

IN THE TWELFTH COURT OF APPEALS
TYLER, TEXAS

Appeal No. 12-25-00279-CV

Udo Birnbaum, Appellant

v.

CSD Van Zandt LLC, Appellee

On Appeal from the 294th Judicial District Court

Van Zandt County, Texas

IDENTITY OF PARTIES AND COUNSEL

Appellant Udo Birnbaum. Pro Se
Appellee CSD Van Zandt LLC, represented by counsel.

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STATEMENT OF THE CASE

This is an appeal from a summary judgment entered by the 294th District Court of Van Zandt County, Texas, in a bill of review proceeding filed by Appellant Udo Birnbaum. After Appellant filed a nonsuit, the trial court granted summary judgment in favor of Appellee CSD Van Zandt and awarded \$36,010 in attorney's fees. This appeal challenges the trial court's jurisdiction to enter judgment *after* nonsuit, and the propriety of awarding attorney's fees in a bill of review proceeding.

ISSUES PRESENTED

- 1.** Whether the trial court lacked jurisdiction to enter orders *after* Appellant took a nonsuit under *Tex. R. Civ. P. 162*.
- 2.** Whether attorney's fees are recoverable in a bill of review proceeding absent statutory or contractual authorization.
- 3.** Whether summary judgment was proper due to lack of title and newly discovered extrinsic fraud.

STATEMENT OF FACTS

In 1981, Udo Birnbaum bought three tracts of land -- approximately 150 acres, 18 acres, and 4 acres -- of property in Van Zandt County, Texas. In 2002, Udo Birnbaum attempted to hide his ownership interest from debt collectors and thieves by executing a deed conveying the property in trust to Gwendolyn Thibodeaux. A week later Gwendolyn executed another deed returning the property to Birnbaum, but failed to record it. Udo Birnbaum always resided on his property, even after Gwendolyn's death. He never abandoned it.

Gwendolyn Thibodeaux, who held bare legal title in trust, later predeceased her husband, Louis Thibodeaux.

Decades later, in 2017, Louis Thibodeaux resided at the *Southwest Louisiana Veterans Home*. When Louisiana officials began viewing the Van Zandt County property as an asset that could be attached to pay for his nursing care, Louis Thibodeaux made it clear to everyone that he had no interest in the property, and that the true owner was Udo Birnbaum. Louis Thibodeaux requested that a volunteer notarize his signature on a warranty deed conveying the property back to Birnbaum. Lisa Girot, an employee of the law firm of Skipper Drost, routinely volunteered at the nursing home. As a commissioned Louisiana notary public, Lisa Girot sealed the warranty deed and delivered it by U.S. Mail to Udo Birnbaum.

Two years later, in 2018, Louis Thibodeaux's health was in sharp decline. He was deaf, could not see very well, and uttered meaningless ramblings almost incessantly – a very strong indication of incompetency. Lisa Girot took advantage of the situation. Girot had a sister named Donna Girot Brown, who also was a notary employed by the law firm of Skipper Drost. Lisa Girot

had her sister Donna prepare and notarize Louis Thibodeaux's signature on a last will and testament leaving everything to Lisa Girot.¹

After Thibodeaux's death, in 2020 Girot filed the will in Louisiana and obtained an initial court order accepting the succession case to be probated. Girot recorded the initial order in Van Zandt County real property records. and thereafter convinced taxing authorities in Van Zandt that this document gave her ownership. She then sold one of the three tracts in Van Zandt County to CSD Van Zandt. Robert Dow, owner of CSD Van Zandt, then evicted Birnbaum from his home and obtained a summary judgment as a bona fide innocent purchaser.²

Birnbaum, proceeding *pro se*, attempted to appeal because he was denied a jury trial, but the appeal was dismissed. Birnbaum

1. There is substantial doubt as to whether Louis Thibodeaux actually signed the will in the notary's presence. Both Girot and Brown were employed by the *disreputable law firm* of Skipper Drost, which has a history of fraudulent activities. Appellant requests this Court of Appeals *take judicial notice* of an order from the Louisiana Supreme Court suspending attorney Drost from the practice of law for notarizing a will outside the presence of the person allegedly signing it. **See Appendix Document #1.**

2. The summary judgment and appeal only involved Robert Dow/CSD Van Zandt claim of title as a bona fide purchaser. The trial court and appellate court assumed — without ever being asked to review or verify — that Lisa Girot had lawful title to convey. That assumption has now been proven **false.**

returned to the trial court seeking a bill of review. While the bill of review was pending, he sold part of his property to a Mennonite faith-based organization called “God’s Property Ministries.” Barney Donalson, owner of God’s Property, attempted to join Birnbaum as a party through the filing of an amended petition.

Shortly thereafter, a title search uncovered a defect in the chain of title constituting **extrinsic fraud**. It was discovered that Louis Thibodaux’s estate had not been properly administered, and that the Louisiana case -- *In Re Succession of Louis Thibodeaux*, Case No. 20-11 (31st Judicial District Court, Jefferson Davis Parish, Louisiana) – still remained open and pending.

Donalson traveled to Jefferson Davis Parish. He not only examined the succession case file, but also spoke with court officials. They advised that Girot failed to comply with the Louisiana legal process to be appointed as executor, failed to file an index list of estate assets and debts, failed to publish the required notice to creditors and claimants, and failed to obtain a judgment of possession. Without such a judgment, Girot had no individual interest in, or title to, the property in question. She was not

authorized to sell any property belonging to the estate until so ordered by the Louisiana succession court.

Because of this **extrinsic fraud** -- and because the attorney for CSD Van Zandt was rushing the Van Zandt court to grant another summary judgment without having a trial or all the facts in place -- Donalson and Birnbaum decided to file a nonsuit. By doing so, they could refile their claims once all the evidence was gathered. The District Clerk marked their nonsuit as filed at **3:53 p.m.** on 9/22/2025. **(See Clerk's Record; see also Appendix Document #2).**

Despite the nonsuit being filed **before** judgment, the trial court nevertheless went ahead and entered an order granting judgment and awarding attorney's fees. The District Clerk marked the judgment as filed at **4:45 p.m.** on 9/22/2025. **(See Clerk's Record; see also Appendix Document #3).**

SUMMARY OF THE ARGUMENT

Appellant's nonsuit terminated the trial court's jurisdiction. *Texas Rule of Civil Procedure 162* provides that a nonsuit is effective *immediately upon filing*, divesting the court of jurisdiction; thus, it was plain error for the trial court to enter a judgment and award

attorney fees **after** a nonsuit was taken. Additionally, there is no statutory or contractual basis for awarding attorney's fees in a bill of review proceeding. Finally, summary judgment was improper because the seller, Lisa Girot, never held valid title and thus committed extrinsic fraud in conveying the property to Dow.

ARGUMENT AND AUTHORITIES

Issue One: The Trial Court Lacked Jurisdiction To Grant Judgment After the Nonsuit Was Filed

Under *Tex. R. Civ. P. 162*, a plaintiff may take a nonsuit at any time before introducing all evidence other than rebuttal evidence. A nonsuit is effective immediately upon filing and terminates the court's power to act, except for limited matters such as costs. *See Hyundai Motor Co. v. Alvarado*, 892 S.W.2d 853 (Tex. 1995).

The nonsuit was filed at 3:53 p.m. **See Appendix #2.** Thus, the trial court lacked jurisdiction to enter a judgment at 4:45 p.m. **See Appendix #3.**

Issue Two: Attorney's-Fee Award Unauthorized in Bill-of-Review Context

Texas follows the American Rule that each party bears its own attorney's fees unless authorized by contract or statute. A bill of review is an equitable remedy; thus, fees may be recovered only if authorized in the underlying cause. *See Meece v. Moerbe*, 631 S.W.2d 729 (Tex. 1982). The trial court awarded \$36,010.00 in attorney's fees without citing any statutory or contractual basis, and without hearing any evidence to support the amount. There is authority authorizing attorney fees in a bill of review case. Therefore, the fee award must be reversed.

Issue Three: Summary Judgment Improper Due To Lack of Title and Newly Discovered Evidence

Dow's earlier Texas quiet-title case decided only **one issue** – e.g., *whether Dow was a bona fide purchaser for value without notice of Birnbaum's unrecorded deed*. Lisa Girot was not a party in the case, and the issue of whether Girot actually inherited the property and held a valid title to convey was never litigated therein.

We now have **new facts** demonstrating the Louisiana state court *Succession of Louis Thibodeaux* was never completed. We also have **new issues**: whether Girot obtained a Judgment of Possession; whether she had any title to convey and/or authority to

sell; whether she fraudulently recorded succession documents in the real property records of Van Zandt County; and/or whether she fraudulently concealed from Robert Dow the deed she notarized conveying the property from Thibodeaux to Birnbaum. These issues have not yet been before any Texas court.

The newly discovered facts render Appellee Dow's status as a bona fide innocent-purchaser irrelevant. The grantor, Lisa Girot, has not yet completed the Louisiana succession/probate case. She has not obtained a judgment of possession authorizing her to sell property belonging to the estate of Louis Thibodeaux. Without a Judgment of Possession, no heir receives ownership, no legatee receives ownership, and no one can lawfully sell estate property. *See Succession of Houssiere*, 247 La. 764, 174 So.2d 521 (La. 1965) (*"Heirs have no right to possess or dispose of succession property until a judgment of possession places them in ownership."*); *See also Succession of Jones*, 572 So.2d 607, 609 (La. App. 4 Cir. 1990) (*"Until the judgment of possession is signed, the succession property remains owned by the estate, and heirs or legatees have no authority to alienate it."*)

Because Girot lacked any title to convey, Dow's innocent purchaser status is defeated and his summary judgment motion should have been denied. *See Johnson v. Darr*, 272 S.W. 1098 (Tex. 1925) (A purchaser cannot acquire better title than the seller).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant Udo Birnbaum respectfully requests that this Court reverse and remand with instructions to vacate all post-nonsuit orders and dismiss the case for lack of jurisdiction. Appellant also requests all other relief to which he may be entitled.

Respectfully submitted,

/s/ Udo Birnbaum

UDO BIRNBAUM
119 AN County Road 2501
Tennessee Colony, TX 75861
(903) 922-5996
brnbm@aol.com

CERTIFICATE OF COMPLIANCE

I certify that the computer software used to prepare this brief indicates a count of 1908 words.

/s/ Udo Birnbaum

UDO BIRNBAUM

CERTIFICATE OF SERVICE

I certify I have served the foregoing Brief on Nicole Feregen and Corey Kellum, Sullivan Law Firm, 430 N Carroll Ave # 120, Southlake, TX 76092, using the Texas efile system on this 19th day of December, 2025.

/s/ Udo Birnbaum

UDO BIRNBAUM

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Envelope ID: 109289144

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Appellant's Brief

Status as of 12/19/2025 7:51 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Nicole Feregen		nicole@sullivanlawoffices.com	12/19/2025 12:54:15 AM	SENT
Udo Birnbaum		brnbnm903@gmail.com	12/19/2025 12:54:15 AM	SENT

Appendix # 1

12/02/2011 "See News Release 076 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 11-B-2188

IN RE: SKIPPER M. DROST

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM*

The Office of Disciplinary Counsel (“ODC”) commenced an investigation into allegations that respondent entered into an improper business transaction with a client and notarized a will which was not signed by the testator in his presence. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline, in which the parties stipulated that respondent has violated Rules 1.1(a) (failure to provide competent representation to a client), 1.3 (failure to act with reasonable diligence and promptness in representing a client), 1.8(a) (entering into a business transaction with a client), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that Skipper M. Drost, Louisiana Bar Roll number 5084, be and he hereby is suspended from the practice of law for two years, with all but ninety days deferred, followed by a two-year period of supervised probation governed by the terms and conditions set forth in the Petition for Consent Discipline. The probationary period shall commence from the date respondent, the ODC, and the probation monitor execute a formal probation plan. Any failure of respondent to comply with the

* Chief Justice Kimball not participating in the opinion.

conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate.

IT IS FURTHER ORDERED all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

Appendix #2

Filed 9/22/2025 3:53 PM
Karen L. Wilson
District Clerk
Van Zandt County, Texas

CAUSE NO. 25-00024

Stormy Canady

Barney Donalson, Jr.

Plaintiff

VS.

Michael King,

Defendant

IN THE DISTRICT COURT OF

VAN ZANDT COUNTY, TEXAS

294TH JUDICIAL DISTRICT

NOTICE OF NONSUIT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW UDO BIRNBAUM AND BARNEY DONALSON, Plaintiffs, and file this notice that they are taking a nonsuit in this case pursuant to TEX. R. CIV. P. 162.

Respectfully submitted,

/s/ Joe Donalson

Barney Donalson
God's Property Ministries
State Highway 43
Henderson, TX 75652
(903) 488-5656
joedonalson@gmail.com

/s/ Udo Birnbaum

Udo Birnbaum
119 AN County Road 2501
Tennessee Colony, TX 75861

(903) 922-5996
brnbm@aol.com

CERTIFICATE OF SERVICE

I certify that on this 22nd day of September, 2025, I have served a true copy of the foregoing First Amended Complaint on all parties using the Texas electronic efile system.

/s/ B.J. Donalson Jr.

Barney Donalson

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Envelope ID: 105919082

Filing Code Description: Motion (No Fee)

Filing Description: Notice of Nonsuit

Status as of 9/22/2025 3:56 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Udo Birnbaum		brnbn@aol.com	9/22/2025 3:53:59 PM	SENT
Barney JoeDonalson		joedonalson@gmail.com	9/22/2025 3:53:59 PM	SENT
Corey Kellam		Corey@SullivanLawOffices.com	9/22/2025 3:53:59 PM	SENT
Kent Canada		kent@sullivanlawoffices.com	9/22/2025 3:53:59 PM	SENT
Nicole Feragen		Nicole@sullivanlawoffices.com	9/22/2025 3:53:59 PM	SENT
Courtney Woodruff		courtney.woodruff@sullivanlawoffices.com	9/22/2025 3:53:59 PM	SENT
James Barnett		james@sullivanlawoffices.com	9/22/2025 3:53:59 PM	SENT

CAUSE NO. 25-00024

LILIAN ROJAS

UDO BIRNBAUM
Plaintiff

§
§
§
§
§
§
§

IN THE DISTRICT COURT

VS.

294TH JUDICIAL DISTRICT

CSD VAN ZANDT LLC
Defendant

VAN ZANDT COUNTY, TEXAS

ORDER GRANTING DEFENDANT’S TRADITIONAL AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

ON THIS DAY came on for consideration Defendant CSD Van Zandt LLC’s Traditional and No-Evidence Motion for Summary Judgment (the “Motion”). The Court, after considering the Motion, responses and replies, and evidence on file, is of the opinion that the Motion should be GRANTED. It is therefore,

ORDERED, ADJUDGED, and DECREED that Defendant CSD Van Zandt LLC is entitled to judgment as a matter of law, and that its Motion is GRANTED in all things, and Plaintiff Udo Birnbaum (“Plaintiff”) shall take nothing on his claims asserted against CSD Van Zandt LLC (“Defendant”).

It is further ORDERED, ADJUDGED, and DECREED specifically as follows:


- 1) That Defendant is the bona fide purchaser and owner of the 150 acres of real property located at and around address 540 Van Zandt County Road 2916, Eustace, Texas (the “Property”). Defendant’s status as a bona fide purchaser and owner is confirmed by the Warranty Deed with Vendor’s Lien (Instrument No. 2022-007473) transferring the Property from grantors Lisa Leger Girot, Patricia Moore Barclay, and James T. Moore, III to grantee Defendant, which was filed in the Official Public Records of Van Zandt County, Texas, on or about June 24, 2022;
- 2) That the final judgment issued in on or about September 20, 2023, in Cause No. 22-00105, *CSD Van Zandt LLC v. Udo Birnbaum*, in the 294th Judicial District Court of Van Zandt County, Texas (the “Final Judgment”), along with Plaintiff’s subsequent unsuccessful attempts to appeal that Final Judgment, bars Plaintiff from seeking the instant bill of review action under the theory of res judicata as a matter of law;
- 3) That Plaintiff has failed to raise any genuine issue of material fact to support the essential elements of his bill of review claim; and
- 4) That Plaintiff’s First Amended Petition filed September 18, 2025 (the “Amended Petition”), cannot be considered and is stricken from the record, for the reasons being that (a) the addition of new causes of action to the Amended Petition which were not pled in the Final Judgment’s underlying litigation is improper under Texas law, (b) the addition of

new parties to the Amended Petition which were uninvolved in the Final Judgment's underlying litigation is improper under Texas law, and (c) Plaintiff failed to request and was not granted leave to amend as required under TEX. R. CIV. P. 63 while the Motion was pending and noticed for submission ruling September 17, 2025.

It is further ORDERED, ADJUDGED, and DECREED that Defendant have and recover of Plaintiff the sum of \$36,010.00 to account for the total of reasonable and necessary attorneys' fees related to the Motion through any subsequent appeals of this ruling. This sum shall be paid by Plaintiff to Defendant within ninety (90) days of this ruling.

It is further ORDERED, ADJUDGED, and DECREED that all relief not granted herein is denied, and this Order disposes of this cause, and is therefore the final order of this Court.

It is so ORDERED this 9/22/2025 ~~of September, 2025.~~



JUDGE PRESIDING
Chris Martin

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Nicole Feragen on behalf of Nicole Feragen

Bar No. 24106935

nicole@sullivanlawoffices.com

Envelope ID: 105896170

Filing Code Description: Proposed Order

Filing Description: Proposed Order Granting Defendant's Traditional and No-Evidence Motion for Summary Judgment

Status as of 9/22/2025 4:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Corey Kellam		Corey@SullivanLawOffices.com	9/22/2025 11:47:46 AM	SENT
Kent Canada		kent@sullivanlawoffices.com	9/22/2025 11:47:46 AM	SENT
Nicole Feragen		Nicole@sullivanlawoffices.com	9/22/2025 11:47:46 AM	SENT
Courtney Woodruff		courtney.woodruff@sullivanlawoffices.com	9/22/2025 11:47:46 AM	SENT
Udo Birnbaum		brnbn@aol.com	9/22/2025 11:47:46 AM	SENT
James Barnett		james@sullivanlawoffices.com	9/22/2025 11:47:46 AM	SENT
Barney JoeDonalson		joedonalson@gmail.com	9/22/2025 11:47:46 AM	SENT