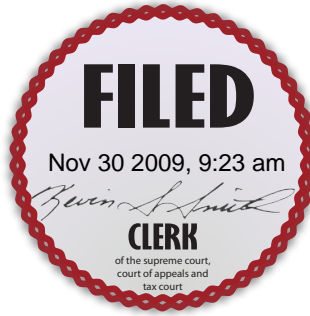


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

THOMAS A. PASTORE
Thomas Pastore, P.C.
Indianapolis, Indiana

RAYMOND A. BASILE
PAUL J. CARROLL
Harrison & Moberly, LLP
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMBERLAND HOME CENTER, INC., and)
TIMBERLAND LUMBER CO.,)
)
Appellants-Defendants,)
)
vs.)
)
HANSEN & HORN GROUP, INC.)
)
Appellee-Plaintiff.)

No. 49A02-0905-CV-476

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Dreyer, Judge¹
Cause No. 49D10-0903-CC-13144

November 30, 2009

¹ According to Appellee Hansen & Horn, on June 19, 2009, pursuant to a motion for a change of judge, the underlying cause was transferred to the Honorable David A. Shaheed.

MEMORANDUM DECISION—NOT FOR PUBLICATION

BRADFORD, Judge.

Appellants-Defendants Timberland Home Center and Timberland Lumber Company (collectively, “Timberland”) appeal the trial court’s grant of a preliminary injunction in favor of Appellee-Plaintiff Hansen & Horn Group in its action against Timberland for breach of contract. Upon appeal, Timberland challenges the trial court’s order on several grounds, including that it did not include findings of fact and conclusions thereon as required by Indiana Trial Rules 52 and 65(D). Concluding that such findings are necessary to support a preliminary injunction in the instant case, we reverse and remand to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

Hansen & Horn builds and sells single family residential projects. On or about March 12, 2001, Hansen & Horn entered into a Continuing Agreement with Timberland relating to materials and services which Timberland agreed to provide for Hansen & Horn’s projects. Provision 9 of that Agreement, deemed a “no lien provision” stated, in part, as follows:

The parties hereto agree that no liens shall attach to real estate or any improvements in favor of Subcontractor or any subcontractor, mechanic, laborer or materialman or supplier, or any firm, person or corporation performing labor or furnishing materials, equipment, tools or machinery for improvements pursuant to this Agreement.

Plaintiff’s Exh. 1. The Agreement further provided for purchase orders which Hansen & Horn would issue to Timberland for individual projects. These purchase orders outlined the work required for individual projects and the price of such work. These purchase orders did

not reference the Agreement, nor did they reference mechanic's liens or state that they were impermissible. In March of 2009, Timberland filed sixteen mechanic's liens against Hansen & Horn projects.

On March 20, 2009, Hansen & Horn initiated an action against Timberland alleging breach of contract based upon Timberland's filing of mechanic's liens, among other grounds. On April 3, 2009, Hansen & Horn filed an emergency motion for a preliminary injunction requiring Timberland to release its mechanic's liens and enjoining it from filing further liens. The trial court held a hearing on April 20, 2009, during which the parties stipulated to the existence of sixteen mechanic's liens filed by Timberland against Hansen & Horn.

On April 21, 2009, the trial court granted Hansen & Horn's motion for a preliminary injunction, ordering that Timberland release existing mechanic's liens and enjoining Timberland from filing mechanic's liens against any Hansen & Horn projects governed by the Agreement. On April 27, 2009, Timberland filed a motion requesting, *inter alia*, that the trial court enter findings of fact and conclusions thereon pursuant to Rule 65(D).² The trial court did not rule on this motion, and on May 19, 2009, Timberland filed notice of the instant interlocutory appeal.

DISCUSSION AND DECISION

The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion.

² The motion also requested that the court order Hansen & Horn to provide security, pursuant to Rule 65(C), for payment of costs and damages to Timberland in the event that it was found to have been wrongfully enjoined.

Apple Glen Crossing, LLC v. Trademark Retail, Inc., 784 N.E.2d 484, 487 (Ind. 2003). To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence that: (1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and (4) the public interest would not be disserved. *Id.* If the movant fails to prove any of these requirements, the trial court's grant of an injunction is an abuse of discretion. *Id.*

In challenging the trial court's order granting Hansen & Horn an injunction, Timberland claims that the trial court committed reversible error by failing to issue findings of fact and conclusions thereon pursuant to Rules 52 and 65(D). Rule 52 provides that "[t]he court shall make special findings of fact without request . . . in granting or refusing preliminary injunctions. . . ." Trial Rule 65(D) provides that "[e]very order granting temporary injunction and every restraining order shall include or be accompanied by findings as required by Rule 52[.]"

A trial court's failure to enter findings of fact and conclusions thereon in an order granting a preliminary injunction constitutes reversible error when it is harmful or prejudicial to the appellant. *See Whiteco Indus., Inc. v. Nickolick*, 549 N.E.2d 396, 397 (Ind. Ct. App. 1990) (dissolving injunction where trial court failed to include required findings and conclusions); *see also Teperich v. N. Judson-San Pierre High Sch. Bldg. Corp.*, 257 Ind. 516,

520, 275 N.E.2d 814, 817 (1971) (finding error harmless where facts were relatively simple and not in dispute).

At the hearing, the parties disputed certain facts, including those relating to whether the alleged ripple effect of a mechanic's lien, and the resulting lost business for Hansen & Horn, rendered standard remedies at law inadequate and caused Hansen & Horn irreparable harm. Yet the trial court's order included no findings of fact resolving these or any disputed facts. Instead, it listed only the bare legal conclusions necessary to justify a preliminary injunction, namely that Hansen & Horn had no adequate remedy at law and would suffer irreparable harm; that Hansen & Horn had a reasonable likelihood of success on the merits; that greater harm would be done by refusing the injunction than by granting it; and that the injunction did not disserve public policy. Given the relatively complicated and disputed nature of Hansen & Horn's alleged injury, we are unable to evaluate the trial court's conclusions relating to whether Hansen & Horn indeed faced irreparable harm and whether such harm outweighed the harm to Timberland of granting the injunction and releasing its liens.³ Accordingly, we reverse the trial court's order issuing a preliminary injunction against Timberland and remand to the trial court for further proceedings consistent with this opinion.

The decision of the trial court is reversed, and the cause is remanded for further proceedings.

BAILEY, J., and VAIDIK, J., concur.

³ This is so especially in light of the fact that Hansen & Horn was not ordered to provide security for its injunction against Timberland as provided for in Rule 65(C).

