Reversed and Rendered and Opinion filed November 4, 2025.

In The

Fourteenth Court of Appeals

NO. 14-24-00300-CV

GERALD DARGIN, Appellant

V.

NOBLE DRILLING SERVICES, INC. Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 22-DCV-294757

O P I N I O N

Texas jurisprudence holds that if a plaintiff nonsuits his case without prejudice in order to avoid an adverse ruling on the merits, the defendant may nevertheless recover attorney's fees as a prevailing party provided that the defendant is entitled to attorney's fees by statute or contract. Today's case, however, asks us to extend that law to hold that, if a plaintiff nonsuits his case without prejudice to avoid an adverse ruling, the court can and should convert the dismissal without prejudice to a dismissal with prejudice. We decline to do so. In this case, the trial court did as

defendant requested; the trial court converted plaintiff's nonsuit without prejudice to a dismissal with prejudice. Concluding that the trial court erred in granting this relief, we reverse and render judgment nonsuiting the case without prejudice and dismissing the claims without prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant/plaintiff Gerald Dargin sued his employer, appellee/defendant Noble Drilling Services, Inc., alleging that he sustained serious and permanent personal injuries while working as a Jones Act[1] seaman assigned to the vessel *Noble Globetrotter II*,[2] which Dargin claims was owned, owned *pro hac vice*, manned, managed, chartered, leased, operated, crewed, or controlled by Noble.

Dargin asserted claims for Jones Act negligence, unseaworthiness, and maintenance and cure (collectively the "Jones Act Seaman Claims"). Noble does not dispute that it was Dargin's employer at the time of his alleged injury. Noble filed a traditional summary-judgment motion ("Traditional Motion") seeking dismissal of the Jones Act Seaman Claims on the ground that as a matter of law Dargin was not a Jones Act seaman because at all relevant times, the *Noble Globetrotter II* was not a "vessel in navigation" as she was wholly incapable of transportation on her own and was undergoing extensive repairs to damages caused by her encounter with Hurricane Ida. Noble filed a separate no-evidence motion ("No Evidence Motion") seeking summary judgment as to medical negligence claims that Noble contended were alleged in Dargin's live pleading. Dargin filed responses in opposition to each motion.

Each of Noble's summary-judgment motions was set for oral argument on

[1] *See* 46 U.S.C. § 30104, *et seq*.

[2] In his live pleading Dargin alleges that the name of the vessel was the *Noble Globetrotter 2*, but we use the correct name which is the "*Noble Globetrotter II.*"

February 5, 2024, at 1:30 p.m., along with Dargin's motion for spoliation sanctions. No record was made of the February 5, 2024 hearing. The trial court never signed an order ruling on Dargin's spoliation motion, but a docket-sheet entry from February 5, 2024 with the trial court's initials says, "Waiting for trial to rule on motion on spoilation of evidence." Though Noble submitted no evidence as to what happened during the oral hearing, Noble contends that the trial court said it was inclined to grant Noble's Traditional Motion and tried to electronically sign an order granting that motion but could not do so due to computer issues. According to Noble the trial court did not say at the hearing whether it was inclined to grant the No Evidence Motion. Noble does not contend that the trial court stated at the hearing that it was granting the Traditional Motion or the No Evidence Motion. Instead, Noble asserts that "the [t]rial [c]ourt stated at the hearing that it was going to grant summary judgment" but that "the [t]rial [c]ourt did not grant or sign any summary judgment orders." Dargin agrees that the trial court did not sign a summary-judgment order or state at the hearing that it was granting the Traditional Motion or the No Evidence Motion.

At 3:36 p.m. on February 5, 2024, shortly after the hearing had ended, Dargin filed a notice of nonsuit in which he nonsuited all of his claims against Noble without prejudice. When Dargin filed the nonsuit Noble did not have any pending claim for affirmative relief, request for attorney's fees or costs, or request for sanctions on file. The trial court initially signed an Order of Nonsuit Without Prejudice on February 7, 2024. On the same day Noble filed a "Motion to Declare Plaintiff's Nonsuit a Dismissal with Prejudice" ("Motion to Declare"). In the Motion to Declare Noble asserted that it was clear that Dargin improperly filed the nonsuit without prejudice to avoid or prevent an adverse ruling by the trial court—the imminent granting of the Traditional Motion. Noble argued that under these circumstances Texas courts

have the authority to convert the plaintiff's nonsuit without prejudice to a dismissal with prejudice. Noble primarily relied on the majority opinion in *Lacy v. Castillo*, 580 S.W.3d 830, 832–37 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (maj. op.). Noble did not move for sanctions in the motion; instead, Noble asked the trial court to use its alleged authority to convert Dargin's nonsuit without prejudice to a dismissal with prejudice based on Dargin's alleged improper use of the nonsuit procedure to avoid the imminent granting of the Traditional Motion. Noble did not submit any evidence in support of the Motion to Declare.

Dargin opposed the Motion to Declare arguing that the trial court did not render judgment at the hearing and that the court stated it was going to review two cases before ruling on the Traditional Motion. Dargin asserted that the trial court did not sign an order ruling on a summary-judgment motion or announce a ruling on a summary-judgment motion at the hearing. Dargin contended that until the trial court announces that it is granting a defendant's summary-judgment motion, a plaintiff has the right to take a nonsuit without prejudice. Dargin relied on a case in which this court held that "in the context of a summary judgment proceeding, a plaintiff may take a nonsuit at any time prior to the time the court renders judgment," *Taliaferro v. Smith*, 804 S.W.2d 548, 550 (Tex. App.—Houston [14th Dist.] 1991, no writ), and similar cases from other courts of appeals. Dargin did not submit any evidence in opposition to the Motion to Declare.

Noble had the Motion to Declare set for an emergency hearing on February 19, 2024. An associate judge presided over this hearing, not the judge who presided at the summary-judgment hearing. After hearing argument the associate judge took the motion under advisement and stated that she would talk to the presiding judge about what happened at the summary-judgment hearing. Before the trial court lost plenary power, the presiding judge signed an order granting the Motion to Declare

and ordering that Dargin's nonsuit without prejudice be converted to a dismissal with prejudice, precluding the re-filing of claims by Dargin against Noble.

Dargin timely filed a motion for new trial supported by an affidavit from Dargin's attorney of record, who was present at the summary-judgment hearing. Dargin asserted that the trial court did not render or announce a ruling on the Traditional Motion and that Dargin retained his absolute right to a nonsuit without prejudice. The trial court denied the motion for new trial, and Dargin timely perfected this appeal.

II. ISSUES AND ANALYSIS

Did the trial court reversibly err in granting the Motion to Declare?

Under his first issue Dargin asserts that the trial court erred in granting the Motion to Declare and converting Dargin's nonsuit without prejudice to a nonsuit with prejudice. Dargin argues that there is no evidence that Dargin took a nonsuit after the trial court announced a judgment and that Dargin's right to a nonsuit without prejudice is supported by this court's opinion in *Genesis Producing Company, L.P. v. Smith Big Oil Corp.*, in which this court confirmed that plaintiffs retain the absolute right to nonsuit their claims without prejudice, provided that they do so before the trial court renders a judgment. *See* 454 S.W.3d 655, 658–60 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Nonsuit Law

In Texas, the general rule is that plaintiffs have the right to take a nonsuit without prejudice at any time until they introduce all their evidence other than rebuttal evidence. *See* Tex. R. Civ. P. 162; *Hyundai Motor Co. v. Alvarado*, 892 S.W.2d 853, 854 (Tex. 1995). Such a nonsuit may have the effect of vitiating earlier interlocutory orders. *See id.* at 854–55. Although plaintiffs can render their claims moot by filing a nonsuit, a nonsuit cannot vitiate a prior decision on the merits, such

as a summary judgment. *Id*. at 855. Once a judge announces a decision that adjudicates a claim in favor of the defendant, such as a summary judgment, that claim is no longer subject to the plaintiff's right to nonsuit without prejudice. *See id*. A nonsuit sought after such a rendition of judgment results in a dismissal with prejudice as to the claims adjudicated in the rendition of judgment. *See id*. A judgment's "rendition" is "'the judicial act by which the court settles and declares the decision of the law upon the matters at issue.'" *Baker v. Bizzle*, 687 S.W.3d 285, 292 (Tex. 2024) (quoting *Coleman v. Zapp*, 151 S.W. 1040, 1041 (Tex. 1912)). Rendition of judgment requires a present act, either by spoken word or signed memorandum, that decides the issues on which the ruling is made. *Bizzle*, 687 S.W.3d at 292. If the judge's words only indicate an intention to render judgment in the future or to provide guidelines for drafting a judgment, the pronouncement cannot be considered a present rendition of judgment.[3] *Id*.

A plaintiff who takes a nonsuit without prejudice is also subject to the preclusive effect of any prior venue determination by the trial court. *See In re Team Rocket, L.P.*, 256 S.W.3d 257, 260 (Tex. 2008). But, this preclusive effect does not result in a dismissal with prejudice; rather, it means that the plaintiff must file any later suit in the venue determined by the trial court in the first case, and if the plaintiff does not do so, the case will be transferred to that venue. *See id*. at 259–61.

A nonsuit does not affect the right of an adverse party to be heard on a pending claim for affirmative relief or a pending request for attorney's fees or other costs. *See* Tex. R. Civ. P. 162. If a defendant requests attorney's fees under a contract or

[3] Reducing a decision to final judgment has three phases: (1) rendition; (2) signing; and (3) entry. *Bizzle*, 687 S.W.3d at 291. Rendition and signing are judicial acts that can, but need not, occur at the same time. Entry, on the other hand, is a clerical act undertaken by the clerk of the court. *Id*. at 291–92.

statute providing that a prevailing party may recover attorney's fees, the defendant may be a prevailing party for the purposes of this provision if the plaintiff takes a nonsuit without prejudice and if the trial court determines, on the defendant's motion, that the plaintiff took the nonsuit without prejudice to avoid an unfavorable ruling on the merits. *See Epps v. Fowler*, 351 S.W.3d 862, 870 (Tex. 2011).

A nonsuit does not affect the right of an adverse party to be heard on a motion for sanctions, even a motion filed after the nonsuit has been filed, provided that the trial court still has plenary power. *See Scott & White Mem'l Hosp. v. Schexnider*, 940 S.W.2d 594, 596 (Tex. 1996). Two sister courts of appeals have held that on the motion of a defendant, the trial court has discretion to change a plaintiff's nonsuit without prejudice to a nonsuit with prejudice as a sanction under chapter 10 of the Civil Practice and Remedies Code ("Chapter 10") for the plaintiff's bad faith conduct in filing a nonsuit without prejudice for an improper purpose—to avoid an unfavorable decision that would have resulted in dismissal of the plaintiff's claims on the merits. *See* Tex. Civ. Prac. & Rem. Code Ann. § 10.001, et seq. (West, Westlaw through 2025 R.S.); *DGF Holdings, Ltd. v. Air Clinic Air Conditioning & Heating, Inc.*, No. 05-23-01262-CV, 2025 WL 1558886, at *1–5 (Tex. App.—Dallas Jun. 2, 2025, pet. filed); *Cox v. Vanderburg*, No. 06-20-00078-CV, 2021 WL 4055487, at *2, *6–9, *13 (Tex. App.—Texarkana Sep. 7, 2021, pet. denied). The Supreme Court of Texas and this court have not addressed this point; nonetheless we presume, without deciding, that this court would agree with these holdings from our sister courts of appeals. *See DGF Holdings, Ltd.*, 2025 WL 1558886, at *1–5; *Cox*, 2021 WL 4055487, at *2, *6–9, *13.

Application of the Law

Noble does not argue that the trial court announced at the summary-judgment hearing that it was granting the Traditional Motion or the No Evidence Motion or

that the trial court rendered a summary judgment or signed a written summary-judgment order. Therefore, Dargin's nonsuit did not result in a dismissal with prejudice on the ground that he took the nonsuit after the trial court had rendered judgment. *See Hyundai Motor Co.*, 892 S.W.2d at 854–55; *Taliaferro v. Smith*, 804 S.W.2d 548, 550 (Tex. App.—Houston [14th Dist.] 1991, no writ).

When Dargin took a nonsuit without prejudice, Noble had not asserted a claim for affirmative relief or requested attorney's fees or other costs. *See* Tex. R. Civ. P. 162. Because Noble was not seeking attorney's fees under a contract or statute providing that a prevailing party may recover attorney's fees, this case does not fall within the scope of the Supreme Court of Texas's holding in *Epps v. Fowler*. *See* 351 S.W.3d at 865, 868–70.

When Dargin took a nonsuit without prejudice, there was no pending motion for sanctions against Dargin. In the Motion to Declare or otherwise, Noble did not seek any sanctions against Dargin based on his taking of a nonsuit without prejudice, whether under Chapter 10, the trial court's inherent power to sanction, or on any other basis for sanctions. In its order granting the Motion to Declare the trial court did not purport to grant any sanctions against Dargin. Therefore, the opinions from sister courts of appeals changing a nonsuit without prejudice to a nonsuit with prejudice as a sanction under Chapter 10 are not on point. *See DGF Holdings, Ltd.*, 2025 WL 1558886, at *1–5; *Cox*, 2021 WL 4055487, at *2, *6–9, *13; *Montgomery v. Montgomery*, No. 14-15-00203-CV, 2016 WL 1533930, at *3 (Tex. App.—Houston [14th Dist.] Apr. 14, 2016, no pet.) (concluding that the trial court could not properly have dismissed the case with prejudice as a sanction because the defendants did not request sanctions in their motion and the trial court did not mention in its judgment that the judgment was granted as a sanction) (mem. op.).

The parties have not cited and research has not revealed a case in which a

court holds that a trial court may change a plaintiff's nonsuit without prejudice to a nonsuit with prejudice in the fact pattern presented in today's case. Though Dargin had the option to take a nonsuit with prejudice, which amounts to an adverse judgment on the merits, Dargin did not do so. In the context of today's case we conclude that when Dargin took a nonsuit without prejudice he had the right to do so and that as a matter of law the trial court erred in granting the Motion to Declare and changing his nonsuit to a nonsuit with prejudice. *See Genesis Prod. Co., L.P.*, 454 S.W.3d at 658–60 (holding that the trial court erred in dismissing the plaintiff's claims on the merits because the trial court had not rendered judgment and the plaintiff still had the right to take a nonsuit without prejudice); *Taliaferro*, 804 S.W.2d 548, 550 (holding that "in the context of a summary judgment proceeding, a plaintiff may take a nonsuit at any time prior to the time the court renders judgment"); *accord Cricket Communications v. Trillium Indus*., 235 S.W.3d 298, 311 (Tex. App.—Dallas 2007, no pet.); *Cook v. Nacogdoches Anesthesia Group, L.L.P.*, 167 S.W.3d 476, 482 (Tex. App.—Tyler 2005, no pet.); *Pace Concerts, Ltd. v. Resendez*, 72 S.W.3d 700, 702 (Tex. App.—San Antonio 2002, pet. denied).

Noble argues that in *Lacy* this court (1) made clear that a trial court has discretion to dismiss a case with prejudice when the plaintiff takes a nonsuit without prejudice to avoid an unfavorable ruling; and (2) acknowledged that a request seeking a declaration that a nonsuit without prejudice should be treated as a dismissal with prejudice is a proper and valid request. The *Lacy* court did neither. The *Lacy* majority did not state that if the plaintiff had taken a nonsuit without prejudice to avoid an unfavorable ruling on the merits, that action would allow the trial court to declare the nonsuit without prejudice to be a nonsuit with prejudice. *See Lacy v. Castillo*, 580 S.W.3d 830, 832–37 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (maj. op.). Rather, all the *Lacy* majority held was that the trial court did not abuse its

discretion in determining that the plaintiff did not nonsuit his claims to avoid an unfavorable ruling. *See id*. at 834–37. The *Lacy* majority therefore never reached the question of what would have been the effect if the trial court concluded that the plaintiff had nonsuited his claims to avoid an unfavorable ruling, *i.e.,* would it then be appropriate to convert the nonsuit without prejudice to with prejudice.[4] *See id*.

Noble also cites *Epps* for the proposition that the Supreme Court has made clear that a trial court has discretion to dismiss with prejudice when a nonsuit is taken to avoid an unfavorable ruling. Noble's reliance on *Epps* is misplaced. *See Epps*, 351 S.W.3d at 865, 865–70. The Supreme Court of Texas granted review in *Epps* to decide whether a defendant may be a prevailing party when the plaintiff takes a nonsuit without prejudice. *See id*. at 865. The high court held that a defendant may be a prevailing party for the purposes of a prevailing-party attorney's-fees provision if the plaintiff takes a nonsuit without prejudice and if the trial court determines, on the defendant's motion, that the plaintiff took the nonsuit without prejudice to avoid an unfavorable ruling on the merits. *See id*. at 870. The high court did not say that if the trial court makes this determination, the nonsuit without prejudice would be transformed into a nonsuit with prejudice. *See id*. at 865–70. Indeed, the premise of the *Epps* court's inquiry was that the plaintiffs had taken a nonsuit without prejudice. *See id*. In *Epps*, the supreme court addressed the circumstances under which a defendant may recover attorney's fees as a prevailing party in a lawsuit even though the plaintiff took a nonsuit without prejudice. *See id*. In today's case, Noble did not seek to recover attorney's fees under a contract or statute providing that a prevailing

[4] The concurring justice concluded that presuming for the sake of argument that the plaintiff took a nonsuit without prejudice to avoid an unfavorable ruling on the merits, that action would not allow the trial court to declare the plaintiff's nonsuit without prejudice to be a nonsuit with prejudice. *See Lacy v. Castillo*, 580 S.W.3d at 838–41 (Frost, C.J., concurring). Thus the concurring opinion does not support Noble's position either.

party may recover attorney's fees; rather, Noble asked the trial court to change Dargin's nonsuit without prejudice to a nonsuit with prejudice even though Dargin denominated it as a nonsuit without prejudice. *Epps* is not on point.

Noble also cites *Referente v. City View Courtyard, L.P.* for the proposition that "[a] court can dismiss claims with prejudice when the plaintiff nonsuits after the defendant moved for summary judgment and does not offer a legitimate reason for the nonsuit." *See* 477 S.W.3d 882 (Tex. App.—Houston [1st Dist.] 2015, no pet.). This proposition is not stated in or supported by the *Referente* opinion. *See id*. at 883–88. The parties have not cited and research has not revealed a case stating this proposition. In *Referente* the plaintiffs nonsuited the case without prejudice, and no court ever dismissed any of the plaintiffs' claims with prejudice. *See id*. Instead the *Referente* court applied the *Epps* precedent and affirmed the trial court's award of attorney's fees to the defendants under a prevailing party contract provision based on the trial court's finding that the plaintiffs nonsuited to avoid an unfavorable ruling on the merits. *See id*.

III. CONCLUSION

When Dargin took a nonsuit without prejudice he had the right to do so, and the trial court erred in granting the Motion to Declare and changing his nonsuit to a nonsuit with prejudice. Therefore, we reverse the trial court's order granting this relief and render judgment nonsuiting the case without prejudice and dismissing Dargin's claims without prejudice to refiling.

/s/ Randy Wilson
Justice

Panel consists of Justices Wilson, Hart, and Boatman.