In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00417-CV

LANDRY ROBERT LLOYD, APPELLANT

V.

KACY JEANNE HENSLEY, APPELLEE

On Appeal from the 237th District Court
Lubbock County, Texas
Trial Court No. 2016-519,987; Honorable Les Hatch, Presiding

September 6, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

On September 27, 2016, the trial court signed its *Final Decree of Divorce,* severing the bonds of matrimony between Appellant, Landry Robert Lloyd, and Appellee, Kacy Jeanne Hensley. By a single issue, Landry contends the trial court erred by denying his *Motion to Set Aside Default Judgment.* We affirm.

BACKGROUND

Landry and Kacy were married on October 24, 2015. Less than five months later, they separated and ceased to live together as husband and wife. No children were born during the marriage and the parties accumulated no significant community property. Landry filed his petition for divorce on March 22, 2016,[1] and Lacy filed her counter-petition on May 10. The contested issues in the divorce centered on the characterization and division of three pieces of property: (1) Kacy's wedding ring, (2) a pair of women's earrings, and (3) a German Shepherd dog named "Black." On June 8, Landry requested a jury trial. The trial court scheduled trial to begin on Monday, August 1, and at a pretrial hearing held on Friday, July 29, Charles Blevins, Landry's counsel, made an oral motion *in limine* regarding a prior auto accident involving his client where two people were killed. Discussion surrounding that motion led to a discussion concerning fault in the breakup of the marriage. When Landry's counsel realized that fault had not been pled, he moved to amend his pleadings. The trial court denied that motion and the pretrial hearing recessed. Later that same day, Mr. Blevins notified the trial court that Landry was waiving his request for a jury trial.

On Monday, August 1, the day trial was set to begin, Mr. Blevins appeared in court and filed a motion seeking to disqualify Kacy's attorney.[2] When the trial court denied that motion, Mr. Blevins attempted to dismiss Landry's petition. When the court informed him that it would stll proceed on Kacy's counter-petition, Mr. Blevins withdrew

[1] In his *Original Petition for Divorce,* Landry sought both a temporary restraining order and a temporary order concerning the use of property. Although the record does not reflect that either request was ever granted, he later filed a *Motion to Extend Temporary Restraining Order,* which also appears to never have been granted.

[2] Despite the fact that the reporter's record reflects that the motion to disqualify was "filed," no motion appears of record.

his oral motion to dismiss and advised the trial court that he would be filing a petition for writ of mandamus regarding the court's denial of his motion to disqualify. At that point, the record goes silent as to the discussions between the trial court and counsel. In that regard, the record reflects the following colloquy:

> THE COURT: Let's go off the record.
>
> (Recess.)
>
> (Open Court, no jury.)
>
> THE COURT: The Court calls Cause Number 2016-519,987. This is the Matter of the Marriage of Landry and Kacy Lloyd.
>
> What says the Petitioner?
>
> Let the record reflect that the Petitioner, attorney for Petitioner has indicated to the Court that he is leaving the courtroom to travel to his office to file Motion for Leave for Petition for Writ of Mandamus. The Court has indicated to Counsel for Petitioner that it is calling the case and proceeding with trial in the meantime. He has indicated that he has no objection, as long as our first witness is, in fact, Mr. Bustos' client who he is accompanying here today in response to a subpoena that was served.
>
> So is the Respondent/Counter-Petitioner ready?
>
> [Kacy's Counsel]: Yes, Your Honor, we are ready.

Kacy's counsel then presented evidence to the court concerning the matters in controversy. At the conclusion of Kacy's testimony, the record reflects the following exchange:

> (Mr. Blevins entered the courtroom)
>
> THE COURT: Mr. Blevins, Ms. Hensley [Kacy] has testified.
>
> MR. BLEVINS: Okay. May I approach?
>
> THE COURT: Let the record reflect that Mr. Blevins has just entered the courtroom and presented to the Court a proof of filing of a motion for

> leave to file writ of mandamus in this matter that we are here on here [sic] today. The Court is going to take a recess and figure out what that means and I will be back with you.
>
> (Mr. Blevins left the courtroom.)
>
> (Recess.)
>
> THE COURT: We are back on the record. Does the Respondent/Counter-Petitioner have any more evidence?

(Notwithstanding the trial court's statement that Mr. Blevins handed him "proof of filing a motion for leave to file writ of mandamus," the appellate record in that case indicates that the motion was not filed for another seven and one-half weeks.) At that point, the trial court continued to hear evidence regarding Kacy's request for attorney's fees. After the respondent/counter-petitioner rested, the trial court made the following statement for the record:

> THE COURT: Let the record reflect that Counsel for the Petitioner Counter-Respondent is not in the courtroom nor is his client, that they only showed up to present the Court a copy of a filed motion for leave to file Petition for Writ of Mandamus. The Court considers this matter closed. The Court will not entertain any additional evidence. The Court finds that the Respondent -- or excuse me, Petitioner Counter-Respondent has waived his right to present evidence at the trial. This is a matter that has been set for trial since June 10th, 2016. It is the Court's understanding that the attorneys for the parties agreed to waive the 45 days notice.

At that time, the trial court took the matter under advisement. On September 22, 2016, Mr. Blevins filed with this Court a *Motion for Emergency Relief*, and on September 23, he filed a *Petition for Writ of Mandamus*. This Court denied any relief on September 26, 2016,[3] and that same day, the trial court entered its *Final Decree of Divorce*. On

[3] *In re Lloyd*, No. 07-16-00340-CV, 2016 Tex. App. LEXIS 10489 (Tex. App.—Amarillo Sept. 26, 2016, orig. proceeding) (mem. op).

October 25, 2016, Landry filed his *Motion to Set Aside Default Judgment*, which the trial court denied on the same day without a hearing.

ISSUE PRESENTED

Landry contends the trial court abused its discretion in denying his *Motion to Set Aside Default Judgment* because his decision to leave the courtroom was "not the result of conscious indifference." Contrary to the evidence in the record, he contends the trial court did not inform him that the case was going to proceed after Mr. Blevins voluntarily absented himself from the courtroom. Our review of the record does not support Landry's contention.

ANALYSIS

We review a trial court's disposition of a post-judgment motion under an abuse of discretion standard. *B & S Sons Constr.*, *LLC v. Rood Holdings*, *LLC*, No. 01-15-00355-CV, 2016 Tex. App. LEXIS 1697, at *5 (Tex. App.—Houston [1st Dist.] Feb. 18, 2016, no pet.) (mem. op.). The test for abuse of discretion is whether the trial court acted without reference to any guiding rules and principles or, alternatively, whether the trial court's actions were arbitrary and unreasonable based on the circumstances of the individual case. *Quixtar v. Signature Mgmt. Team*, *LLC*, 315 S.W.3d 28, 31 (Tex. 2010) (citing *Downer v. Aquamarine Operators*, *Inc*., 701 S.W.2d 238, 241-42 (Tex. 1985)).

The record before this court reflects an attorney doing everything and anything he could to avoid a final hearing in this divorce proceeding. First, he files a request for a jury trial in a divorce proceeding involving no children and no significant community property. Next, he attempts to orally amend his pleadings at a pretrial conference on

the last business day before the scheduled jury trial. He then waives a jury but shows up on the day of trial with a motion to disqualify opposing counsel. When that motion is denied, he equivocates on whether to dismiss his client's petition, only to finally retract his previous statement of non-suit once he realizes that dismissal of the petition would not result in disposition of the entire case and cancellation of the scheduled hearing. After realizing that dismissal or non-suit would not delay the trial, he announces his intent to seek mandamus relief regarding his motion to disqualify opposing counsel. When that threat does not result in cancellation of the hearing, he advises the trial court that he has no objection to the matter proceeding—and he walks out of the courtroom. But wait . . . he then comes back before the hearing is over, presents the trial court with a draft of what he represents to be a filed petition for writ of mandamus (not actually filed for another fifty-three days) and walks out again.

Based on these facts, Landry contends the trial court abused its discretion in not setting aside the decree. Relying on *Craddock v. Sunshine Bus Lines, Inc*., 133 S.W.2d 124, 126 (Tex. 1939), and its progeny, he contends his failure to appear was not "intentional" or due to "conscious indifference." What? First, *Craddock* deals with the standard a court should follow in determining whether to set aside a default judgment and despite the fact that Mr. Blevins refers to the decree entered in this case as a "default" judgment, it is not. The decree entered in this case is a decree entered following a full evidentiary hearing—a hearing in which Mr. Blevins was present but voluntarily chose to absent himself in order to pursue mandamus relief regarding a motion he did not file until the day of trial.

Secondly, contrary to his assertion, Mr. Blevins made a conscious and calculated decision to walk out of the courtroom in the middle of a hearing to pursue what he considered to be a meritorious petition for writ of mandamus. He was not only aware that the hearing would proceed, he indicated that he had "no objection" so long as a particular subpoenaed witness was the first witness to be called. He even reappeared in open court prior to the conclusion of the hearing, only to once again voluntarily depart.

Based on this record, we cannot even come close to saying the trial court abused its discretion by denying his motion to set aside the decree of divorce previously entered. Landry's issue is overruled.

CONCLUSION

The trial court's judgment is affirmed.

Patrick A. Pirtle
Justice

Campbell, J., concurring in the result.