

NO. 12-15-00120-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*JAMES D. BRANCH, II,
APPELLANT*

§ *APPEAL FROM THE*

V.

§ *COUNTY COURT AT LAW*

*ELIZABETH MARLENE BRANCH,
APPELLEE*

§ *ANDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

James D. Branch II sued Elizabeth Marlene Branch for conversion. After a bench trial, the trial court ordered that James take nothing. In a single issue, James contends that the trial court wrongfully denied his claim for conversion. We affirm.

BACKGROUND

James, Elizabeth's stepson, testified that his father owned a building on his property in which he allowed James to store some belongings, including a large safe. At some point, the building burned down, melting the safe's combination mechanism and handles. Sometime after the fire, James's father died. James spoke with Elizabeth and an insurance adjuster, but did not tell either individual what the safe contained. The safe remained on the building's slab. James testified that Elizabeth would not have known if the safe was anything more than scrap metal.

One day, James, who resides in close proximity to Elizabeth's property, noticed that the safe was gone. James testified that Elizabeth initially said she sold the safe, but she "caught herself" and promptly claimed that James gave the safe away. Elizabeth told James that people came by her home two to three times a month asking about the safe and she always referred them to James. But James testified that no one ever approached him about buying the safe. He filed a police report regarding the missing safe because he believed that Elizabeth sold the safe without

his permission. However, he testified that Elizabeth had no duty to protect the safe and that he had a duty to protect his own belongings. James denied receiving any insurance proceeds for the safe.

Elizabeth denied selling the safe. She explained that people often approached her to ask about the safe. One day, two men told her that James said they could have the safe. She pointed the men in the direction of the safe. She admitted that she should have called James before allowing the men to take the safe. She testified that the safe was not hers to sell and that she did not know the safe contained any items. According to the insurance company, the safe's cash value totaled \$29.70, and the company gave Elizabeth a check that included this amount. Elizabeth testified that she gave James a cashier's check for \$1,974.76, which the record indicates included \$29.70 for the safe. She testified that James did not complain about the safe's valuation.

In its findings of fact, the trial court determined that James never (1) told Elizabeth that he wanted the burned safe or that the safe contained anything of value; (2) opened the safe to determine if the fire damaged any of its contents; (3) attempted to remove or secure the safe or otherwise indicate an intent to keep the safe and its contents; (4) sought Elizabeth's permission to leave the safe on the slab; or (5) provided evidence supporting his testimony regarding the safe's contents and their value. In its conclusions of law, the trial court concluded, in part, that Elizabeth owed no duty to protect, preserve, or keep the safe for James or to first verify that James gave anyone permission to remove the safe. The trial court also concluded that (1) Elizabeth had the exclusive right to possess the family homestead and the property on which the safe stood; (2) James had no right to store the safe on the property after his father died; (3) James did not exercise control or dominion over the safe and its contents consistent with ownership of a valuable item; (4) James abandoned the safe and any contents; and (5) the doctrine of quasi-estoppel barred James's claim.

UNCHALLENGED GROUNDS

In his sole issue, James maintains that Elizabeth owed a duty as bailee of his property and that the trial court erred by failing to so find and denying his claim for damages. According to James, Elizabeth became a bailee of his property when she accepted the safe and allowed it to

remain on her property. Thus, James contends that Elizabeth had a duty to keep the safe reasonably secure.

Generally, an appellant must attack all independent bases or grounds that fully support the trial court's 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.). If the appellant does not do so, we must affirm the ruling or judgment. *Id.* This rule is based on the reasoning that when an independent ground fully supports the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, then (1) we must accept the validity of the unchallenged independent ground, and (2) any error in the challenged ground(s) is harmless because the unchallenged independent ground fully supports the complained-of ruling or judgment. *Id.*

In this case, James does not challenge the trial court's conclusions that the doctrine of quasi-estoppel bars his conversion claim or its conclusions that James abandoned the safe, had no right to store the safe on the property after his father's death, and no longer exercised control or dominion over the safe after the fire. Any of these grounds would, if meritorious, support the trial court's judgment.¹ See *id.* Accordingly, we overrule James's sole issue.

DISPOSITION

Having overruled Appellant's only issue, we *affirm* the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 24, 2016.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(PUBLISH)

¹ We also note that, despite his contention that Elizabeth owed a duty, James admitted at trial that Elizabeth did not owe a duty to keep the safe secure and that he bore the responsibility of protecting his own property. Testimonial declarations that are contrary to a party's position are quasi-admissions and the weight of such admissions is to be determined by the trier of fact. See *Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980).



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 24, 2016

NO. 12-15-00120-CV

JAMES D. BRANCH, II,
Appellant
V.
ELIZABETH MARLENE BRANCH,
Appellee

Appeal from the County Court at Law
of Anderson County, Texas (Tr.Ct.No. 11821)

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, **JAMES D. BRANCH, II**, for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.