



NUMBER 13-16-00115-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

DAVID N. CALVILLO,

Appellant,

v.

MARIA DE LOS ANGELES
GUERRA,

Appellee.

On appeal from the 370th District Court of
Hidalgo County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Benavides and Longoria
Memorandum Opinion by Justice Longoria**

Appellant David N. Calvillo appeals an order that: (1) denied his motion to amend the trial court's judgment; (2) denied his post-judgment application for the appointment of a receiver and for turnover relief; and (3) granted appellee Maria De Los Angeles Guerra's ("Maria") motion to retax costs. We affirm.

I. BACKGROUND

A. The Domit Divorce Case

Antun Domit (“Antun”), a McAllen-area property developer, filed for divorce from Maria in the 370th District Court of Hidalgo County in 2006. During the course of the case, Maria asked the trial court to appoint a receiver to take charge of the parties’ numerous properties and business entities. See TEX. FAM. CODE ANN. § 6.502(a)(5) (West, Westlaw through Ch. 49, 2017 R.S.). The trial court granted the motion and appointed appellant as the receiver on November 18, 2008.

On August 26, 2009, the trial court entered an agreed order regarding the receiver’s compensation. The order directed appellant to “prepare periodic statements of services rendered and time and expenses expended during the course of the receivership. Those periodic statements shall NOT be filed with the Court but will be made available to the parties in the litigation.” If none of the parties objected within ten days of receipt, appellant “was authorized to pay the invoice.” It is unclear how many invoices were submitted or approved through this process but, on June 7, 2013, appellant submitted an invoice to the parties for \$289,112.46 for fees incurred since November 30, 2012. Neither party objected within ten days of receipt, but appellant apparently did not pay the invoice to himself.

The trial court signed a final decree of divorce in December 2013. The decree expressly discharged appellant as receiver, terminated the receivership, and provided that “[t]he costs of the receivership are to be borne 75% by Petitioner Antun and 25% by Respondent [Maria],” but did not award a specific amount of fees.

Appellant thereafter timely filed his “Amended Motion for Entry of Supplemental

Judgment or Alternatively, Motion to Amend Judgment, and Motion for Issuance of Post Judgment Writs.” Appellant informed the trial court in this motion that he was owed the \$289,112.46 in fees from his invoice of June 7, 2013 and that he had incurred additional fees after that date which he had not billed. In addition, appellant informed the trial court that he had hired the law firm of Cox and Smith to represent the marital estate’s interests in an involuntary bankruptcy proceeding at the cost of \$145,000 in attorneys’ fees. According to appellant’s motion, the total of the fees incurred by him and Cox and Smith was \$432,112.46.¹ Appellant requested in his motion that the trial court either amend the decree of divorce “to provide for a judgment in favor of Receiver for the full amount of \$432,112.46 as against the parties and the business entities subject to the Receivership” or enter a supplemental judgment to that effect. The trial court took no action on appellant’s motion.

Antun appealed the decree of divorce to this Court, but appellant did not file his own notice of appeal. *Cf. Wiley v. Sclafani*, 943 S.W.2d 107, 110 (Tex. App.—Houston [1st Dist.] 1997, no writ) (holding that a receiver had standing to appeal the trial court’s award of his fees in a final judgment).

While Antun’s appeal was pending in this Court, appellant submitted his fees to the district clerk. The fee amounts in his submission were slightly higher than in his motion to the trial court: the same \$289,112.46 in fees for appellant but \$160,959.94 in attorneys’ fees for Cox and Smith. After subtracting a \$2,231 credit, the total amount of fees was \$450,072.40. The district clerk included these fee amounts in the bill of costs

¹ There is no evidence in the record that Cox and Smith participated in this case after the time this Court affirmed the final decree of divorce.

as receivership fees and prepared a Civil Fee Docket and Fee Book including these figures.

This Court subsequently rejected Antun's appeal and affirmed the decree of divorce. *Domit v. Domit*, No. 13-14-00001-CV, 2014 WL 5500475, at *1 (Tex. App.—Corpus Christi Oct. 30, 2014, no pet.) (mem. op.).

B. Post-Appeal Proceedings

Appellant later filed an abstract of judgment in the Official Records of Hidalgo County stating that the original decree of divorce constituted a judgment in his favor against Maria for unpaid receivership fees in the amount of \$112,518.10, her 25% share of the total. Appellant then filed his "Postjudgment Application of David Calvillo, Esq. For Appointment of Receiver and Turnover Relief" in the trial court. Appellant alleged in this motion that \$99,841.60 of the judgment remained unsatisfied and that appointment of a receiver was necessary for him to collect on it.

Maria filed a motion to retax costs as well as combined response to both the motion to amend judgment and the application for turnover relief. She requested that the trial court deny both of appellant's motions, grant her motion to retax costs, and strike the fees appellant claimed from the bill of costs.

The trial court² held a two-day hearing where it considered all three motions. At the end of the hearing, the trial court issued an order where it found there was no judgment against Maria for receivership costs and granted Maria's motion to retax costs. Accordingly, the trial court ordered the Hidalgo County District Clerk to strike those costs

² By this time, the case had been transferred from the 370th District Court to the 430th District Court. A visiting judge heard the case in place of the elected judge of the 430th District Court.

from the fee docket and all other documents under whatever name. The trial court further declared that the abstract of judgment was “void and of no force or effect” and instructed appellant to file an instrument reflecting the court’s order in the Hidalgo County Official Records. The trial court denied appellant’s application for turnover relief “for lack of any enforceable judgment subject to turnover.” Regarding the motion to amend the decree of divorce, the order provided that “the Court denies consideration of any request for the Court to make an award of receivership fees because the Court lacks jurisdiction over the receivership.”

This appeal followed.

II. DISCUSSION

Appellant argues in his first issue that the court erred in granting the motion to retax costs. In his second issue, appellant asserts that the trial court erred in denying his application for turnover relief.

A. Motion to Retax Costs

By his first issue, appellant argues that the court erred in granting Maria’s motion to retax costs because the clerk’s bill of costs was the functional equivalent of a final judgment.

1. Applicable Law and Standard of Review

A receiver’s fees are considered court costs and are governed by the rules applicable to awarding court costs. *Hill v. Hill*, 460 S.W.3d 751, 767 (Tex. App.—Dallas 2015, pet. denied) (citing *Jones v. Strayhorn*, 159 Tex. 421, 424, 321 S.W.2d 290, 293 (1959)). Those rules provide that the trial court is responsible for adjudicating which party or parties will bear the costs of court. *Diggs v. VSM Fin., L.L.C.*, 482 S.W.3d 672,

674 (Tex. App.—Houston [1st Dist.] 2015, no pet.); see TEX. R. CIV. P. 131, 141. Once the trial court has made its decision, the clerk has a ministerial duty to tax costs. *Diggs*, 482 S.W.3d at 674; see TEX. R. CIV. P. 129, 149, 162. Section 31.007(a) of the Texas Civil Practice and Remedies Code requires the successful party to submit its record of costs to the clerk so that the clerk can perform this ministerial duty. TEX. CIV. PRAC. & REM. CODE ANN. § 31.007(a) (West, Westlaw through Ch. 49, 2017 R.S.); see TEX. R. CIV. P. 622. A party seeking to challenge a particular item in the bill of costs must file a motion to retax costs with the trial court. *Diggs*, 482 S.W.3d at 674.

We review the trial court's ruling on a motion to retax costs for an abuse of discretion. *Gumpert v. ABF Freight Sys., Inc.*, 312 S.W.3d 237, 239 (Tex. App.—Dallas 2010, no pet.). Under this standard, we may reverse only if the trial court's ruling was arbitrary or unreasonable. *Id.*

2. Analysis

Appellant argues that the trial court abused its discretion in granting the motion to retax costs because the bill of costs was the functional equivalent of a judgment against Maria. It was therefore proper for the clerk to tax appellant's receivership fees in the bill of costs. Maria responds that the trial court did not abuse its discretion because the trial court never awarded appellant any of the fees he incurred for his work as receiver after November 30, 2012.

We agree with Maria. The final decree of divorce discharged appellant as receiver, terminated the receivership, and divided up the parties' responsibility for the costs of the receivership, but it did not award appellant any fees. Appellant argues on appeal that the clerk's bill of costs, which was mailed to Maria and her attorney after the

trial court signed the final decree of divorce, was effectively an invoice from appellant. Thus, under the terms of the earlier agreed order on appellant's compensation, Maria effectively accepted the invoice by not objecting within ten days. Even if we agreed that Maria's acceptance in this manner would be the equivalent of a judgment in his favor for fees, appellant's argument fails because the agreed order, by its terms, applied while the receivership was ongoing. After the court discharged appellant and terminated the receivership, it was the trial court's responsibility to award him any outstanding fees. See *Diggs*, 482 S.W.3d at 674; see also *Hill*, 460 S.W.3d at 763 (observing that the trial court retains jurisdiction after discharging the receiver "to conduct proceedings necessary to conclude the receivership and discharge the receiver"); *Moyer v. Moyer*, 183 S.W.3d 48, 57–58 (Tex. App.—Austin 2005, no pet.) (discussing how a receiver's fee should be measured at the termination of the receivership). In the absence of a judgment awarding appellant additional fees, there is no support for taxing \$432,112.46 in the bill of costs. We conclude the trial court did not abuse its discretion in granting Maria's motion to retax costs. We overrule appellant's first issue.

B. Motion for Turnover Relief

Appellant argues in his second issue that the trial court abused its discretion in denying his application for turnover relief because the court retained the power to award him his fees.³

1. Standard of Review and Applicable Law

A turnover order is a statutory procedural device through which a judgment creditor may reach assets of a judgment debtor that are otherwise difficult to attach or

³ Appellant does not address on appeal his request for the appointment of a receiver.

levy by ordinary legal process. See TEX. CIV. PRAC. & REM. CODE ANN. § 31.002 (West, Westlaw through Ch. 49, 2017 R.S.); *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 224 (Tex. 1991). Under the statute, a judgment creditor can apply to a court for an injunction or other means to satisfy a judgment. TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a). “The turnover statute is purely procedural; its purpose is to ascertain whether an asset is either in the judgment debtor’s possession or subject to its control.” *Black v. Shor*, 443 S.W.3d 170, 174–75 (Tex. App.—Corpus Christi 2013, no pet.). We review the trial court’s decision on a motion for a turnover relief for an abuse of discretion. *Id.* at 175.

2. Discussion

Appellant argues in his second issue that the trial court erred because the court actually retained jurisdiction to award him fees even though the trial court had already discharged him and terminated the receivership. The trial court could therefore treat the bill of costs as the equivalent of a judgment and order turnover relief. Maria responds that there was no abuse of discretion because there was no judgment subject to turnover.

We agree with Maria. Appellant’s argument combines two issues: whether the trial court had jurisdiction to grant the motion to amend the final decree of divorce and whether it abused its discretion in denying the turnover order. Regarding the turnover order, we agree there was no abuse of discretion. As we explained in greater detail above, the bill of costs was not the functional equivalent of a judgment against Maria for appellant’s receivership fees. And if there is no judgment that was subject to turnover, a party is not a “judgment creditor” who can invoke the assistance of the turnover

statute. See TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a); see also *Black*, 443 S.W.3d at 174–75. Without a judgment for fees, the trial court correctly denied appellant’s motion for turnover relief.

Regarding appellant’s motion to amend the judgment, the trial court was correct that it had no jurisdiction to award fees through that motion. Appellant’s motion to amend was overruled by operation of law when the trial court did not act on it within seventy-five days of signing the decree of divorce. See TEX. R. CIV. P. 329b(c). Once the trial court’s plenary power expired, as it has here, the court had no power to reconsider the motion. See *id.* R. 329b(f); see also *Morris v. O’Neal*, 464 S.W.3d 801, 808 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

We overrule appellant’s second issue.

III. CONCLUSION

We affirm the trial court’s order.

NORA L. LONGORIA
Justice

Delivered and filed the
13th day of July, 2017.