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Court of Appeals of Texas,
Dallas.
Virgil LIPTAK, Appellant,
v.
Elizabeth THORNHILL, Kerry Thornhill, and Richard E. Colgin Co., Appellees.

No. 05-01-01097-CV.
Dec. 5, 2002.

Former wife petitioned for bill of review claiming husband fraudulently obtained assets in divorce that were her separate property, alleged breach of fiduciary duty, fraud, intentional infliction of emotional distress in connection with divorce, and sought exemplary damages and attorney fees. Summary judgment was entered on former husband's counterclaims, and his third-party claims were severed. The 255th Judicial District Court, Dallas County, entered judgment, on jury's verdict, restoring various assets to former wife, setting aside that part of divorce decree in conflict with judgment, awarding exemplary damages and attorney fees, and finding former husband to be vexatious litigant. Former husband appealed. The Court of Appeals, Francis, J., held that: (1) entry of summary judgment did not violate stay pending vexatious litigant determination; (2) former husband was "plaintiff" for purposes of vexatious litigant determination; (3) bill of review was not collateral attack on personal injury judgment; (4) former husband retained fiduciary relationship with former wife during divorce; (5) judgment did not violate one-judgment rule.

Affirmed.

West Headnotes

[1] Divorce 134 884

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)9 Proceedings for Division or Assignment
134k882 Judgment or Decree
134k884 k. Stays and incidental relief. Most Cited Cases
(Formerly 134k254(2))

Divorce 134 1170(9)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(H) Counsel Fees, Costs, and Expenses
134k1170 Applications and Proceedings Between Parties
134k1170(9) k. Judgment or order. Most Cited Cases
(Formerly 134k288)

Letter from judge to former wife and former husband apprising them that former husband was determined to be vexatious litigant was valid order, in former wife's bill of review proceeding to restore to her assets awarded to former husband in divorce, and thus, entry of summary judgment against former husband, after date of judge's letter, on former husband's counterclaims did not violate rule that stays proceedings while vexatious litigant motion is pending; letter clearly granted former wife's motion to determine former husband as vexatious litigant, and judge's signing of more specific order at later date did not defeat effect of letter. V.T.C.A., Civil Practice & Remedies Code § 11.052(a).

[2] Divorce 134 1141

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property
134V(H) Counsel Fees, Costs, and Expenses
134k1137 Grounds and Considerations for Award or Amount in General
134k1141 k. Conduct of litigation; misconduct in general. Most Cited Cases
(Formerly 134k288)

Divorce 134 ⚿1162

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(H) Counsel Fees, Costs, and Expenses
134k1159 Stage or Condition of Cause
134k1162 k. Nature of proceeding as factor in general. Most Cited Cases
(Formerly 134k288)

Former husband was "plaintiff" for purposes of former wife's motion to determine him vexatious litigant, making him subject to court order determining him to be vexatious litigant and requiring him to provide security; former husband filed counterclaims and crossclaims against former wife, her husband, former wife's company, and other defendants, in former wife's bill of review proceeding seeking restoration to her of assets awarded to former husband in divorce. V.T.C.A., Civil Practice & Remedies Code § 11.001(5).

[3] Divorce 134 ⚿1323(1)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1320 Determination and Disposition of Cause
134k1323 Property
134k1323(1) k. In general. Most Cited Cases
(Formerly 134k287)

Former husband failed to challenge, on appeal, all theories on which trial court could have granted summary judgment to former wife on former husband's counterclaims, requiring appellate court to affirm judgment in former wife's bill of review proceeding to restore to her assets awarded to former husband in divorce.

[4] Judgment 228 ⚿185.3(9)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(9) k. Domestic relations. Most Cited Cases

Denial of former husband's motion for summary judgment on his counterclaims against former wife in bill of review proceeding to restore assets to former wife awarded to former husband in divorce, was not fatally inconsistent with granting former wife's motion for summary judgment on his counterclaims, where trial court could have believed that former husband simply failed to meet burden of conclusively establishing his entitlement to summary judgment. Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(c).

[5] Divorce 134 ⚿892(1)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)9 Proceedings for Division or Assignment
134k882 Judgment or Decree
134k892 Opening and Vacating
134k892(1) k. In general. Most Cited Cases
(Formerly 134k254(2))

Purpose of former wife's bill of review was to restore to former wife assets awarded to former husband in divorce, and did not constitute collateral attack on judgment in separate proceeding awarding her damages for personal injury, where divorce court awarded former husband percentage of former

wife's personal injury recovery and was court with jurisdiction to set aside award.

[6] Divorce 134 892(5)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)9 Proceedings for Division or Assignment
134k882 Judgment or Decree
134k892 Opening and Vacating
134k892(5) k. Proceedings in general. Most Cited Cases
(Formerly 134k254(2))

Husband retained fiduciary relationship with wife during divorce, and thus, instructing jury as to former husband's fiduciary duty, in bill of review proceeding to restore to former wife assets awarded to former husband in divorce, was not error, even though fiduciary duty terminates in contested divorce, where former wife did not have independent advice of counsel, and former wife alleged divorce was not contested as former husband dictated all terms of divorce.

[7] Divorce 134 892(5)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)9 Proceedings for Division or Assignment
134k882 Judgment or Decree
134k892 Opening and Vacating
134k892(5) k. Proceedings in general. Most Cited Cases
(Formerly 134k254(2))

Former husband was not entitled to rely on former wife's statements to bar her recovery in bill of review proceeding to restore to her assets awarded to former husband in divorce, even if statements rose to level of judicial admissions, where former husband failed to protect record by objecting to introduction of evidence that controverted former wife's statements and to submission of any issue bearing on facts she admitted.

[8] Divorce 134 1251

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1251 k. Briefs. Most Cited Cases
(Formerly 134k278.1)

Former husband waived for appellate review issue of whether trial court erred in overruling former husband's special exceptions and denying his motion to dismiss, in former wife's bill of review proceeding to restore to her assets awarded to former husband in divorce, where former husband inadequately briefed issue and failed to cite supporting authority. Rules App.Proc., Rule 38.1.

[9] Divorce 134 1207

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1203 Decisions Reviewable
134k1207 k. Finality of determination. Most Cited Cases
(Formerly 134k280)

Former husband's claims against third-party defendants, in bill of review proceeding brought by former wife to restore to her assets awarded to former husband in divorce, were severed and became independent action, and without indication in record that final judgment was rendered in severed proceeding, appellate court lacked jurisdiction to consider issues related to third-party defendants.

[10] Divorce 134 1251

134 Divorce
134V Spousal Support, Allowances, and Dispos-

ition of Property
134V(I) Appeal
134k1251 k. Briefs. Most Cited Cases
(Formerly 134k278.1)

Former husband waived for appellate review issue of whether trial court abused its discretion in severing former husband's claims against third-party defendants, in bill of review proceeding brought by former wife to restore to her assets awarded to former husband in divorce, where former husband failed to present any legal analysis as to why ordering separate trial for third-party claims was abuse of discretion. Vernon's Ann.Texas Rules Civ.Proc., Rule 174(b); Rules App.Proc., Rule 38.1.

[11] Divorce 134 1251

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1251 k. Briefs. Most Cited Cases
(Formerly 134k278.1)

Former husband waived for appellate review issues of whether judge, in bill of review proceeding brought by former wife to restore to her assets awarded to former husband in divorce, was biased, whether jury verdict was product of passion and unfair prejudice, and whether trial court erred in overruling former husband's postverdict motions, where former husband failed to cite any law or provide any legal analysis. Rules App.Proc., Rule 38.1.

[12] Divorce 134 1215

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1214 Presentation and Reservation in Lower Court of Grounds of Review
134k1215 k. In general. Most Cited Cases
(Formerly 134k278.1)

Former husband waived for appellate review issue of whether audit and accounting were required for proper valuation of community estate, in bill of review proceeding brought by former wife to restore to her assets awarded to former husband in divorce, where former husband failed to present any legal analysis or make citations to record. Rules App.Proc., Rule 38.1.

[13] Divorce 134 892(1)

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)9 Proceedings for Division or Assignment
134k882 Judgment or Decree
134k892 Opening and Vacating
134k892(1) k. In general. Most Cited Cases
(Formerly 134k254(2))

Divorce 134 1207

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(I) Appeal
134k1203 Decisions Reviewable
134k1207 k. Finality of determination. Most Cited Cases
(Formerly 134k280)

Judgment in bill of review proceeding, brought by former wife to restore to her assets awarded to former husband in divorce, set aside portions of divorce decree that were inconsistent with judgment, making it final, appealable judgment that did not violate one-judgment rule.

On Appeal from the 255th Judicial District Court, Dallas County, Texas, Trial Court Cause No. 95-17218-S.Virgil Liptak, pro se.

Daniel J. Sheehan, Jr., for Elizabeth Thornhill.

Before Justices MORRIS, MOSELEY, and FRANCIS.

OPINION

Opinion by Justice FRANCIS.

***1** In this appeal of a bill of review proceeding involving the property division granted in a 1993 divorce action between Elizabeth Thornhill and Virgil Liptak, Liptak brings twenty-two issues challenging the trial court's judgment, its jurisdiction over the case, its ruling against him on his counterclaims and cross claims, and various other rulings. For the reasons set out below, we conclude Liptak's issues are without merit and affirm the trial court's judgment.

Liptak and Thornhill divorced in 1993. As part of an agreed divorce decree, Liptak was awarded, among other things, 35 percent of Thornhill's family business, Richard E. Colgin Co., and 39 percent of the first $500,000 recovered by Thornhill in a pending personal injury lawsuit (the "L-tryptophan suit"). In 1995, Thornhill filed a petition for bill of review claiming Liptak fraudulently obtained the above assets. She asserted these assets were her separate property, which she would have retained if not for Liptak's fraud and intimidation. Additionally, she sued Liptak for breach of fiduciary duty, fraud, and intentional infliction of emotion distress in connection with the divorce settlement. In a later amended petition, she also sought exemplary damages and attorney's fees.

Liptak counterclaimed against Thornton and also filed third-party claims against her husband Kerry Thornhill, Colgin Co., and several other defendants alleging various causes of action. The trial court ultimately granted summary judgment in favor of the Thornhills and Colgin Co. on Liptak's claims. Additionally, it severed Liptak's third-party claims against the other defendants.

A jury heard the bill of review action as well as Thornhill's claims for fraud and breach of fiduciary duty. After hearing the evidence, the jury found (1) the division of property in the 1993 divorce resulted from the extrinsic fraud of Liptak; (2) Liptak breached his fiduciary duty to Thornhill in obtaining the property; (3) Liptak obtained the interest in the Colgin Co. and the lawsuit settlement through fraud; and (4) the harm to Thornhill resulted from malice. It awarded Thornhill attorney's fees and $1.1 million in exemplary damages.

In accordance with the jury's verdict, the trial court awarded to Thornhill as her separate property the 35 percent interest in the Colgin Co. wrongfully obtained by Liptak, monetary damages of $195,000, which represented the amount obtained by Liptak in the L-tryptophan settlement, exemplary damages, and attorney's fees. The trial court set aside the1993 divorce decree to the extent its provisions conflicted with the judgment.

Additionally, the trial judge granted appellees' motion to determine Liptak to be a vexatious litigant under section 11.051 of the Texas Civil Practice and Remedies Code and ordered that Liptak not file any lawsuits against the Thornhills or Colgin Co. without first obtaining the permission of the local administrative judge where he intended to file suit. Liptak appealed.

***2** Before proceeding to the merits, we first address two matters necessitated by this appeal. First, Liptak is representing himself in this appeal. Pro se litigants are held to the same standards as licensed attorneys, and they must comply with all applicable rules of procedure. *Foster v. Williams*, 74 S.W.3d 200, 202 (Tex.App.-Texarkana 2002, pet. denied); *Clemens v. Allen*, 47 S.W.3d 26, 28 (Tex.App.-Amarillo 2000, no pet.); *Chandler v. Chandler*, 991 S.W.2d 367, 379 (Tex.App.-El Paso 1999, pet. denied); *In re Estate of Dilasky*, 972 S.W.2d 763, 766 (Tex.App.-Corpus Christi 1998, no pet.). No allowance is made because a litigant is not an attorney. *Foster*, 74 S.W.3d at 202. If pro se litigants were held to a lesser standard, they would be given an unfair advantage over litigants represented by counsel. *Id.*

With that said, Texas Rule of Appellate Procedure 38 governs the appellant's brief to be filed in this Court. The rule provides that a brief to this Court shall contain, among other things, a concise, nonargumentative statement of facts of the case, supported by record references, and a clear and concise argument for the contention made with appropriate citations to authorities and the record. TEX.R.APP. P. 38.1; *McIntyre v. Wilson*, 50 S.W.3d 674, 682 (Tex. App .-Dallas 2001, pet. denied). In this case, we have made every effort to understand the complaints raised by Liptak in his brief. However, our review is limited to trial court error and, while Liptak has cited many cases, they are, in many instances, irrelevant to the issue of trial court error or the specific issue of complaint. Consequently, while we will broadly construe his issues, we will not make arguments for him nor are we required to address on the merits those issues we determine to be inadequately briefed.

Second, in his brief, Liptak purports to incorporate by reference "all facts and law recited in his pleadings, motions, responses, papers filed with this Court and the Court below, **and the Clerk's and Reporter's Record already supplied to this Court in 05-96-00544-CV, all his original proceedings and prior appeals, and his pending Appeals 05-99-00583-CV and 05-01-01134-CV.** " (Boldface type in original.) We will not consider materials outside the appellate record filed in this case. *See* TEX.R.APP. P. 34; *Sabine Offshore Serv., Inc. v. City of Port Arthur*, 595 S.W.2d 840, 841 (Tex.1979) (per curiam). With this in mind, we turn to the merits.

[1] In his first issue, Liptak argues the trial court had no authority to render any judgment while appellees' motion to declare him a vexatious litigant was pending. He argues the filing of the motion resulted in an automatic stay until the trial court ruled, and orders or judgments signed while the motion was pending are null and void. In particular, he complains the summary judgment on his counterclaims and the final judgment are both null and void because they were signed before the trial court signed an order on the vexatious litigant motion. We disagree.

***3** Section 11.051 allows a defendant to move for an order determining that a plaintiff is a vexatious litigant and requiring the plaintiff to furnish security. TEX. CIV. PRAC. & REM.CODE ANN. § 11.051. (Vernon Supp.2002). Section 11.052 provides, in part:

> (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:
>
> (1) if the motion is denied, before the 10 th day after the date it is denied; or
>
> (2) if the motion is granted, before the 10 th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

TEX. CIV. PRAC. & REM.CODE ANN. § 11.052(a) (Vernon Supp.2002).

In a March 30, 2001 letter, the trial judge instructed the parties to "make note of the following rulings by the Court: ... The motion of Thornhill to declare Respondent (Counter Plaintiff Liptak) a vexatious litigant is granted. The determination of security for this moving counter-defendant is deferred until a ruling on Thornhill's motion for summary judgment." The letter was signed by the trial judge.

This letter, worded in present language, was sufficient to apprise the parties of the trial judge's ruling on appellees' vexatious litigant motion. *See Dunn v. County of Dallas*, 794 S.W.2d 560, 562 (Tex.App.-Dallas 1990, no writ) (construing letter from trial judge as valid order of recusal). The fact the trial court later signed a more specific order does not defeat this conclusion. Therefore, assuming the statute would have the effect advanced by Liptak, the trial court had ruled on the motion before granting summary judgment against Liptak on

his counterclaims and rendering a final judgment. We resolve his first issue against him.

[2] In his eighteenth issue, Liptak argues the ruling on the vexatious litigant motion is reversible error. First, he argues he was the *defendant*, not the plaintiff, in this lawsuit. In making this argument, Liptak ignores the fact that after he was sued by Thornhill, he filed suit against her, her husband, her company, and various other defendants. "Plaintiff" means "an individual who commences or maintains a litigation." TEX. CIV. PRAC. & REM.CODE ANN. § 11.001(5) (Vernon Supp.2002). Liptak clearly falls within this definition.

Next, he argues there is no evidence that he commenced five litigations in seven years that were adversely determined against him and the trial court could not therefore find he was a vexatious litigant. Section 11.054 sets out the criteria for finding a plaintiff to be a vexatious litigant. TEX. CIV. PRAC. & REM.CODE ANN. § 11.054 (Vernon Supp.2002). The criteria challenged by Liptak is found in section 11.054(1); however, the trial court's order, signed on June 25, 2001, relied on the criteria found in 11.054(2). *See id.* In particular, the trial court found

> there is not a reasonable probability that Defendant Virgil Liptak will prevail on his claims against [appellees] and that Defendant Liptak, after a litigation has been finally determined against him, has repeatedly litigated or attempted to relitigate, in propria persona, (i) the validity of the determination against the movants as to whom the litigation was finally determined; or (ii) the cause of action, claim, controversy or any of the issues of fact or law determined or concluded by the final determination against the movants as to whom the prior litigation was finally determined, and, based on these findings, the Court has determined that Virgil Liptak is a vexatious litigants [sic]....

***4** Liptak does not challenge this finding and thus has not shown reversible error. *Cf. Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex.1970) (in summary judgment context, appellant must assign error to every ground it wishes to challenge or risk having judgment affirmed on any ground available to trial judge but not specifically challenged on appeal).

Finally, Liptak argues the statute is "obviously and apparently unconstitutionally overbroad, vague, and violates the 1st and 14th Amendment rights to open and equal access to fair courts in Texas." Other than these general references to the constitution, Liptak cites no other law. Moreover, he does not provide this Court with any legal analysis. Consequently, this complaint is not adequately briefed. *See* TEX.R.APP. P. 38.1. We resolve the eighteenth issue against him.

In his second issue, Liptak complains the trial judge erred in rendering summary judgment against him on his "compulsory counter and cross claims." First, he asserts the trial judge took the action after recusing himself from the case, rendering the order a nullity. There is nothing in the record to support Liptak's assertion that the trial judge recused himself; the record shows only that a visiting judge presided over the jury trial. This complaint is without merit.

[3] Alternatively, Liptak argues the ruling was "fundamental error." In his original brief, however, he does not attack any of the bases asserted in appellees' motion for summary judgment. As a general rule, an appellant must assign error to every ground it wishes to challenge or risk having the judgment affirmed on any ground available to the trial judge but not specifically challenged on appeal. *See Malooly*, 461 S.W.2d at 121; *Williams v. Crum & Forster Commercial Ins.*, 915 S.W.2d 39, 43 (Tex.App.-Dallas 1995), *rev'd on other grounds*, 955 S.W.2d 267 (1997). Liptak's failure to address all theories that might support summary judgment in favor of appellees on the counterclaims requires to us to affirm the summary judgment. *Malooly*, 461 S.W.2d at 121. To the extent Liptak attempts to argue any new grounds for reversal in his reply

brief, we decline to address them. A reply brief is not intended to raise new grounds for reversal but is to allow an appellant to address matters in appellee's brief. *See* TEX.R.APP. P. 38.3.

[4] Last, Liptak asserts in his brief that the trial court's denial of his motion for summary judgment is "fatally inconsistent" with granting Thornhill's motion. He presumes the denial of his summary judgment was because there were fact issues which were required to go to a jury. To the contrary, the trial court could have believed that Liptak simply failed to meet his burden of conclusively establishing his entitlement to summary judgment. *See* TEX.R. CIV. P. 166a(c); *Swilley v. Hughes,* 488 S.W.2d 64, 67 (Tex.1972) (party moving for summary judgment has burden of showing no genuine issue of material fact exists and he is entitled to judgment as matter of law). We resolve the second issue against him.

***5** [5] In his third issue, Liptak argues the trial court erred in denying his motion to dismiss for want of jurisdiction because the lawsuit is an improper collateral attack on the judgment in the L-tryptophan suit in the 68th Judicial District Court. Liptak does not cite this Court to the place in the record where the L-tryptophan judgment can be found nor does he analyze his position with any relevant law.

Regardless, this Court fails to see how the bill of review proceeding seeking to set aside the divorce court's award of proceeds from the L-tryptophan suit is an improper collateral attack on the personal injury settlement itself. The divorce decree rendered in the 255th Judicial District Court awarded Liptak 39 percent of the first $500,000 recovered by Thornhill in the L-tryptophan suit, which was pending at the time of divorce. Ultimately, Liptak recovered $195,000 from the settlement of that suit as ordered by the divorce decree; thus, the 255th Judicial District Court is the only court with jurisdiction to set aside that award. *See Solomon, Lambert, Roth, & Assoc., Inc. v. Kidd,* 904 S.W.2d 896, 899 (Tex.App.-Houston [1st Dist.] 1995, no writ) (because bill of review is direct attack on judgment, only court rendering original judgment has jurisdiction over proceeding).

Liptak's issue also mentions a judgment in the 95th Judicial District Court. Again, he does not cite us to a place in the record where we can find a copy of the 95th court judgment. Moreover, he makes no attempt to explain how the judgment here is a collateral attack of the 95th court judgment. Without a copy of the judgment or any argument related to it, we cannot review his general assertion regarding jurisdiction. We resolve the third issue against him.

In his fourth issue, Liptak complains the trial court erred in instructing the jury on fiduciary duty because he conclusively established he owed no fiduciary duty to Thornhill once she filed for divorce. He relies solely on *Parker v. Parker,* 897 S.W.2d 918 (Tex.App.-Fort Worth 1995, writ denied), for this proposition.

[6] In *Parker,* the court cited law that a fiduciary relationship brought about by marriage terminates "in a contested divorce when a husband and wife each have independent attorneys and financial advisers." *Id.* at 924. From Thornhill's pleadings, it is clear she was alleging that she did not have the independent advice of counsel at the time she and Liptak divorced. She asserted Liptak hired the lawyer, instructed him to act as Thornhill's attorney, but prevented Thornhill from "having any meaningful access" to him. Moreover, the divorce was not contested, and Thornhill alleged Liptak dictated all terms of the divorce.

We do not have before us all the evidence presented on this issue because Liptak requested and filed only a portion of the reporter's record from the jury trial in this case. He did not, however, follow the requirements of Texas Rule of Appellate Procedure 34.6(c) in relying on a partial record. *See* TEX.R.APP. P. 34.6; *Brown v. McGuyer Homebuilders, Inc.,* 58 S.W.3d 172, 175 (Tex.App.-Houston [14th Dist.] 2001, pet. denied). Because Liptak failed to comply with the rule on

partial records, we presume the omitted portions of the record support the judgment rendered. *Brown,* 58 S.W.3d at 175. Accordingly, we resolve the fourth issue against him.

***6** [7] In his fifth issue, Liptak claims he conclusively established fraud, unclean hands, waiver, and estoppel such that Thornhill was barred from challenging the divorce judgment. In his eighth issue, he contends he conclusively disproved all elements of extrinsic fraud in the bill of review. In both issues, he complains that Thornhill's "judicial admissions" bar her recovery. The statements relied upon by Liptak are not judicial admissions; but, even if they were, a party relying on a judicial admission "... must protect the record by objecting to the introduction of controverting evidence and to the submission of any issue bearing on the facts admitted." *Marshall v. Vise,* 767 S.W.2d 699, 700 (Tex.1989) (original proceeding) (citing *Houston First Am. Sav. v. Musick,* 650 S.W.2d 764, 769 (Tex.1983)). Liptak has failed to do so. Moreover, he filed only a partial reporter's record, but did not comply with rule 34.6. We therefore presume the omitted portions of the record support the submission of issues regarding (1) Liptak's extrinsic fraud for purposes of the bill or review and (2) Liptak's fraud on obtaining the property. The fifth and eighth issues are without merit.

[8] In his sixth issue, Liptak complains the trial court erred in overruling his special exceptions and in denying his motion to dismiss for incurable pleading defects. Within this issue, he cites four cases, none of which are relevant to whether the trial court erred in denying his motion and special exceptions. Because the issue is inadequately briefed, it is waived. *See* TEX.R.APP. P. 38.1.

In his seventh issue, Liptak complains there was "no pleading upon which the jury could make ... an inferred finding of duress ." It appears Liptak believes the jury only could have reached the decision it did if it believed Thornhill was under duress; however, he makes no attempt to explain why such an inferred finding would be necessary in this case. Regardless, we have only a partial record, and we presume the omitted portions support the judgment. We resolve the seventh issue against him.

In his ninth issue, Liptak argues the trial court erred in denying his motion for separate trials on the bill of review issue of extrinsic fraud and the separate cause of action for breach of fiduciary duty. Again, he does not cite any law or provide any legal analysis; thus, we conclude the issue is inadequately briefed for review. *See* TEX.R.APP. P. 38.1(h). Within this issue, he also complains that the "entry of evidence as to Liptak's assets during and at the same trial on the threshold issue, was absolutely prohibited" by *Transportation Insurance Co. v. Moriel,* 879 S.W.2d 10 (Tex.1994). He fails, however, to cite any evidence in the record to support this contention. Moreover, the record suggests the punitive damage issue was bifurcated. The clerk's record contains an "additional charge of the court" with one question on exemplary damages. We resolve the ninth issue against him.

***7** [9] In issues ten, eleven, twelve, and thirteen, Liptak complains the trial court erred in failing to render default judgments against third-party defendants John Frick, Godwin and Carlton, Jackson and Walker, Michael Moran, CPA, and Strasburger and Price. He complains he was entitled to default judgment because these defendants failed to timely answer.

The trial court ordered Liptak's claims against these defendants severed from the bill of review proceeding that is the subject of this appeal. A severance splits a single suit into two or more independent actions, each resulting in an appealable final judgment. *See Van Dyke v. Boswell, O'Toole, Davis & Pickering,* 697 S.W.2d 381, 383 (Tex.1985). There is nothing in our record to suggest a final judgment has been rendered in the severed cause of action. Because these third-party claims and defendants are not part of this appeal, we do not have jurisdiction to consider Liptak's complaint. We dismiss issues ten, eleven, twelve,

and thirteen.

In issue fourteen, Liptak asserts the trial court abused its discretion in denying his motion to strike Thornhill's first amended petition because it gave him only six days' notice before trial and included "belated claims" for punitive damages and attorney's fees. He asserts the refusal violated "mandatory Rules of Procedure, due process under the 14th Amendment and any sense of justice and equity."

Other than a general reference to the "Rules of Procedure" and the 14th amendment, Liptak again offers no law or analysis; thus, the issue is inadequately briefed. *See* TEX.R.APP. P. 38.1. Regardless, Liptak has not shown error. The first amended petition was filed on April 10, 2001; the trial was set for April 17, 2001. Consequently, the pleading was timely filed. *See Sosa v. Cent. Power & Light,* 909 S.W.2d 893, 895 (Tex.1995) (per curiam).

[10] In issue fifteen, Liptak complains the trial court erred by " 'bifurcating' the trial on proportionate responsibility, *without motion from any party*, thereby denying [him] his right to full and fair relief in one trial" under Chapter 33 of the Texas Civil Practice and Remedies Code and Texas Rule of Civil Procedure 39. It appears Liptak is arguing that the trial court erred in ordering a separate trial on his claims against the third-party defendants.

Texas Rule of Civil Procedure 174(b) allows a trial court to order the separate trial of third-party claims "in furtherance of convenience or to avoid prejudice." TEX.R. CIV. P. 174(b). The trial court has broad discretion in this matter, and its action will not be disturbed absent an abuse of discretion. *Kaiser Foundation Health Plan of Tex. v. Bridewell,* 946 S.W.2d 642, 645 (Tex.App.-Waco 1997, orig. proceeding) (per curiam).

Again, Liptak has failed to present any legal analysis as to why the trial court abused the broad discretion it had in ordering a separate trial of his third-party claims. Rather, he makes a conclusory assertion that "removing the questions of negligence of Thornhill's attorneys, Bank Trust and other advisors ... denied [him] his absolute right to jury questions on their negligence as fiduciaries to Thornhill which [is] imputed to her." Because this issue is inadequately briefed, it is waived. *See* TEX.R.APP. P. 38.1.

***8** In issue sixteen, Liptak contends the trial court lacked jurisdiction because an indispensible party, Mark Stewart, was in bankruptcy, resulting in an automatic stay against him. Liptak sued Stewart, who, acccording to Liptak's pleadings, represented Thornhill in the L-tryptophan litigation. Liptak has not cited any legal authority or provided any analysis to support his assertion that Stewart was an indispensable party in this proceeding or, even if he was, that his absence deprived the trial court of jurisdiction of the case. Failure to join an "indispensable" party does not render a judgment void; there could rarely exist a party who is so indispensable that his absence would deprive the trial court of jurisdiction to adjudicate between the parties who are before the Court. *Browning v. Placke,* 698 S.W.2d 362, 363 (Tex.1985). Having reviewed Liptak's pleadings, we cannot conclude this is that rare circumstance. We resolve issue sixteen against Liptak.

[11] In his seventeenth issue, Liptak asserts the trial court's rulings "were obviously motivated by ... bias, and if not, the jury verdict was the intended product of passion and unfair prejudice because of incurably abusive jury argument of Thornhill's lawyer during *voir dire.*" In his nineteenth issue, he complains the trial court erred in overruling all of his postverdict motions. In neither issue did Liptak cite any law or provide any legal analysis. Consequently, both issues are inadequately briefed. *See* TEX.R.APP. P. 38.1.

[12] In his twentieth issue, Liptak reurges many of the same complaints previously addressed and asserts the judgment is a "manifest injustice and should be reversed...." We will not revisit those

complaints previously addressed. Liptak also complains the trial court denied his motion for audit and accounting and therefore could not have made a "meaningful assessment" of the values of the community and separate estate. He provides no law to support his position that the jury must make a "proper valuation" of the community estate "in order to balance the equities" once it found he defrauded Thornhill and breached his fiduciary duty to her. He also asserts Thornhill is "gaining a double recovery." Because these complaints are unsupported by any citations to the record or meaningful legal analysis, we conclude they are waived. *See* TEX.R.APP. P. 38.1.

In his twenty-first issue, he argues the trial court violated "the letter and spirit" of Dallas County Local Rule 1.4(a), which disfavored motions to sever. The Dallas County judges adopted new rules on April 1, 1998, and the text of the rule relied upon by Liptak is not contained in the new rules. These rules were in effect at the time the trial court severed Liptak's third-party claims. Because Liptak relies on a rule that is no longer in effect, we resolve this issue against Liptak.

[13] In his twenty-second issue, Liptak complains there is no valid final judgment that determines the entire controversy between the parties upon which to base appellate jurisdiction. In particular, he complains the bill of review judgment does not set aside, but merely supplements, the 1993 divorce decree in violation of the one-judgment rule. Relying on *Kessler v. Kessler*, 693 S.W.2d 522 (Tex.App.-Corpus Christi 1985, writ ref'd n.r.e.), he argues the bill of review judgment is a nullity and leaves the 1993 decree "standing undisturbed." We disagree.

***9** In *Kessler*, the parties divorced and, eighteen months later, Ethel Kessler filed a bill of review alleging her ex-husband concealed community funds in the bank account of another person. *Id.* at 523-24. The trial court rendered a bill of review judgment awarding Ethel a money judgment against her ex-husband. The judgment, however, did not set aside the original divorce decree, did not divide the parties' community property, and therefore did not dispose of the entire controversy. *Id.* at 527-28. Thus, the court of appeals concluded a final judgment had not been rendered and dismissed the appeal. *Id.* at 528.

The judgment in this case does not suffer the defects found in *Kessler*. Here, the judgment sets out the jury's findings that Liptak obtained a percentage of the settlement proceeds and a percentage of Thornhill's family business through fraud and breach of fiduciary duties and calculates the amount owed by Liptak to Thornhill. The judgment further provides, in part, as follows:

> Based on the findings and conclusions set forth above, the Court concludes that Plaintiff Elizabeth Thornhill is entitled to judgment against Defendant Virgil Liptak awarding Plaintiff as her separate property all right, title and interest in the Richard E. Colgin I, Ltd. partnership owned by Plaintiff or Defendant at the time of their 1993 divorce and the sum of $1,655,045, plus post-judgment interest at the rate of 10% per annum from and after the date of this judgment until paid in full. The Court further concludes that Plaintiff is allowed such writs and processes, including writs of execution and orders of sale, as may be necessary in the enforcement and collection of this judgment.
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Agreed Decree of Divorce and Agreement Clarifying Agreed Decree of Divorce signed in December 1993 in Cause No. 93-16706-S, styled *In the Matter of the Marriage of Elizabeth Liptak and Virgil Liptak* are set aside, in part, and superceded by this judgment to the extent any provisions of the prior Agreed Decree of Divorce or Agreement Clarifying Agreed Decree of Divorce conflict with any provision of this judgment.

Thus, unlike the judgment in *Kessler*, the judgment at issue specifically sets aside the previous di-

vorce decree to the extent any of its provision conflict with the judgment. Further, the judgment here is more specific than that in *Rathmell v. Morrison*, 732 S.W.2d 6 (Tex.App.-Houston [14th Dist.] 1987, no writ), where the court distinguished *Kessler* and concluded the bill of review judgment did not violate the one-judgment rule. We resolve his twenty-second issue against him.

We affirm the trial court's judgment.

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