Dissenting and Concurring Opinion Filed August 17, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00813-CV

EDWARD KELLY, EDWARD KELLY D/B/A KELLY PLUMBING & LEAK DETECTION, AND BRITTANY KELLY, Appellants
V.
SANJAI R. ISAAC, M.D., REBECCA ISAAC, MERIDIAN REVOCABLE TRUST, BARBARA HEIDEN, SHELLEY OLIVER, AND BLAKE MYERS, Appellees

On Appeal from the County Court at Law No. 7
Collin County, Texas
Trial Court Cause No. 007-01284-2017

DISSENTING AND CONCURRING OPINION

Before Justices Whitehill, Osborne, and Carlyle
Dissenting and Concurring Opinion by Justice Carlyle

I dissent from my friends in the majority, who have determined that the county court did not have jurisdiction over the Homeowners' lien-related claims. I join the remainder of the opinion.

The statute at issue says, "A county court does not have jurisdiction in . . . a suit for the enforcement of a lien on land . . . ." TEX. GOV'T CODE § 26.043(2). To answer this "question of statutory interpretation," the majority rewords the statute

and resorts to the absurd-result canon of statutory interpretation. It must do so because the statute's plain language does not extinguish jurisdiction here.

The majority says the county court has no jurisdiction "because § 26.043(2), properly construed, deprives county courts of jurisdiction over suits adjudicating the enforceability of liens." But that's not what the statute says. The plain language of the statute does not describe suits to remove liens or to have them declared unenforceable. *See Merit Mgmt. Partners I, L.P. v. Noelke*, 266 S.W.3d 637, 652 (Tex. App.—Austin 2008, no pet.) (Henson, J., dissenting) ("Where a party's pleadings do not affirmatively demonstrate an absence of jurisdiction, a doubtful case will be presumed in favor of jurisdiction." (citing *Peek v. Equip. Serv. Co.*, 779 S.W.2d 802, 804 (Tex. 1989)).

The Homeowners sued to remove a lien and have it declared unenforceable. The majority reasons that because the "lien's enforceability is thus at issue," and because "§ 26.043 shows a legislative intent that county courts should not decide questions closely related to land ownership," it would be absurd for the statute to permit jurisdiction to remove a lien but not to enforce it.

We must tread lightly when we resort to the absurd-results safety-valve method of interpretation and should do so only in "truly exceptional cases."[1] Mere

[1] Sometimes we find a worthy call for the absurd-results canon. *See ExxonMobil Pipeline Co. v. Coleman*, 464 S.W.3d 841, 847 (Tex. App.—Dallas 2015), *rev'd on other grounds*, 512 S.W.3d 895, 898 (Tex. 2017) (per curiam); *Kawcak v. Antero Res. Corp.*, 582 S.W.3d 566, 582 (Tex. App.—Fort Worth 2019, pet. denied); *Dyer v. Medoc Health Servs., LLC*, 573 S.W.3d 418, 426–27 (Tex. App.—Dallas 2019,

oddity does not "equal absurdity."[2] *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 569 (Tex. 2014).

Complicating matters further, to claim the lien, the property code required Kelly Plumbing to file their affidavit with the county clerk, not the district clerk. *See* TEX. PROP. CODE § 53.052(b). To the extent the majority identifies a certain inconsistency in the statutory scheme, I agree: the Kellys went to the county clerk to file their lien and could not have sued to enforce the lien in county court, yet the Homeowners could sue to remove the lien as part of the county court litigation. But we are not the branch of government to fix this inconsistency, and must defer to the legislative judgment expressed by the current state of Texas's statutes. Notably, this provision has been either in a Texas Constitution or statutory compilation since 1866.[3]

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pet. denied). In these cases, there was a clear legislative purpose behind the law at issue, the Texas Citizens Participation Act, and interpreting the statute using only strict dictionary definitions yielded an outcome that did not comport with that purpose. Other than to restrict a county court's jurisdiction in specific ways by using specific language, I see no further legislative purpose for the statute here.

[2] I cannot disagree with the majority that, reading section 26.043's eight subparts as a whole could lead to the conclusion that "county courts should not decide questions closely related to land ownership. *See* GOV'T CODE § 26.043(2) (liens on land); *id.* § 26.043(8) (recovery of land); *see also id.* § 26.043(7) (depriving county courts of jurisdiction in eminent domain cases)." That has generally been the case since 1866. *See* TEX. CONST. of 1866, art. V, § 6 (describing original district court jurisdiction). But rather than resorting to the other subparts of section 26.043, several of which have nothing to do with land, I would go no further than 26.043(2)'s plain text.

[3] The county courts were first authorized by the Texas Constitution of 1866, article IV, section 1. We find the current county court jurisdiction limitations in section 6 of that constitution, in the section granting district courts original jurisdiction over, among other things, "all suits for the enforcement of liens." Though county courts were not authorized by the Texas Constitution of 1869, they later made a return, along with a similar provision discussing original district court jurisdiction over lien enforcement. TEX. CONST. of 1876, art. V, § 8; *see also* Acts 1876, p.172 (mirroring current-day section 26.043's stated limitations on county court jurisdiction), *appearing at* TEX. REV. CIV. STAT. art. 1164 (1879).

Though I would not reach an inter-code comparison, the majority also relies on a "venue" provision requiring certain claims to be filed in district court. *See* TEX. CIV. PRAC. & REM. CODE §§ 12.001–.007 ("Chapter 12. Liability Related to a Fraudulent Court Record or a Fraudulent Lien or Claim Filed Against Real or Personal Property"). The Legislature added that chapter in 1997, originally as Chapter 11, to combat "individuals and organizations" who refused "to recognize the authority and sovereignty of the government of the State of Texas." *See* Bill Analysis, Acts 1997, HB 1185, 75th R.S., ch. 189. Those people "filed fraudulent judgment liens . . . and fraudulent documents purporting to create liens or claims on personal and real property," "clogg[ing] the channels of commerce and [amounting] to harassment and intimidation of both public officials and ordinary citizens." *Id.*

The Legislature passed the "venue" provision more than 125 years after the county court jurisdiction limitations first appeared, focusing on a specific and unrelated problem to which it wished to direct the highest-level trial courts' attention. For that reason, that provision does not shed significant light on the question we face today. This complication further demonstrates the difficulty of employing the absurd-results analysis in this circumstance.

In any event, I dissent because the statute's words are plain and have a definite meaning which the majority improperly expands upon to reach its conclusion.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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