Affirmed and Opinion filed March 21, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-01322-CV

ELIZABETH ANN ROGERS, Appellant

V.

RONALD LEE ROGERS, M.D., Appellee

On Appeal from the 257th District Court
Harris County, Texas
Trial Court Cause No. 98-50602

O P I N I O N

Appellant Elizabeth Ann Rogers appeals a turnover order entered in favor of her ex-husband, Ronald Lee Rogers. Ann challenges the following rulings of the trial court: (1) the appointment of a receiver without explicitly requiring that the receiver execute a good and sufficient bond; (2) the award of attorney's fees incurred in bringing the turnover action; and (3) the part of the turnover order that requires Ann to appear in court and deliver a certified check to Ronald's attorney to satisfy the award of attorney's fees. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

After a bitterly contested divorce trial, Ronald was awarded, among other assets of the marital estate, the sum of $87,615.00 from the parties' Harris Webb & Garrison brokerage account, formerly known as the Merrill Lynch 'Grace Account.'[1] The trial court immediately ordered Ann to sell and liquidate the shares of the account and to pay Ronald before the second day following the signing of the Final Divorce Decree. The trial court signed the Final Divorce Decree on December 27, 1999. Ann did not comply with the trial court's order. Ronald made several attempts to get the funds in the brokerage account from Ann. When these attempts were unsuccessful, Ronald filed an application for turnover relief, asking the trial court to order Ann to pay the sums owed. The trial court scheduled a hearing on Ronald's turnover application for October 3, 2000. Ronald notified Ann's counsel of the hearing and attempted on several occasions to notify Ann of this hearing. Eventually, Ronald served the attorney representing Ann in a related matter with notice. That attorney also tried to notify Ann of the hearing. Despite Ronald's service of notice of the hearing, there is no evidence in the record that Ann personally learned of the hearing. At the turnover hearing, Ronald presented uncontroverted testimony as to Ann's failure to comply with the court's decree awarding the sums in the brokerage account to him. The trial court granted Ronald's application and entered a turnover order, which, among other things, appointed a receiver. The trial court also awarded Ronald attorney's fees in the amount of $8,000 and ordered Ann to appear in court on October 13, 2000, with a certified check in that amount. Ann did not comply with the court's turnover order.

II. ISSUES PRESENTED ON APPEAL

In three issues, Ann contends that: (1) the appointment of the receiver is invalid because the turnover order did not include language requiring the receiver to execute a good and sufficient bond; (2) there was insufficient evidence to support the trial court's award of

[1] In a separate case, cause no. 14-00-00077-CV, Ann has appealed the trial court's division of the martial estate.

attorney's fees; and (3) the trial court exceeded its authority by ordering Ann to appear in court with certified funds to pay her ex-husband's attorney's fees.

III. APPOINTMENT OF RECEIVER

In her first issue, Ann contends the appointment of a receiver was invalid because the turnover order did not require the receiver to post a bond. Ronald maintains that, because Ann did not complain or object to the absence of a bond in the trial court, she cannot raise this issue for the first time on appeal. We agree.

The appointment of a receiver without a bond does not render the appointment void, merely voidable. *See Payne v. Snyder*, 661 S.W.2d 134, 140 (Tex. App.—Amarillo 1983, writ ref'd n.r.e.); *Johnson v. Barnwell Prod. Co.*, 391 S.W.2d 776, 785 (Tex. Civ. App.—Texarkana 1965, writ ref'd n.r.e.); *Carlton v. Bos*, 281 S.W.2d 131, 132 (Tex. Civ. App.—Beaumont 1955, no writ). Therefore, a party's failure to voice a timely objection waives the complaint. *See O & G Carriers, Inc. v. Smith Energy-A P'ship.*, 826 S.W.2d 703, 707 (Tex. App.—Houston [1st Dist] 1992, no writ); *Cross v. Cross*, 738 S.W.2d 86, 88 (Tex. App.—Corpus Christi 1987, writ dism'd w.o.j.).

To preserve this complaint for appellate review, it was incumbent upon Ann to present the trial court with a timely request, objection, or motion, stating the specific grounds for the ruling if the grounds were not apparent from the context, and to obtain a ruling on the request, objection, or motion. *See* TEX. R. APP. P. 33.1; *O & G Carriers*, 826 S.W.2d at 707; *Cross*, 738 S.W.2d at 88. Despite notice, Ann did not present the complaint that she makes in her first issue to the trial court. Having failed to bring this matter to the attention of the trial court, she may not raise this complaint for the first time on appeal. *See Hawkins v. Twin Mont., Inc.*, 810 S.W.2d 441, 443-44 (Tex. App.—Fort Worth 1991, no writ); *see also Payne*, 661 S.W.2d at 140; *King Land & Cattle Corp. v. Fikes*, 414 S.W.2d 521, 524 (Tex. Civ. App.—Fort Worth 1967, writ ref'd n.r.e.). Accordingly, we overrule Ann's first issue.

IV. SUFFICIENCY OF ATTORNEY'S FEES

In her second issue, Ann contends the trial court erred in awarding attorney's fees to her ex-husband's attorney. Specifically, she complains that the evidence at the hearing on the turnover application was insufficient to show that the attorney's fees were reasonable and necessary. Texas Rule of Civil Procedure 324 provides that a point in a motion for new trial is a prerequisite to complain on appeal of insufficiency of the evidence only in a jury trial. TEX. R. CIV. P. 324(b)(2); *Owen v. Porter*, 796 S.W.2d 265, 268 (Tex. App.—San Antonio 1990, no writ). In non-jury cases, a motion for new trial is not required to attack either the legal or factual sufficiency of evidence on appeal. *Owen*, 796 S.W.2d at 268. This case was tried to the bench. Accordingly, even though Ann did not file a motion for new trial, we may review the sufficiency of the evidence supporting the trial court's findings of attorney's fees.

The party seeking to recover attorney's fees carries the burden of proof. *Stewart Title Guaranty Co. v. Sterling*, 822 S.W.2d 1, 10 (Tex. 1991). The allowance of attorney's fees rests within the sound discretion of the trial court and will not be reversed without a showing of an abuse of that discretion. *Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 881 (Tex. 1990). Factors the trial court should consider when determining the reasonableness of an attorney's fee include:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
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> (2) the likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
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> (6) the nature and length of the professional relationship with the client;
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> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

> (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

See Arthur Andersen & Co. v. Perry Equip. Corp., 945 S.W.2d 812, 818 (Tex. 1997). It is presumed that the usual and customary attorney's fees for a claim are reasonable. TEX. CIV. PRAC. & REM. CODE ANN. § 38.003 (Vernon 1997). Ronald's attorney, Robert Clements, Jr., testified as to the reasonableness and necessity of the attorney's fees:

> Mr. Clements: Your [sic], Honor, my name is Robert Clements. I am licensed to practice law in the State of Texas and my license is on file. I'm familiar with what reasonable and necessary fees for matters of this sort in Harris County. I've practiced now for almost 20 years. I'm board certified in civil trial advocacy and personal injury. Family law is approximately 50 percent of my practice and has been for about probably the last 10 or 15 years.
>
> I charge at the rate of $250 per hour, which based [on] my experience, I believe is a reasonable rate in Harris County. To date, Your Honor, I have been paid the sum of $5,000. I believe that Mr. Rogers will probably owe another $1,000 before this is done. He paid $2,500 to Mr. De La Garza, who I've taken over [sic] in the shoes of. And I think the sum of $8,000 to date for the difficulty that we've had from [Ms.] Rogers is a fair and reasonable fee and it was necessary to get us this far, Your Honor.

Following this uncontroverted testimony, the trial court found $8,000 to be reasonable and necessary fees for the turnover relief and awarded that amount, plus an additional $7,500 in the event of an appeal to the court of appeals, and an additional $3,500 if appealed to the Texas Supreme Court. Because Mr. Clements's testimony is clear, positive, direct, and uncontroverted, we may take his testimony as true as a matter of law. *See Eller Media Co.*, 51 S.W.3d 783, 787 (Tex. App.—Fort Worth, 2001, no pet.). Accordingly, we hold that the attorney's fees awarded by the trial court were reasonable and necessary. We overrule Ann's second issue.

V. ENFORCEMENT OF ATTORNEY'S FEES

In her third issue, Ann asserts the trial court exceeded its authority in ordering her to appear in court with certified funds in the amount of $8,000 to satisfy the attorney's fees awarded in connection with the turnover proceeding.

Ann failed to raise this objection in the trial court and, therefore, failed to preserve the error for appeal. In order to preserve certain complaints regarding an award of attorney's fees, a party must make a timely and sufficiently specific objection to such an award in the trial court. *See* TEX. R. APP. P. 33.1; *Henry v. Henry*, 48 S.W.3d 468 (Tex. App.—Houston [14th Dist.] 2001, no pet) (finding that certain complaints relating to attorney's fees, other than sufficiency, must be preserved at the trial court); *Massey v. Massey*, 807 S.W.2d 391, 403 (Tex. App.—Houston [1st Dist.] 1991, writ denied) (stating whether the trial court has the authority to award attorney's fees as part of the equitable power to make a fair division of the community estate issue could not be raised for first time on appeal). Ann fails to cite to any objection in the record, and a careful review reveals that no objection was made nor was the issue preserved in a motion for new trial; thus, Ann has preserved nothing for appellate review. *See* TEX. R. APP. P. 33.1. Accordingly, we overrule Ann's issue third issue.

V. APPELLEE'S REPLY POINTS

Ann asserts two reply points in response to matters raised in Ronald's appellee's brief. First, she objects to this court's consideration of factual allegations and deposition testimony attached to the appendix of Ronald's brief as being outside the record. Additionally, Ann objects to this court's consideration of Ronald's "personal attacks" not supported by the record. She asserts Ronald's brief is replete with disparaging remarks unsubstantiated by any citation to the appellate record. In reaching our decision, we have not considered any evidence that is outside the record, and we have not based our decision on factual allegations not supported by the record or on any personal attacks.

We affirm the trial court's judgment.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed March 21, 2002.
Panel consists of Justices Anderson, Hudson, and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).