



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00404-CV

ALBERT LYNN BARCROFT

APPELLANT

V.

CANDACE WALTON AND
KENNETH GIBBS

APPELLEES

FROM PROBATE COURT NO. 2 OF TARRANT COUNTY
TRIAL COURT NO. 2005-0000126-2-D

MEMORANDUM OPINION¹

This is an appeal from a postjudgment turnover order entered under civil practice and remedies code section 31.002. See Tex. Civ. Prac. & Rem. Code Ann. § 31.002 (West 2015). Appellant Albert Lynn Barcroft, appearing pro se, raises three issues. He asserts that the trial court inadvertently signed the

¹See Tex. R. App. P. 47.4.

turnover order, that the turnover order improperly required “the direct turnover of property owned by a judgment debtor to a judgment creditor[,]” and that the turnover order failed to give him—as the judgment debtor—credit against the underlying judgment against him.

We review a trial court’s turnover order for an abuse of discretion. See, e.g., *Beaumont Bank N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *Beeler v. Fuqua*, 351 S.W.3d 428, 432 (Tex. App.—El Paso 2011, pet. denied); *Roebuck v. Horn*, 74 S.W.3d 160, 163 (Tex. App.—Beaumont 2002, no pet.).

Barcroft’s efforts to establish an abuse of discretion in the signing and entry of the September 19, 2016 turnover order fail. Barcroft did not file a complete reporter’s record of the September 19, 2016 hearing at which the motion for turnover order was heard, nor did he comply with the rules of appellate procedure governing agreed or partial reporter’s records.² See Tex. R. App. P. 34.2, 34.3, 34.6(c), (e). Accordingly, we must presume that the omitted portions

²Barcroft’s letter to the court reporter requesting preparation of the reporter’s record sought “only that portion of the hearing held on September 19, 2016, which specifically addresses the Order for Turnover” and asked the court reporter to “submit [to the court of appeals] the record only as to the parts that concern the Order for Turnover.” Barcroft also filed a “Notice of Appeal of Order for Turnover and Designation of Record.” But neither Barcroft’s written request for preparation of a partial reporter’s record (the portion addressing the turnover order) nor his notice of appeal included a statement of points or issues to be presented on appeal. See Tex. R. App. P. 34.6(c)(1); 38.1(f). The court reporter prepared and filed a four-page excerpt from the September 19, 2016 hearing. Appellees Candace Walton and Kenneth Gibbs requested preparation and filing of an additional one-page excerpt from the September 19, 2017 hearing, which the court reporter filed.

of the reporter's record support entry of the September 19, 2016 turnover order. See, e.g., *Bennett v. Cochran*, 96 S.W.3d 227, 228–30 (Tex. 2002) (providing that, “absent complete record on appeal, [the court of appeals] must presume the omitted items supported the trial court’s judgment” (quoting *Gallagher v. Fire Ins. Exch.*, 950 S.W.2d 370, 371 (Tex. 1997))); *Mason v. Our Lady Star of the Sea Catholic Church*, 154 S.W.3d 816, 822 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (explaining that, absent compliance with the rules governing agreed or partial records, “we must presume that the omitted portions of the record are relevant and would support the judgment”); *Old Tin Roof Steakhouse, LLC v. Haskett*, No. 04-12-00363-CV, 2013 WL 1148921, at *3 (Tex. App.—San Antonio Mar. 20, 2013, no pet.) (mem. op.) (same).

Presuming the omitted portions of the reporter's record of the September 19, 2016 hearing support the trial court's entry of the September 19, 2016 turnover order, Barcroft has not shown that, despite the trial court's initial reluctance to sign a turnover order, Appellees “tricked” the trial court into signing the turnover order. Presuming the omitted portions of the reporter's record of the September 19, 2016 hearing support the trial court's entry of the September 19, 2016 turnover order, Barcroft has not shown that the trial court abused its discretion by the turnover order language requiring

that the Trustee of GWB Family and Friends Trust, the Administrator of the Estate of Bert Gibbs, and the Administrator of the Estate of Kathryn Gibbs turn over to [Appellees] Kenneth Gibbs and Candace Walton all present and/or future interest which Albert Barcroft and his alter egos Pentex Royalty Trust, Pentex Foundation, and GBU

Friends and Associates Trust hold in (1) GWB Family and Friends Trust, (2) the Estate of Bert Gibbs, and (3) the Estate of Kathryn Gibbs. The Trustee of GWB Family and Friends Trust and the Administrators of the Estates of Bert Gibbs and Kathryn Gibbs should make any payments that would have been due to Albert Barcroft or his alter egos to Kenneth Gibbs and Candance Walton directly.

Presuming the omitted portions of the reporter's record of the September 19, 2016 hearing support the trial court's entry of the September 19, 2016 turnover order, Barcroft has not shown that the trial court abused its discretion by not including express language in the turnover order giving him monetary credit against the underlying judgment against him.³

Presuming the omitted portions of the reporter's record of the September 19, 2016 hearing support the trial court's entry of the September 19, 2016 turnover order, Barcroft has failed to show an abuse of discretion in any of his three issues. We therefore overrule them and affirm the trial court's order.

PER CURIAM

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DELIVERED: May 4, 2017

³Barcroft asserts that he was entitled to credit against a monetary default judgment Appellees attained against him; Appellees assert that he obtained the turnover order in connection with a different, subsequent judgment Appellees obtained against Barcroft ruling that "minerals and royalties in the hands of Pentex or Barcroft rightfully belonged to the GWB Family and Friends Trust."