COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00181-CV

EDGAR 'PAT' CALLAWAY — APPELLANT

V.

GRANVILLE 'RANDY' MARTIN, III, AND JUDY MARTIN, INDIVIDUALLY AND D/B/A LUKES MOBILE HOME PARK — APPELLEES

FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CV12-1760

MEMORANDUM OPINION[1]

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[1]*See* Tex. R. App. P. 47.4.

I. Introduction

Appellant Edgar "Pat" Callaway sued his daughter, Appellee Judy Martin, and her husband, Appellee Granville "Randy" Martin III, individually and doing business as Lukes Mobile Home Park, after their 1999 business deal involving the park soured. The parties had created two corporations—one, JRP Enterprises, Inc., to own the park, and the other, Lukes Mobile Home Park, Inc., to manage the park,[2] and in June 2000, Pat paid $89,970 of the purchase price and borrowed the remaining amount—$200,000—from a bank before the sale closed. Opal Lukes signed the deed transferring the property to JRP. Pat waited until after the closing to tell Judy and Randy that he had obtained the loan instead of using his own cash, and for the following five years—from August 12, 2000 to July 12, 2005—JRP and Lukes struggled to pay off the bank note at more than $4,000 per month and ultimately paid the bank an additional $48,000 in interest that was not contemplated at the outset of the transaction. Neither corporation fully recovered from this financial blow.

In December 2012, Pat filed his lawsuit. Among the other claims that Pat asserted during the course of the litigation, he alleged fraud, undue influence, coercion, breach of fiduciary duty, and breach of an oral contract, and he sought a declaratory judgment. Pat added his declaratory judgment claim in his third

[2]The case's special master stated in his affidavit that the parties' partnership had been converted into the two corporations before they bought the park.

amended petition, which he filed in April 2013, and he added his breach-of-oral-contract claim in his fifth amended petition, which he filed a week before the first summary judgment hearing in 2014. The trial court granted a partial summary judgment for Randy and Judy on all but the declaratory judgment and contract actions.

A few days after Randy and Judy filed a second motion for summary judgment on Pat's remaining claims, they also sought rule 13 sanctions, complaining that all of Pat's pleadings had been groundless, had been filed in bad faith, and had been filed for purposes of harassment. Undeterred, Pat filed a sixth amended petition, raising a new fraud claim in addition to his breach-of-oral-contract claim and requiring Randy and Judy to supplement their second summary judgment motion. The trial court granted the second summary judgment motion but denied Randy and Judy's motion for sanctions.

After Randy and Judy were realigned as plaintiffs based on the counterclaims they had asserted against Pat, Pat moved for summary judgment on their claims, and Randy and Judy asked the trial court to reconsider assessing sanctions. At the January 7, 2016 hearing on the parties' motions, Randy and Judy informed the trial court that they would dismiss their counterclaims but that they wanted reimbursement for their expenditures made in defending against Pat's unmeritorious lawsuit. After hearing additional testimony, including Pat's, the trial court awarded sanctions against Pat in the amount of $75,000 in attorney's fees and $45,000 in court costs.

Pat does not challenge the amount awarded. Nor does he appeal the trial court's summary judgments on his claims. Instead, in three issues, he appeals only the propriety and basis for the sanctions imposed. We affirm.

II. The Trial Court's Sanctions Award and Final Judgment

The trial court signed the order awarding sanctions, with findings of fact therein, on May 11, 2016, stating,

> The Court finds that all of the claims of [Pat] filed against the Martins were groundless; that with regard to such claims there was no basis in law or fact; that they were not warranted by a good-faith argument for the extension, modification or reversal of existing law and further that the claims of [Pat] filed against the Martins were also filed in bad faith and/or for the purpose of harassment, and that good cause exists for the imposition of the sanctions as set forth below.
>
> In particular the Court finds that each of [Pat's] claims against the Martins for fraud were groundless because each such claim was barred by the four year statute of limitation and that each claim was also without any factual basis.
>
> The Court finds that [Pat's] claim against the Martins that Judy Martin had exercised undue influence on [Pat] was without factual basis for the reason that [Pat] admitted to facts during his deposition proving that Judy Martin had not exercised undue influence on him.
>
> The Court finds that [Pat's] claim against the Martins that he had been excluded from the premises and business, that the Martins had failed to provide him with information about the business and that the Martins failed and refused to pay him any net profits of the business was factually groundless because [Pat] admitted in his deposition that he had always had access to the Company's bank account records and in answer to [Randy's] Interrogatory No. 15 that Lukes Mobile Home Park, Inc. ("Lukes") had paid [Pat] $76,260.00 between 2006 and 2011.
>
> The Court finds that [Pat's] claim against the Martins that they had breached an oral contract with him to pay him $1,500.00 a month is without legal or factual basis for the reason that no

consideration existed for any alleged contract and that any such contract as alleged by [Pat] was barred by the Statute of Frauds.

The Court finds that [Pat's] claim against the Martins wherein he alleged that the Martins misappropriated money from Lukes for themselves is factually groundless for the reason that an audit by Erickson Group after detailed examination of the records of Lukes found that no evidence existed reflecting the Martins had improperly appropriated money from Lukes.

The Court finds that [Pat's] claim against the Martins for Trespass to Try Title and to Quiet Title is legally and factually groundless for the reason that the warranty deed attached as Exhibit "B" to [Pat's] Original Petition and his admissions during his deposition reflect that [Pat] never owned any right, title or interest in the real property the subject of the lawsuit and knew that he had never had ownership of such property.

The Court finds that [Pat's] declaratory judgment action groundless for the reason that [Pat] alleged no factual basis authorizing a declaratory judgment.

The Court further finds that [Pat's] suit against the Martins was filed in bad faith because:

a) He filed a sworn Original Petition in which his verification to his Original Petition was false;

b) He alleged facts and claims in his verified Original Petition which he subsequently contradicted under oath by deposition, reflecting that the facts alleged in his Original Petition were false and unfounded in fact;

c) He continuously refused to answer questions responsively during his deposition and again during the hearing on March 31, 2016 to reconsider the Martins' Motion for Sanctions;

d) He amended his pleadings to allege a new claim for breach of contract in order to avoid dismissal of his lawsuit by Summary Judgment, which claim was also equally groundless;

e) He continued to assert factual allegations and claims after the discovery process revealed that the factual basis of his claims were untrue; and

f) In the course of discovery he produced from his possession minutes of a partnership meeting the occurrence of which he denied and which minutes negated his fraud claim regarding an American Express credit card.

The Court further finds that [Pat] filed his suit for the purpose of harassment in that the [sic] sought to bribe witnesses to testify against the Martins and stated that his purpose in suing the Martins was to damage [Randy] financially.

On the same day, the trial court signed its final judgment, rendering a take-nothing judgment against Pat, dismissing Randy and Judy's claims, and incorporating the sanctions award.

III. Sanctions

Pat argues that the trial court abused its discretion (1) by granting Randy and Judy's motion for reconsideration because no new, reliable evidence was presented to support it, (2) by granting the sanctions because his pleadings were not filed in bad faith or with the intent to harass, and (3) by finding that Randy and Judy's evidence of Pat's alleged conduct after he filed the case showed his bad faith or intent to harass when he filed his lawsuit.

Randy and Judy respond that the trial court's judgment must be affirmed because, among other reasons, the trial court did not clearly abuse its discretion by awarding the sanctions after considering and weighing the evidence submitted to show that Pat had asserted his claims in bad faith and with the intent to harass.

A. Standard of Review and Applicable Law

We review both a trial court's decision on a motion to reconsider[3] and a trial court's imposition of sanctions for an abuse of discretion. *See Nath v. Tex. Children's Hosp.* (*Nath I*), 446 S.W.3d 355, 361 (Tex. 2014); *Mullins v. Martinez R.O.W., LLC*, 498 S.W.3d 700, 705 (Tex. App.—Houston [1st Dist.] 2016, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles, that is, if its act is arbitrary or unreasonable. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007); *Cire v. Cummings*, 134 S.W.3d 835, 838–39 (Tex. 2004). A trial court also abuses its discretion by ruling without supporting evidence. *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). But an abuse of discretion does not occur when the trial court bases its decision on

[3]A trial court has plenary power—power that is full, entire, complete, absolute, perfect, and unqualified—over, and therefore the jurisdiction and authority to reconsider, not only its judgment but also its interlocutory orders until thirty days after the date a final judgment is signed or, if a motion for new trial or its equivalent is filed, until thirty days after the motion is overruled by signed, written order or operation of law, whichever first occurs. *Orion Enters., Inc. v. Pope*, 927 S.W.2d 654, 658 (Tex. App.—San Antonio 1996, orig. proceeding) (citing Tex. R. Civ. P. 329(b), *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993), and *Mesa Agro v. R.C. Dove & Sons*, 584 S.W.2d 506, 508 (Tex. Civ. App.—El Paso 1979, writ ref'd n.r.e.)); *see Bass v. Waller Cnty. Sub-Reg'l Planning Comm'n*, No. 03-17-00039-CV, 2017 WL 744262, at *6 (Tex. App.—Austin Feb. 24, 2017, no pet.) ("Both orders, being interlocutory, remained subject to change or modification—or being abrogated altogether—until merged into a final judgment."); *see also Flagstar Bank, FSB v. Walker*, 451 S.W.3d 490, 504 (Tex. App.—Dallas 2014, no pet.) ("[A] trial court has the inherent right to change or modify any interlocutory order or judgment until the judgment on the merits of the case becomes final."); *Dunagan v. Coleman*, 427 S.W.3d 552, 557 (Tex. App.—Dallas 2014, no pet.) (same); *Rush v. Barrios*, 56 S.W.3d 88, 98 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (same).

conflicting evidence and some evidence of substantive and probative character supports its decision. *Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 97 (Tex. 2009); *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex. 2002) (op. on reh'g).

With regard to imposing rule 13 sanctions, a trial court abuses its discretion if it does not ensure that there is a direct relationship between the improper conduct and the sanction imposed: the punishment must be imposed upon the true offender and must be tailored to remedy any resulting prejudice. *Pearson v. Stewart*, 314 S.W.3d 242, 247 (Tex. App.—Fort Worth 2010, no pet.). Further, the trial court must examine the facts available to the litigant and the circumstances existing when the litigant filed the pleading, as well as provide notice and hold an evidentiary hearing "'to make the necessary factual determinations about the motives and credibility of the person signing the groundless petition.'" *Fast Invs., LLC v. Prosper Bank*, No. 02-13-00026-CV, 2014 WL 888438, at *1 (Tex. App.—Fort Worth Mar. 6, 2014, no pet.) (mem. op.) (quoting *Parker v. Walton*, 233 S.W.3d 535, 539–40 (Tex. App.—Houston [14th Dist.] 2007, no pet.)). But in determining whether rule 13 sanctions are warranted, the court may also consider the case's entire history. *Smith v. Duncan Land & Expl., Inc.*, No. 02-05-00334-CV, 2006 WL 2034031, at *7 (Tex. App.—Fort Worth July 20, 2006, no pet.) (mem. op.).

Pat does not specifically challenge any of the trial court's numerous findings of fact, but in reviewing sanctions orders, we are not bound by a trial court's findings of fact and conclusions of law; rather, we must independently

review the entire record to determine whether the trial court abused its discretion. *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006). But in determining whether the trial court abused its discretion in awarding sanctions, we may look at whether there is some evidence to support the trial court's findings. *See Nath v. Tex. Children's Hosp. (Nath II)*, No. 14-15-00364-CV, 2016 WL 6767388, at *7 (Tex. App.—Houston [14th Dist.] Nov. 15, 2016, pet. filed) (mem. op.) (citing *Nath I*, 446 S.W.3d at 361, and *Unifund CCR Partners*, 299 S.W.3d at 97).

Rule of civil procedure 13, "Effect of Signing of Pleadings, Motions and Other Papers; Sanctions," acts as a check on abuses in the pleading process. *See Nath I*, 446 S.W.3d at 358 (stating that pleadings sanctions are allowed against parties and attorneys when, among other things, a pleading is filed with an improper purpose or is unlikely to receive evidentiary support).[4]

While rule 13 sets out the presumption that pleadings, motions, and other papers are filed in good faith, it also sets out a remedy when they are not, stating, in pertinent part,

> The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after

[4]Sanctions may be imposed for a variety of reasons—to enforce compliance with relevant rules, to punish violators, to compensate the aggrieved party forced to incur costs to respond to baseless pleadings, or to deter other litigants from similar misconduct. *Mann v. Kendall Home Builders Constr. Partners I, Ltd.*, 464 S.W.3d 84, 91 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

> reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. . . . If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215[] upon the person who signed it, a represented party, or both.[5]
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> . . . No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

Tex. R. Civ. P. 13 (footnote omitted). The party moving for sanctions has the burden of overcoming the presumption that a pleading was filed in good faith. *Smith*, 2006 WL 2034031, at *6.

When the trial court sanctions a party under rule 13 pursuant to another party's motion, it may not award sanctions on a basis not asserted in the motion. *Mann*, 464 S.W.3d at 93. We may uphold the ruling, however, if any ground raised in the motion is supported by the record. *Id.* Here, Randy and Judy asked for sanctions arguing that Pat's pleadings were: (1) groundless and brought in bad faith, and (2) groundless and brought for the purpose of harassment.[6] Thus,

[5]These sanctions provide only for a monetary penalty based on expenses, court costs, or attorney's fees. *See* Tex. R. Civ. P. 215.2(b); *Low*, 221 S.W.3d at 614.

[6]In *Nath I*, the supreme court added a third option to the "bad faith" or "harassment" prong: knowledge of the filings' falsity when made. 446 S.W.3d at 362–63; *see Allison v. Conglomerate Gas II L.P.*, No. 02-13-00205-CV, 2015 WL

we may uphold the trial court's sanctions order if the record supports either theory. *Id*.

B. "New" Evidence and the Motion for Reconsideration

In his first issue, Pat contends that the trial court abused its discretion by granting the motion for reconsideration of rule 13 sanctions "when no new, reliable evidence was presented to the court."

In their motion for reconsideration of sanctions, Randy and Judy incorporated by reference the depositions and documentary evidence attached to their original motion "together with the oral testimony of Judy Martin during the hearing on that Motion on November 4, 2014," in addition to excerpts from Pat's deposition, the Erickson Partners report, a portion of their first motion for partial summary judgment, Kurt Reed's affidavit, Floyd Pruitt's affidavit, Donna Mills's affidavit, and Pat's fourth amended petition. They also asked the trial court to take judicial notice of the entire file in the case to determine Pat's motives and credibility. The trial court explicitly took judicial notice of its file "and all the contents thereof."

Pat did not request that the reporter's record of the November 4, 2014 hearing be included in the appellate record for this appeal. Therefore, Pat cannot demonstrate and we cannot determine whether Judy's testimony—or anyone else's—at the earlier hearing is the same or whether the evidence presented at

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5106448, at *6 (Tex. App.—Fort Worth Aug. 31, 2015, no pet.) (mem. op.) (setting out the third option with citation to *Nath I*).

the subsequent reconsideration hearing was "new." *See Imagine Auto. Grp. v. Boardwalk Motor Cars, Ltd.*, 430 S.W.3d 620, 632 (Tex. App.—Dallas 2014, pet. denied) ("When confronted with an incomplete record, we presume the omitted portions are relevant to the appeal and the evidence contained within the omitted portions of the record support the trial court's judgment."). Further, Pat cites us to no authority—and we have likewise found none—to support the assertion that, absent a statute or rule to the contrary, a trial court is restricted to considering only "new" evidence on a motion for reconsideration during its plenary power.[7]

To the extent that Pat's brief can be fairly read to complain that the trial court abused its discretion in considering the live testimony of Kurt Reed, a witness Pat contends the trial court had earlier struck, we find nothing in the

[7]For example, when a motion to reconsider a partial summary judgment is filed, while the trial court may ordinarily consider only the record as it existed prior to hearing the summary judgment motion for the first time, it may consider evidence submitted with a motion for reconsideration of the summary judgment so long as it affirmatively indicates on the record that it accepted or considered this evidence. *See Circle X Land & Cattle Co. v. Mumford ISD*, 325 S.W.3d 859, 863 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) (op. on reh'g). This is in contrast to the standard for newly discovered evidence required for a post-judgment motion for new trial on the basis of new evidence. *See Vafaiyan v. State*, No. 02-09-00098-CV, 2010 WL 3432819, at *15 (Tex. App.—Fort Worth Aug. 31, 2010, pet. denied) (mem. op.) (setting out, in civil forfeiture case that ended in summary judgment, the elements required to obtain a new trial based on newly discovered evidence); s*ee also In re Guardianship of Stokley*, No. 05-10-01660-CV, 2011 WL 4600428, at *3 (Tex. App.—Dallas Oct. 6, 2011, no pet.) (mem. op.) ("A trial court may modify an injunction because of fundamental error or changed circumstances, 'but has no duty to reconsider the grant of an injunction if the movant fails to present *new* evidence showing fundamental error or changed conditions.'" (quoting *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 580 (Tex. App.—Austin 2000, no pet.)).

record to support this contention. While the trial court did strike two *affidavits*—of Donna Mills and of Reed—in favor of receiving live testimony rather than affidavit testimony from these witnesses, the trial court did not strike them as witnesses.[8]

To the extent that Pat's brief can be fairly read to complain that the trial court abused its discretion by "bas[ing] its decision to reconsider its previous ruling on Reed's testimony," Pat cites to no authority—and we can find none—to support that this is an impermissible reason for a trial court to reconsider its prior ruling.[9] Nor do we find any support in the record to conclude that Reed's testimony formed the only basis of the trial court's decision to reconsider its initial ruling on the motion for sanctions.

Pat also generally complains that Reed's testimony should not be given any persuasive weight because Reed gave testimony that Pat characterizes as "unclear and incoherent at times." He further complains that all of Randy and Judy's witnesses were biased against him. But the trial court, as the trier of fact, is the sole judge of the credibility of witnesses and the weight to be given to their testimony. *See Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003); *Shear Cuts, Inc. v. Littlejohn*, 141 S.W.3d 264, 271 (Tex. App.—Fort Worth 2004, no pet.) ("We will not reevaluate the weight and credibility of the

[8]Although Pat's attorney announced on the record that Mills was present at the hearing and able to give live testimony, she was not called as a witness.

[9]To the extent Reed's testimony would have been "new" to the motion for sanctions on reconsideration, Pat's argument conflicts with his preceding argument that no "new" evidence was presented.

evidence and therefore defer to the trial court's role as the exclusive judge of the credibility of the witnesses.").

For these reasons, we hold that the trial court did not abuse its discretion in reconsidering its prior ruling on the motion for sanctions, and we overrule Pat's first issue.

C. Award of Sanctions

As discussed above, we may uphold the trial court's award of rule 13 sanctions if either of the grounds Randy and Judy raised in their motion is supported by the record. *See Mann*, 464 S.W.3d at 93. Randy and Judy asserted two rule 13 grounds, each containing a two-prong requirement of proof: (1) that Pat's pleadings were groundless and brought in bad faith, and (2) that Pat's pleadings were groundless and brought for the purpose of harassment. We will take each theory in turn and begin with the trial court's "groundless" finding, since to prevail under either theory, Randy and Judy were required to prove that Pat's pleadings were groundless.

1. Groundless Finding

Pat does not challenge the trial court's findings that his claims were groundless. Nevertheless, a thorough review of the record reveals evidentiary support for the trial court's finding that Pat's pleadings were groundless, and we will briefly discuss some of this evidence below.

A "groundless" pleading is one that has no basis in law or fact and is not warranted by a good-faith argument for the extension, modification, or reversal of

existing law.[10] Tex. R. Civ. P. 13. We have said that the underlying purpose of rule 13 is "'to insure that at the time a challenged pleading was filed, the litigant's position was factually well grounded and legally tenable.'" *Tarrant Cnty. v. Chancey*, 942 S.W.2d 151, 155 (Tex. App.—Fort Worth 1997, no writ) (quoting *Home Owners Funding Corp. of Am. v. Scheppler*, 815 S.W.2d 884, 889 (Tex. App.—Corpus Christi 1991, no writ)). Thus, in reviewing the trial court's ruling imposing sanctions for filing a groundless pleading, we examine whether the facts, as alleged by the pleading, were well grounded and whether the litigant's claim for entitlement to relief under the law was tenable.

The mere fact that the trial court granted summary judgment against Pat on every one of his causes of action does not necessarily mean that his claims were groundless. *See Parker v. Walton*, 233 S.W.3d 535, 539 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (stating that sanctions cannot be based "merely on the legal merit of the pleading"); *Monroe v. Grider*, 884 S.W.2d 811, 818 (Tex. App.—Dallas 1994, writ denied) (stating that a trial court cannot rely on the granting of an instructed verdict to find that a claim is groundless); *see also GTE Commc'ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993) (noting that the denial of a plaintiff's motion for summary judgment alone is not grounds for sanctions). But certainly it provides a starting point for our analysis.

[10]Pat's pleadings made no argument, good faith or otherwise, for modification or reversal of existing law.

And, while a party who entrusts his legal representation to an attorney should not be punished for that attorney's conduct in drafting pleadings that are later determined to contain false factual allegations, a party may be subject to sanctions when his own conduct is implicated. *See Metzger v. Sebek*, 892 S.W.2d 20, 52 (Tex. App.—Houston [1st Dist.] 1994, writ denied), *cert. denied*, 516 U.S. 868 (1995). This is certainly so when a party supplies false facts, reads the pleading containing the false facts before it is filed, and swears to the truth of the false facts. *Id*. at 52–53. Because lying under oath is a "despicable, shameful act," such conduct on the part of a litigant is sufficient to uphold sanctions. *Id*. at 53. In fact, this conduct is precisely the type of conduct that sanctions rules are designed to address. *Id*.

The record here reveals that:

- On February 20, 2012, Pat's first attorney sent a demand letter to Judy and Randy, informing them that Pat had told him that: (1) the parties—Randy, Judy, and Pat—had purchased the mobile home park in June 2008, (2) the parties then organized a partnership in which the parties had verbally agreed that each would own a one-third interest, (3) the parties agreed that Pat would receive $1,500 per month as profit-sharing, (4) Randy and Judy thereafter opened an American Express account without Pat's knowledge or permission, (5) they charged approximately $18,000 on the card before Pat was contacted and had his credit rating threatened, and (6) Pat's share of the profits had been converted by Randy and Judy for their own use. Pat later admitted that the demand letter did not accurately state the facts, but he contended that the mistake was not his, explaining that the letter did not accurately reflect the facts that he related to his attorney and that the attorney "didn't show [him] no letters." Specifically, Pat admitted that the park was not purchased in 2008, but a decade earlier, in 1999 or 2000. He also agreed that he signed a written partnership agreement in 1999, not in 2008.

- On December 3, 2012, Pat's new attorney filed suit against Randy and Judy containing similar factual allegations but correcting the timeframe under which the agreement was reached. The pleading contained a verification signed by Pat, stating that he had read the original petition and that "the facts stated in it are within his personal knowledge and are true and correct to the best of his knowledge and belief or are supported by sworn affidavits or documents attached hereto and incorporated by reference." Pat later admitted that he had signed the original petition's verification but that contrary to his verification, he did not read the original petition before the lawsuit was filed.

- In his original petition, Pat alleged that he had paid "the entire amount" of the American Express card balance of $15,400. Pat later admitted that, contrary to his pleadings, he had never paid any part of the American Express bill, that Judy had paid off the credit card, and that he had known about the American Express card account for more than ten years prior to filing the lawsuit. Pat dropped his fraud claim as to the American Express card in his second amended original petition filed on April 8, 2013.

- In his original petition, Pat alleged, "since Plaintiff's daughter, Defendant Judy Martin, represented that Defendants would repay the purchase price of the property and split the proceeds of the park fifty-fifty, Defendant Judy Martin coerced decedent [sic], by using undue influence, into signing the warranty deed." Pat later admitted not only that Judy did not unduly influence him, threaten him, or in any way control his mind, but also that he had *never even signed a warranty deed* during the transaction described in the pleading. [Emphasis added.] Nevertheless, this factual allegation remained in Pat's pleadings through his fifth amended petition, and disappeared from his live pleading only after the trial court granted Randy and Judy a partial summary judgment on Pat's claim against Judy for undue influence on May 2, 2014.

- In his original petition, Pat alleged that Judy and Randy had "represented" to him that they "would split the proceeds of the business" with him "fifty-fifty." Pat later admitted that the agreement between the parties was "one third, one third and one third" and that the allegation in the pleading about a fifty-fifty agreement was not correct. He disavowed any part in making the false allegation, claiming, "I didn't say anything about no 50-50," and "I didn't write

that in there," despite the fact that the allegation appeared in his original petition and his first amended petition, both of which contained his personal verification, as well as his second amended petition and third amended petition, which contained no verification.

- In his original petition, under his cause of action for fraud, Pat alleged that Judy and Randy had "represented" to him that they "would pay [Pat] $200,000 as their portion of the purchase price of the property." Yet, Pat later admitted that at the time of the purchase, he voluntarily borrowed the $200,000 from a bank in his own name. This fraud claim was repeated in his first amended petition, second amended petition, and third amended petition.

- In his fourth amended petition, under a cause of action entitled "undue influence," Pat amended his allegation that Randy and Judy represented that they would "pay" the purchase price of the property and instead alleged that Judy represented that she and Randy would "repay" the purchase price of the property. Yet, Pat subsequently admitted that there was no understanding that Randy and Judy would repay the bank loan, testifying that "nothing was never mentioned on it that [Pat] knew of," and "[n]othing was ever said. The only thing [the parties did] was just take the payments out of the park that [the parties] collected every month and made the [loan] payments with it." And he further admitted that, except for five payments that Pat paid "out of [his] pocket," the note was paid from funds received from park tenant rental payments. This amended allegation remained in Pat's pleadings through his fifth amended petition and was removed from his live pleading only after the trial court granted Randy and Judy a partial summary judgment on this claim on May 2, 2014.[11]

- In his original petition, under his cause of action for fraud, Pat complained that, "from the outset," Randy and Judy had "sought to exclude [Pat] from the operations of the business," and "have not provided [Pat] with any information pertaining to the business." Later, under his cause of action for breach of fiduciary duty, Pat made the same allegation, that Randy and Judy had breached their

[11]Even after that point, an allegation of agreement to "repay" the bank note remained in the "Factual Background" section of Pat's sixth amended petition, which included the allegation that after Pat secured the loan, "Defendants then agreed to repay $200,000 from their personal funds."

fiduciary duty of "full disclosure" by "not fully disclosing business information to [Pat], as described in the above paragraphs." Yet Pat later admitted that he had full access to the bank account and the records of the park, that he saw "every one" of the checks, that he visited the park on a daily basis, and that he knew "what was going on and what wasn't going on." When asked to explain what he meant by the phrase, "exclude [him] from the business from the outset," Pat replied, "I don't know. But they never invited me to do anything -- they just done it. And if I didn't like it -- if I didn't like it, it made no difference . . . they never invited me on anything, right. It was them two that make the decision, mostly him. He told her, and then she did it." When pressed to pinpoint how Randy and Judy excluded him from the business, he summed it up, "I'm going to say the biggest part of the deal, they -- they did what they wanted to do in that park. They didn't invite me at all." And when further pressed to provide an example, Pat said, "Just on everything. Their decisions they made around the park, whatever they wanted to do, they did it. But when they wanted the money, they always come to me to get it. And I always give it to them."

- In his original petition and carried forward through to the sixth—and final—amended petition, Pat alleged that he paid $3,118 "to cover the legal fees for the incorporation [of JRP]." At his deposition, after four pages of repeated questioning, Pat finally admitted that the $3,118 he referenced in his pleadings was not a personal payment he made to cover the legal fees to incorporate JRP at all, but rather represented his one-third contribution to purchase a sign to advertise the park.

The examples listed above represent only those groundless factual allegations that Pat admitted to. The record is replete with other evidence that, if believed by the trial court, would prove that most, if not all, of the other factual allegations essential to and forming the bases of Pat's causes of action against Randy and Judy had no basis in fact and were not true. As noted above, we may uphold a trial court's sanctions ruling if the grounds raised are supported by the record. *Mann*, 464 S.W.3d at 93.

Thus, we cannot conclude that the trial court abused its discretion by finding that Pat filed groundless pleadings.

2. Bad Faith Finding

In his second issue, Pat challenges the trial court's finding of bad faith, the second prong of the first ground Randy and Judy alleged in support of their motion for sanctions. "Bad faith" is not simply bad judgment or negligence; rather, it is the conscious doing of a wrong for dishonest, discriminatory, or malicious purposes. *Fast Invs.*, 2014 WL 888438, at *1. Improper motive is an essential element of bad faith, and the party moving for sanctions must prove the pleading party's subjective state of mind; however, intent can be shown by circumstantial evidence. *Zuehl Land Dev., LLC v. Zuehl Airport Flying Cmty. Owners Ass'n*, 510 S.W.3d 41, 54 (Tex. App.—Houston [1st Dist.] 2015, no pet.).

At the reconsideration hearing, the trial court admitted Travis Duvall's deposition into evidence, in which Duvall testified that he had known the parties for approximately five years and that he spoke with Pat at a grocery store about six months prior to the time Pat filed his lawsuit against Randy and Judy. Duvall testified that his girlfriend Rebecca Wallis was also present during this discussion. According to Duvall, at that time Pat told them that he was planning to file the lawsuit and that if Wallis and Duvall testified for him and he won, he would pay them $25,000.

Wallis, whose deposition the trial court also admitted into evidence, testified that the grocery store encounter occurred earlier, in April 2012. She also

said that during that conversation, Pat offered her $25,000 to testify against Randy and Judy but that she refused to give false testimony. Wallis said that she walked away and did not hear the separate conversation between Pat and Duvall.

Duvall further stated that he met with Pat again in January 2013, at which time Pat reiterated his prior offer, stating, "Just, you know, you'll testify for me, help me take Randy down, then, you know, we'll -- I will take care of you no matter what you need." Duvall said that because he and Randy had been "on the outs" at the time, he told Pat that he would testify for him even though he knew that what Pat wanted him to say was not true. Duvall said that Pat described Randy as "a bully" who had "gott[en] away with this stuff for too many years," that Pat explained that he felt cheated out of his portion of the business, that it was "time for [Randy] to pay. And I am going to take him down," and that Pat said, "I don't think I'll ever live to see all my money. I just want to live long enough to see Randy sell off all of his shit and go broke." According to Duvall, Pat's son Terry Callaway and Pat's daughter-in-law Stormy Callaway were also present during this meeting.

Reed, who appeared as a witness at the hearing, testified that he had known Randy and Judy for more than twenty years and had lived at the trailer park for several years. According to Reed, in July 2013, while performing repair work on a pool at Terry and Stormy's house, Stormy began to question him about Randy, Judy, and the trailer park. Reed testified, without objection, that during

that conversation Stormy told him that Pat would pay $25,000 for in-court testimony against Randy and Judy. According to Reed, he declined the offer.

Reed further testified that a few months later, he heard Pat say that he was looking for someone to break Randy, bring him down, and destroy him. According to Reed, on a different occasion he also heard Pat offer a briefcase full of cash to "anybody that would testify against Randy and Judy."

The trial court was entitled to judge the credibility of Duvall, Willis, and Reed and to believe their testimony, even though, as Pat points out, all three were Randy's and Judy's friends and Reed had a fifteen-year-old assault conviction. Likewise, the trial court was entitled to disbelieve Pat's testimony that he had never met Reed and that he had never said such things. The affidavit testimony of Duvall and Willis and Reed's live testimony provided sufficient evidence to support the trial court's finding that Pat had filed the lawsuit in bad faith.

Thus, we cannot conclude that the trial court abused its discretion by finding that Pat's pleadings were filed in bad faith.

3. Harassment Finding

In his second issue, Pat also challenges the trial court's finding of harassment, the second prong of the second ground Randy and Judy alleged in support of their motion for sanctions. "Harassment" means that the pleading was intended to annoy, alarm, and abuse another person. *Fast Invs.*, 2014 WL

888438, at *1. And "for purposes of harassment" means that the sole purpose was to harass. *Smith*, 2006 WL 2034031, at *6.

Without reiterating the testimony of Duvall, Willis, and Reed, as recited above, these witnesses provided sufficient evidence to support the trial court's finding that Pat had filed the lawsuit for the purpose of harassment. Thus, we cannot conclude that the trial court abused its discretion by so finding, and we overrule Pat's second issue.

D. Conduct after Filing

In his third issue, Pat argues that the trial court abused its discretion by finding that Randy and Judy's evidence of his "alleged conduct after the filing of the case shows bad faith or intent to harass at the time [he] filed his lawsuit." The standard is not as restrictive as Pat would suggest. While the inquiry begins at the outset of the lawsuit, parties have an ongoing obligation to correct false factual allegations in their pleadings. *See Monroe*, 884 S.W.2d at 817–18 (stating that a trial court can also impose sanctions for a party's failure to inquire into the facts after he is on notice the facts are not what he believed). Furthermore, in determining whether rule 13 sanctions are warranted, the court may consider the case's entire history. *Smith*, 2006 WL 2034031, at *7.

Nevertheless, even if the trial court considered only Pat's conduct prior to the filing of the lawsuit, the trial court's findings still find evidentiary support. Duvall testified that at the time he spoke with Pat in July 2012—approximately half a year prior to Pat's filing of the lawsuit—Pat had said that if Duvall testified

for Pat and Pat won, Duvall would get $25,000. Willis testified that Pat made the same offer to her, only she testified that the conversation occurred earlier than July 2012. All of the facts that Pat himself later admitted were not true were known to him prior to filing the lawsuit. And Pat further admitted that the verification that he signed—swearing that he had read his original petition and that the facts contained therein were true—was false and that he had not read the pleading. Therefore, even assuming that the trial court could not properly consider evidence of Pat's alleged conduct after filing the original petition, it had sufficient substantive and probative evidence upon which to find that Pat knew his factual allegations were groundless and that Pat had acted in bad faith or with the intent to harass when he filed his lawsuit. We overrule Pat's third issue.

IV. Conclusion

Having overruled all of Pat's issues, we affirm the trial court's judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DELIVERED: May 25, 2017