan Carol Bolster (Bolster), allegedly inherited from their respective parents. Bolster filed a cross-appeal regarding the trial court's denial of her attorneys' fees. The trial court found that Cooper lacked standing to partition the property and dismissed the case, and the trial court denied Bolster's request for attorney's fees. We affirm.

I. Background

Bolster applied to probate her stepmother's will as a muniment of title. Cooper, the decedent's son, contested Bolster's application and sought to partition the real property that was the subject of the dispute. The trial court severed the partition claim and admitted the will to probate.¹ The trial court's action effectively gave Bolster fee simple title to a parcel of land and denied Cooper the half interest in that parcel that he alleged to have inherited from his mother. Bolster contends Cooper had no ownership interest in the property, and he consequently lacked standing to seek a partition. The trial court agreed and dismissed the case.

II. Standard of Review

Because standing is a component of subject matter jurisdiction, we review it de novo. *See Farmers Tex. Cty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 240 (Tex. 2020) (citations omitted).

We review the denial of attorneys' fees under an abuse of discretion standard. *See Tomsu v. Tomsu*, 381 S.W.3d 715, 719 (Tex. App.—Beaumont 2012, no pet.); *Shayn v. City of Houston*, 499 S.W.3d 12, 15 (Tex. App.—Houston [14th Dist.] 2016, no pet.). “The award of attorneys' fees rests in the sound discretion of the trial court and will not be reversed absent a clear showing of abuse of discretion.” *Morrell*

¹ In appeal no. 09-21-00269-CV, we affirmed the trial court's order admitting the will to probate as a muniment of title.

Masonry Supply, Inc. v. Lupe's Shenandoah Reserve, LLC, 363 S.W.3d 901, 909 (Tex. App.—Beaumont 2012, no pet.). “To recover attorney’s fees, the party must prove the reasonableness of the fees.” *Tomsu*, 381 S.W.3d at 719. A trial court abuses its discretion when it “acts without regard for any guiding rules.” *Caffe Ribs, Inc. v. State*, 487 S.W.3d 137, 142 (Tex. 2016).

III. Analysis

A. Standing

In *Freeman v. Formosa Mgmt., L.L.C.*, our sister court of appeals considered whether an ownership interest in real property goes to standing or is, instead, an element of a partition claim. No. 01-15-00907-CV, 2016 Tex. App. LEXIS 12365, at **12-13 (Tex. App.—Houston [1st Dist.] Nov. 17, 2016, pet. denied) (mem. op.). The *Freeman* court held that a property ownership interest does not affect standing to seek partition but is an element of a successful partition suit. *Id.* We therefore hold that although the trial court erred in dismissing Cooper’s case for lack of standing, this error is not reversible because Cooper’s lack of ownership interest in the subject property precluded him from meeting his burden of proof in his partition suit.² *Id.*; *see* Tex. R. App. P. 44.1(a).

² In the companion case, the trial court determined that Cooper had no ownership interest in the property sought to be partitioned in this case.

We overrule Cooper’s initial appellate point. Because no discussion of Cooper’s remaining appellate argument on his issue is necessary to this appeal, we decline to address it. *See* Tex. R. App. P. 47.1.

B. Attorneys’ Fees

Bolster argues that she is entitled to attorney fees pursuant to the Uniform Declaratory Judgments Act (UDJA). *See* Tex. Civ. Prac. & Rem. Code Ann. § 37.009. Although Bolster prevailed in the trial court, she was not entitled to an attorneys’ fee award as a matter of law. *See Mahmood v. Fanasch*, No. 09-05-134-CV, 2005 Tex. App. LEXIS 9632, at **7-8 (Tex. App.—Beaumont Nov. 17, 2005, no pet.) (mem. op.). Instead, an attorneys’ fee award depends on what is equitable and just and is committed to the trial court’s sound discretion. *Id.* at *8. In its Findings of Fact and Conclusions of Law the court found as follows: “The declarations were unnecessary to achieve Defendant’s acquisition of the property in question and it appears to the court the request under the UDJA was simply to obtain attorneys[’] fees from Plaintiff. . . . It is therefore this Court’s opinion that it is not equitable and just to award attorneys[’] fees to Defendant.” The court further found “In fact it encourages unnecessary litigation.”

The court concluded that, since the declaratory judgment pleadings were unnecessary for Bolster to obtain the judgment which awarded her the property in the other suit, and were duplicative, it would be inequitable to grant attorneys’ fees

to which she would not otherwise be entitled. *See Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998) (In sum, then, the Declaratory Judgments Act entrusts attorney fee awards to the trial court's sound discretion, subject to the requirements that any fees awarded be reasonable and necessary, which are matters of fact, and to the additional requirements that fees be equitable and just, which are matters of law). We cannot say the trial court abused its discretion in refusing to grant attorneys' fees to Bolster.

We overrule Bolster's sole point in her cross-appeal.

IV. Conclusion

Having overruled the issue raised by Appellant and the issue raised on cross appeal by Appellee, we affirm the trial court's judgment.

AFFIRMED.

JAY WRIGHT
Justice

Submitted on March 3, 2023
Opinion Delivered December 14, 2023

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