

COURT OF APPEALS OF TEXAS, SIXTH APPELLATE DISTRICT AT
TEXARKANA

Edward Cox and Theresa Cox v. Franklin Micah May Vanderburg,
Premier Land, LLC, and Cecilia Gutierrez De Cruz

Cox · No. 06-20-00078-CV · Decided September 7, 2021

SUMMARY

The Texas Sixth Court of Appeals considers whether the trial court abused its discretion by dismissing the Coxes’ claims with prejudice after finding that their voluntary nonsuit was taken in bad faith. The Coxes had nonsuited and later re-added a defendant through untimely amended pleadings, then nonsuited all remaining claims shortly before trial and refiled substantially identical claims in a new action. The court affirmed the trial court’s dismissal with prejudice and its determination that the defendants were prevailing parties.

CASE DETAILS

COURT	Court of Appeals of Texas, Sixth Appellate District at Texarkana
WRITING FOR THE COURT	Ralph K. Burgess; Morriss, C.J.; Burgess, J.; Stevens, J.
JURISDICTION	Texas
DECIDED	September 7, 2021
DOCKET	06-20-00078-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Coxes appealed sanctions-related orders entered after they voluntarily nonsuited their claims without prejudice during a summary-judgment hearing and refiled substantially identical claims in a new lawsuit. The trial court deemed the nonsuit to be with prejudice, declared Premier and Cedar Creek prevailing parties, and awarded costs.
STANDARD OF REVIEW	The imposition of sanctions under Chapter 10 of the Texas Civil Practice and Remedies Code is reviewed for abuse of discretion. The determination that a nonsuit was taken to avoid an unfavorable ruling is also reviewed for abuse of discretion. The appellate court views the evidence in the light most favorable to the trial court’s ruling and reverses only when the ruling is arbitrary or unreasonable, or based on an erroneous assessment of the evidence or law.

PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified as published in the supplied metadata.
PARTIES	Edward Cox, Theresa Cox v. Franklin Micah May Vanderburg, Premier Land, LLC, Cecilia Gutierrez De Cruz

TOPICS

sanctions civil procedure appellate procedure standard of review remedies

PRACTICE AREAS

civil procedure appellate procedure sanctions personal injury remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by finding that the Coxes' nonsuit was taken for an improper purpose to avoid unfavorable rulings and by imposing sanctions under Chapter 10.
2. Whether dismissal of the Coxes' claims with prejudice was a just and proportionate sanction.
3. Whether Premier and Cedar Creek were prevailing parties after the Coxes nonsuited their claims.
4. Whether the Coxes preserved a complaint that the trial court should have imposed lesser sanctions.

HOLDINGS

1. A plaintiff's otherwise absolute right to nonsuit under Texas Rule of Civil Procedure 162 remains subject to sanctions, and the trial court did not abuse its discretion by finding that the Coxes nonsuited to avoid unfavorable rulings and to circumvent the court's pleading and docket-control orders.
2. Dismissal of the Coxes' claims with prejudice was a just sanction because it bore a direct relationship to the improper nonsuit and was not shown to be excessive.
3. The trial court properly declared Premier and Cedar Creek prevailing parties because the Coxes' nonsuit was found to have been taken to avoid an unfavorable ruling on the merits and was ultimately deemed to be with prejudice.
4. The Coxes waived their appellate complaint that the trial court should have imposed lesser sanctions because they did not present that complaint to the trial court.

KEY QUOTATIONS

“Courts should presume parties and their counsel file all papers in good faith, and the party seeking sanctions must overcome that presumption.” (21)

“However, even the filing of a nonsuit is subject to sanctions.” (22)

“a decision on the merits cannot be circumvented by nonsuiting and refiling the case” (26)

“Since the sanction of deeming the nonsuit to be with prejudice bore a direct relationship to the offensive conduct” (27)

“The res judicata effect of a nonsuit with prejudice works a permanent, inalterable change in the parties’ legal relationship to the defendant’s benefit” (29)

FACTUAL BACKGROUND

The Coxes were passengers in a vehicle driven by Franklin Vanderburg during a real-estate-sales caravan arranged by Premier and associated with Cedar Creek. Vanderburg drove through a red light after receiving instructions connected to the police escort, and the vehicle collided with one driven by Cecilia Gutierrez De Cruz, injuring the Coxes. During litigation against Premier and Cedar Creek, the Coxes repeatedly amended their pleadings, nonsuited Cedar Creek, readmitted it through untimely amended petitions, and then nonsuited all claims during a summary-judgment hearing after adverse evidentiary and pleading rulings. They subsequently refiled substantially the same claims in a new action.

PROCEDURAL HISTORY

The Coxes sued defendants for personal injuries arising from a collision involving a real-estate-sales caravan. After prior amendments, a prior nonsuit of Cedar Creek, untimely amended petitions, evidentiary rulings, and the commencement of defendants' summary-judgment hearing, the Coxes nonsuited all claims against Premier and Cedar Creek and filed a new action. The trial court found that the nonsuit and refiling were undertaken in bad faith to avoid unfavorable rulings and to circumvent docket-control orders, imposed dismissal with prejudice under Texas Civil Practice and Remedies Code Chapter 10, and declared the defendants prevailing parties. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Messina v. Messina, No. 01-07-00277-CV, 2008 WL 2854191, at *2 (Tex. App.—Houston [1st Dist.] July 24, 2008, pet. denied) (mem. op.)
- Dike v. Peltier Chevrolet, Inc., 343 S.W.3d 179, 183–84 (Tex. App.—Texarkana 2011, no pet.)
- Low v. Henry, 221 S.W.3d 609, 614–15 (Tex. 2007)
- Cire v. Cummings, 134 S.W.3d 835, 838 (Tex. 2004)
- Northside Pharmacy, LLC v. AMJ Inv., LLC, No. 14-19-00094-CV, 2021 WL 330067, at *1 (Tex. App.—Houston [14th Dist.] Feb. 2, 2021, no pet.) (mem. op.)
- Lusk v. Osorio, Nos. 14-17-01011-CV, 14-18-00522-CV, 2019 WL 3943195, at *6 (Tex. App.—Houston [14th Dist.] Aug. 20, 2019, no pet.) (mem. op.)
- Mobley v. Mobley, 506 S.W.3d 87, 95 (Tex. App.—Texarkana 2016, no pet.)
- TransAmerican Natural Gas Corp. v. Powell, 811 S.W.2d 913, 917 (Tex. 1991)
- GTE Communications Systems Corp. v. Tanner, 856 S.W.2d 725, 731 (Tex. 1993)
- In re Liu, 290 S.W.3d 515, 519 (Tex. App.—Texarkana 2009, orig. proceeding)
- Liles v. Contreras, 547 S.W.3d 280, 295–96 (Tex. App.—San Antonio 2018, pets. denied)

- Villafani v. Trejo, 251 S.W.3d 466, 469 (Tex. 2008)
- Vick v. Floresville Independent School District, 505 S.W.3d 24, 31 (Tex. App.—San Antonio 2016, pet. denied)
- Genesis Producing Co., L.P. v. Smith Big Oil Corp., 454 S.W.3d 655, 659 (Tex. App.—Houston [14th Dist.] 2014, no pet.)
- Aetna Casualty & Surety Co. v. Specia, 849 S.W.2d 805, 806 (Tex. 1993) (orig. proceeding)
- Travelers Insurance Co. v. Joachim, 315 S.W.3d 860, 863 (Tex. 2010)
- Epps v. Fowler, 351 S.W.3d 862, 864–71 (Tex. 2011)
- Intercontinental Group Partnership v. KB Home Lone Star LP, 295 S.W.3d 650, 652 (Tex. 2009)
- Sanchez v. Fiedler, No. 03-14-00182-CV, 2016 WL 4272111, at *5–6, *9 (Tex. App.—Austin Aug. 11, 2016, pet. denied) (mem. op.)
- In re Team Rocket, 256 S.W.3d 257, 259–60 (Tex. 2008) (orig. proceeding)
- Werley v. Cannon, 344 S.W.3d 527, 535 (Tex. App.—El Paso 2011, no pet.)
- Akhtar v. Leawood HOA, Inc., 525 S.W.3d 814, 820–21 (Tex. App.—Houston [14th Dist.] 2017, no pet.)
- Approximately \$5,602.00 v. State, No. 14-08-00359-CV, 2009 WL 1886127, at *1 (Tex. App.—Houston [14th Dist.] July 2, 2009, no pet.) (mem. op.)