THIRTEENTH DISTRICT OF TEXAS

COURT OF APPEALS

Corpus Christi, Texas

CARRIE M. LEO,

Appellant

V

TYLER C. THOMAS AND NICHOLAS STACEY,

Appellees

Appealed from the 444th Judicial District, Cameron County, Texas
Trial Court Cause No: 2020-DCL-1028, Honorable David Sanchez, Presiding

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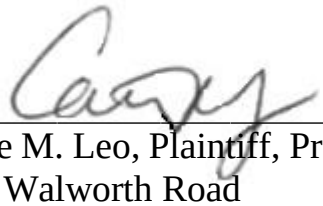
APPELLANT'S AMENDED REPLY BRIEF

Appellant is Pro Se.

Appellees are Tyler C. Thomas and Nicholas Stacey. Both Appellees are represented by Counsel, Paul L. Fourt, Jr., Esquire of the Law Office of Paul L. Fourt Jr., 1000 East Van Buren, Brownsville, Texas 78520.



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BRIEF REVIEW OF STATEMENT OF THE CASE

Appellant is appealing a district trial court order dated January 6, 2021, which awarded sanctions against Appellant payable to both named Appellees in the amount of ten thousand dollars ($10,000.00) based on Texas Civil Rule 13. The underlying civil lawsuit filed by Appellant sought the return of her exotic animals (personal property) in the custody and possession of Appellees. Specifically, Appellant sought the Texas District Court's help to enforce a duly issued interlocutory order from the New York Supreme Court directing the Appellees to return her animals.

ISSUES PRESENTED THOUGH APPELLEES' ANSWER BRIEF

I. Factual Misrepresentations from Appellees Concerning Chronology of Appellant's Filings

II. Absence of Support to Sustain Appellees' Arguments Relative to Judicial Factual Suppositions/Assumptions Against Appellant for Rule 13 Bad Faith

ARGUMENT

I. FACTS AND CHRONOLOGY IN REBUTTAL TO ANSWER BRIEF (Factual Misrepresentations Debunked)

A. The undersigned Appellant filed her case, as a plaintiff, in the District Court for the 444th Judicial District, Cameron County, Texas on February 26, 2020 (Clerk's Record at pg. 56). On page eleven (11) of Appellees' Answer Brief, a

citation was made that at Clerk's Record Vol 5, at pg. 996, this reviewing court will locate the trial court's findings of fact and conclusions of law as cited.

Directing this Court to said Findings and Conclusions of the Court executed by the trial court on February 12, 2021 as cited by Appellees, enumerated paragraph 3 found that it was "false and willful" on the part of the undersigned Appellant to have alleged in Appellant's Texas trial court Complaint that she was prosecuting a pending case in the Jefferson County, New York Supreme Court against Appellees *on* February 26, 2020, because the undersigned Appellant *knew* that said New York case had been dismissed four (4) months later into the future on July 11, 2020. Again, if this reviewing appellate court will examine these dates, it is apparent that said trial court document is contradictory and defective on its face. The dismissal of the New York Supreme Court case four (4) months **AFTER** the undersigned's filing in the Texas District Court case in February of 2020 cannot support paragraph number 3 as per CR Vol 5 at 996 that Appellant filed such an action with the knowledge that her/my case in New York would or might be dismissed on some future date for reasons unrelated to the substance of the interlocutory order.

B. Appellant's Notice of Appeal was filed consistent with Texas Rule of Appellate Procedure, 26.1, which required the undersigned's Notice of Appeal to be filed within 30 days of its execution/rendition. The trial court dismissed

Appellant's case on January 6, 2021. Undersigned Appellant filed the Notice of Appeal on January 24, 2021. More than 30 days after the execution and rendition of the trial court's judgment and order of dismissal, the trial court issued its Findings and Conclusion of Law on February 12, 2021 (CR Vol 5 at 996). Said differently, Appellant was compelled to bring the instant appeal blindly because there had yet to be any Findings and Conclusions of Law. Rule 13 sanctions are supposed to provide *due* notice; Be based upon the trial court's informed inquiry, *Together*, with a qualifying guiding legal standard in furtherance of same. Without qualifying a fixed standard, a trial court cannot issue sanctions because the guide is absent. ***Cire v. Cummings***, 134 S.W.3d 835, 838-39 (Tex.2004).

> An appellate court may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling was arbitrary or unreasonable.

The trial court's Findings and Conclusions of Law failed to identify any guiding legal principle or precedent that stands for the proposition that a litigant could be found culpable or at fault for judicial orders that are executed four (4) months into the unknown future. Perhaps more dispositive is whether the trial court's delay in issuing its Findings and Conclusions of Law, issued more than 30 days after the order/judgment of dismissal, with its apparent defects, is an appropriate legal burden that should be suffered/carried by the undersigned pro se appellant.

C. Appellant's initial filings in the Texas District Court on February 26, 2020, were the same documents the undersigned filed in October of 2020. Appellant's online examination of the docket did not reflect the presence of these documents. Without these documents being duly accounted for as filings, per the online examination of the undersigned via the Clerk of Courts, the District Court could not be reasonably expected to grant Appellant the relief being sought, to wit, enforcement of the interlocutory order for the return of my animals. Nonetheless, the same interlocutory May 2, 2019, order from the New York Supreme Court, Appellant's Appendix #2, was never vacated by the issuing New York court.

II. The Absence of Record Findings from New York and Texas Trial Courts to Support Appellees' Inflammatory Arguments of Bad Faith Against Appellant

A. While the New York court ultimately found that undersigned Appellant failed to allege claims that had "legal sufficiency", the record is devoid of anythingtantamount to this interlocutory order being vacated. The New York court dismissed Appellant's case due to insufficiency of the pleadings, but there has never been a judicial word offered by the same court to repudiate the interlocutory order. Appellees have characterized these facts in a *creative* manner that continues to attribute some premediated false, malicious, and willful bad faith conduct to Appellant. The interlocutory order, Appendix #2, was *never* found to be fraudulent, untruthful, nor

premised upon misrepresentations. Appellees' arguments, emotional and full of inflammatory assaults are a giant leap into fantasy supposition. Appellees argued that the dismissal of Appellant's New York case 4 months after she filed suit in the Texas District Court, is a per se admission that something was inappropriate about the way/means Appellant obtained the interlocutory order 1 year earlier.

As an easy parallel, consider the order of a family court that finds that a father should be allowed visitation of his child. A subsequent dismissal of the divorce petition does not invalidate the existence of the parent-child relationship found to exist prior to said dismissal. Continuing with this parallel, nor should the father be sanctioned for presenting an interlocutory order to a foreign state court ***prior*** to the dismissal of the divorce petition back in his home state for unrelated matters that did not embrace the substance of the interlocutory order compelling the visitation. In other words, his paternity is not deemed lost, vacated, nor assumed judicially repudiated making him subject to sanctions just because the divorce petition was dismissed for "insufficiency" to state a cognizable legal claim.

Appellees' bold and over-stated arguments go beyond and past anything the record supports. Saying that the New York trial court interlocutory order of May 2, 2019, was "invalid", pg. 6 of Appellees'

Answer Brief, should have followed with a full exposition as to how the order was deemed invalid, vacated, or judicially repudiated. Appellees will not yield or recognize the difference between a properly issued interlocutory order vested with res judicata standing over the specific factual matters it governed, to wit, the return of Appellant's property, as compared to the dismissal of a legal action with no relation back to the substanceor facts of a previously issued interlocutory order.

B. Appellant wanted the Texas District Court to enforce a properly executed interlocutory New York State Supreme Court order that compelled Appellee Thomas to return her exotic animals. Because Appellant had never heretofore sought enforcement help from a Texas District Court about this May 2, 2019, interlocutory order from New York, there is no basis to entertain any aspect of "resjudicata" being an impediment or block to the sought-after relief. Res judicata is the same thing as saying this legal issue was already fully adjudicated, addressed, ruled upon and disposed of by a court that had subject matter and personal jurisdiction. ***In re Fuentes,* 530 S.W. 3d 244** (Texas App. 2017). There was never a prior time when Appendix #2 was vacated with words from a judge finding that Appellant was not the rightful property owner of said animals. Appellees' arguments are broad. They try to encompass legal issues without facts to support such colorful angst. They are

unfounded shot-gun blasts of legalese and legal terms of art. Appellees' presumptive giant leaps are spirited and persuasive, but wholly illogical.

C. Last, precedence indicates that the levy of sanctions on a litigant who is considered indigent by the court is ineffective and unreasonable. The Plaintiff's assertion that the monetary sanctions were inappropriate is supported by case law.

1. In *REULE*, (Appellant) v. *M & T MORTGAGE et al*., (Appellees) NO. 14-13-00502-CV (Tex. App. Oct. 29, 2015), the Court opined "when the sanctioned litigant has no money, the money alternate is meaningless."

2. In *Montgomery v. Mattucci* (NO. 02-11-00418-CV (Tex. App. May. 23, 2013), the levy of monetary sanctions on an indigent litigant was "an abuse of discretion".

3. In *Mathis v. State* (424 S.W.3d 89 (Tex. Crim. App. 2014), it was also opined that "whenever monetary payments are proposed . . . the trial judge must consider the . . . the ability to pay before imposing monetary conditions. Even though *Mathis v. State* was a criminal appeals case, it reveals the treatment of the indigent when considering sanctions which should also apply to civil proceedings.

The decision of the Court to levy an exorbitant sanction on conduct which wasn't in bad faith, and with no evidence to support such an

assumption by the court, was unwarranted and an abuse of discretion. No actions on the part of the Plaintiff were evidence of conscious disregard or deliberate neglect. *Wheeler v. Green* 157 S.W.3d 439 (Tex. 2005) Nor did any of her actions cause a hindrance of any core function of the Court.

CONCLUSION & PRAYER FOR RELIEF

Appellant was supposed to have an evidentiary hearing so that the trial court could assess the credibility and motives of the undersigned. An evidentiary hearing is also required so the Court can make factual determinations about the person signing the pleadings credibility and their motives. ***Bisby v. Dow Chem. Co***., 931 S. W.2d 18, 21 (Tex. App. 1996). The trial court did not convene such a hearing and did not inquire into issues as to whether Appellant believed a validly issued New York Supreme Court interlocutory order would still apply and be enforceable relative to Appellant's ownership and return of her animals. Appellees avoided addressing the absence of such an evidentiary hearing.

The trial court issued its Findings of Fact and Conclusions of Law after the expiration of the 30 days' time for filing a Notice of Appeal. "A trial court's failure to specify the good cause for sanctions in a sanction order may be an abuse of discretion." ***Gaspard v. Beadle***, 36 S.W.3d 229, 239 (Tex. App. 2001).

Finally, the Findings of Fact and Conclusions of Law is facially defective and should be vacated because it finds Appellant to be at fault for filing an action in Texas, followed by a dismissal of the New York case from whence the interlocutory order was issued over 4 months later. Being held to willful premeditated wrongdoing

about a case dismissal in New York that happened 4 months later was an abuse of discretion. It attributed knowledge to Appellant of unknown future matters.

Appellant requests that this Court vacate the sanctions order of January 6, 2021 and remand this case back to the trial court for enforcement of the duly issued foreign interlocutory order and to hear the plaintiff's motion for sanctions against the defendant.

Date: January 22, 2022

Respectfully Submitted,

Carrie M. Leo, *Appellant Pro Se*

AMENDED CERTIFICATE OF SERVICE

I certify that on January 22, 2022, Appellant's REPLY Brief was served on counsel under Texas Rules of Appellate Procedure 9.5(d)(e) to

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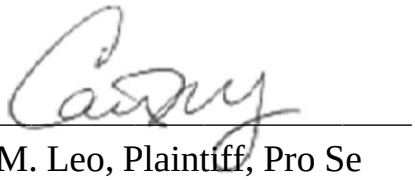
AMENDED CERTIFICATE OF COMPLIANCE

This brief complies with Texas Rules of Appellate Procedure 9.4 because the sections covered by the rule contain no more than 2,272 words. The font used in the body of the brief is no smaller than 14 points, and the font used in the footnotes is no smaller than 12 points.



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