

FOURTH COURT OF APPEALS OF TEXAS

**David Rodriguez v. Richard R. Storm, Jr.; H-E-B, LP; Law Office of
Shelton & Valadez; Mark A. Giltner; William Tate; and Stephen
Martinez; and David Rodriguez v. H-E-B, Jointly and Severally;
William Tate; Stephen Martinez; Meredith Reid; Debra Ann Godoy;
and Mark Giltner**

Nos. 04-19-00642-CV & 04-19-00795-CV · No. Nos. 04-19-00642-CV & 04-19-00795-CV · Decided May 6,
2020

SUMMARY

The Fourth Court of Appeals of Texas affirmed orders dismissing David Rodriguez’s claims arising from a prior settlement and declaring him a vexatious litigant subject to a pre-filing order. The court held that the trial court properly considered dismissal under Texas Civil Practice and Remedies Code section 13.001 and did not abuse its discretion in dismissing the claims. The court declined to review challenges to the vexatious-litigant findings because Rodriguez failed to provide the reporter’s record of the relevant hearing.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas
WRITING FOR THE COURT	Sandee Bryan Marion, Chief Justice; Patricia O. Alvarez, Justice; Luz Elena D. Chapa, Justice
JURISDICTION	Texas
DECIDED	May 6, 2020
DOCKET	Nos. 04-19-00642-CV & 04-19-00795-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from orders dismissing Rodriguez's claims under Texas Civil Practice and Remedies Code section 13.001 and declaring him a vexatious litigant subject to security and a pre-filing order.
STANDARD OF REVIEW	A dismissal under Texas Civil Practice and Remedies Code section 13.001 is reviewed for abuse of discretion. A trial court abuses its discretion by failing to follow guiding rules and principles. Review of the vexatious-litigant order for abuse of discretion and evidentiary

	sufficiency requires a reporter's record; absent that record, the appellate court presumes the evidence supported the order.
PRECEDENTIAL VALUE	Memorandum opinion; precedential status is not expressly stated in the document text.
PARTIES	David Rodriguez v. Richard R. Storm, Jr., H-E-B, LP, Law Office of Shelton & Valadez, Mark A. Giltner, William Tate, Stephen Martinez, Meredith Reid, Debra Ann Godoy

TOPICS

motions to dismiss

sanctions

appellate procedure

standard of review

civil procedure

PRACTICE AREAS

Civil procedure

Appellate procedure

Remedies

Contracts

QUESTIONS PRESENTED

1. Whether the trial court properly considered and granted defendants' motions to dismiss under Texas Civil Practice and Remedies Code section 13.001 when the hearing was also described as involving a Texas Rule of Civil Procedure 91a motion.
2. Whether the trial court was required to enter findings of fact and conclusions of law when dismissing Rodriguez's claims under section 13.001.
3. Whether the trial court abused its discretion in declaring Rodriguez a vexatious litigant, requiring him to post security, and imposing a pre-filing order.
4. Whether the evidence sufficiently supported the findings underlying the vexatious-litigant order when Rodriguez failed to provide the reporter's record of the hearing.

HOLDINGS

1. The trial court properly considered and granted the defendants' motions to dismiss under Texas Civil Practice and Remedies Code section 13.001 because the hearing notice encompassed those motions and section 13.001 was expressly asserted as a ground for dismissal.
2. The trial court was not shown to have a mandatory duty to enter findings of fact and conclusions of law in ruling on the section 13.001 motion; in any event, the omission did not require reversal because the trial court's oral statements established the basis for its ruling and Rodriguez was not required to guess at that basis.
3. The court could not review Rodriguez's challenges to the vexatious-litigant order for abuse of discretion or evidentiary sufficiency without the reporter's record of the hearing and therefore presumed the evidence supported the trial court's findings.

KEY QUOTATIONS

“Because a reporter’s record from the hearing is required to consider Rodriguez’s issues challenging the trial court’s vexatious litigant order, we do not further address them.” (at 7–8)

“The trial court’s orders dismissing Rodriguez’s claims in trial court cause number 2019-CI-13590 and declaring him to be a vexatious litigant subject to a pre-filing order in trial court cause number 2019-CI-16263 are affirmed.” (at 8)

FACTUAL BACKGROUND

Rodriguez previously sued H-E-B and several employees over emotional injuries allegedly suffered by his wife and asserted loss-of-consortium claims for himself and his minor son. The parties entered a settlement and release, approved by the trial court and the attorney ad litem, under which H-E-B paid Rodriguez \$6,500 and his son \$1,000, and Rodriguez released his claims. Rodriguez then filed one suit alleging fraud and misrepresentation relating to the settlement and another alleging breach of the settlement agreement and defamation based on statements in pleadings.

PROCEDURAL HISTORY

Rodriguez filed two separate lawsuits in Bexar County district courts. In cause number 2019-CI-13590, the trial court dismissed his claims after a hearing on defendants' motions to dismiss, including a motion under section 13.001. In cause number 2019-CI-16263, the trial court declared Rodriguez a vexatious litigant and imposed security and pre-filing requirements. The Fourth Court of Appeals consolidated the appeals and affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- Black v. Jackson, 82 S.W.3d 44, 49 (Tex. App.—Tyler 2002, no pet.)
- Nell Nations Forist v. Vanguard Underwriters Ins. Co., 141 S.W.3d 668, 670 (Tex. App.—San Antonio 2004, no pet.)
- Gunn v. McCoy, 554 S.W.3d 645, 666 (Tex. 2018)
- State v. Cullen, 195 S.W.3d 696, 698 (Tex. Crim. App. 2006)
- Kendrick v. Lynaugh, 804 S.W.2d 153, 156 (Tex. App.—Houston [14th Dist.] 1990, no writ)
- Mora v. Mora, No. 04-17-00428-CV, 2018 WL 4903079, at *4 (Tex. App.—San Antonio Oct. 10, 2018, pet. denied) (mem. op.)
- Amrhein v. Bollinger, 593 S.W.3d 398, 404 (Tex. App.—Dallas 2019, no pet.)
- Willms v. Americas Tire Co., 190 S.W.3d 796, 803 (Tex. App.—Dallas 2006, pet. denied)
- In re Guardianship of L.S., No. 14-15-00494-CV, 2017 WL 1416190, at *5 (Tex. App.—Houston [14th Dist.] Apr. 18, 2017, pet. denied) (mem. op.)
- In re N.M.D., No. 04-13-00849-CV, 2014 WL 3339627, at *2 (Tex. App.—San Antonio July 9, 2014, no pet.) (mem. op.)

- Sareen v. Sareen, 350 S.W.3d 314, 317 (Tex. App.—San Antonio 2011, no pet.)

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