REVERSE and RENDER and Opinion Filed June 16, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00217-CV

VSDH VAQUERO VENTURE, LTD., Appellant
V.
KEN GROSS AND BETSY GROSS, Appellees

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-09-05232-A

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Reichek
Opinion by Justice Reichek

In a previous appeal, we remanded this case to the trial court solely to determine, pursuant to the parties' Rule 11 agreement, VSDH's reasonable and necessary attorney's fees for its successful defense of fraud and breach of contract counterclaims asserted by appellees Ken and Betsy Gross. *See VSDH Vaquero Venture, Ltd. v. Gross*, No. 05-16-01041-CV, 2017 WL 3405312, at *4–5 (Tex. App.—Dallas Aug. 9, 2017, no pet.) (mem. op.). The trial court subsequently awarded VSDH $36,000 in attorney's fees.

At issue in this appeal is the trial court's decision to strike the 2018 attorney's fees affidavit of VSDH's counsel and instead base its decision on a 2009 disclosure response. VSDH argues the trial court abused its discretion by striking the affidavit when (1) appellees had written notice, for three years, of the change in its expert attorney's hourly rate and estimated hours through trial, satisfying any duty to supplement under the rules of civil procedure and (2) this notice, in addition to updates before the dispositive hearing, established that appellees were not unfairly prejudiced or surprised by the 2018 affidavit testimony, such that exclusion was improper.

For the reasons set out below, we conclude appellees were not unfairly surprised or prejudiced by VSDH's counsel's 2018 affidavit on attorney's fees. Accordingly, we reverse the trial court's order and render judgment in VSDH's favor.

BACKGROUND

In July 2009, VSDH sued the Grosses for breach of a Buy Back Option in a real estate sales contract under which the Grosses purchased a home for $2.85 million. Van Shaw and Doug Hickok, who were members of VSDH, intervened in the suit, and the Grosses counterclaimed against VSDH, Shaw, and Hickok for breach of contract and fraud. Shaw, an attorney, represented VSDH and, for a time, Hickok in the litigation.

Five months after the suit was filed, in December 2009, VSDH served its response to requests for disclosure and identified Shaw as a testifying expert on attorney's fees. The disclosure stated that Shaw expected to testify to an hourly rate of $300 and that the time expected to be spent through trial was 120 hours.

Six years later, in June 2015, the case was tried to a jury, which found in favor of VSDH and Hickok.[1] During the trial, the parties entered a Rule 11 agreement to have the trial court determine attorney's fees, rather than submitting the issue to the jury. Pursuant to this agreement, Shaw submitted his affidavit on attorney's fees on July 14, 2015. In his affidavit, Shaw testified to the increases in his billing rates since 2009 as well as the rates of his associates who worked on the case. Specifically, he asserted his hourly rate since January 1, 2015 is $450; was $400 from January 1, 2014 through December 31, 2014; and was $300 prior to January 1, 2014. He also presented detailed billing invoices that showed that a total of 416.50 hours of legal services had been rendered by his office through trial, resulting in $146,200 in attorney's fees. These fees reflected not only the time that Shaw or his associates spent on the case representing VSDH, but also himself and Hickok. Shaw also testified to his opinion of the amount of contingent appellate attorney's fees that he believed would be reasonable and necessary for any future appeal. With respect to appellate fees, Shaw testified that he had handled appeals of final judgments and

[1] Shaw was dismissed from the suit in April 2011.

was familiar with the legal research, drafting, briefing, and arguing of such appeals that would be required.

Three days after filing his affidavit, Shaw filed a motion requesting the trial court render judgment consistent with the jury's verdict and the attorney's fee affidavit on file. Appellees responded with objections to the attorney's fee request, but did not argue that the affidavit should be excluded because Shaw's testimony went beyond the 2009 disclosure of Shaw as an expert. Rather, they challenged whether Hickok and Shaw were parties to the contract such that they were entitled to attorney's fees and argued the evidence submitted on behalf of VSDH was legally insufficient for failure to segregate between permissible and impermissible claims and parties.

Separate from the dispute over attorney's fees, appellees filed a motion for new trial, arguing that Shaw, as VSDH's lawyer, violated the rules of professional responsibility by acting as both an advocate and witness at trial. The trial court granted appellees' motion and ordered a new trial. VSDH and Hickok filed a petition for writ of mandamus in this Court challenging the order. This Court conditionally granted the writ and ordered the trial court to set aside its order and enter judgment on the jury's verdict. *See In re VSDH Vaquero Venture, Ltd.*, No. 05-15-01513-CV, 2016 WL 2621073, at *9 (Tex. App.—Dallas May 6, 2016, orig. proceeding) (mem. op.).

One month later, the trial court signed a final judgment but did not award attorney's fees. In response, Hickok filed a motion to correct or modify the judgment to award attorney's fees through trial and for work on the mandamus, and VSDH and Shaw adopted the motion. Attached to the motion were the affidavits and billing records of Jeffrey S. Levinger and J. Carl Cecere, Jr., appellate specialists who were retained by VSDH and Hickok to represent them on the mandamus and attested to fees totaling $71,432.50. The motion was denied by operation of law.

Thereafter, VSDH, Shaw, and Hickok appealed to this Court, which determined that VSDH, as the prevailing party under the contract, was entitled to attorney's fees, but Hickok and Shaw were not because they were not parties to the contract. *See VSDH Vaquero Venture,* 2017 WL 3405312, at *4–5. We further determined that Shaw's 2015 affidavit failed to segregate the fees provided by Shaw's firm to both Hickok and Shaw and for claims, such as negligence, for which attorney's fees are unrecoverable. *Id*. at 7. Accordingly, we reversed the trial court's judgment and remanded for a determination "pursuant to the parties' June 17, 2015 rule 11 agreement, of VSDH's reasonable attorney's fees and costs . . . for its successful defense of fraud and breach of contract counterclaims asserted against it by" the Grosses. *Id*. at *8.

Once back in the trial court, VSDH filed a request to determine its attorney's fees pursuant to this Court's remand. It also sought leave to supplement its expert disclosures to add another attorney, Mark Ticer, to testify as to attorney's fees, along

with Shaw, but the trial court denied the supplementation and set a hearing on attorney's fees for March 12.

In anticipation of that hearing, VSDH filed a second affidavit of Shaw on March 9, 2018. This affidavit included the same invoices that were included with the 2015 affidavit, but added updated billing records from July 14, 2015 through November 17, 2017, which brought the total hours spent on the case to 441 with a total amount of $154,487.50. In addition, Shaw testified to Levinger's billing invoices for appellate work on the case, bringing the total amount of fees requested to $164,453.

Both sides agree there was a hearing on March 12 at which the Grosses objected that the second affidavit was untimely. At that point, the trial court set the hearing on attorney's fees for June and apparently made clear it would decide the issue based on affidavits and would not accept evidence at the hearing. The court gave VSDH a deadline of April 13, 2018 to file its attorney's fees affidavit, and set a schedule for appellees' response to the affidavit, VSDH's reply, and appellees' sur-reply.

In accordance with the trial court's schedule, VSDH filed Shaw's third affidavit on April 13, which attached his detailed billing records. As before, it set out Shaw's hourly rate changes over the course of the litigation. It also reflected the same number of hours, 416.50, as the 2015 affidavit for the period of July 2009 through June 19, 2015, the date of jury's verdict, but now deducted the discrete work

performed for Shaw and Hickok as well as an additional 15% discount to account for any discrete work performed but not identifiable by the billing entries. The affidavit also included work performed from July 14, 2015 through March 26, 2018. Finally, it included the fees of appellate attorneys Levinger and Cecere for the services rendered to VSDH on the mandamus action that resulted in the setting aside of the trial court's new trial order. Levinger's and Cecere's affidavits and billing records were attached as documents and testimony that Shaw reviewed in rendering his opinion. Shaw stated that the total amount of reasonable and necessary attorney's fees incurred by VSDH to defend appellees' breach of contract and fraud claims totaled $196,744.06.

Appellees moved to strike Shaw's affidavit on the basis it exceeded the scope of the 2009 expert designation that showed Shaw's opinion of a $300 hourly rate and 120 hours through trial. Appellees argue that VSDH never supplemented the disclosure to reflect the changes in time and rates that formed the basis of Shaw's expert testimony reflected in his affidavit. They also requested that the affidavits of Levinger and Cecere be stricken because VSDH had not designated either as a fact or expert witness.

VSDH filed a reply arguing that Shaw's testimony was within the scope of the nine-year-old disclosure and the fact his billing rate increased over that time period is implied. Moreover, it argued that Shaw's 2015 affidavit contained the information, and appellees did not object then that Shaw's testimony exceeded the

scope of the disclosure. VSDH explained that Shaw's new affidavit was submitted pursuant to this Court's remand and the trial court's order. As for the affidavits of Levinger and Cecere, VSDH explained that they were not being proffered as experts; rather, their affidavits were simply evidence that Shaw, as an expert, relied upon in testifying to the reasonable and necessity of attorney's fees VSDH had incurred. Appellees filed a sur-reply that essentially reiterated the arguments previously made.

The hearing on attorney's fees was held on June 14. During the hearing, the trial court sustained appellees' objections to the affidavits of Levinger, Cecere, and Shaw. Following the hearing, the trial court allowed both sides to further brief the requirements of supplementation under the facts of this case.

VSDH argued that given the multiple, additional, or corrective information provided in 2015 in Shaw's first affidavit as well as further information provided since then, rule of civil procedure 193.5(a)(2) did not require Shaw's disclosure to be supplemented. Further, VSDH argued that, given appellees had the information for three years, it established that appellees were not prejudiced or surprised at the June 14, 2018 hearing.

In their responsive brief, appellees asserted that after the last appeal, VSDH served its Eighth Supplemental Responses as part of its motion for leave to supplement its expert disclosures to add Mark Ticer, and the original disclosure for Shaw was unchanged. In other words, it recited that Shaw would testify that $300 hourly rate was reasonable and the time expected on the case through trial was 120

hours. Appellees asserted they were "entitled to rely on that designation" and any change would "unfairly surprise and unfairly prejudice" them.

Following the supplemental briefing, the trial court signed an order awarding VSDH $36,000 in attorney's fees, noting that the motion to strike Shaw's affidavit was granted. This appeal ensued.

ANALYSIS

In four issues, VSDH generally asserts that the trial court erred in striking the 2018 affidavit because (1) the 2015 affidavit constituted sufficient notice under the discovery rules to allow it to avoid the duty to supplement the prior hourly rate and estimated total hours and (2) the undisputed evidence of this notice established that appellees were not unfairly prejudiced or unfairly surprised by Shaw's affidavit testimony as to the attorney's fees it incurred. Specifically, VSDH asserts the 2015 affidavit placed appellees on "uncontroverted notice" of (1) Shaw's increased hourly rate, (2) more than 400 hours of Shaw's billing records on the case, (3) Shaw's testimony that, as of the date of the affidavit in 2015, Shaw's firm had rendered $146,200 in attorney's fees in representing VSDH, Shaw, and Hickok, and (4) Shaw's intent to testify to any appellate fees incurred.

Under Texas Rule of Civil Procedure 193.5, a party is under a duty to supplement its discovery responses if the party knows the responses are incomplete or are no longer true unless the additional or corrective information has been made known to the other parties in writing, on the record at a deposition, or through other

discovery responses. TEX. R. CIV. P. 193.5(a)(2). When a party has such a duty but fails to timely supplement a discovery response, the untimely disclosed evidence may be excluded. TEX. R. CIV. P. 193.6(a); *see Alvarado v. Farah Mfg. Co.*, 830 S.W.2d 911, 914 (Tex. 1992) (op. on reh'g). Exclusion is mandatory and automatic unless the court finds there was good cause for the failure to amend or supplement, or the failure will not unfairly surprise or prejudice the other party. TEX. R. CIV. P. 193.6(a); *OIC Holdings, LLC v. Gleason*, No. 05-18-00029-CV, 2019 WL 2098616, at *8 (Tex. App.—Dallas June 13, 2019, no pet.) (mem. op.).

Here, we assume without deciding the additional or corrective information was not made known previously such that supplementation was required and turn instead to the issue of lack of unfair surprise or unfair prejudice. The burden is on VSDH, as the party seeking to introduce the evidence, to establish the exception. TEX. R. CIV. P. 193.6(b). If VSDH failed to meet this burden, then under rule 193.6, the trial court's decision to strike Shaw's affidavit should be affirmed. *See Cunningham v. Columbia/St. David's Healthcare Sys., L.P.*, 185 S.W.3d 7, 13 (Tex. App.—Austin 2005, no pet.).

We review the trial court's decision for an abuse of discretion. *Id*. The general test for abuse of discretion is whether the trial court acted without regard to any guiding rules or principles. *Cire v. Cummings*, 134 S.W.3d 835, 838–39 (Tex. 2004). This occurs when either (1) the trial court fails to analyze or apply the law correctly, or (2) with regard to factual issues or matters committed to its discretion,

the trial court could reasonably only reach one decision and failed to do so. *Jaster-Quintanilla & Assocs., Inc. v. Prouty*, 549 S.W.3d 183, 188 (Tex. App.—Austin 2018, no pet). A trial court does not abuse its discretion when it bases its decision on conflicting evidence, as long as some evidence in the record supports the trial court's decision. *Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 97 (Tex. 2009) (per curiam).

The purposes of Rule 193.6 are threefold: (1) to promote responsible assessment of settlement, (2) to prevent trial by ambush, and (3) to give the other party the opportunity to prepare rebuttal to expert testimony. *In re D.W.G.K.*, 558 S.W.3d 671, 680 (Tex. App.—Texarkana 2018, pet. denied). Accordingly, in order to establish the absence of unfair surprise or prejudice, the party seeking to call an untimely disclosed witness or introduce untimely disclosed evidence must establish that the other party had enough evidence to reasonably assess settlement, to avoid trial by ambush, and to prepare rebuttal to expert testimony. *Id*.

Courts have found abuses of discretion in excluding late-disclosed witnesses or evidence when prior independent disclosure of materially the same information negated unfair surprise or unfair prejudice. *See State v. Target Corp.*, 194 S.W.3d 46, 48–49 (Tex. App.—Waco 2006, no pet.) (abuse of discretion to exclude expert testimony regarding subjects and bases that had already been disclosed through expert reports or depositions); *Elliott v. Elliott*, 21 S.W.3d 913, 921–22 (Tex. App.—Fort Worth 2000, pet. denied) (abuse of discretion to exclude expert who was

designated in different discovery response); *Best Indus. Uniform Supply Co. v. Gulf Coast Alloy Welding, Inc.*, 41 S.W.3d 145, 146–49 (Tex. App.—Amarillo 2000, pet. denied) (abuse of discretion to exclude testimony from company's current employee who had not been timely identified in disclosures, but predecessor in same position had been, and testimony would be substantially identical); *Rutledge v. Staner*, 9 S.W.3d 469, 472 (Tex. App.—Tyler 1999, pet. denied) (lack of unfair surprise established because opposing party had listed same person in its own discovery responses). Additionally, courts have found no abuse of discretion in allowing untimely designated attorney's fees experts to testify under certain circumstances. *Estate of Toarmina*, No. 05-15-00073-CV, 2016 WL 3267253, at *2 (Tex. App.—Dallas June 13, 2016, pet. denied) (mem. op.) (party had timely designated former attorney as fee expert and claim had been asserted since case's inception); *Rhey v. Redic*, 408 S.W.3d 440, 459 (Tex. App.—El Paso 2013, no pet.) (party had asserted claim for attorney's fees since inception of litigation).

This is not a case where a party called a surprise witness or offered testimony that had never been disclosed such that the opposing party could legitimately claim unfair surprise or prejudice. Rather, this case is more akin to those where materially the same information had been provided. The undisputed evidence showed that appellees had known for three years of the increases in Shaw's hourly rate and the number of hours expended through trial. VSDH first provided appellees with this information through Shaw's July 14, 2015 affidavit, which was submitted to the

court after the jury found in VSDH's favor on appellees' counterclaims. Through this affidavit, appellees knew Shaw would testify (1) about the specific increases in his hourly rate since the filing of the suit in 2009, (2) that 416.50 hours had been expended through trial, (3) the rates of Shaw's associates who worked on the case, and (4) about his intent to testify on appellate attorney's fees. And, notably, in their objections to the attorney's fee requests filed in August 2015, appellees did not complain that Shaw's affidavit was outside the scope of his disclosure.

As for appellate attorney's fees, appellees were aware as early as June 29, 2016 that VSDH was seeking $71,432.50 for legal work performed to vacate the trial court's order granting a new trial in the case. This information was contained in the affidavits attached to Hickok's motion to correct or modify judgment, which was adopted by VSDH. Finally, after the case was remanded to the trial court, Shaw submitted his affidavit in April 2018 that contained his billing records and his opinions about the reasonableness and the necessity of the amount sought for trial and appellate work.

Given this evidence, we conclude VSDH met its burden to establish a lack of unfair surprise or unfair prejudice. Appellees were not ambushed by testimony that they were unaware of and for which they were unable to prepare. To the contrary, appellees had plenty of time and information to prepare a response to VSDH's affidavit but presented no controverting evidence either at the time of the 2015 affidavit or after the case was remanded. Moreover, appellees had more than enough

evidence to reasonably assess whether they wanted to attempt to settle the attorney's fees matter.

In reaching this conclusion, we are unpersuaded by an argument made by appellees in their supplemental briefing in the trial court and on appeal: that they are entitled to rely on VSDH's Eighth Supplemental Responses to appellees' requests for disclosure. This supplemental response was attached as an exhibit to VSDH's December 2017 motion for leave to supplement expert designations to add Ticer to testify about attorney's fees. But, as appellees acknowledge, the trial court denied the motion. Perhaps that is the reason that in their written motion to strike the 2018 affidavit and sur-reply, both filed in advance of the hearing as required by the trial court's briefing schedule, appellees failed to mention, much less rely on, this document as a basis for striking the affidavit. Rather, they assert that the "last response" to the requests for disclosure directed to VSDH was attached as exhibit 1, which is the December 2009 Response to Defendants' Request for Disclosure. Given the trial court's decision to deny the motion for leave to supplement, we question the relevance of this document to our discussion.

Finally, we reject appellees' argument that VSDH failed to attack all independent grounds supporting the trial court's order, rendering any error harmless. Here, appellees contend VSDH needed to challenge the legal and factual sufficiency of the evidence supporting the award of $36,000 in order to preserve its issue regarding the decision to exclude the affidavit.

Pursuant to this Court's mandate, the trial court was required to determine VSDH's attorney's in accordance with the rule 11 agreement. That agreement allowed for the issue to be decided by the trial court "in a form and fashion" as desired by the court, "with at least an opportunity for everybody to submit affidavits related to attorney's fees on the same day and with each party an opportunity to respond to those affidavits."

On remand, the trial court set deadlines for VSDH to file its affidavit and for appellees' response to the affidavit, VSDH's reply, and appellees' sur-reply. Instead of basing attorney's fees on that affidavit, the trial court struck it and awarded fees in the amount of the 2009 disclosure. VSDH's affidavit was the only affidavit submitted to the court. By striking it, the trial court effectively struck all evidence and, as a result, there was no evidence from which the trial court could make any ruling.

In sum, we conclude VSDH established that appellees were not unfairly surprised or prejudiced by Shaw's April 18, 2018 affidavit in support of attorney's fees, and the trial court abused its discretion in striking it. Having so concluded, we must now determine whether remand or rendition is appropriate in this case.

Appellate courts generally remand the question of the amount of fees to be awarded. *Morales v. Barnes*, No. 05-18-00767-CV, 2020 WL 597346, at *3 (Tex. App.—Dallas Feb. 7, 2020, no pet. h.). However, when trial counsel's testimony concerning attorney's fees is "not contradicted by any other witness or attendant

circumstances" and is "clear, direct and positive, and free from contradiction, inaccuracies, and circumstances tending to cast suspicion thereon," it is taken as true as a matter of law, especially when the opposing party had the means and opportunity to disprove the testimony and failed to do so. *See Ragsdale v. Progressive Voters League*, 801 S.W.2d 880, 882 (Tex. 1990) (per curiam); *McMillin v. State Farm Lloyds*, 180 S.W.3d 183, 210 (Tex. App.—Austin 2005, pet. denied). In such instances, appellate courts will reverse a denial or minimization of attorney's fees and, in the interest of judicial economy, render judgment for attorney's fees in the amount proved. *See Ragsdale,* 801 S.W.2d at 882 (on injunction and $1 damage case, reversing $150 attorney's fees award and rendering $22,500 judgment for attorney's fees); *Swarovski v. Enger*, No. 05-17-00398-CV, 2018 WL 1357483 at *5–6 (Tex. App.—Dallas Mar. 16, 2018, no pet.) (mem. op.) (after concluding plaintiff conclusively proved underlying theft claim, rendered damages and $187,445.10 in attorney's fees); *Recognition Commc'ns, Inc. v. Am. Auto. Ass'n, Inc.*, 154 S.W.3d 878, 891 (Tex. App.—Dallas 2005, pet. denied) (op. on reh'g) (on $10,000 damage award, reversing jury's zero attorney's fee award and rendering $75,764); *see also Cale's Clean Scene Carwash, Inc. v. Hubbard,* 76 S.W.3d 784, 786–88 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (on $31,846 damage award, affirming trial court's award of $29,225 in attorney's fees notwithstanding jury's zero award).

VSDH sought $196,744.06 in attorney's fees, which included $71,432.50 in appellate fees for the mandamus action setting aside the trial court's order granting a new trial. It submitted Shaw's affidavit to establish that the fees were reasonable and necessary and were incurred by VSDH in successfully defending the breach of contract and fraud counterclaims brought by appellees.

In his affidavit, Shaw testified to his knowledge, training, and years of litigation experience in the Dallas/Fort Worth area, his hourly rates during the specific litigation periods, and the appellate experience of him and his firm. He also identified his associates who worked on the case, set out their experience, and hourly rates. He testified that the rates charged by him and his associates were usual and customary rates charged for matters of this nature and were consistent with the rates charged by attorneys of equal experience with respect to similar matters. He explained the claims brought against VSDH by appellees and VSDH's defense of those claims.

He detailed the services billed to VSDH which did not require segregation and were necessary to defend against the breach of contract and fraud claims. He also set out the discrete legal services performed on behalf of himself and Hickok, which he said amounted to $18,025, and deducted the amount of those services and also deducted an additional 15% "to account for the possibility that some discrete services may not have been described sufficiently on each billing entry . . . to identify them as discrete services.

With respect to appellate fees, Shaw explained that after the jury found against appellees on their claims, the trial court granted a new trial, requiring VSDH to bring a mandamus proceeding. Shaw testified that VSDH retained Levinger and Cecere to prepare and file the mandamus, and the fees they charged were reasonable and necessary.

In determining the reasonableness and necessity of the total fees and costs incurred by VSDH, Shaw took into consideration the *Anderson* and *Johnson* factors.[2] Finally, Shaw set out the specific hours expended through three time periods and the corresponding amount of fees: (1) July 2009 through June 19, 2015 (the date of the jury verdict); July 14, 2015 through November 17, 2017 (the date of this Court's mandate in the previous appeal); and December 5, 2017 through March 26, 2018 (the period after remand). Attached to his affidavit, among other things, were detailed billing records of each of those time periods. The billing records identified the work performed, the date it was performed, the initials of the attorney who performed the work, and the amount of time spent. In addition, Shaw attached the affidavits and billings records of Levinger and Cecere as evidence that he relied upon, as an expert, in testifying to the reasonable and necessity of appellate attorney's fees incurred by VSDH.

[2] *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1994).

Shaw's testimony constituted clear, positive, and direct evidence in support of these fees. Nothing in this evidence suggests it is unreasonable, incredible, or otherwise of questionable belief. This case has been in litigation for eleven years now—five years since the jury reached a verdict—and the only issue remaining is attorney's fees. Although appellees challenged the affidavit on grounds that it was outside the scope of VSDH's expert disclosures, they did not challenge the reasonableness and necessity of the fees sought, although given the opportunity. We sustain VSDH's second and third issues.[3]

We reverse the trial court's order on attorney's fees and render judgment that VSDH recover $196,744.06 in attorney's fees from appellees.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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[3] Our disposition of these issues makes it unnecessary to consider issues one and four. *See* TEX. R. APP. P. 47.1.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

VSDH VAQUERO VENTURE, LTD., Appellant No. 05-19-00217-CV V. KEN GROSS AND BETSY GROSS, Appellees	On Appeal from the County Court at Law No. 1, Dallas County, Texas Trial Court Cause No. CC-09-05232-A. Opinion delivered by Justice Reichek; Justices Schenck and Osborne participating.

In accordance with this Court's opinion of this date, the trial court's order on attorney's fees is **REVERSED** and judgment is **RENDERED** that VSDH recover $196,744.06 in attorney's fees from appellees Ken Gross and Betsy Gross.

It is **ORDERED** that appellant VSDH Vaquero Venture, Ltd. recover its costs of this appeal from appellees Ken Gross and Betsy Gross.

Judgment entered June 16, 2020.