Affirmed as Modified and Memorandum Opinion filed June 4, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00758-CV

EDMUND BURTON, Appellant

V.

JOSE GUEVARA AND ANGELICA GUEVARA, Appellees

On Appeal from the 133rd District Court
Harris County, Texas
Trial Court Cause No. 2016-88333

MEMORANDUM OPINION

This is an appeal in a negligence suit arising from an automobile accident. The appellant, the defendant in the trial court, seeks reversal of a judgment rendered in his favor. He complains the trial court failed to award him costs of court in the judgment and, on this basis, seeks reversal and rendition of judgment. Because the trial court erred in failing to award costs, we modify the trial court's judgment to award the appellant costs of court and we affirm the judgment as modified.

BACKGROUND

After the jury rendered a verdict in appellant Edmund Burton's favor, the trial court signed a "Final Take Nothing Judgment" against appellees Jose Guevara and Angela Guevara. In the judgment the trial court did not award court costs to any party.

Burton filed a "Motion to Modify Judgment to Include Costs," asking the trial court to sign an amended judgment awarding all costs of court to Burton. The trial court failed to act on the motion and it was overruled by operation of law. *See* Tex. R. Civ. P. 329b(c).

ANALYSIS

Texas Rule of Civil Procedure 131, entitled "Successful Party to Recover", provides that the successful party to a suit shall recover of the party's adversary all costs incurred in the suit, "except where otherwise provided." Tex. R. Civ. P. 131. The law deems a defendant who receives a take-nothing judgment a successful party. *Indus. III, Inc. v. Burns*, No. 14-13-00386-CV, 2014 WL 4202495, at *14 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014, pet. denied) (mem. op.). When a defendant is a successful party, it is appropriate to award it costs. *Id*. Generally, a defendant who gets a take-nothing judgment, as a successful party, is entitled to the award of court costs under rule 131. *Midwest Med. Supply Co. v. Wingert*, 317 S.W.3d 530, 539 (Tex. App.—Dallas 2010, no pet.).

Nonetheless, under Texas Rule of Civil Procedure 141, entitled "Court May Otherwise Adjudge Costs," a trial court may assess costs differently for good cause stated on the record. Tex. R. Civ. P. 141 ("The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided by law or these rules."). This court has held that a trial court that awards costs differently without stating good cause

for doing so abuses its discretion. *See Trevino v. City of Pearland*, 531 S.W.3d 290, 298 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (holding that the trial court abused its discretion because the trial court did not state any good cause that would justify not awarding costs to successful party). Other courts of appeals follow the same rule. *See Davenport v. Hall*, No. 04-14-00581-CV, 2019 WL 1547617, at *8 (Tex. App.—San Antonio Apr. 10, 2019, no pet.) (mem. op.) (concluding that the award of court costs to the successful parties was mandated under rule 131 when the record did not contain a statement showing good cause for failing to award court costs); *Int'l Med. Ctr. Enter., Inc. v. ScoNet, Inc*., No. 01-16-00357-CV, 2017 WL 4820347, at *15 (Tex. App.—Houston [1st Dist.] Oct. 26, 2017, no pet.) (mem. op.) (same).

Because Burton obtained a take-nothing judgment, he stands as the successful party. *See Indus. III, Inc.*, 2014 WL 4202495, at *14; *Midwest Med. Supply Co*., 317 S.W.3d at 539. The record contains no statement of good cause by the trial court for not awarding court costs to Burton, the successful party. Under these circumstances, the trial court abused its discretion by not awarding Burton court costs. *See* Tex. R. Civ. P. 131, 141; *Trevino*, 531 S.W.3d at 298; *Davenport*, 2019 WL 1547617, at *8; *Int'l Med. Ctr. Enter*., 2017 WL 4820347, at *15. We sustain Burton's challenge to the judgment.

In the prayer of his appellate brief, Burton asks this court to reverse and render judgment awarding costs to him. Alternatively, Burton states that this court could reverse and remand, instructing the district court to render a new judgment awarding costs to him. Burton asserts that it would be improper for this court to affirm a judgment that violates rules 131 and 141 as a matter of law. According to Burton, in cases in which courts have determined that the costs in the judgment were improper, "the case is always reversed." Yet, in one of the cases Burton cites for this proposition, the court of appeals affirmed as modified rather than reversing. *See Texas River Barges v. City of San Antonio*, 21 S.W.3d 347, 358 (Tex. App.—San

Antonio 2000, pet. denied). Though Burton asserts that this court should not affirm the trial court's judgment, Burton does not say that this court should not affirm the judgment as modified. Burton does not cite any case in which a court holds that affirming as modified is an improper remedy in this context. We conclude that modifying the trial court's judgment to remedy the error of which Burton complains and affirming the judgment as modified is a proper appellate remedy in this situation. *See* Tex. R. App. P. 43.2(b); *Int'l Med. Ctr. Enter.*, 2017 WL 4820347, at *17; *Texas River Barges*, 21 S.W.3d at 358.

CONCLUSION

We modify the trial court's judgment to award Burton all costs of court and we affirm the judgment as modified.

/s/ Kem Thompson Frost
Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Jewell and Spain.