



NUMBER 13-17-00219-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

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HOLLY M. HENDRIX,

Appellant,

v.

LVNV FUNDING, LLC,

Appellee.

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On appeal from the County Court at Law No. 1  
of Travis County, Texas.

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## MEMORANDUM OPINION

Before Justices Rodriguez, Benavides, and Longoria  
Memorandum Opinion by Justice Benavides

Appellant Holly M. Hendrix filed a notice of appeal from the trial court's final judgment rendered in favor of appellee LVNV Funding, LLC (LVNV) in trial court cause number C-1-CV-12-008951 in the County Court at Law No. 1 of Travis County, Texas. Her appeal was transferred to this Court from the Third Court of Appeals by order of the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 22.220(a) (West, Westlaw through

2017 1st C.S.) (delineating the jurisdiction of appellate courts); TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 1st C.S.) (granting the supreme court the authority to transfer cases from one court of appeals to another at any time that there is "good cause" for the transfer).

Appellee LVNV brought suit against Hendrix for breach of a credit card agreement. After a bench trial, the trial court found in favor of LVNV. The final judgment awarded LVNV \$28,579.01 in actual damages, \$5,012.68 in prejudgment interest, and \$8,397.92 in attorney's fees. By two issues, Hendrix argues that the trial court erred in awarding LVNV prejudgment interest and attorney's fees, and she requests that we reverse these two awards. Hendrix does not otherwise attack the award of damages.

LVNV has now filed an unopposed motion for voluntary remittitur through which it suggests that we modify and affirm the final judgment to conform to Hendrix's requests:

As provided above, Appellee would respectfully ask that this Court consider Appellee's voluntary remittitur and modify and affirm the Final Judgment rendered in Case No. C-1-CV-12-008951 to conform with Appellant's prayer in its brief. Appellee remits that the Final Judgment should be modified as follows: the amount of prejudgment interest awarded should be modified from [\$5,012.68] to \$0.00; the amount of attorney's fees awarded should be modified from \$8,397.92 to \$0.00. Concurrent with the prayer of Appellant, Appellee would ask that the damage portion of the Final Judgment in the amount of \$28,579.01 be unchanged and affirmed.

LVNV requests this remittitur "without any admissions or acceptance of Appellant's claims." LVNV nevertheless maintains that remittitur would be appropriate to resolve this case.

Texas Rule of Appellate Procedure 46 delineates two means by which remittitur may be effectuated on appeal. See TEX. R. APP. P. 46.3; *Formosa Plastics Corp. USA*

*v. Presidio Engineers & Contractors, Inc.*, 960 S.W.2d 41, 51 (Tex. 1998). First, the court of appeals may suggest a remittitur in lieu of ordering a new trial. TEX. R. APP. P. 46.3; see *Formosa Plastics Corp. USA*, 960 S.W.2d at 51. Second, a party may voluntarily remit if a court of appeals reverses the trial court’s judgment because of a legal error that affects only part of the damages awarded by the judgment. TEX. R. APP. P. 46.5; see *Formosa Plastics Corp. USA*, 960 S.W.2d at 51. Texas Rule of Appellate Procedure 46 does not expressly authorize a party to voluntarily remit to the Court on its own motion prior to the Court’s consideration of the appeal on the merits. We nevertheless conclude that it is appropriate under the circumstances present here.

Rule 46.5 states, “If the remittitur is timely filed and the court of appeals determines that the voluntary remittitur cures the reversible error, then the court must accept the remittitur and reform and affirm the trial court judgment in accordance with the remittitur.” TEX. R. APP. P. 46.5. Here, LVNV has concurred with Hendrix’s request that we modify and affirm the final judgment to omit the awards of prejudgment interest and attorney’s fees. In this regard, we note that a request for remittitur need not concede error. See *id.* & cmt.; *cf. id.* R. 42.1(a)(2) (allowing an appellate court to render judgment effectuating the parties’ agreement). A voluntary suggestion of remittitur may be construed as an acceptance of remittitur under the rules. See TEX. R. APP. P. 46.5; see also *Melton v. State*, No. 03-17-00096-CV, 2017 WL 2729897, at \*2 (Tex. App.—Austin June 21, 2017, pet. filed) (mem. op.) (accepting a voluntary suggestion of remittitur while noting that the appellate court would “ordinarily” suggest a remittitur and construing the request as accepting a suggested remittitur); *Maya Walnut, LLC v. Lopez-Rodriguez*, No. 05-16-

00750–CV, 2017 WL 1684679, at \*7 (Tex. App.—Dallas May 3, 2017, no pet. h.) (mem. op.) (construing appellee’s request for reformation of the judgment regarding excessive damages as “accepting the suggested remittitur”); *Mesquite Elks Lodge No. 2404 v. Shaikh*, No. 05–08–01372–CV, 2011 WL 989037, at \*1 (Tex. App.—Dallas Mar. 22, 2011, no pet.) (mem. op. on reh’g) (“We conclude appellees’ voluntary remittitur cures the reversible error, and we accept it. We . . . modify the trial court’s judgment to reflect the remittitur . . . and affirm the trial court’s judgment as modified.”)

Accordingly, we grant LVNV’s unopposed motion for voluntary remittitur. We modify the final judgment by (1) deleting the award of \$5,012.68 in prejudgment interest and awarding instead \$0.00 in prejudgment interest, and (2) deleting the award of \$8,397.92 in attorney’s fees and awarding instead \$0.00 in attorney’s fees. We affirm the judgment, as modified.

GINA M. BENAVIDES,  
JUSTICE

Delivered and filed the  
19th day of October, 2017.