

VACATE Judgment and REMAND; Opinion Filed November 12, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00397-CV

**WBW HOLDINGS, LLC, Appellant
V.
DONALD L. CLAMON AND LARRY D. CLAMON, Appellees**

**On Appeal from the County Court at Law No. 2
Kaufman County, Texas
Trial Court Cause No. 104449-CC2**

MEMORANDUM OPINION

Before Justices Myers, Nowell, and Evans
Opinion by Justice Nowell

This is an interlocutory appeal from an order granting a temporary injunction in favor of appellees Donald L. Clamon and Larry D. Clamon. In four issues, appellant WBW Holdings, LLC argues the trial court erred by granting a temporary injunction in favor of appellees. We conclude appellees failed to prove a probable, imminent, and irreparable injury if the temporary injunction did not issue, and, therefore, failed to show their entitlement to a temporary injunction. We vacate the trial court's June 9, 2020 Order Granting Defendants'/Counterplaintiffs' Application

for Temporary Injunction and remand this cause to the trial court for further proceedings.

FACTUAL BACKGROUND

The parties own adjoining properties in Kaufman County; appellees' property is on the north side of their shared boundary and appellant's is on the south side. The parties' dispute concerns the location of the boundary line between their properties and access from appellant's property to a public, county-owned road known as Bar Ten Lane. Bar Ten Lane generally runs east-west and intersects Farm-to-Market Road (FM) 90, which generally runs north-south. The parties disagree about whether the boundary between their properties is the center line of Bar Ten Lane or the center line of an abandoned county road that is no longer visible. At the hearing, the parties presented evidence to support their own understanding of the property line.

The trial court heard evidence that appellant purchased a 250-acre property in January 2019 (the Property). At that time, a gate on the eastern side of the Property near the intersection of Bar Ten Lane and FM 90 was the only point of access to the Property. Appellant's predecessor only accessed the Property via the gate, which is along Bar Ten Lane. There was no access from the Property to FM 90.

After acquiring the Property, appellant divided it into ten tracts for development. At the time of the hearing, seven tracts had been sold (tract numbers 3, 5, 6, 7, 8, 9, and 10) and appellant retained three tracts (tract numbers 1, 2, and 4).

The gate used by appellant's predecessor is on tract 6, which appellant no longer owns.

When appellant purchased the Property, there was a fence facing Bar Ten Lane on the Property. Dustin Weems, manager of appellant WBW Holdings, testified that in January 2020, he discovered appellees had erected a second fence between the original fence and Bar Ten Lane. Because appellees' fence precluded Weems from accessing Bar Ten Lane, Weems cut appellees' fence. Appellant contends the fence installed by appellees is on the Property; appellees maintain the fence they installed is on their property.

The parties dispute whether the center line of Bar Ten Lane is the boundary between their properties and, based on the boundary line, who owns the land immediately south of Bar Ten Lane. Appellant maintains its property extends northward to the center line of Bar Ten Lane, it owns the land immediately south of Bar Ten Lane, and it has the right to access Bar Ten Lane from the north side of its property.

Conversely, appellees maintain Bar Ten Lane is located entirely on their property, they own the land immediately south of Bar Ten Lane, and appellant's property does not abut Bar Ten Lane. Therefore, according to appellees, appellant must cross their property to access Bar Ten Lane and the fence they installed and Weems cut was their fence located on their property.

At the end of the temporary injunction hearing, the trial court denied appellant's request for injunctive relief and granted appellees' request for injunctive relief. The trial court enjoined appellant from crossing "the so-called center line over to the county road." This appeal followed.

LAW & ANALYSIS

A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Id.* To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant;¹ (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*; *see also State v. Hollins*, No. 20-0729, 2020 WL 5919729, at *3 (Tex. Oct. 7, 2020) (per curiam) (elements of temporary injunction). An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Butnaru*, 84 S.W.3d at 204.

¹ Appellant sued appellees for tortious interference with the use and enjoyment of property, tortious interference with a prospective business relationship, and trespass to try title; appellant also sought a temporary restraining order and temporary injunction precluding appellees from denying access to the Property. In response, appellees asserted a counterclaim for declaratory judgment and application for injunctive relief. Whether each party has asserted a cause of action is not disputed in this appeal.

Whether to grant or deny a temporary injunction is within the trial court's sound discretion. *Id.* A reviewing court should reverse an order granting injunctive relief only if the trial court abused that discretion. *Id.* The reviewing court must not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion. *Id.* When no findings of fact or conclusions of law have been requested or filed, as in this case, we must uphold an order granting or denying a temporary injunction on any legal theory supported by the record. *Amend v. Watson*, 333 S.W.3d 625, 628 n.2 (Tex. App.—Dallas 2009, no pet.).

Because it is dispositive, we begin with appellant's fourth issue in which it argues the trial court erred by granting the temporary injunction in favor of appellees because appellees failed to prove a probable, irreparable, imminent injury. Appellees argue the evidence shows Weems cut the wire fence they installed on their property, thus trespassing upon and damaging their property. Their brief states appellees "have no adequate remedy, short of injunctive relief, to stop WBW's representatives from trespassing upon their land." They argue, without citing any authority, that appellant trespassing on their land "is of such a nature that the damage to the Clamon brothers is irreparable; it simply cannot be measured by any pecuniary standard."

For purposes of this analysis, we will assume Bar Ten Lane and the fence Weems cut are located entirely on appellees' property; we also will assume appellant

cannot directly access Bar Ten Lane from its own property without crossing appellees' property, which appellant does not have permission to do. Despite these assumptions, there is no evidence in the record that appellees have suffered or will suffer any injury or that any injury they would suffer is irreparable. Certainly the cost to repair or replace the fence can be adequately compensated in damages. And, while appellees argue trespass alone is an irreparable injury, this Court's case law does not support that proposition. *See Amend v. Watson*, 333 S.W.3d 625, 629 (Tex. App.—Dallas 2009, no pet.) (“Similarly, we decline to hold that every trespass constitutes irreparable injury as a matter of law. Instead, applying well-settled Texas law, we conclude that the Amends were required to submit evidence to demonstrate a probable, imminent, and irreparable injury.”) (citing *Butnaru*, 84 S.W.3d at 204; *Matrix Network, Inc. v. Ginn*, 211 S.W.3d 944, 948 (Tex. App.—Dallas 2007, no pet.)). Appellees did not provide the trial court with any evidence that appellant trespassing on their property would cause probable, imminent, and irreparable injury. They did not show that appellant trespassing on their property would invade the possession of their land, destroy the use and enjoyment of their land, or cause potential loss of rights in real property. *See Savering v. City of Mansfield*, 505 S.W.3d 33, 49 (Tex. App.—Fort Worth 2016, pet. denied) (“Where a trespass invades the possession of a person's land, or destroys the use and enjoyment of the land, an injunction is a proper remedy.”) (citing *Beathard Joint Venture v. W. Houston Airport Corp.*, 72 S.W.3d 426, 432 (Tex. App.—Texarkana 2002, no pet.);

Yarto v. Gilliland, 287 S.W.3d 83, 97 (Tex. App.—Corpus Christi 2009, no pet.) (potential loss of rights in real property is a probable, imminent, and irreparable injury that qualifies a party for a temporary injunction); *Rus–Ann Dev., Inc. v. ECGC, Inc.*, 222 S.W.3d 921, 927 (Tex. App.—Tyler 2007, no pet.); *Seghers v. Kormanik*, No. 03–13–00104–CV, 2013 WL 3336845, at *5 (Tex. App.—Austin June 26, 2013, no pet.) (mem. op.)).

Because appellees failed to submit evidence demonstrating a probable, imminent, and irreparable injury, we conclude appellees failed to plead and prove all three elements required to obtain a temporary injunction. Therefore, the trial court abused its discretion by granting appellees’ request for a temporary injunction. We sustain appellant’s fourth issue.

In light of our disposition of appellant’s fourth issue, we need not resolve its first, second, and third issues in which appellant argues the trial court unjustly failed to protect the status quo and abused its discretion by granting the temporary injunction in favor of appellees because the public has access to Bar Ten Lane and because appellees have no probable right to recover on the underlying merits of their claims. *See* TEX. R. APP. P. 47.1 (court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to the final disposition of the appeal).

CONCLUSION

We vacate the trial court's June 9, 2020 Order Granting Defendants'/Counterplaintiffs' Application for Temporary Injunction and remand this cause to the trial court for further proceedings.

/Erin A. Nowell/

ERIN A. NOWELL
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

WBW HOLDINGS, LLC, Appellant

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DONALD L. CLAMON AND
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Law No. 2, Kaufman County, Texas
Trial Court Cause No. 104449-CC2.
Opinion delivered by Justice Nowell.
Justices Myers and Evans
participating.

In accordance with this Court's opinion of this date, we **VACATE** the trial court's June 9, 2020 Order Granting Defendants'/Counterplaintiffs' Application for Temporary Injunction and the cause is **REMANDED** to the trial court for further proceedings.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 12th day of November, 2020.