

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CW 1044

PLANTATION TRACE DEVELOPMENT, LLC

VERSUS

HENRY SCOTT, STATEWIDE CONSTRUCTION & LAND DEVELOPMENT, LLC, PARISH OF LAFOURCHE, AND THE LAFOURCHE PARISH PLANNING AND ZONING COMMISSION

Mrt. Gray

Judgment Rendered: JUN 25 2019

Appealed from the
17th Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
Case No. 130832

The Honorable F. Hugh Larose, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

shp Penzato, J., concurs in The Result

THERIOT, J.

In this case involving a petition for injunctive relief, a defendant appealed a trial court order striking the upcoming trial date from the court's docket on the grounds that any remaining issues were moot. Finding that the order appealed is not a final, appealable judgment, we exercise our discretion to convert the appeal to an application for supervisory writ and deny the relief requested.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Plantation Trace Land Development, L.L.C. ("Plantation Trace"), is the owner of a tract of land in Lafourche Parish. The southern boundary of Plantation Trace's property is marked by a railroad embankment, which is situated on property owned by Energy Realty Investment Company, L.L.C. ("Energy"). The property immediately south of the railroad embankment is owned by Statewide Construction & Land Development, L.L.C. ("Statewide"). Both Plantation Trace and Statewide acquired their property from Energy.

The natural direction of drainage of Plantation Trace's property runs from north to south, running from Plantation Trace's property, through Energy's property, and onto Statewide's property. In 2007, Plantation Trace was granted a drainage servitude on Energy's property, which servitude was consistent with the natural drainage flow from each tract. Because the railroad embankment would serve as a dam, preventing the natural flow of water from Plantation Trace's property, drainage channels had long ago been placed in the railroad embankment to facilitate the natural drainage. Under the conventional servitude of drainage granted in favor of Plantation Trace's property by Energy, Plantation Trace has the responsibility for clearing out and maintaining the drainage channels to allow water to continue to flow from Plantation Trace's property towards the south.

Both Plantation Trace and Statewide planned to develop their respective land. Statewide developed its land in phases to form a housing subdivision known as

Milltown Subdivision. In 2016, in conjunction with the development of Phase C of Milltown Subdivision, Statewide allegedly hauled in landfill in an effort to raise the land prior to construction; in doing so, they blocked Plantation Trace's drainage servitude, so that "the land [owned by Plantation Trace] no longer drains, and water backs up and remains in the drainage ditches that lead into the servitude." Plantation Trace subsequently submitted plans to the Lafourche Parish Planning Commission for the development of its property; however, the plans were rejected due to the drainage issues.

On September 18, 2016, Plantation Trace filed a petition for injunctive relief, seeking an injunction against Henry Scott,¹ Statewide, the Parish of Lafourche, and the Lafourche Parish Planning Commission² to prohibit any further construction, approval, or acceptance of any aspect of the subdivision project, until such time as the natural drainage of storm water is allowed through the subject property and the servitude in existence is restored to its full pre-construction capacity. The trial court issued a temporary restraining order on November 2, 2016, prohibiting all further construction, approval, or acceptance of any aspect of Phase C of Milltown Subdivision. The trial court also ordered the parties to appear and show cause on December 5, 2016, why a preliminary injunction should not issue and why the court should not fix a trial date for a permanent injunction.

After a full evidentiary hearing on the merits on December 5, 2016, at which the parties presented expert and fact witnesses and exhibits, the trial court rendered a judgment on December 14, 2016, stating:

IT IS ORDERED, ADJUDGED, AND DECREED that the *Petition for Injunctive [R]elief* against defendant Statewide Development, L.L.C. is hereby granted. Statewide is hereby ordered to

¹ Scott, the sole member of Statewide, was dismissed from the petition for injunctive relief by stipulation of the parties during the December 5, 2016 hearing.

² The Lafourche Parish Planning Commission was incorrectly referred to in the petition as Lafourche Parish Planning and Zoning Commission.

receive the natural drainage of Plantation Trace's estate and to make no work impeding such drain.³

In its reasons for judgment, the trial court made a factual finding that the work done on Statewide's property had blocked the drainage channels for Plantation Trace's property and noted that it was granting a "mandatory injunction ordering Statewide to clear any and all obstructions laying in the path of the alleged natural servitude of drainage." Statewide did not appeal this judgment.

On March 16, 2017, Statewide filed a motion to set a status conference "for the purpose of fixing a date and time for the trial on the permanent injunction." Thereafter, a pretrial conference was held on May 4, 2017, and a trial date was set. Statewide then filed a peremptory exception of nonjoinder of a party and a motion requesting that the court either set security for the preliminary injunction as required by La. C.C.P. art. 3610, or remove the injunction requiring Statewide to receive drainage waters and to make no work impeding the drain.

Plantation Trace filed a motion to strike both Statewide's peremptory exception and its motion to set security, on the grounds that the December 14, 2016 judgment granting the mandatory injunction against Statewide was a final judgment, from which no appeal had been taken, and therefore Statewide's exception and motion were "unauthorized collateral attacks on a final judgment and are moot." In support of its position, Plantation Trace relied on this court's en banc ruling in *Deshotels v. White*, 2016-0889 (La.App. 1 Cir. 8/16/17), 226 So.3d 1211, *writ denied*, 2017-1565 (La. 12/5/17), 231 So.3d 628. In *Deshotels*, this court held that a mandatory injunction, which (unlike a prohibitory injunction) cannot issue without a full hearing on the merits, has the same effect as a permanent injunction; thus, regardless of the parties' intent to submit the matter for a final decision, it is not possible, as a matter of law, for a court to issue a mandatory preliminary injunction.

³ The trial court dismissed the petition for injunctive relief against the Parish of Lafourche and the Lafourche Parish Planning Commission with prejudice.

Deshotels, 2016-0889 at p. 7, 226 So.3d at 1217-18. Thus, Plantation Trace reasoned that the trial court's December 14, 2016 judgment had granted a permanent injunction, which was subject to normal appeal delays, and since no appeal had been filed, the judgment had become final, and Statewide was precluded from making a collateral attack on that final judgment.

After a hearing, the trial court granted Plantation Trace's motion in a January 16, 2018 judgment, striking Statewide's peremptory exception and motion to set security.⁴ The trial court issued an order on its own motion on March 7, 2018, striking the previously-set trial date from its docket on the grounds that "the issues involved in this action have become moot and there is no justiciable issue or controversy on which this court can act." The trial court recognized that "jurisprudentially the mandatory injunction rendered on December 14, 2016, holds the same effect as a permanent injunction. The mandatory injunction was issued after a full evidentiary hearing on the issue and, thereafter, became a final judgment subject to the applicable appeal timelines." On March 29, 2018, Statewide⁵ filed a motion for a devolutive appeal from the trial court's March 7, 2018 order striking the trial date from the docket.

This court issued a rule to show cause *ex proprio motu* regarding the timeliness of the appeal; *i.e.*, whether Statewide's appeal is timely under La. C.C.P. art. 3612(C), which provides that an appeal from an order or judgment "relating to a preliminary injunction" must be taken within fifteen days from the date of the order or judgment. Statewide filed a brief in response to the rule to show cause, arguing that the order being appealed was not an order "relating to a preliminary injunction,"

⁴ Although Statewide filed a Notice of Intention to Apply for Supervisory Writs, seeking review of the January 16, 2018 judgment, no writ application appears to have ever been filed.

⁵ Although the Motion for Order of Appeal states that it is taken on behalf of both Statewide and Scott, Scott was dismissed from the suit and no judgment was rendered against him.

since it did not itself grant or deny injunctive relief, but merely struck a trial date.⁶ The rule to show cause was referred to the merits panel.

Louisiana Code of Civil Procedure article 3612 governs appeals of judgments or orders “relating to” injunctions. Regardless of whether the injunction issued by the trial court in this case was preliminary or permanent, the March 7, 2018 order striking the trial date from the court’s docket does not *relate to* an injunction, as required for an appeal under article 3612. See *Yokum v. Nicholas S. Karno II, Inc.*, 2012-1736, pp. 4-5 (La.App. 4 Cir. 10/23/13), 126 So.3d 723, 727, *writ denied*, 2013-2706 (La. 2/21/14), 133 So.3d 683 (holding that a judgment of contempt for violation of a preliminary injunction is not a judgment “relating to a preliminary injunction”). As such, the provision of La. C.C.P. art. 3612(B), providing a right of appeal from orders relating to preliminary or permanent injunctions, is inapplicable. *Id.* There being no law expressly providing for an appeal, the March 7, 2018 order, which does not determine the merits of the action, is an interlocutory, non-appealable judgment.⁷ See *In re Interdiction of Marceaux*, 2006-1328, p. 4 (La.App. 3 Cir. 2/14/07), 951 So.2d 1286, 1289.

The proper procedural vehicle to contest an interlocutory judgment is an application for supervisory writ. See La. C.C.P. art. 2201; *Alex v. Rayne Concrete Service*, 2005-1457, pp. 5-6 (La. 1/26/07), 951 So.2d 138, 144. We have authority to exercise our supervisory jurisdiction and treat the appeal of this interlocutory judgment as an application for supervisory writ, since the motion for appeal was filed within the thirty-day delay allowed under Rule 4-3 of the Uniform Rules –

⁶ Notably, Statewide’s motion seeking a devolutive appeal from the March 7, 2018 order took the opposite approach, asserting that Statewide was entitled to an appeal from the March 7, 2018 order under La. C.C.P. art. 3612 because the March 7, 2018 order was related to a preliminary or permanent injunction, since it “expressly referred to and incorporated an injunction issued by this Court on December 14, 2016.”

⁷ Louisiana Code of Civil Procedure art. 1841 states that a judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. A judgment may be interlocutory or final. A judgment which does not determine the merits but only preliminary matters in the course of an action is an interlocutory judgment, whereas a judgment that determines the merits in whole or in part is a final judgment. The appellate jurisdiction of this court extends to final judgments; interlocutory judgments are appealable only when expressly provided by law. See La. C.C.P. art. 2083; *Matter of Succession of Porche*, 2016-0538, pp. 6-7 (La. App. 1 Cir. 2/17/17), 213 So.3d 401, 405.

Courts of Appeal for the filing of an application for supervisory writ. *State in Interest of J.C.*, 2016-0138, p. 7 (La.App. 1 Cir. 6/3/16), 196 So.3d 102, 107; *KAS Properties, LLC v. Louisiana Board of Supervisors for Louisiana State University*, 2014-0566, p. 5 (La.App. 1 Cir. 4/21/15), 167 So.3d 1007, 1010. We exercise our discretion to convert Statewide’s appeal to an application for supervisory writ and consider the merits of the appeal under our supervisory jurisdiction. See *Stelluto v. Stelluto*, 2005-0074, p. 7 (La. 6/29/05), 914 So.2d 34, 39.

DISCUSSION

Statewide argues that the trial court erred: in improperly converting a preliminary injunction into a permanent injunction in its March 7, 2018 order, without a trial set pursuant to the procedure for an ordinary proceeding; in issuing a preliminary injunction without the requirement of security; and in failing to require the joinder of Energy as a party.

The trial court conducted a full evidentiary hearing on the merits prior to ruling on the request for injunctive relief and made it clear that it was issuing a mandatory injunction against Statewide, requiring it to take action to restore the drainage to Plantation Trace’s property.⁸ As this court noted in *Deshotels*, a mandatory injunction cannot, as a matter of law, be a preliminary injunction. *Deshotels*, 2016-0889 at p. 7, 226 So.3d at 1218. Thus, the trial court did not “convert” the preliminary injunction to a permanent injunction in its March 7, 2018 order, it merely recognized that its mandatory injunction was a permanent injunction, which had become final once the appeal delays expired, and could not be collaterally attacked. The trial court did not err in holding that Statewide’s pending exception and motion, as well as the upcoming trial date, constituted impermissible collateral attacks on a valid final judgment, nor did the trial court err in striking them

⁸ A mandatory injunction is so named because it commands the doing of some action and cannot be issued without a hearing on the merits. *Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa*, 2004-0270, p. 7 (La.App. 1 Cir. 3/24/05), 906 So.2d 660, 664.

on that ground. See *Park Place Surgery Center, LLC v. National Oilwell Varco, L.P.*, 2017-483, p. 7 (La.App. 3 Cir. 9/6/17), 250 So.3d 1087, 1092, *writ denied*, 2017-1682 (La. 11/28/17), 230 So.3d 221.

CONCLUSION

For the reasons set forth above, Statewide Construction & Land Development, L.L.C.'s appeal is converted to an application for supervisory writ, and the writ is denied. All costs associated with this matter are assessed to defendant, Statewide Construction & Land Development, L.L.C.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT DENIED.