Affirmed and Opinion filed September 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00368-CV

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JOHN J. LAUGHLIN, Appellant

V.

AECTRA TRADINGS & TRANSPORTATION, INC. & SCOTT C. MITCHELL, RECEIVER, Appellees

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On Appeal from the 11th Judicial District Court
Harris County, Texas
Trial Court Cause No. 92-50774

O P I N I O N

John J. Laughlin, appellant, appeals the trial court's order requiring him to pay $16,000 in costs, an amount the trial court determined to be Laughlin's portion of fees incurred by an appointed receiver. Laughlin raises several issues on appeal: (1) whether Laughlin was a party to the suit in which the receiver was appointed such that the trial court may properly assess the receiver's fees against him; (2) whether the trial court assessed fees against Laughlin on an improper basis; and (3) whether there is sufficient evidence to support the court's action in assessing a portion of the fees against Laughlin. We affirm.

BACKGROUND

This appeal arises from a suit in which three cases were consolidated. In the first suit, Ameristar Fuels Corporation ("Ameristar"), sued Aectra Trading & Transportation, Inc. ("ATT"), for an accounting of a partnership created by the parties. The partnership entity was known as "Aectra Fuels." In this suit, the trial court appointed Scott Mitchell as Receiver for Aectra Fuels; Mitchell incurred a total of $648,343.38 in fees and expenses. The second suit, in which Laughlin was named as a party defendant, involved a second joint venture between Ameristar Supply Corporation and ATT. In the third suit, Laughlin, who was an officer and employee of Ameristar, sued certain shareholders for removing him from his position with Ameristar.

In 1995, ATT moved to consolidate all three cases. On June 14, the trial court entered an order granting this motion over Laughlin's objections. Subsequently, prior to a trial on the merits, the parties settled all their respective claims. Mitchell then moved to be discharged as receiver and for payment of his unpaid fees. On December 1, 1997, the court conducted an evidentiary hearing on Mitchell's motion, at the conclusion of which the court assessed $16,000 of the unpaid balance of Mitchell's fees against Laughlin.

PROPRIETY OF ASSESSMENT OF FEES

In his first issue, Laughlin complains that the trial court erred in assessing a portion of Mitchell's fees against him because he was not a party to the suit in which Mitchell was appointed receiver.

Rule 174(a) of the Texas Rules of Civil Procedure provides that a trial court may consolidate actions involving a common question of law or fact. *See* TEX .R. CIV. P. 174(a); *Santa Fe Drilling Co. of S. Am. v. Oneill*, 774 S.W.2d 423, 424 (Tex. App.—Houston [14th Dist.] 1989, *writ mand. overruled*). A trial court's decision to consolidate is subject to appellate review under an abuse of discretion standard. *See Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 525 (Tex. 1982); *Oneill*, 774 S.W.2d at 424.

The trial court consolidated the cases on June 14, 1995, without limiting the scope or purpose of the consolidation. Laughlin does not challenge the validity of the consolidation; rather, Laughlin contends that the trial court erred in taxing him with a portion of the receiver's fees when he was not a party to the suit in which the receiver was appointed. However, consolidation has the effect of merging all issues of law and fact into a single case for trial or other disposition. *See American Motorists Ins. Co. v. Box*, 531 S.W.2d 401, 406 (Tex. App.—Tyler 1975, writ ref'd n.r.e.). Accordingly, once consolidated, all the issues and facts presented in the three cases merged into the single consolidated case, to which Laughlin was a party. Therefore, the trial court did not err in assessing a portion of the receiver's fees against Laughlin.

Laughlin argues, however, that *State v. B & L Landfill, Inc.*, 758 S.W.2d 297 (Tex. App.—Houston [1st Dist.] 1988, no writ), is controlling of this issue. In *B & L Landfill*, the State sued B& L Landfill for violations of the Texas Clean Air Act. In an unrelated suit involving a separate and independent ownership dispute, the court appointed a receiver. Although the State was not a party to the latter cause of action, the trial court treated the cases as though they were consolidated. The trial court then issued a final order terminating the receivership and awarding costs, in which it assessed against the State $20,000 in costs for the receivership. On appeal, the State complained that the trial court erred in ordering it to pay costs incurred by the receiver in the ownership dispute.

Laughlin asserts that *B & L Landfill* is instructive because the court stated that:

> While it would have been erroneous for the trial court to have ordered the State of Texas to pay costs of the receivership in the cause of action to which it was not a party, we have no evidence before us that the State was, in fact, allocated such costs.

Id. However, Laughlin's reliance on this language is misplaced. The quoted passage is mere dicta and does not provide the basis for the court's holding. In fact, in overruling the State's point, the court held that the State failed to present evidence that would show that it was assessed costs stemming from the ownership dispute. Furthermore, *B & L Landfill* is

distinguishable because our case involved the consolidation of three cases, and Laughlin was a party to the consolidated case. Thus, the trial court did not tax Laughlin for costs in a cause of action to which he was not a party. Accordingly, we overrule Laughlin's first issue.

METHOD OF ASSESSING COSTS

In his second issue, Laughlin contends that the "trial court erred by assessing fees against [him] on the basis that the receiver's actions benefitted his affirmative claims because (i) there is no basis in the law to award receiver's fees on this criteria and (ii) there was no evidence to support the finding."

Rule 131 provides that the successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided. *See* TEX. R. CIV. P. 131. However, in the present case, the parties settled the issues prior to trial, therefore, there is no "successful" party. *See Operation Rescue-Nat'l. v. Planned Parenthood, Inc.*, 937 S.W.2d 60, 86 (Tex. App.—Houston [14th Dist.] 1996, no writ), *aff'd as modified*, 975 S.W.2d 546 (Tex. 1998) (holding that a successful party is one who obtains a judgment of a competent court vindicating a civil claim of right). Thus, the trial court could not assess the costs of the receivership pursuant to rule 131.

Generally, the rules of equity govern matters regarding receivers and the powers of the court in relation thereto. *See Hodges v. Peden*, 634 S.W.2d 8, 12 (Tex. App.—Houston [14th Dist.] 1982, no writ). Under rule 141, the court may, for good cause to be stated on the record, adjudge costs otherwise than as provided by law or the rules. *See* TEX. R. CIV. P. 141. The trial court's assessment of costs for good cause will not be disturbed on appeal absent an abuse of discretion. *See Rogers v. Walmart Stores, Inc.*, 686 S.W.2d 599, 601 (Tex. 1985). However, although the matter is left to the court's discretion to resolve the issue based upon principles of equity, the court should set forth in its order the reasons which prompted it to tax the costs for good cause. *See Jones v. Strayhorn* , 159 Tex. 421, 321 S.W.2d 290, 293 (1959).

The receiver's fees totaled $648,343; of this amount, the court assessed $16,000 as costs against Laughlin. In its order awarding receiver's fees, the trial court stated its reasons for finding good cause to assess costs for the receivership against Laughlin, explaining that:

> John J. Laughlin sought affirmative relief in his action against Akin, Gump, Strauss, Hauer & Feld, L.L.P., and in his claims against Thatcher and Wallace, his claims were dependent upon facts related to the financial status and affairs of Aectra Fuels, and the appointment of the Receiver benefited [sic] his affirmative claims.

The court further stated that the total amount it taxed as costs and allocated to the parties represented a fair distribution of the burden of the cost of the receivership based upon the benefits derived by each of the parties. Thus, it is clear that the trial court assessed the receivership costs based on equitable principles. Accordingly, the trial court did not abuse its discretion in taxing Laughlin for a portion of the receiver's fees.

Laughlin further challenges the sufficiency of the evidence to support the court's good cause findings. In reviewing a no evidence challenge, we will consider only the evidence and inferences that tend to support the finding and disregard all evidence and inferences to the contrary. *See Minnesota Mining & Mfg. Co. v. Nishika, Ltd.*, 953 S.W.2d 733, 738 (Tex. 1997). If there is any evidence of probative force to support the finding, we will overrule the no evidence challenge and uphold the finding. *See id.*; *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex. 1997). In reviewing a factual sufficiency challenge, we will weigh and examine all the evidence, and set aside the verdict only if the evidence which supports the finding is so weak as to be clearly wrong and manifestly unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam).

As stated previously, the court found that Laughlin's claims were dependent upon facts related to the financial status and affairs of Aectra Fuels, and the appointment of the receiver benefitted Laughlin's affirmative claims. The evidence shows that the receiver conducted a full accounting of Aectra Fuels for the purpose of distributing the partnership's assets to its partners, and/or to recover from either of the partners any amounts found by the receiver to

be due to the partnership. The damage issue in each of the three consolidated cases involved, to a great extent, the value of Aectra Fuels, the partnership entity created by Ameristar and ATT. In fact, in the third suit, Laughlin sought damages against those individuals who removed him from his position with Ameristar, and acknowledged that the receiver's conclusions were relevant to his claim for damages against those parties. A part of this damage claim involved a determination of Laughlin's interest in Ameristar; because Ameristar is partial owner of Aectra Fuels, a determination of Ameristar's value must necessarily involve a calculation of its partnership interest in Aectra Fuels. Accordingly, the receiver's accounting was relevant in determining Laughlin's damages against certain parties. Thus, contrary to Laughlin's contentions, there is probative evidence to support the court's findings, and this evidence is not so weak as to be clearly wrong and manifestly unjust. As a result, we overrule Laughlin's second issue.

The trial court's judgment is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed September 23, 1999.

Panel consists of Justices Yates, Hudson and Frost.

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