IN THE SUPREME COURT OF TEXAS

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NO. 00-0846
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FURR'S SUPERMARKETS, INC., PETITIONER

v.

MARTHANA BETHUNE, RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE EIGHTH DISTRICT OF TEXAS
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Argued on April 18, 2001

JUSTICE BAKER, joined by JUSTICE HANKINSON and JUSTICE O'NEILL, dissenting.

Today, the Court holds that potential emotional harm a trial court may cause a party in assessing costs can never be, as a matter of law, good cause for ordering each party to pay their own costs under Rule 141. In doing so, the Court ignores the limited parameters of its review under an abuse-of-discretion standard. Because there is some evidence in the record to support the trial court's good-cause statement, the Court has improperly substituted its judgment for the trial court's judgment. I dissent.

I. APPLICABLE LAW

Typically, unless otherwise provided, the successful party in a suit shall recover costs from the opposing party. TEX. R. CIV. P. 131. The trial court may, however, "for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules." TEX. R. CIV. P. 141.

This Court has recognized that "'[g]ood cause' [under Rule 141] is a very elusive concept which can only be determined on a case-by-case basis." *Rogers v. Walmart Stores, Inc.*, 686 S.W.2d 599, 601 (Tex. 1985). As a result, we have instructed appellate courts to "scrutinize the record" to determine if it supports the trial court's taxing some or all costs against the prevailing party. *Rogers*, 686 S.W.2d at 601. And "[u]nless the record demonstrates an abuse of discretion, the trial judge's assessment of costs for good cause should not be disturbed on appeal." *Rogers*, 686 S.W.2d at 601.

After *Rogers*, courts of appeals have essentially taken three different approaches when reviewing a trial court's decision to assess costs under Rule 141. Some courts have held that a trial court abuses its discretion in assessing costs against the winning party if the trial court did not explain or state on the record the grounds or rationale for finding good cause. *See, e.g., Howell Crude Oil Co. v. Donna Refinery Partners*, 928 S.W.2d 100, 112 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *State v. B&L Landfill, Inc.*, 758 S.W.2d 297, 300 (Tex. App.—Houston [1st Dist.] 1988, no writ). But other courts, when the trial court does not state good cause on the record, examine the record despite this omission to determine if the trial court intended to deviate from the general rule and if this was an abuse of discretion. *See, e.g., Allen v. Crabtree*, 936 S.W.2d 6, 9-10 (Tex. App.—Texarkana 1996, no writ); *Silber v. Broadway Nat'l Bank*, 901 S.W.2d 672, 675 (Tex. App.—San Antonio 1995, writ denied); *cf. Howell*

v. Hecht, 821 S.W.2d 627, 632-33 (Tex. App.—Dallas 1991, writ denied) (affirming trial court's assessing costs against losing party after reviewing the record and finding no intention to deviate from the general rule). Still, in other cases, when a trial court does not state good cause on the record, courts remand the case to the trial court so it can have the opportunity to do so. *See, e.g.*, *Contemporary Health Mgmt., Inc. v. Palacios*, 832 S.W.2d 743, 745-47 (Tex. App.—Houston [14th Dist.] 1992, no writ); *Dover Elevator Co. v. Servellon*, 812 S.W.2d 366, 368 (Tex. App.—Dallas 1991, no writ); *cf. Guerra v. Perez & Assocs.*, 885 S.W.2d 531, 533-34 (Tex. App.—El Paso 1994, no writ) (holding that trial court abused its discretion by not stating good cause on record, but recognizing that the court would have considered remanding the case to the trial court to do so if there were facts in the record supporting the Rule 141 cost assessment).

Although these courts have taken varying approaches, they have all applied the standard of review this Court has established for Rule 141 cases—whether the trial court abused its discretion. *Rogers*, 686 S.W.2d at 601. Under an abuse-of-discretion standard, an appellate court cannot overrule a trial court's decision unless the trial court acted unreasonably, arbitrarily, or without reference to guiding rules or principles. *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998); *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). A trial court does not abuse its discretion if some evidence supports the trial court's decision. *Davis v. Huey*, 571 S.W.2d 859, 863 (Tex. 1978); *see also Estrello v. Elboar*, 965 S.W.2d 754, 758 (Tex. App.—Fort Worth 1998, no pet.); *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied).

II. ANALYSIS

In this case, Furr's received a favorable jury verdict. Then, at a post-trial hearing, the trial court determined that each party should bear its own costs. Furr's initiated a partial appeal, as our appellate rules permit, complaining about the trial court's assessing its own costs—about $4,500 —against it under Rule 141. *See* TEX. R. APP. P. 34.6(c). Furr's provided the Court with the transcript from the hearing assessing costs, and Bethune did not designate any additional record for the appeal. *See* TEX. R. APP. P. 34.6(c)(2).

Traditionally, appellate courts review the entire record to determine whether a trial court abused its discretion. *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex. 1996); *Simon v. York Crane & Rigging Co.*, 739 S.W.2d 793, 795 (Tex. 1987). Thus, before the appellate rules were amended in 1997, a trial court's decision could not be reviewed with only a partial record "[w]hen an appellant raise[d] a legal or factual sufficiency challenge." *See Land v. AT & S Transp., Inc.*, 947 S.W.2d 665, 667 (Tex. App.—Austin 1997, no writ) (refusing to review trial court's sanctions order under partial record). But, as the Court recognizes, Rule 34.6 now expressly permits a partial record for legal or factual sufficiency issues. TEX. R. APP. P. 34.6(c)(4). And, even when the complaint is about the evidence's legal or factual sufficiency, we presume that the partial record is the entire record for purposes of reviewing the appeal. TEX. R. APP. P. 34.6(c)(4). Accordingly, in this case, we must presume the limited record before us is the entire record for this appeal.

In holding that trial court determinations about assessing costs under Rule 141 must be reviewed on a case-by-case basis, we have recognized that appellate courts should not categorically assess whether

a reason is "good cause" as a matter of law. *See Rogers*, 686 S.W.2d at 601. The Court, however, ignores this principle and holds that emotional harm a trial court may cause a party in assessing costs can never be, as a matter of law, good cause. The Court's holding also disregards its role as the reviewing court applying an abuse-of-discretion standard. Under this standard, appellate courts defer to trial courts' decisions on discretionary matters unless the trial court could reasonably have reached only one decision or the trial court improperly applies the law to the facts of the case. *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992). And, when reviewing matters committed to the trial court's discretion, such as a decision that there is good cause to assess costs under Rule 141, the reviewing court cannot substitute its judgment for the trial court's judgment even if it would have reached a contrary conclusion. *See Walker*, 827 S.W.2d at 839; *Beaumont Bank*, 806 S.W.2d at 226.

Even operating under the presumption that the limited record is the entire record for this appeal, it is clearly erroneous for this Court to hold that the trial court abused its discretion in requiring Furr's to pay its own costs. There is some evidence to support the trial court's good-cause statement for assessing costs under Rule 141. *See Davis*, 571 S.W.2d at 863; *Estrello*, 965 S.W.2d at 758; *Holley*, 864 S.W.2d at 706. At the post-trial hearing, the trial court noted Bethune's previous emotional outbursts and suicide threats, and it considered argument that a third party had asked police officers to attend the hearing in case Bethune harmed herself. Further, the trial court heard argument that Bethune's income is derived from a disability pension. The trial court was also reminded about the evidence and expert testimony at trial showing Bethune's fragile emotional state. Throughout the hearing, the trial court and the parties' attorneys referred to conversations and conduct off the record that arguably demonstrated Bethune's

emotional state. And Bethune spoke out several times during the hearing, often incoherently, displaying her distress and anxiety.

When the hearing concluded, the trial court determined that it was "not going to be the one to precipitate any further emotional problems for [Bethune]," and it thus ordered that each party bear their own costs. Despite this good-cause statement on the record, and despite the evidence in the partial record supporting that statement, the Court holds that a judge's fear that assessing costs will cause a party emotional harm is not, as a matter of law, good cause. The Court reasons that ,this is so because "stress associated with litigation is an unavoidable consequence of the adversarial process." __ S.W.3d at __. It also reasons that "[j]ust as potential emotional harm to a litigant caused by enforcing the rules is not good cause, neither is the party's inability to pay court costs." __ S.W.3d at __.

I do not disagree that parties may suffer stress resulting from litigation. And I do not disagree that it is within a trial court's discretion to determine that a losing party's economic status is not good cause to assess costs against the winner. But the Court's reasoning ignores our guiding principle in Rule 141 cases that "'[g]ood cause' is a *very elusive concept* which can only be determined on a *case-by-case basis*." *Rogers*, 686 S.W.2d at 601 (emphasis added). This precludes the Court from determining that something is not "good cause" when there is some evidence to support the trial court's decision.

Here, there is evidence in the record showing that Bethune was emotionally fragile and that Bethune was in fact extremely distressed and upset. Notably, even Furr's does not dispute that Bethune suffered from real and severe emotional distress. Further, there is evidence that the trial court considered other events that occurred previously or off the record. As the court of appeals concluded, the trial court was

entitled to consider all these factors, and it adequately stated its reasoning as Rule 141 requires. __ S.W.3d at __.

This case exemplifies why trial courts have discretion under Rule 141 and why appellate courts, when applying an abuse-of-discretion standard, should not micro-manage and substitute their judgment for the trial court's judgment. Trial courts have first-hand knowledge about the parties and their conduct throughout the litigation, and they witness the daily events of trial. Thus, trial courts typically have the most insight when determining how to assess costs. Here, the trial court was in the best position to appreciate the situation and to make the ruling it did. And the trial court determined under the record and within its discretion that requiring Furr's to pay its own costs was the ruling to make. The Court opines that recessing the hearing would have resolved the situation better. But this suggestion is nothing more than a reviewing court exercising discretion it does not have. Because there is some evidence supporting the trial court's good-cause statement, as the reviewing court, we may not disturb the trial court's cost assessment on appeal. *Rogers*, 686 S.W.2d at 601; *Davis*, 571 S.W.2d at 863.

Finally, the Court concludes that "Rule 141's good cause exception to the mandate of Rule 131 is designed to account for a prevailing party's questionable conduct that occurs during litigation, permitting the trial judge some discretion to reassess costs so that the cost attendant to that conduct is not visited on an innocent, but losing party." __ S.W.3d at __. In so concluding, the Court improperly defines and limits what can be "good cause," again wholly ignoring Texas jurisprudence to the contrary. *Rogers*, 686 S.W.2d at 601 ("'Good cause' is a very elusive concept which can only be determined on a case-by-case basis."). Now, a trial court can only apply Rule 141 based on a party's misconduct during litigation. The

bottom line is the Court has implicitly overruled *Rogers*.

III. CONCLUSION

In determining whether the trial court abused its discretion, this Court exercises discretion it does not have to step in and "fix" what it perceives to be a wrong or unfair decision. This is improper because there is some evidence in the record to support the trial court's Rule 141 cost assessment. Thus, I would affirm the court of appeals' judgment. Because the Court concludes otherwise, I dissent.

James A. Baker, Justice

Opinion delivered: June 28, 2001