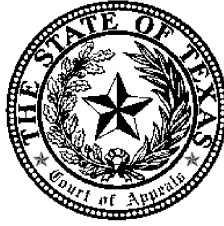


**Affirmed and Opinion filed February 7, 2002.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-00-01497-CV**

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**CHRISTINE S. PARKER, Appellant**

**V.**

**DONALD M. LANCON, Appellee**

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**On Appeal from the 212th District Court  
Galveston County, Texas  
Trial Court Cause No. 96CV0515**

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**OPINION**

Christine Parker appeals an award of Rule 13 sanctions for bad-faith litigation. We affirm.

**Background**

Appellant's husband, Richard Parker (hereinafter "R. Parker"), is an attorney. Appellee sued R. Parker in 1988 after R. Parker received a fraudulent transfer of land from one of his clients. In 1994, appellee's claim was reduced to a money judgment in the 151st District Court. In addition to appealing the judgment to the Fourteenth Court of Appeals, R. Parker filed for bankruptcy. Appellant did not join her husband in the bankruptcy

proceeding. Both the Fourteenth Court of Appeals and the Bankruptcy Court ruled against R. Parker, holding the transfer void and the money judgment enforceable.

Next, the 151st entered a judgment *nunc pro tunc* in the original suit. R. Parker appealed that judgment and, at the same time, initiated this lawsuit together with appellant. Appellant's claims derived entirely from her alleged ownership of the fraudulently transferred land. Appellee counter-sued and removed the suit to the bankruptcy court, which had continuing jurisdiction over R. Parker. The bankruptcy court dismissed R. Parker's claims with prejudice and remanded appellant's claims (the remainder of the suit) to the court below. R. Parker appealed this dismissal. After remand in late 1996, appellant continued this suit, filing a first, and later, a second amended petition.

R. Parker continued to fight the original money judgment by filing a bill of review in the 151st. In the meantime, the *nunc pro tunc* judgment was affirmed by the Fourteenth Court of Appeals, the U.S. District Court affirmed the Bankruptcy Court order allowing Lancon to execute on the money judgment, and the Fifth Circuit affirmed the U.S. District Court on appeal. The 151st then ruled against R. Parker on his bill of review. Finally, in March 2000, the Fifth Circuit rejected R. Parker's appeal of the dismissal with prejudice.

In this suit, both appellant and appellee filed motions for summary judgment. No ruling was ever made on appellant's motion. Instead, on September 25, 2000, appellant non-suited her claims. On October 27, 2000, appellee filed a motion for non-suit together with a motion for sanctions under Texas Rule of Civil Procedure 13. The court granted the non-suit and entered an order granting appellee's summary judgment on that same day.

The court held a hearing on the motion for sanctions on November 13, 2000. It is unclear whether the hearing was transcribed. In any event, no record of the hearing was brought forth on appeal. The court below ordered appellant to pay appellee \$13,500, an amount it determined to be the sum of reasonable legal expenses and fees incurred by appellee in defending this suit after 1997. The court's sanctions order included findings of fact and conclusions of law. The court found appellant's filing of amended petitions after

the bankruptcy court's 1997 dismissal (with prejudice) of her husband's claims was groundless and done in bad faith.

### **Issue**

In a single issue, appellant contends the trial court abused its discretion in awarding sanctions. Specifically, appellant claims the award of sanctions is improper because the trial court failed to explain why it sanctioned appellant without also sanctioning appellant's attorney. Additionally, appellant claims the trial court received no evidence that appellant subjectively acted in bad faith. No objection is made as to the amount of the sanctions.

### **Standard of Review**

We review the imposition of sanctions under an abuse of discretion standard. *See In re Max Bennett*, 960 S.W.2d 35, 40 (Tex. 1997); *Bradt v. Sebek*, 14 S.W.3d 756, 760-61 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *See Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985). A Rule 13 sanction must be upheld if any of the facts set forth by the court supports the sanctions. *See New York Underwriters Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 856 S.W.2d 194, 205 (Tex. App.—Dallas 1993, no writ) (judgment imposing sanctions will be upheld on any applicable theory that finds support in the record). However, the evidence in the record must be sufficient to overcome the presumption that a party's pleadings are filed in good faith. *See TEX. R. CIV. P. 13; GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993).

### **Discussion**

#### **I. Grounds for Sanctions Against Party Only**

Appellant initially contends the lower court's sanction order should be reversed because the court failed to explain why appellant's lawyer was not also sanctioned. *See TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991) (trial court must at least attempt to determine whether the offensive conduct was attributable to counsel

only, or party only, or to both). While *TransAmerican* clearly states sanctions must directly relate to the abuse found, we do not read that opinion to hold that a sanction order is constitutionally defective if it fails to specifically state why counsel or a party was sanctioned whilst the other was not.<sup>1</sup> Here the lower court's findings specifically charge appellant, not her attorney, with knowledge of the *res judicata* effect of her husband's bankruptcy proceeding on her claims. Due process concerns are not raised where the evidence, which we discuss below, demonstrates that a party is at fault independent of the culpability of her attorney. We therefore next determine whether the sanctions order is sufficiently particular in its identification of good cause for the sanctions against appellant alone.

## II. Sufficiency of Statement of Grounds

A trial court's broad discretion to impose sanctions under Rule 13 is tempered by the requirement that it point out the conduct sanctioned with particularity.<sup>2</sup> See *Mattly v. Spiegel, Inc.*, 19 S.W.3d 890, 895 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (citing *GTE Communications Sys. Corp. v. Curry*, 819 S.W.2d 652, 654 (Tex. App.—San Antonio 1991, no writ). Thus, a mere statement in the order that good cause was shown is insufficient to sustain a sanctions order. *Id.*

Here, unlike in *Mattly*, the trial court entered five pages of fact findings describing a veritable odyssey of litigation in which appellant and her husband, sought to avoid paying

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<sup>1</sup> *TransAmerican* imposes due process limitations on a trial court's ability to sanction. *TransAmerican* involved discovery abuse. Because it can be particularly difficult to determine whether a party or her attorney is responsible for discovery abuse, *TransAmerican* recognizes that the trial court should, under those circumstances, diligently investigate whether the party or attorney is at fault.

<sup>2</sup> Rule 13, in pertinent part, states: "If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both. . . . Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, *the particulars of which must be stated in the sanction order.*" (Emphasis added).

a judgment in favor of appellee.<sup>3</sup> Based upon this identified history of litigation, the court charged appellant (not counsel) with knowledge that her claims were barred by *res judicata* after entrance of final judgment in R. Parker's bankruptcy. We hold the trial court's sanction order stated with adequate particularity the conduct sanctioned.

### III. Bad-Faith and Groundlessness

Appellant additionally contends sanctions were improper because the lower court's finding of bad-faith/groundlessness was erroneous. We disagree. Bad-faith is not misjudgment or mere negligence. *Elbaor v. Sanderson*, 817 S.W.2d 826, 829 (Tex. App.—Fort Worth 1991, no writ). Rather, it is the conscious doing of a wrong for dishonest or malicious purpose. *Id.* In determining whether an act is consciously malicious, we examine the facts available to a party or attorney at the time. *See, e.g., Home Owners Funding Corp. of America v. Scheppler*, 815 S.W.2d 884, 889 (Tex. App.—Corpus Christi 1991, no writ). *See also* TEX. R. CIV. P. 13 (pleadings “groundless” for purposes of this rule if no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law).

Asserting claims known to be barred by *res judicata* constitutes bad-faith. *Campos v. Ysleta Gen. Hosp., Inc.*, 879 S.W.2d 67, 73 (Tex. App.—El Paso 1994, writ denied). Here, R. Parker received a land deed from a client. The client appears to have owed R. Parker more than \$100,000 in attorney's fees at the time of the transfer. Nevertheless, on September 20th, 1994, Judge Carolyn Garcia, sitting in the 151st District Court, rendered final judgment against R. Parker and in favor of appellee, finding the deed transfer to have been fraudulent. R. Parker attacked the decision from the 151st both in bankruptcy court (twice) and in state court (twice). The Fifth Circuit ruled against R. Parker twice. This Court ruled against R. Parker twice.

In spite of all this, appellant continued to assert ownership to the transferred land in

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<sup>3</sup> The (pre-trial) record before us is approximately 2,200 pages in length.

these proceedings. All property acquired during the marriage, except separate property is community property. *See* TEX. FAM. CODE ANN. § 3.002 (Vernon 1998). R. Parker acquired the land while married to appellant. There is nothing in the record to indicate that the property was conveyed to him as his sole and separate property. Appellant had a mere undivided community interest in the land, which was derivative of the conveyance to R. Parker. The final determination that the transfer to R. Parker was void extinguished the community's interest in the land and thus any ownership interest appellant claimed. Her causes of action in this suit were clearly barred by *res judicata*.

We reject appellant's contention that her verified response to appellee's motion for sanctions contains "uncontroverted" evidence of good faith. Finally, to the extent appellant presented evidence affirmatively demonstrating her good faith at the hearing on appellee's motion for sanctions, appellant's failure to present a transcript from that hearing on appeal prevents us from considering it. *See* TEX. R. APP. P. 38.1(h) (requiring citations to record in support of appellant's argument).

We hesitate to subject parties to sanctions for filing claims that are held, at a later date, to be barred by *res judicata*. However, under these particular facts, we hold the trial court did not abuse its discretion when it found appellant's second amended petition was both groundless and filed in bad-faith. We overrule appellant's issue.

Accordingly, the judgment of the trial court is affirmed.

/s/     Eva M. Guzman  
          Justice

Judgment rendered and Opinion filed February 7, 2002.

Panel consists of Justices Yates, Edelman, and Guzman.

Do Not Publish — TEX. R. APP. P. 47.3(b)