Rel: August 20, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200066

JT Construction, LLC

v.

MW Industrial Services, Inc.

Appeal from Walker Circuit Court
(CV-20-900278)

SHAW, Justice.

JT Construction, LLC ("JTC"), the defendant below, appeals from the Walker Circuit Court's judgment awarding declaratory and injunctive relief to MW Industrial Services, Inc. ("MWI"), the plaintiff in this contract dispute. We reverse and remand.

Facts and Procedural History

MWI contracted with Golder Associates, Inc. ("Golder"), to provide labor and services for a construction project at Plant Gorgas, a power plant operated by Alabama Power Company ("Alabama Power") in Walker County. Southern Company Power, Inc. ("Southern Company"), is the parent company of Alabama Power.[1] Pursuant to the terms of a contract between MWI and Golder ("the master contract"), which governs MWI's work at Plant Gorgas, MWI was prohibited from "permit[ting] any lien, affidavit of nonpayment, stop payment notice, attachment or other encumbrance ... to remain on record against [Plant Gorgas] or the property upon which it is situated for ... work performed or materials finished in connection [there]with" by any subcontractor with whom MWI might also contract.

On or around April 13, 2020, pursuant to a bid proposal provided by JTC and accepted by MWI, JTC also apparently began work at Plant Gorgas. JTC's bid proposal provided that 10% of the bid amount was to

[1]Golder, Alabama Power, and Southern Company are not parties to the present litigation.

be paid to JTC by April 16, 2020, to allow JTC to purchase necessary tools and equipment to undertake performance of its duties. At or around that same time, MWI presented to JTC for execution a "Project-Specific Supplier Services Agreement" ("the subcontract agreement") regarding JTC's provision of certain labor and equipment to MWI in connection with the work at Plant Gorgas. Paragraph 15 of the subcontract agreement ("the lien-waiver provision") precluded JTC, in accordance with the master contract, from filing a lien against property owned by Alabama Power or Southern Company.

Initially, JTC attempted to revise the subcontract agreement by returning to MWI a "Red-Line" version deleting the lien-waiver provision. Although it asserted that it did not receive, by the agreed-upon date, the initial promised payment equal to 10% of its bid amount, and despite its failure to execute the subcontract agreement, JTC nonetheless continued work at Plant Gorgas.

After JTC had allegedly been working at Plant Gorgas for over 90 days without having received payment, MWI, according to JTC, purportedly informed JTC that if it did not execute the original, unedited

version of the subcontract agreement, JTC would not be paid for its previously completed work. JTC, allegedly in desperate need of the funds to pay certain outstanding invoices, signed the subcontract agreement on June 10, 2020.

Following execution of the subcontract agreement, a dispute arose between MWI and JTC in connection with JTC's performance of its contractual obligations and the amount owed to JTC for the work it had performed. In September 2020, counsel for JTC provided a "Notice of Mechanics' Lien" indicating that JTC claimed against the real property on which Plant Gorgas was situated a lien in the amount of $1,195,152.92 "for goods, services and materials rendered or furnished for said buildings and improvements" in connection with JTC's work under the subcontract agreement.

In a subsequent written response, MWI pointed out the language of the lien-waiver provision and demanded that JTC withdraw the lien notice. Thereafter, in related correspondence, JTC alleged that it had executed the subcontract agreement only after MWI had promised to pay certain past-due amounts to JTC upon execution of the subcontract

agreement. According to JTC, however, those amounts were never paid; thus, JTC contended that it had been forced to sign the subcontract agreement under duress to receive payment and that MWI had fraudulently induced its execution of the subcontract agreement. For both of the foregoing reasons, JTC disputed that the lien-waiver provision was enforceable. In further correspondence, MWI asserted that JTC had been paid for any previous work in May 2020, before its execution of the subcontract agreement, and again demanded that JTC withdraw its notice of lien.

On September 24, 2020, JTC filed in the Walker Probate Court a "Verified Statement of Mechanics' Lien" in the amount of $1,195,152.92 and a supporting affidavit. On September 30, 2020, MWI filed a complaint against JTC in the Walker Circuit Court seeking both declaratory and injunctive relief. Specifically, MWI requested, pursuant to Rule 65, Ala. R. Civ. P., a temporary restraining order and a preliminary injunction prohibiting JTC from filing a lien on the Plant Gorgas property and further requiring the withdrawal of the previously

filed lien. MWI also sought a declaratory judgment "giving full force and effect to" the subcontract agreement.

MWI's complaint was accompanied by supporting exhibits, including the affidavit of its counsel of record and supporting documentation demonstrating both MWI's unsuccessful demands that JTC withdraw the lien notice and the alleged potential for immediate and irreparable financial harm to MWI if the lien was not withdrawn. Also included was an affidavit from an MWI officer addressing JTC's contention that it had signed the subcontract agreement under duress and specifically averring that the subcontract agreement had to comport with MWI's own contractual obligations under the master contract; that MWI thus could never have consented to the striking of the lien-waiver provision; that, at the time the subcontract agreement was executed, JTC had issued to MWI invoices totaling $193,887.50 despite the lack of a formal contract between the parties; that certain invoices submitted by JTC had been rejected on the grounds that they were erroneous or insufficiently detailed; and that the "approved" invoices had totaled $145,366.04 and MWI had issued payment in the amount of $139,320, leaving a balance of $6,046.04 as of

June 10, 2020, the date JTC signed the subcontract agreement. A copy of the check issued to JTC by MWI on May 29, 2020, in the amount of $139,320, and reflecting JTC's subsequent deposit on June 2, 2020, was also included.

On the date MWI's action was commenced, the trial court issued the requested temporary restraining order requiring JTC to withdraw its lien. In that same order, the trial court also indicated that on October 7, 2020, it would hold "a hearing on the preliminary injunction in this cause, pursuant to Rule 65 ..., as prayed for in [MWI's] complaint."

The record suggests that JTC did not file any response to MWI's complaint before the scheduled hearing date, but it did appear at the hearing. JTC was not served with MWI's complaint until October 9, 2020, after the hearing took place.

The transcript of the October 7, 2020, hearing reflects that, at its beginning, the trial court announced: "[W]e're here today for hearing on [MWI's] complaint for declaratory judgment and injunctive relief of preliminary and permanent. At least preliminary. I'm not sure about the permanent. We'll see where we go with that." At that time, when

questioned by the trial court as to what "[they] need[ed] to accomplish here today," MWI's counsel replied: "Basically we're looking to get a preliminary injunction today." Shortly thereafter, following a summary of MWI's position, its counsel reiterated that "[MWI's] intent [was] to get a preliminary injunction ...."

Later, when counsel for the parties engaged in argument as to whether the "irreparable financial injury" alleged by MWI was sufficient to justify injunctive relief, MWI identified authority allegedly supporting its claims. At that time, the trial court asked JTC's counsel whether he had "had time to look at [the authority]" and received a negative response. The trial court then announced:

> "Why don't we proceed on and hear whatever we need to hear, and then I would imagine I'll take the matter under advisement. And I'll give each of you an opportunity to submit, and you can respond to this and argue, as to why they're not entitled to an injunction and so forth. But let's go ahead and proceed on to take whatever testimony y'all are prepared to offer today, if any, and we'll go from there."

(Emphasis added.)

During MWI's subsequent attempt to admit documentary evidence, including copies of the master contract and subcontract agreement, the

following exchange occurred between counsel for MWI and counsel for JTC:

> "[MWI's counsel]: I'm sorry I'm not showing these [exhibits] to you, but you've seen them, I'm sure.
>
> "[JTC's counsel]: I haven't."

Thereafter, MWI offered testimony to confirm the details surrounding the execution of the subcontract agreement, including that the signed subcontract agreement was in effect at the time that JTC filed its verified statement of lien, and regarding the payments allegedly made by MWI to JTC or on JTC's behalf.

After MWI rested, JTC presented testimony from Tim Kittrell, its vice president, who outlined JTC's invoicing process for the Plant Gorgas project and the amounts JTC claimed it was owed under the subcontract agreement. In response to a letter that JTC's counsel offered into evidence, MWI's counsel pointed out that "attachments" referenced in the letter did not appear to be appended to the proffered copy. JTC's counsel indicated that he did not have the attachments at the hearing.

Regarding the allegedly outstanding invoices, which were specifically labeled as having been rejected by MWI for lack of supporting detail, Kittrell testified that, despite that label, they were subsequently "adjusted" and later approved. When asked by MWI's counsel whether he possessed proof of that alleged approval, Kittrell responded: "I know we have it. It might not be here today, but we do have that," and further maintained that JTC possessed "documentation to support [the disputed] invoices."

Also during Kittrell's testimony, the trial court interrupted to inquire as follows:

> "THE COURT: Can I interrupt just a minute. ... I'm sorry to do this, but let me ask this. Aren't we getting pretty much beyond -- what am I missing here? I understand the relief [MWI is] asking for, which is the injunction to enjoin [JTC from] filing a lien and for declaratory judgment giving full force and effect to the agreement, but now, can I not give full force and effect to that and [JTC] still have [the] right to file some sort of -- I guess it would be a lawsuit, breach of contract?
>
> "[MWI's counsel]: Absolutely.
>
> "THE COURT: Well, then, why are we --

> "[MWI's counsel]: That's what we've told them. They can sue us.
>
> "THE COURT: I'm satisfied, I'm satisfied that you're entitled to the relief you've asked for. But I'm certainly not prepared to preclude [JTC] from [its] right to proceed on a breach of contract claim, or however [it] wants to proceed, to claim that [it's] due some more money from [MWI].
>
> "[MWI's counsel]: We agree, Your Honor, totally.
>
> "THE COURT: ... So who else do you want to put on? I'm satisfied that the contract is due to be enforced, okay? And so is there something else that you all would offer to show me why it shouldn't be enforced?
>
> "[JTC's counsel]: Yes, we have further evidence ... to go towards the duress argument."

At the conclusion of its evidentiary submission, JTC objected to granting an injunction and renewed its earlier argument that the financial harm alleged by MWI "is not sufficient for preliminary injunction." The trial court overruled JTC's objection and stated on the record its intent "to grant [MWI] the relief requested."

Following a discussion between the trial court and MWI's counsel regarding the proper way to "enjoin" the existing lien, the trial court's request that MWI present a proposed order "one day next week," and the

trial court's related instruction to JTC's counsel that "if [JTC has] some problem with the way it's proposed, [to] let [the trial court] know," the hearing concluded upon the following additional exchange between the trial court and MWI's counsel:

> "[MWI's counsel]: Thank you, Your Honor. Is that granting the preliminary injunction or granting just the total injunction that no liens can be filed under [the agreement]?
>
> "THE COURT: Yeah, that's what I'm -- yes, I'm ordering you the relief you requested, without precluding [JTC] from taking further action to recover what [it says it is] due under the agreement."

As mentioned above, on October 9, 2020, two days after the hearing, JTC was served with MWI's complaint.

On October 15, 2020, the trial court entered an order issuing a permanent injunction and ruling in favor of MWI on its declaratory-judgment claim, providing as follows:

> "The Court, having considered [MWI's] Complaint ... and all of the testimony and evidence presented by the parties, finds that [MWI's] prayer for relief requesting that the [subcontract] Agreement be declared valid and enforceable and that [JTC] should be permanently enjoined, both in the past and in the future, from placing any mechanic's liens on the land, building, and/or improvements on the property ... at Plant Gorgas ... is due to be granted."

The trial court also awarded MWI attorneys' fees.

The following day, JTC filed in the trial court an "Answer, Counterclaim, & Motion to Transfer Venue." In addition to generally denying MWI's entitlement to the requested relief, JTC asserted numerous defenses to MWI's claims and a 10-count "compulsory counterclaim" against MWI seeking damages for, among other things, breach of contract based on MWI's purported failure to pay JTC's outstanding invoices for work performed pursuant to the subcontract agreement. JTC further demanded "trial by struck jury on all matters raised" and moved, pursuant to Rule 12(b)(3), Ala. R. Civ. P., to transfer the action to either the Jefferson Circuit Court or the Shelby Circuit Court in accordance with a choice-of-venue provision in the master contract.

Also on October 16, 2020, JTC filed a "Motion to Reconsider and Motion to Stay" in which it argued, among other things, that the trial court had erred in entering a "final determination on the merits" pursuant to "an un-noticed bench trial" conducted at the time of the hearing scheduled for review of MWI's preliminary-injunction request. According to JTC, the trial court's actions deprived it of due process because, at the

time of the hearing, it had not yet been formally served with MWI's complaint, it had been unprepared to "take and present testimony" for trial (as opposed to responding to MWI's pending request for a preliminary injunction) without the benefit of discovery, and it had not yet filed an answer (which, because it had not yet been served, it was not yet obligated to file and in which it ultimately asserted defenses to MWI's injunctive and declaratory-judgment claims, its own compulsory counterclaim, and a jury demand). In addition, JTC argued that, even if the trial court had given notice that the October 7, 2020, hearing would be a trial on the merits, the seven days between the issuance of the trial court's order setting that hearing and the hearing date would nonetheless have failed to provide "sufficient time under the Alabama Rules of Civil Procedure to conduct discovery or subpoena witnesses."

While its postjudgment motion remained pending, JTC filed a notice of appeal to this Court, which we held in abeyance until the trial court, by an order entered on November 7, 2020, denied JTC's postjudgment motion. See Rule 4(a)(5), Ala. R. App. P.

Standard of Review

Because the determinative issue on appeal concerns a question of law related to the trial court's entry of permanent injunctive relief, we review that judgment de novo. Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008).

Discussion

On appeal, JTC raises various challenges to the trial court's judgment. Specifically, among claims challenging both procedural and substantive aspects of that judgment, JTC alleges that the trial court deprived JTC of due process and the right to a jury trial by prematurely proceeding to a final hearing on the merits of the action -- including whether to grant permanent injunctive relief -- without providing JTC with either notice or the opportunity to prepare a defense to MWI's claims. We agree.[2]

Rule 65(a), Ala. R. Civ. P., provides:

> "(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

[2]Because of the dispositive nature of this issue, we pretermit discussion of the remaining issues JTC raises on appeal.

> "(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury."

(Emphasis added.)

In Martin v. Patterson, 975 So. 2d 984, 990-91 (Ala. Civ. App. 2007), the Court of Civil Appeals considered a similar claim that the defendants had not received "proper notice that a hearing on the merits of a permanent injunction would be held, as opposed to a hearing on the propriety of a preliminary injunction," stating:

> "In Woodward [v. Roberson, 789 So. 2d 853 (Ala. 2001)], our supreme court noted:
>
> > "'It is appropriate for the trial court, either before or after the commencement of the hearing on an application for a preliminary injunction, to order that the trial of the action on the merits be consolidated with that hearing. Rule 65(a)(2), Ala. R. Civ. P. However, such a consolidation must conform to the rights of the litigants to reasonable notice. Pughsley v. 3750 Lake Shore Drive Coop.

> Bldg., 463 F.2d 1055 (7th Cir. (Ill.) 1972) (per then Circuit Judge John Paul Stevens).'

"Woodward, 789 So. 2d at 855. Pughsley v. 3750 Lake Shore Drive Coop. Bldg., 463 F.2d 1055 (7th Cir. 1972), which is cited in Woodward, also stated that 'the parties should be given a clear opportunity to object, or to suggest special procedures, if a consolidation is to be ordered.' 463 F.2d at 1057.

"In determining that the trial court had entered a preliminary injunction and not a permanent injunction in Woodward, our supreme court distinguished the facts in that case from those in TFT[, Inc. v. Warning Systems, Inc., 751 So. 2d 1238, 1242 (Ala. 1999), overruled on other grounds by Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008),] by observing that 'the parties in TFT agreed to the consolidation of the hearing on the preliminary-injunction request with a hearing on the merits.' 789 So. 2d at 855 (citing TFT, 751 So. 2d at 1241-42). In regard to that agreement our supreme court noted in TFT that 'the trial court asked the parties during the hearing, "Are we going to combine this hearing with any subsequent hearing, for the record?" and to that question counsel for each of the parties responded, "Yes, sir."' 751 So. 2d at 1242. Although at the conclusion of the second hearing in this case the parties agreed to 'submit it' for the trial court's consideration, such an agreement is not similar to the agreement in TFT. In fact, the agreement to submit the issue for the trial court's determination in this case is similar to dialogue between the trial court and the attorneys in Pughsley, supra. In that case the trial court stated:

> "'"Now I am going to insist, counsel, that whatever your total case is, and I want to give you every reasonable opportunity to put it in, that you

> complete it before I request the defendants to go ahead.
>
> "'"Now, can you produce your witness tomorrow...."'

"463 F.2d at 1056. In determining that the trial court's statement in Pughsley did not meet the notice requirement under Rule 65(a)(2), Fed. R. Civ. P., the United States Court of Appeals for the Seventh Circuit stated that the '[p]laintiffs' counsel could reasonably have understood the judge as merely requiring a presentation on the following day of the remainder of plaintiffs' "total case" in support of their pending motion. That was the only hearing then in progress.' Id. at 1057. Similarly, within the context of the overall trial-court proceedings in this case, it is apparent that the parties intended to submit the question whether the preliminary injunction should be entered for the trial court's consideration -- they did not agree to submit the question whether a permanent injunction should be entered. However, our analysis does not end with that determination, because:

> "'A party contesting the entry of final judgment at the preliminary injunction stage, however, must demonstrate prejudice as well as surprise. The action may be remanded to the trial court for a determination of whether prejudice has resulted. On the other hand, if it is clear that consolidation did not detrimentally affect the litigants, as, for example, when the parties in fact presented their entire cases and no evidence of significance would be forthcoming at trial, then the trial court's consolidation will not be considered to have been improper.'

> "11A Charles Allan Wright et al., Federal Practice and Procedure: Civil § 2950 (2d ed. 1995) (footnotes omitted); see also Rule 45, Ala. R. App. P. (providing that '[n]o judgment may be reversed or set aside, nor new trial granted in any ... case ... for error as to any matter of ... procedure, unless ... after an examination of the entire cause, it should appear that the error complained of has probably injuriously affected substantial rights of the parties')."

975 So. 2d at 991-92 (footnote omitted).

A. Notice

In the present case, the record reflects, as JTC notes, that the trial court specifically noticed the October 7, 2020, hearing as "a hearing on the preliminary injunction in this cause, pursuant to Rule 65" -- not as a bench trial on the merits of MWI's claims. Further, the transcript, as quoted above, suggests that, consistent with the trial court's order and contrary to the terms of the judgment ultimately entered, the trial court and MWI suggested on the record that only the issue of preliminary injunctive relief was at issue at the October 7, 2020, proceeding. In fact, it was not until the conclusion of the hearing that there was arguably an indication by the trial court that it was considering granting anything other than preliminary injunctive relief. Indeed, our review of the record

indicates that apparently neither party appeared certain as to the relief being contemplated by the trial court either during or at the conclusion of the proceeding below.

To the extent that the trial court's ultimate comments at the close of the hearing might have suggested to JTC that the trial court was also considering granting permanent injunctive relief -- as Rule 65(a)(2) clearly contemplates -- such notice at that late stage of the proceeding cannot be deemed adequate in this case, in which JTC was not prepared for a trial on the merits and in which final relief was awarded before JTC had been served with MWI's complaint and before its answer was due. See Rule 12(a), Ala. R. Civ. P. ("A defendant shall serve an answer within thirty (30) days after the service of the summons and complaint upon that defendant ...."), and Rule 38(b), Ala. R. Civ. P. ("Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than thirty (30) days after the service of the last pleading directed to such issue."). Moreover, the record clearly reflects the parties' ongoing dispute -- and widely disparate

positions -- regarding any amounts owed to JTC under the subcontract agreement, which dispute ultimately formed the basis of JTC's counterclaims. Under the present circumstances, JTC received inadequate notice of the consolidation of the preliminary-injunction hearing with a final hearing on the merits. Cf. Funliner of Alabama, L.L.C. v. Pickard, 873 So. 2d 198, 219 (Ala. 2003) ("Notice to the adverse party before a preliminary injunction is issued is mandatory, pursuant to Rule 65(a), Ala. R. Civ. P. The defendants had no indication that the request for a preliminary injunction was to be heard at the class-certification hearing, that the defendants needed to address the preliminary injunction at that time, or that the request had been set for a hearing. An adverse party must have notice and a hearing in order to adequately oppose a request for a preliminary injunction.").

B. Prejudice

As explained in Martin, however, our inquiry does not conclude with our finding of insufficient notice; instead, we must further consider whether JTC was prejudiced by that "surprise" consolidation. 975 So. 2d at 991.

> "[The Court of Civil Appeals] held in Martin that a party objecting to the consolidation of a hearing on a preliminary injunction with a final trial on the merits under Rule 65(a)(2), Ala. R. Civ. P., must not only demonstrate surprise that the hearing was consolidated with a trial on the merits but also demonstrate that the consolidation resulted in prejudice to that party. Martin, 975 So.2d at 991-92. To demonstrate such prejudice, [that court] explained, would require some proof that the party had lacked the opportunity to present its entire case or that the party had 'additional "evidence of significance" that "would be forthcoming at trial."' Id. at 992 (quoting 11A Charles Alan Wright et al., Federal Practice and Procedure: Civil § 2950 (2d ed. 1995) ('Wright & Miller')); see also Atlantic Richfield Co. v. F.T.C., 546 F.2d 646, 651 (5th Cir.1977) (declining to find error in a Rule 65(a)(2), Fed. R. Civ. P., consolidation -- i.e., consolidating a hearing on a preliminary injunction with a final trial on the merits -- because the complaining party failed to show prejudice resulting from the lack of notice of the consolidation). Furthermore, to establish the required element of prejudice, specific allegations regarding the evidence that allegedly was not or could not have been presented must be made by a party objecting to the consolidation of any of the hearings that might be held under Rule 65. See Roberts v. Community Hosps. of Indiana, Inc., 897 N.E.2d 458, 466 (Ind. 2008) ('[T]he prevailing federal rule is that allegations of prejudice must be specific.')."

Jacobs Broad. Grp., Inc. v. Jeff Beck Broad. Grp., LLC, 160 So. 3d 345, 351-52 (Ala. Civ. App. 2014).

MWI argues that JTC suffered no prejudice from the consolidation of the preliminary-injunction hearing with the final trial on the merits of

MWI's claims. JTC, however, contends that the trial court's precipitous actions deprived it of the right to a jury trial. We agree.

It is apparent that, despite the lack of formal service of the complaint in this case, JTC did receive some type of notice of the scheduled hearing on MWI's request for a preliminary injunction. That notice allowed JTC to appear at the scheduled preliminary-injunction hearing with legal counsel and to offer evidence in opposition to MWI's request for preliminary injunctive relief. Nonetheless, as demonstrated by the excerpts from the hearing quoted above, JTC was not fully prepared to address the merits of MWI's claims because it had not been provided, or it had lacked sufficient opportunity to locate and review, all the documentary evidence and applicable legal authority relied on by MWI. In fact, JTC had not been served with the complaint, and no discovery had occurred.

Further, despite multiple representations by the trial court that, following the hearing, JTC would be afforded additional opportunities both to engage in follow-up briefing of certain issues and to attend future proceedings, for all that appears those representations were later negated

by the trial court's immediate decisions to award MWI permanent injunctive relief[3] and to rule in favor of MWI on its declaratory-judgment claim.

Clearly, JTC had the opportunity to present testimony in defense to MWI's request for a preliminary injunction, which requires a different evidentiary standard than that applicable to a request for a permanent injunction. See D.M.C. Enters., Inc. v. Hope, 100 So. 3d 1102, 1109 (Ala. Civ. App. 2012) ("[A]s opposed to a preliminary injunction, which requires a showing of a likelihood of success on the merits of the litigation, a permanent injunction requires proof of success on the merits of the litigation."). Further, a final disposition so near in time to the filing of MWI's complaint and before the parties had engaged in any discovery

---

[3]Based on the record, the vagueness of the trial court's representations regarding the precise nature of the relief that the court was considering -- as well as the ostensible opportunity for further submissions -- explains JTC's failure to object during the proceeding. See Martin, 975 So. 2d at 991 ("Pughsley v. 3750 Lake Shore Drive Coop. Bldg., 463 F.2d 1055 (7th Cir. 1972), which is cited in Woodward[v. Roberson, 789 So. 2d 853 (Ala. 2001)], also stated that 'the parties should be given a clear opportunity to object, or to suggest special procedures, if a consolidation is to be ordered.' 463 F.2d at 1057." (emphasis added)).

gave JTC no opportunity to obtain or identify material evidence. More importantly, as indicated by its subsequent answer, JTC timely demanded a jury trial. The trial court's premature consolidation and decision on the merits, however, deprived JTC of that right in contravention of Rule 65(a)(2), which permits consolidation but "save[s] the parties['] ... rights ... to trial by jury." We conclude that JTC sufficiently demonstrated prejudice.

Conclusion

Based on the foregoing, we hold that the trial court erred in issuing the declaratory judgment and in awarding permanent injunctive relief without prior notice to JTC, as required by Rule 65(a)(2), and that JTC was prejudiced by that error. The trial court's judgment is therefore reversed, and this case is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Parker, C.J., and Bryan, Mendheim, and Mitchell, JJ., concur.