

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

Janet Lou Douglass v. Gilberto C. Torrez and Ercilia J. Torrez

No. 2-08-189-CV (Tex. App.—Fort Worth Apr. 30, 2009) (mem. op.) · No. No. 2-08-189-CV · Decided April 30, 2009

SUMMARY

The Texas Court of Appeals, Second District, affirmed a take-nothing judgment against Janet Lou Douglass in her trespass and related tort claims against neighboring property owners. The court held that it could not review Douglass’s appellate issues because she failed to provide a reporter’s record of the bench trial, requiring the court to presume that the evidence supported the trial court’s judgment.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Gardner, J.; Cayce, C.J.; Livingston, J.
JURISDICTION	Texas
DECIDED	April 30, 2009
DOCKET	No. 2-08-189-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a take-nothing judgment entered after a bench trial on Douglass's claims for trespass, trespass to title, intentional infliction of emotional distress, and related relief.
STANDARD OF REVIEW	An appellant bears the burden of presenting a record showing the complained-of error. When a reporter's record necessary to the appeal is not filed through the appellant's fault, the appellate court presumes that the evidence supports the trial court's judgment. After a bench trial, findings of fact are conclusive absent a complete reporter's record.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Janet Lou Douglass v. Gilberto C. Torrez, Ercilia J. Torrez

TOPICS

- appellate procedure
- standard of review
- preservation of error
- civil procedure
- trespass

PRACTICE AREAS

appellate procedure

civil procedure

real estate

torts

QUESTIONS PRESENTED

1. Whether the trial court erred by failing to hold Gilberto Torrez in contempt for alleged perjury.
2. Whether the trial court erred by denying Douglass's motion for continuance after the alleged perjury.
3. Whether the evidence established that Gilberto Torrez trespassed on Douglass's property.
4. Whether the evidence established intentional infliction of emotional distress based on an alleged attempted assault.

HOLDINGS

1. The appellate court could not review the challenged contempt, continuance, trespass, or intentional-infliction-of-emotional-distress issues on the scant record because the record lacked the trial testimony necessary to evaluate the alleged errors and the sufficiency of the evidence.

KEY QUOTATIONS

“Without testimony to explain the significance of the exhibits filed with this court, the exhibits are inexplicable and probative of nothing.” (at 4)

FACTUAL BACKGROUND

Douglass alleged that the Torrezes built a fence in 1995 that encroached on her property and that she discovered the encroachment in 2003. She also alleged that Gilberto cut down no-trespassing signs, threw concrete blocks into her swimming pool, and attempted to assault her. She sought damages, back rent, and injunctive relief, but the trial court entered a take-nothing judgment.

PROCEDURAL HISTORY

Douglass sued her neighbors, alleging that a fence encroached on her property and that Gilberto Torrez engaged in other wrongful conduct. The case was tried to the bench, and the trial court rendered a take-nothing judgment. Douglass appealed, but she did not obtain a reporter's record of the trial testimony; the appellate record contained only two volumes of exhibits.

DISPOSITION

affirmed

CASES CITED

- *Hiroms v. Scheffey*, 76 S.W.3d 486, 489 (Tex. App.—Houston [14th Dist.] 2002, no pet.)
- *Chapman v. Hootman*, 999 S.W.2d 118, 122 (Tex. App.—Houston [14th Dist.] 1999, no pet.)
- *Travelers Indem. Co. v. Starkey*, 157 S.W.3d 899, 905 (Tex. App.—Dallas 2005, pet. denied)

- Catalina v. Blasdel, 881 S.W.2d 295, 297 (Tex. 1994)
- In re JC, 250 S.W.3d 486, 489 (Tex. App.—Fort Worth 2008, pet. denied)

OPINION

PER CURIAM.

COURT OF APPEALS SECOND DISTRICT OF TEXAS FORT WORTH NO. 2-08-189-CV
 JANET LOU DOUGLASS APPELLANT V. GILBERTO C. TORREZ AND APPELLEES
 ERCILIA J. TORREZ FROM THE 352ND DISTRICT COURT OF TARRANT COUNTY
 MEMORANDUM OPINION 1 Appellant Janet Lou Douglass, pro se, appeals the trial court’s take- nothing judgment on her claim for trespass against Appellees Gilberto C. Torrez and Ercilia J. Torrez.

2 We affirm. 1 ... See Tex. R. App. P. 47.4. 2 ... According to Douglass’s trial court pleadings, Ercilia is Gilberto’s wife. Background Douglass sued the Torrezes in October 2006 for “trespass of title,” trespass to real property “with intent to assault,” and intentional infliction of emotional distress. She alleged that in 1995 the Torrezes, who are her next- door neighbors, had built a fence that encroached on Douglass’s property.

She further alleged that she did not discover the encroachment until October 2003 when the Colleyville water department determined that the fence was on her side of the property line. Douglass also claimed that the Torrezes continually “cut[] down ‘No Trespassing’ signage” she had erected on her property, threw concrete blocks into her swimming pool, and attempted to assault her.

She sought \$80,000 in “back rent,” \$1 million in damages for attempted assault and intentional infliction of emotional distress, and an injunction to prevent further interference with her property rights. Gilberto Torrez filed a pro-se answer, asserting a general denial and—as an affirmative defense—lack of consideration to support Douglass’s “back-rent” claim.

He also asserted ownership of the disputed property by adverse possession as a “counterclaim.” 3 3 ... Ercilia did not file an answer. 2 The parties tried the case to the bench. The trial court rendered a take- nothing judgment.

The court reporter filed in this court two volumes of exhibits but no transcript of the trial testimony.⁴ Douglass filed an Appellant’s brief.⁵ Gilberto Torrez filed a notice that he did not intend to file an Appellee’s brief. Discussion In four points, Douglass argues that the trial court erred by (1) not holding Gilberto in contempt of court when he allegedly perjured himself at trial; (2) denying Douglass’s motion for continuance after Gilberto perjured himself;⁶ (3) by not finding that Gilberto had trespassed on Douglass’s property; and (4) 4 ... On June 5, 2008, the court reporter notified this court that Douglass had not requested preparation of a reporter’s record.

On June 6, we notified Douglass that unless she made arrangements to designate and pay for the reporter's record and provided this court with proof of those arrangements by June 20, this court would consider and decide those issues that do not require a reporter's record for a decision.

On June 19, Douglass designated and paid for the clerk's record, but she did not designate preparation of a reporter's record. Nevertheless, on September 26 and October 2, this court received two volumes of trial exhibits. 5 ... In her brief, Douglass identifies trial exhibits that she claims show that Gilberto contaminated her house with "toxoplasma"; choked her dog; practiced witchcraft and voodoo in a parallel universe to make Douglass sick; trespassed on her property in a "bubble" traveling on electromagnetic waves in a parallel universe; launched daily "psychic attacks" against her; caused her left ear lobe to turn black and fall off; planted a parasite in her left ear drum; burned a hole in her stomach via psychic attack; and committed other acts of unneighborly conduct.

6 ... The clerk's record does not contain written motions for contempt or continuance, and the limited reporter's record does not reflect any oral motions. 3 by not finding that Gilberto had intentionally inflicted emotional distress on Douglass by attempting to assault her. An appellant has the burden to present to the appellate court a record that shows the error about which the appellant complains.

Hiroms v. Scheffey, 76 S.W.3d 486, 489 (Tex. App.—Houston [14th Dist.] 2002, no pet.); *Chapman v. Hootman*, 999 S.W.2d 118, 122 (Tex. App.—Houston [14th Dist.] 1999, no pet.). When a reporter's record is necessary for an appeal but is not filed through the fault of the appellant, the appellate court must presume the evidence supports the trial court's judgment.

Travelers Indem. Co. v. Starkey, 157 S.W.3d 899, 905 (Tex. App.—Dallas 2005, pet. denied). After a bench trial, a trial court's findings of fact are conclusive unless the appellate court has a complete reporter's record. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *In re JC*, 250 S.W.3d 486, 489 (Tex. App.—Fort Worth 2008, pet. denied).

We cannot review any of Douglass's points of error on the scant record—comprising two volumes of trial exhibits and no testimony—she caused to be filed in this court. See *In re JC*, 250 S.W.3d at 489. The record does not reflect Gilberto's alleged perjury, Douglass's motion for continuance, or any testimony from which we can evaluate the sufficiency of the evidence to support the trial court's judgment.

Without testimony to explain the 4 significance of the exhibits filed with this court, the exhibits are inexplicable and probative of nothing. We therefore overrule all of Douglass's points of error and affirm the trial court's judgment. See *id.* PER CURIAM PANEL: GARDNER, J.; CAYCE, C.J.; and LIVINGSTON, J. DELIVERED: April 30, 2009 5

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/texas-court-of-appeals-of-texas-second-district-fort-worth/2009/janet-lou-douglass-v-gilberto-c-torrez-and-ercilia-j-torrez-aqx3ap20>