NO. 12-11-00368-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

R. MICHAEL WARD, APPELLANT	***§***	***APPEAL FROM THE THIRD***
V.	***§***	***JUDICIAL DISTRICT COURT***
TRAVIS WARD AND MARTHA WARD, APPELLEES	***§***	***HENDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

R. Michael Ward appeals the trial court's order denying his application for supplemental relief. On appeal, he presents three issues. We affirm.

BACKGROUND

In May 1980, the trustees of the Travis Ward and Martha Ward Family Trust (the Trust) filed an original petition for a declaratory judgment in the district court of Henderson County, Texas, against Travis and Martha Ward. The trustees requested the declaratory judgment in order to determine the status, validity, and construction of the Trust and to determine the ownership of, and quiet title to, land owned by the Trust in Henderson County. Because of a divorce proceeding between Travis and Martha, the trustees alleged in their petition that a controversy had arisen over whether certain real property was the community property of Travis and Martha or was owned by the Trust. The four children of Travis and Martha Ward, for whose benefit the Trust was created, were joined in the action as nominal defendants. R. Michael Ward (Michael) is one of those children and is the appellant in this case. On June 25, 1980, the trial court entered a judgment (the 1980 judgment), finding that the court had jurisdiction over the parties and subject matter, and that the Trust owned two real property interests in Henderson County.

In 2008, Michael filed suit in Dallas County, Texas, against Travis and three trustees of the Trust.[1] On April 5, 2011, the Dallas County court granted, in part, Travis's traditional and no evidence motions for partial summary judgment, determining that the 1980 judgment is dormant, void, and of no legal force and effect (the Dallas judgment). Subsequently, on August 31, 2011, Michael filed an application for supplemental relief in Henderson County against Travis and two of the trustees named in the Dallas County suit. In his application, Michael requested the court to declare, and order, that the 1980 judgment is valid and subsisting, not dormant, void, or of no legal force or effect. He also requested that Travis, the two trustees, and "all persons acting in active concert" with them be enjoined from contending the 1980 judgment is dormant, void, and/or of no force or effect.

Travis filed a plea to the jurisdiction, motion to dismiss, plea in abatement, and subject thereto, a verified original answer. The two trustees filed a similar pleading. More specifically, Travis asserted that the Henderson County court lacked jurisdiction to enter injunctive relief, that Michael's requested declaratory relief would not resolve the controversy between the parties and would not render the Dallas judgment invalid or moot, and that supplemental relief was not necessary, proper, or ancillary to the 1980 judgment. He asserted further that Michael's claims are barred in whole or in part by doctrines of waiver, estoppel, and laches, that Michael failed to join all necessary parties, and that Michael seeks unconstitutional relief by enjoining the speech of Travis and the two trustees. Finally, Travis contended that Michael's requested relief is an impermissible collateral attack on the Dallas judgment because the Dallas judgment is not void on its face, nor did Michael make such a claim, and the 1980 judgment is dormant as a matter of law.

On October 17, 2011, the trial court held a show cause hearing. Michael argued that under Section 37.011 of the Texas Civil Practice and Remedies Code, the trial court had the power to enforce the 1980 judgment by appropriate relief, the Henderson County court had jurisdiction over the 1980 judgment, and the attack on the 1980 judgment was a collateral attack. Two days later, the trial court denied Michael's application for supplemental relief without specifying the grounds for its ruling. The trial court did not file findings of fact or conclusions of law and none were requested. This appeal followed.

[1] Cause No. 08-12624-B, "*R. Michael Ward v. Wayne Stanford, individually and as trustee, Morris Turman, individually and as trustee, Branka Karakashevich, individually and as trustee, and Travis Ward*," filed in the 44th Judicial District Court of Dallas County, Texas.

GROUNDS ON APPEAL

On appeal, Michael argues that the trial court erred in denying his application for supplemental relief because the 1980 judgment is not subject to the "dormancy rules" of Section 34.001 of the Texas Civil Practices and Remedies Code, and that Travis's attempt to declare the 1980 judgment dormant constituted an impermissible collateral attack. In a nonjury trial, where findings of fact and conclusions of law are neither filed nor timely requested, it is implied that the trial court made all necessary findings to support its judgment. ***Holt Atherton Indus., Inc. v. Heine***, 835 S.W.2d 80, 83 (Tex. 1992). The judgment must be affirmed if it can be upheld on any legal theory that finds support in the evidence. ***Worford v. Stamper***, 801 S.W.2d 108, 109 (Tex. 1990).

An appellant must attack all independent bases or grounds that fully support a complained-of ruling or judgment. ***Britton v. Tex. Dep't of Criminal Justice***, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *see, e. g.*, ***Harris v. Gen. Motors Corp.***, 924 S.W.2d 187, 188 (Tex. App.—San Antonio 1996, writ denied). In other words, where a judgment may rest upon more than one ground, the appealing party must challenge each ground or the judgment will be affirmed on the ground about which no complaint is made. ***Humphries v. Advanced Print Media***, 339 S.W.3d 206, 208 (Tex. App.—Dallas 2011, no pet.); ***Britton***, 95 S.W.3d at 681. This rule is based on the premise that an appellate court normally cannot alter an erroneous judgment in favor of a civil appellant who does not challenge that error on appeal. *See* ***Walling v. Metcalfe***, 863 S.W.2d 56, 58 (Tex. 1993); ***Yazdchi v. Bennett***, No. 01-04-01057-CV, 2006 WL 1028373, at *1 (Tex. App.—Houston [1st Dist.] Apr. 20, 2006, no pet.) (mem. op.). If an independent ground is of a type that could, if meritorious, fully support the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, then we must accept the validity of that unchallenged independent ground. ***Britton***, 95 S.W.3d at 681; ***Yazdchi***, 2006 WL 1028373, at *1. Thus, any error in the grounds challenged on appeal is harmless because the unchallenged independent ground could, if meritorious, fully support the complained-of ruling or judgment. ***Britton***, 95 S.W.3d at 681; ***Yazdchi***, 2006 WL 1028373, at *1.***Id.***

Here, Michael did not attack all of the grounds Travis alleged for denying the application that could, if meritorious, support the trial court's judgment. However, in his reply brief, Michael responded to some, but not all, of Travis's grounds for denying the application. His

reply brief is too late. The rules of appellate procedure do not allow an appellant to include in a reply brief a new issue in response to some matter pointed out in the appellee's brief but not raised in the appellant's original brief. *See* ***Howell v. Tex. Workers' Comp. Comm'n***, 143 S.W.3d 416, 439 (Tex. App.—Austin 2004, pet. denied); ***Barrios v. State***, 27 S.W.3d 313, 322 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) ("Pointing out the absence of an appellant's argument does not raise the argument or entitle appellant to assert that argument for the first time in his reply brief."); *see also* TEX. R. APP. P. 38.3. Thus, Michael waived his complaints in his reply brief by failing to raise them in his original appellant's brief. *See* ***Zamarron v. Shinko Wire Co., Ltd.***, 125 S.W.3d 132, 139 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Because Michael has not challenged all independent bases or grounds that could, if meritorious, support the judgment, we affirm the trial court's judgment denying Michael's application for supplemental relief. *See* ***In re A.M.P.***, No. 14-11-00164-CV, 2012 WL 1851595, at *2 (Tex. App.—Houston [14th Dist.] May 22, 2012, no pet.). Accordingly, we overrule Michael's first, second, and third issues.

DISPOSITION

The judgment of the trial court is ***affirmed***.

BRIAN HOYLE
Justice

Opinion delivered June 29, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 29, 2012

NO. 12-11-00368-CV

R. MICHAEL WARD,

Appellant

v.

TRAVIS WARD AND MARTHA WARD,

Appellees

Appeal from the 3rd Judicial District Court
of Henderson County, Texas. (Tr.Ct.No. 80-71)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellant, **R. MICHAEL WARD**, for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.