

Opinion issued July 29, 2010



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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**NO. 01-09-00952-CV**

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**PATRICIA WESTBO, Appellant**

**V.**

**MARK A. METZGER, JR., Appellee**

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**On Appeal from the 247th District Court  
Harris County, Texas  
Trial Court Cause No. 2007-74745**

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**MEMORANDUM OPINION**

Appellant, Patricia Westbo, challenges the trial court's rendition of summary

judgment in favor of appellee, Mark A. Metzger, Jr., in Metzger's suit against Westbo in which he sought (1) a declaration that Westbo had released any claims to funds that he had deposited in lieu of a bond with the Harris County District Clerk to supersede a judgment pending his initial appeal of the trial court's clarification order, entered after its divorce decree dissolving the marriage of Westbo and Metzger,<sup>1</sup> (2) an order enjoining Westbo from taking any steps to obtain the funds, and (3) an order compelling Westbo to execute documents necessary for Metzger to obtain the funds. In three issues, Westbo contends that the trial court erred in granting summary judgment in favor of Metzger on the basis of a previous default judgment obtained by Metzger in a lawsuit he had filed against her in a Tyler County District Court<sup>2</sup> and the trial court erred in entering a judgment containing "permanent injunctions."

We reverse and remand.

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<sup>1</sup> Metzger deposited cash, an annuity, and an account (herein collectively referred to as the "funds") with the Harris County District Clerk pending his appeal of the trial court's clarification order. In an opinion issued in Metzger's prior appeal of the clarification order, this Court affirmed, as modified, the clarification order. *See Metzger v. Metzger*, No. 01-04-00893-CV, 2007 WL 1633445 (Tex. App.—Houston [1st Dist.] June 7, 2007, pet. denied) (mem. op.).

<sup>2</sup> *See Metzger v. Westbo*, No. 20,053 (88th Dist. Ct., Tyler County, Tex. Aug. 29, 2007).

## Background

This case presents a complex procedural history involving several prior proceedings brought by the parties in Tyler County District Courts, Harris County District Courts, the Beaumont Court of Appeals, and this Court.

In April 2002, Metzger sued his then-wife, Patricia F. Metzger, now known as Patricia Westbo, for divorce in the 247th District Court of Harris County under cause number 2002-21703. The trial court<sup>3</sup> entered the divorce decree in July 2002.<sup>4</sup> In October 2002, Westbo filed a petition in the trial court, seeking clarification of the decree regarding the division of certain property.<sup>5</sup> Metzger and

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<sup>3</sup> For convenience, we refer to the 247th District Court of Harris County as the “trial court,” although, as explained herein, the 247th District Court conducted several relevant proceedings involving Westbo and Metzger prior to the underlying trial court proceedings that give rise to the instant appeal. The trial court originally conducted the proceedings involving the original divorce decree and the proceedings regarding a subsequent clarification order both under cause number 2002-21703. The trial court subsequently conducted the underlying proceedings concerning Metzger’s efforts to obtain the funds that he had previously deposited with the Harris County District Clerk in order to supersede the clarification order pending his appeal under cause number 2007-74745. The trial court’s proceedings under cause number 2007-74745 give rise to the instant appeal.

<sup>4</sup> See *In re Marriage of Mark A. Metzger & Patricia F. Metzger*, No. 2002-21703 (247th Dist. Ct., Harris County, Tex. July 1, 2002) (original divorce proceeding granting divorce decree).

<sup>5</sup> See *In re Marriage of Mark A. Metzger & Patricia F. Metzger*, No. 2002-21703 (247th Dist. Ct., Harris County, Tex. June 18, 2004) (clarification order proceeding).

Westbo, on June 8, 2004, entered into a Mediated Settlement Agreement (“MSA”), the terms of which, among other things, required Metzger to pay Westbo \$75,000, convey to Westbo an annuity account or accounts, and execute a promissory note in the amount of \$45,000 secured by certain real estate in Tyler County. The parties, in the MSA, further provided that they would enter into an “Agreed Judgment in the presently pending Tyler County suit over the real estate [under cause number 18,770],”<sup>6</sup> the “lawsuit pending [under cause number 2002-21703] in the 247th [would] be concluded with an Agreed Order and Modified Divorce Decree,” each party would “indemnify and hold the other party harmless from any and all claims a party did or could have raised in the 247th or Tyler County District Court[s],” the parties would “execute any and all documents necessary to effectuate” the MSA, Westbo would convey to Metzger certain stock shares and sign over authority to certain bank accounts, Metzger would “formally withdraw his criminal complaint” against Westbo filed in the Tyler County District Attorney’s Office, and the parties would consent to mutual injunctions in an “Agreed Judgment to be entered by the Tyler County District Court enjoining each party” from entering upon each other’s property in Tyler County. The parties filed

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<sup>6</sup> Based upon the record before us and the timeline of events, this appears to be the case styled *Metzger v. Metzger*, No. 18,770 (88th Dist. Ct., Tyler County, Tex.) involving real estate in Tyler County.

the MSA with the trial court.

Based upon the parties' MSA, the trial court, on June 18, 2004, entered an "Order on Motion for Clarification of Prior Decree of Divorce."<sup>7</sup> In the clarification order, the trial court recited that both parties appeared and announced their agreement,<sup>8</sup> and it stated that the order "represented a merger of a mediation agreement [the MSA] between the parties" and, to the extent there were any differences between the MSA and the clarification order, the clarification order controlled.

Metzger challenged the clarification order by appeal to this Court, arguing that the trial court had erred in signing the order because Metzger had withdrawn his consent to the MSA and the trial court lacked subject-matter jurisdiction to enter certain portions of the clarification order that "impermissibly modified the divorce decree's property division, rather than merely clarifying it."<sup>9</sup> Pending his appeal, Metzger superseded the clarification order by depositing the funds in the

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<sup>7</sup> *See id.*

<sup>8</sup> Despite this recitation, only the signature from Westbo's attorney appears on the clarification order. In our prior opinion from the appeal of the clarification order, we stated that Metzger objected to Westbo's proposed order. *See Metzger*, 2007 WL 1633445, at \*2.

<sup>9</sup> *See id.* at \* 3–4.

registry of the trial court.<sup>10</sup>

This Court, on June 7, 2007, entered our judgment on Metzger's appeal of the trial court's clarification order. In our opinion, we held that there was nothing in the record to substantiate Metzger's contention that he had withdrawn his consent to the MSA.<sup>11</sup> And, although we further held that the trial court abused its discretion in entering certain portions of the clarification order, we rejected Metzger's argument that the MSA was void in its entirety.<sup>12</sup> After modifying the clarification order to delete certain provisions, we affirmed the clarification order as modified.<sup>13</sup> The Texas Supreme Court, on October 26, 2007, denied Metzger's petition for review of our opinion affirming, as modified, the clarification order.

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<sup>10</sup> See TEX. R. APP. P. 24.1 (providing that debtor may supersede judgment by making deposit with trial court clerk in lieu of filing surety bond). We note that in the course of his prior appeal to this Court, Metzger made several complaints, accompanied by multiple requests for emergency relief, about the trial court's orders related to the funds he was required to deposit with the Harris County District Clerk in order to supersede the judgment. See *In re Metzger*, No. 01-06-00622-CV, 2006 WL 2075940 (Tex. App.—Houston [1st Dist.] July 27, 2006, orig. proceeding) (mem. op.); *In re Metzger*, No. 01-06-00651-CV, 2006 WL 2076030 (Tex. App.—Houston [1st Dist.] July 27, 2006, orig. proceeding) (mem. op.); *In re Metzger*, No. 01-05-00437-CV, 2005 WL 1111078 (Tex. App.—Houston [1st Dist.] May 3, 2005, orig. proceeding) (mem. op.). We denied all requested relief.

<sup>11</sup> See *Metzger*, 2007 WL 1633445, at \*3.

<sup>12</sup> See *id.* at \*7.

<sup>13</sup> See *id.*

Prior to the issuance of our June 7, 2007 opinion, Metzger, on March 27, 2007, filed a separate proceeding in the 88th District Court of Tyler County under cause number 20,053.<sup>14</sup> In Tyler cause number 20,053, Metzger alleged that, prior to filing that lawsuit, he had brought another lawsuit against Westbo concerning an alleged trespass to try title in a Tyler County District Court in cause number 18,770.<sup>15</sup> Metzger further alleged that, pursuant to the judgment in Tyler cause number 18,770, Westbo had been required to execute documents necessary to give Metzger clear title to a piece of real property in Tyler County, Westbo had refused to sign these documents, the title company “insisted upon obtaining a full release” from Westbo of her claims against Metzger in all pending cases, Westbo had then agreed to sign this release in return for the payment of approximately \$45,000,<sup>16</sup>

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<sup>14</sup> See *Metzger v. Westbo*, No. 20,053 (88th Dist. Ct., Tyler County, Tex. Aug. 29, 2007). We discern the filing date of Metzger’s action in the 88th District Court of Tyler County based upon the file stamp on Metzger’s first amended petition.

<sup>15</sup> *Metzger v. Westbo*, No. 18,770 (Dist. Ct. Tyler County, Tex.); *see also Westbo v. Metzger*, Nos. 09-08-200CV, 09-08-241-CV, 2008 WL 4998349, at \*3 (Tex. App.—Beaumont Nov. 26, 2008, pet. denied) (mem. op.) (referring to the trespass to try title cased filed by Metzger in Tyler County District Court as cause number 18,770).

<sup>16</sup> According to Metzger, Westbo agreed to sign a “full release” in exchange for Metzger’s agreement to pay her approximately \$45,000. However, it is undisputed that Metzger was already obligated to pay this amount under the clarification order that was pending on appeal in our Court.

and Westbo signed the release on May 22, 2006. Metzger complained that Westbo denied the effectiveness of this May 22, 2006 release, asserting that it was procured by fraud, it did not release any claims but the judgment rendered in Tyler cause number 18,770, and Westbo lacked the mental capacity to understand the release.<sup>17</sup>

In Tyler cause number 20,053, Metzger sought a declaration that the May 22, 2006 release was valid and not procured by fraud and it not only released Westbo's claims in Tyler cause number 18,770 but also her claims in the Harris County trial court under cause number 2002-21703 and the associated appeal, which was already pending in this Court under appellate cause number 01-04-00893-CV. In addition to his claim for declaratory relief, Metzger also asserted that Westbo had breached certain provisions of the MSA and had breached her fiduciary duty to comply with specific provisions of the MSA. Metzger attached as an exhibit to his petition in Tyler cause number 20,053 a copy of the MSA, which, as noted above, the Harris County trial court had expressly merged into its clarification order in cause number 2002-21703. In his prayer, Metzger sought to invoke "the penalty provision" of the MSA by asking for an award of damages.

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<sup>17</sup> In her filings, Westbo contends that she lacked the mental capacity to understand the release because, just prior to signing the release, she had suffered a debilitating stroke. Westbo also contends that she signed the release without her counsel present.

Metzger also attached to his petition a copy of the May 22, 2006 release.<sup>18</sup>

On August 29, 2007, after this Court had issued its opinion and judgment affirming as modified the Harris County trial court's clarification order, the 88th District Court of Tyler County, in cause number 20,053 entered a "final summary judgment," in which it stated that Westbo had failed to appear and defaulted.<sup>19</sup> Based upon Westbo's default, the 88th District Court rendered a "summary judgment," in which it concluded that the May 22, 2006 release was not obtained by fraud and that Westbo had been paid in full in the amount of \$45,000. Significantly, the judgment entered by the 88th District Court did not contain a declaration, as sought by Metzger, that Westbo had released her claims in the Harris County District Court under cause number 2002-21703 and the associated appeal in our Court. In fact, the judgment entered by the 88th District Court did not make any reference to Harris County cause number 2002-21703, the appeal of the clarification order to this Court, or the funds deposited with the Harris County

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<sup>18</sup> In the May 22, 2006 release, Westbo stated that she had been paid \$45,000. She also referred to the final judgment entered in Tyler cause number 18,770 as well as the Harris County trial court cause number 2002-21703 and the associated appeal in our Court under appellate cause number 01-04-00893-CV. As discussed below, the release, at a minimum, is ambiguous, and, in many respects, is incomprehensible.

<sup>19</sup> In her briefing, Westbo represents that she was unaware that Metzger was pursuing relief in the Tyler County District Courts.

District Clerk. The 88th District Court’s judgment also contained the recital that “all relief not expressly granted herein is denied,” indicating that it denied Metzger’s request for declarations related to the scope of the release and that the release applied to the Harris County trial court proceedings, the appeal in this Court, or the funds on deposit with the Harris County District Clerk.

Shortly after obtaining this “final summary judgment” in the 88th District Court, Metzger, on November 26, 2007, filed another proceeding in Tyler County District Court 1A under cause number 20,735.<sup>20</sup> In his “petition for damages and injunctive relief,” Metzger noted that he had previously filed a lawsuit against Westbo in the 88th District Court in cause number 20,053 concerning the validity of the May 22, 2006 release. Metzger alleged that in order to supersede the Harris County trial court’s judgment in cause number 2002-21703 while the case was pending on appeal, he had deposited funds with the Harris County District Clerk. Contending that the May 22, 2006 release constituted a release to any claim by Westbo to the funds on file with the Harris County District Clerk, Metzger asserted,

These sums are still on deposit with the District Clerk of Harris County. [Westbo’s] full release has been filed with the District Court in Harris County but [Westbo] refuses to acknowledge the fact that she has released any claim to the annuity, the premium account or the

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<sup>20</sup> *Metzger v. Westbo*, No. 20,735 (Dist. Ct. 1A, Tyler County, Tex. Feb. 8, 2008).

cash deposited by [Metzger] in lieu of a surety bond. . . . [Metzger] fears that once the mandate issues on appeal, [Westbo] will make demand upon the District Clerk of Harris County for the annuity and the premium account or for the sums of cash on deposit with the District Clerk. If [Westbo] obtains same, she will be able to place the funds beyond [Metzger's] reach.

Metzger sought a declaration in Tyler cause number 20,735 that Westbo, by executing the May 22, 2006 release, had relinquished any claim to the funds on deposit with the Harris County District Clerk. He also sought an order enjoining Westbo from taking any steps to obtain possession of the funds as well as an order compelling her to execute necessary documents for him to obtain the funds.

While his suit in Tyler cause number 20,735 was pending, Metzger, on December 12, 2007, filed a nearly identical suit in the Harris County trial court under cause number 2007-74745. As in his newly filed action in Tyler cause number 20,735, Metzger, in Harris County, sought a declaration that Westbo, by executing the May 22, 2006 release, had relinquished any claim to the funds on deposit with the Harris County District Clerk, an order enjoining Westbo from taking any steps to obtain possession of the funds, and an order compelling her to execute necessary documents for Metzger to obtain the funds.<sup>21</sup>

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<sup>21</sup> Metzger also named the Harris County District Clerk as a defendant in cause number 2007-74745. The Harris County District Clerk was dismissed from that proceeding, and Metzger's claims against the Harris County District Clerk are not at issue in this appeal. As discussed below, however, Metzger

As in Tyler cause number 20,053, Westbo again did not appear in Tyler cause number 20,735.<sup>22</sup> On February 8, 2008, based upon Westbo’s default, the Tyler District Court 1A, in cause number 20,735, entered a final judgment in favor of Metzger. It concluded that Metzger had deposited funds with the Harris County District Clerk in connection with his appeal from the clarification order entered by the Harris County trial court in cause number 2002-21703, Westbo had “fully released any claim or interest” that she had to the funds,<sup>23</sup> and Westbo should be enjoined from asserting any claim to the funds. The Tyler District Court 1A, in cause number 20,735, further awarded Metzger a “declaratory judgment” stating that the funds were Metzger’s “sole property,” and it ordered the Harris County District Clerk to deliver the funds to Metzger.

Although Westbo did not timely appear in the Tyler District Court in cause number 20,735, she did timely appeal the judgment to the Beaumont Court of

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subsequently filed a separate lawsuit against the Harris County District Clerk regarding its refusal to release the funds to him.

<sup>22</sup> See *Westbo*, 2008 WL 4998349, at \*2 (stating that Westbo did not file answer in cause number 20,735).

<sup>23</sup> The Tyler District Court, in cause number 20,735, recognized in its judgment that the annuity and account to which Westbo had allegedly released her rights had already been awarded to her in the final judgment in the Harris County trial court under cause number 2002-21703.

Appeals,<sup>24</sup> which, on November 26, 2008, concluded that the Tyler District Court, in cause number 20,735, lacked subject-matter jurisdiction over the matters at issue in Harris County. In vacating the judgment of the Tyler District Court in cause number 20,735, the Beaumont Court of Appeals explained,

[T]he injunction issued by the Tyler County district court operated to stay the proceedings by the parties in Harris County and to prevent Westbo from moving forward with her efforts in Harris County to execute on the judgment. The district court in Tyler County, under the unusual facts and circumstances here, did not have subject matter jurisdiction to grant injunctive relief that prevented the parties from proceeding with collection efforts that would ultimately involve a court's interpretation of terms of the "Full Release" that had not previously been interpreted by a court. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 65.023(b). Therefore, the Tyler County district court acted without subject matter jurisdiction in issuing the injunction; its judgment is therefore void. *See generally Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003).<sup>25</sup>

The Beaumont Court of Appeals further explained,

[T]he current issue between these parties is whether the "Full Release" operates as a release of Westbo's claim to the funds on deposit with the District Clerk of Harris County. That issue concerns the construction of the terms of the release and how they may affect the Harris County judgment. *The construction of the terms of the "Full Release" was not addressed by either of the previous Tyler County district court judgments.*<sup>26</sup>

(Emphasis added). Thus, the Beaumont Court of Appeals, after engaging in a

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<sup>24</sup> *Westbo*, 2008 WL 4998349.

<sup>25</sup> *Id.* at \*3.

<sup>26</sup> *Id.*

thorough and detailed review of the history of extensive litigation brought by Metzger, determined that no court had yet addressed the critical issue of the construction of the release and how it could affect the judgment entered by the Harris County trial court, our Court's judgment, or the funds.

After losing in the Beaumont Court of Appeals, Metzger, on May 15, 2009, filed a motion for partial summary judgment in the Harris County trial court, seeking a judgment that the May 22, 2006 release was valid, was not procured by fraud, and was supported by consideration. Metzger contended that the summary judgment entered by the Tyler District Court under cause number 20,053 entitled him to this judgment as a matter of law. Remarkably, Metzger further asserted that the opinion of the Beaumont Court of Appeals, which had vacated the judgment that had been entered in his favor in the Tyler District Court in cause number 20,735, and which had determined that the Tyler District Court lacked subject matter jurisdiction over the issues, could be interpreted in his favor and established his right to summary judgment.

On June 11, 2009, Westbo filed her response to Metzger's partial summary judgment motion. She argued that the Tyler County District Courts lacked jurisdiction "to interfere" with the Harris County District Courts in determining whether the funds deposited by Metzger to supersede the Harris County trial court's clarification order should be given to Westbo or Metzger. Westbo noted

that in the instant proceeding, Metzger was making the non-sensical allegation that, by executing the May 22, 2006 release, she had agreed to release all of the funds on deposit with the Harris County District Clerk, which totaled over \$267,000, in exchange for a \$45,000 payment—“money which Metzger already owed Westbo under the” clarification order. Westbo contended that she did not “release her rights” to the funds, she lacked the capacity to sign the release, and Metzger had intentionally misrepresented to the trial court the force of the Beaumont Court of Appeals opinion.<sup>27</sup> Westbo asserted that “the language of the release is completely botched,” it did not release Metzger from his obligation to supersede the judgment

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<sup>27</sup> Metzger, in his motion, asserted that the Beaumont Court of Appeals, which vacated the judgment in his favor, should be interpreted to conclusively establish that the release was valid, was not procured by fraud, and was supported by consideration. In support of this assertion, Metzger excerpted the following paragraph from the opinion:

Seeking declaratory relief under the release, Metzger filed a declaratory judgment action against Westbo in cause number 20,053. Westbo did not answer. Metzger apparently moved for summary judgment. The trial court’s summary judgment states that the release is valid, that it was not procured by fraud, and that it was supported by consideration. Those issues, however, are not now in dispute.

*Westbo*, 2008 WL 4998349, at \*3. As Westbo notes, however, when read in context, the Beaumont Court of Appeals, with this passage, merely states that the issue before it concerned whether Westbo released her claims to the funds deposited with the Harris County District Clerk. The Beaumont Court of Appeals was not presented with any dispute about the validity of the release. *See id.*

of the Harris County District Court under number 2002-21703, and, “at its very best,” is ambiguous, which creates “a fact issue” that cannot be properly resolved by summary judgment.

On June 18, 2009, the Harris County trial court granted Metzger’s partial summary judgment motion on the issue that the May 22, 2006 release “is valid.” On June 29, 2009, Metzger then filed a motion for “final summary judgment,” in which he argued that Westbo, as a matter of law, had released any claim in Harris County trial court cause number 2002-21703. He asserted that she, thus, “has no claim” to the funds that he had deposited with the Harris County District Clerk. Metzger also sought an order requiring the Harris County District Clerk to release the funds to him.

After the filing of numerous additional responses and motions by both parties, the trial court, on October 2, 2009, granted final summary judgment for Metzger. The trial court concluded that because Westbo had “released any and every claim that she had” in cause number 2002-21703, she was enjoined from making any claim to the funds deposited by Metzger with the Harris County District Clerk and taking any steps from interfering with Metzger’s obtaining those funds.

The trial court, in its final judgment, also ordered the Harris County District Clerk to immediately release to Metzger the deposited funds. However, the final

judgment also contains a handwritten notation stating, “Hold per request of Judge Hellums [the trial court judge] . . . to 10-8-09.” The trial court’s handwritten notation, the docket sheet, and other documents in the record, indicate that after the entry of the final judgment, the trial court elected to hold its ruling.

However, on October 8, 2009, Metzger filed a motion to recuse the trial court judge, alleging that, by “holding” the October 2, 2009 final judgment, which resulted in the Harris County District Clerk not immediately releasing the funds to him, the trial judge had “interfered with the ministerial duties of the Harris County District Clerk.” On November 3, 2009, Judge Olen Underwood, the administrative judge for the region, denied Metzger’s motion to recuse the trial judge.

Judge Underwood’s ruling would likely have allowed the trial court to take further action if it had decided to do so in regard to its October 2, 2009 judgment. However, as indicated in the trial court’s docket sheet, Metzger, on November 4, 2009, filed another motion to recuse the trial court judge.<sup>28</sup> Metzger generally repeated the allegations contained in his first motion to recuse, and he asserted that,

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<sup>28</sup> In yet another proceeding, Metzger filed a petition for writ of mandamus in this Court seeking a writ compelling the trial court, or Judge Underwood, to rule on his second motion to recuse. *See In re Metzger*, No. 01-10-00035-CV, 2010 WL 547575 (Tex. App.—Houston [1st Dist.] Feb. 17, 2010, orig. proceeding). We dismissed this proceeding as moot. *See id.*

by holding the order, the trial court was “tampering with a governmental record.”<sup>29</sup>

There is no indication in the record that the trial court ever reconsidered or modified its October 2, 2009 final judgment. The Harris County District Clerk did not release the funds to Metzger, and the record before us indicates that the Harris County District Clerk continues to hold the funds.<sup>30</sup>

### **Standard of Review**

To prevail on a summary judgment motion, a movant has the burden of proving that it is entitled to judgment as a matter of law and that there is no genuine issue of material fact. TEX. R. CIV. P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). When a plaintiff moves for summary judgment on its claim, it must establish its right to summary judgment by conclusively proving

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<sup>29</sup> Attached to Metzger’s motions to recuse were a verification signed by Metzger’s counsel, Elsie Martin-Simon, in which Ms. Simon verified her factual allegations underlying her claim that the trial judge had violated the Penal Code and tampered with governmental records. *See* TEX. PENAL CODE ANN. § 37.10 (Vernon Supp. 2009).

<sup>30</sup> Metzger brought a separate “writ of mandamus” proceeding against the Harris County District Clerk in the 270th District Court of Harris County under cause number 2009-73276. He sought an order compelling the Harris County District Clerk to release the funds. The 270th District Court denied Metzger’s writ of mandamus, and Metzger has appealed this denial in a separate proceeding to this Court under appellate cause number 01-10-00144-CV. We contemporaneously issue an opinion in this separate proceeding, affirming the denial of Metzger’s petition for writ of mandamus, with our issuance of this opinion. *Metzger v. Jackson*, No. 01-10-00144-CV (Tex. App.—Houston [1st Dist.] July 29, 2010, no pet. h.) (mem. op.).

all the elements of its cause of action as a matter of law. *Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999); *Anglo-Dutch Petroleum Int'l, Inc. v. Haskell*, 193 S.W.3d 87, 95 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

When deciding whether there is a disputed, material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548–49 (Tex. 1985). Every reasonable inference must be indulged in favor of the non-movant and any doubts must be resolved in its favor. *Id.* at 549.

### **Summary Judgment**

In her first two issues, Westbo argues that the trial court erred in granting summary judgment in favor of Metzger on the basis of a previous default judgment obtained by Metzger in the Tyler District Court in cause number 20,053 because the Tyler District Court lacked jurisdiction over the matter. Westbo asserts that the judgment of the Tyler District Court in cause number 20,053 is void and, even if not void, “there remains an issue of fact on Westbo’s lack of capacity defense, which was not decided in the Tyler case.” Within these issues, Westbo also generally asserts that Metzger offered “no evidence to support summary judgment other than the release agreement itself and the judgment in [Tyler District Court cause number 20,053].”

In the underlying proceedings giving rise to the instant appeal, Metzger

sought through summary judgment a declaration that the May 22, 2006 release was valid and Westbo had released any claim in Harris County trial court cause number 2002-21703 and the associated appeal in our Court. He contended that Westbo could not make a claim to the funds that Metzger had deposited with the Harris County District Clerk to supersede the clarification order. The only “evidence” presented by Metzger in support of his summary judgment motion were the judgment of the Tyler District Court in cause number 20,053 and the May 22, 2006 release.

Metzger had requested a declaration from the Tyler District Court in cause number 20,053 stating that Westbo had released her claims in the Harris County trial court and the associated appeal as well as any claims to the funds on deposit with the Harris County District Clerk. However, the actual summary judgment rendered by the Tyler District Court in cause number 20,053 was much more limited. The summary judgment rendered by the Tyler District Court in cause number 20,053 simply provided that the release was not obtained by fraud and that Westbo had been paid \$45,000 “per mediated settlement.” The Tyler District Court in cause number 20,053 did not include within its judgment the much broader declaration requested by Metzger that Westbo had released any and all claims against Metzger, including those arising out of the Harris County

litigation.<sup>31</sup> The Tyler District Court in cause number 20,053 also did not interpret or construe the release, and thus, its order provided no support for the Harris County trial court’s “final judgment,” in which is declared that Westbo had “released any and every claim that she had” in cause number 2002-21703 and ordered Westbo not to make any claim to the funds deposited with the Harris County District Clerk or take any steps to interfere with Metzger’s obtaining those funds.

The only other evidence that Metzger presented to the trial court was the release itself. The release is, in many respects, incomprehensible. At a minimum, it is ambiguous as to what, if anything, Westbo was agreeing to release by executing it. The release provided,

In consideration of the payment in full of the sum of Forty Five Thousand Dollars (\$45,000.00), being the same consideration mentioned in that one certain Special Warranty Deed of even date herewith from the undersigned to Mark Metzger, Jr. the receipt and sufficiency of which is hereby acknowledged, the undersigned being the defendant in the cause(s) of action described in the instruments hereinafter mentioned, and being the legal owner and holder of the claims and liens set forth therein does hereby release from such claims and liens: (i) Mark Metzger, Jr. and (ii) the hereinafter described real property, to-wit :

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<sup>31</sup> Again, the judgment of the Tyler District Court in cause number 20,735, which included broad declarations that Westbo had “fully released any claim or interest” that she had to the funds and that the funds were Metzger’s “sole property,” had already been vacated by the Beaumont Court of Appeals.

Final Judgment signed and entered by the 88th Judicial District Court of Tyler County, Texas, on June 28, 2004 in Cause No. 18,770 styled Mark A. Metzger, Jr., Plaintiff, vs. Patricia Westbo Metzger, Defendant,

Trial Cause No. 2002-21703: In the Matter of the Marriage of Mark A. Metzger, Jr. and Patricia F. Metzger; In the 247th District Court of Harris County, Texas; and

Appeal No. 01-04-0893-CV; In the Court of Appeals for the First Supreme Judicial District at Houston, Texas, Mark A. Metzger, Jr., Appellant VS Patricia F. Metzger Westbo, Appellee

covering property described as follows:

....

The release then identified seven tracts of land located in Tyler County, which were more fully described in an attached "Exhibit A." This exhibit contained information about the recording and public filings related to the tracts of land.

The release is difficult to comprehend. One possible, reasonable interpretation is that the release was merely intended to release any dispute to the title of the properties located in Tyler County and that such a release should be applied in all jurisdictions in which the parties had matters pending. This interpretation is supported by Metzger's own pleading in the Tyler District Court in cause number 20,053, wherein he explains,

Facts: There was a pretrial lawsuit between these same parties in [Tyler D.C. no. 18,770]. That suit involved the title to real property

in this [Tyler] county. Pursuant to the judgment in that case, [Westbo] was to execute the documents necessary give [Metzger] clear title. [Westbo] refused to execute the documents necessary to give [Metzger] clear title to the property until faced with the prospect of a motion to show cause. On information and belief, through her attorney of record, [Westbo] threatened the title company that was to insure the title with litigation. The title company insisted on obtaining a full release from [Westbo] of her claims against [Metzger] and of the other cases that she has that involve [Metzger].

As evidenced from this passage, the genesis of the release concerned litigation commenced in Tyler County related to the parties' real property located in Tyler County. Metzger, through these pleadings, judicially admits that the May 22, 2006 release was required, at least in part, by the title company.

Moreover, Metzger's own explanation about the genesis of the release comports with the language of the release itself, which appears to be focused on the release of any claims or liens to the tracts of real property that are specifically identified both in the release and the attached "Exhibit A."<sup>32</sup> Although the release makes reference to the Harris County trial court proceeding and the appeal in this Court, the language immediately following this reference ("covering property

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<sup>32</sup> The Beaumont Court of Appeals summarized Metzger's argument as follows:

Metzger . . . . argues that the trial court in Tyler County was authorized to construe and enforce a release that arose from litigation between these same parties over real property located in Tyler County.

*Westbo*, 2008 WL 4998349, at \*2.

described as follows") indicates that, to the extent Westbo may have released any pending claims or future claims in the Harris County proceedings, she released only claims, or the right to assert future claims, covering the real property described in the release. At a minimum, the evidence and pleadings before the Harris County trial court establish that the release is ambiguous, there is a fact issue on the proper construction of the release, and this fact issue could not have been properly resolved by the trial court on summary judgment.

The Beaumont Court of Appeals noted in its opinion that no trial court has yet addressed the proper construction of the terms of the release. *Westbo*, 2008 WL 4998349. We agree. It also appears that the Harris County trial court below did not address or consider the proper construction of the terms of the release, but instead erroneously resolved the case on summary judgment simply on the basis of the judgment of the Tyler District Court in cause number 20,053. As noted above, however, the judgment of the Tyler District Court in cause number 20,053 was very limited, did not touch on the Harris County proceedings or the funds, and does not support the Harris County trial court's judgment. And, to the extent that the trial court may have addressed the construction of the release in granting summary judgment, it erred. The release is, at best, ambiguous, and it is, in many respects, incomprehensible. It provided no basis for the trial court to conclude, as a matter of law, that Westbo had released any claims to the funds deposited with the

Harris County District Clerk.

In sum, the Harris County trial court, based upon the judgment of the Tyler District Court in cause number 20,053 and the release, could not have determined, as a matter of law, that Westbo, by executing the May 22, 2006 release, had “released any and every claim that she had” in cause number 2002-21703 as well as the funds on deposit with the Harris County District Clerk. Also, the trial court could not have determined on summary judgment that Westbo should be enjoined from making any claim to the funds and taking any steps from interfering with Metzger’s obtaining of the funds. Accordingly, we hold that the trial court erred in granting Metzger’s summary judgment motion.

As a final note, we must address Westbo’s primary argument on appeal that the trial court’s rendition of summary judgment was improper because the Tyler District Court in cause number 20,053 lacked subject matter jurisdiction. She asserts that the judgment upon which the trial court relied in granting its summary judgment was void. We agree with Westbo that the Beaumont Court of Appeals correctly held that the Tyler District Court in cause number 20,735 lacked subject matter jurisdiction to grant injunctive relief that operated to stay proceedings in Harris County and prevented Westbo from moving forward with her efforts in Harris County to execute on the judgment. *See Westbo*, 2008 WL 4998349, at \*3 (“The district court in Tyler County, under the unusual facts and circumstances

here, did not have subject matter jurisdiction to grant injunctive relief that prevented the parties from proceeding with collection efforts that would ultimately involve a court's interpretation of terms of the 'Full Release' that had not been previously interpreted."). For the same reasons articulated by the Beaumont Court of Appeals, we agree that, if the Tyler District Court in cause number 20,735 had issued similar relief operating to stay collection efforts in Harris County, then it would have also lacked subject matter jurisdiction to provide such relief. However, the actual judgment entered by the Tyler District Court in cause number 20,053 was limited solely to the validity of the release as it related to the proceedings before it. The Tyler District Court in cause number 20,053 did not make declarations touching upon the Harris County trial court proceedings and the funds on deposit with the Harris County District Clerk. Thus, under the plain terms of the actual judgment of the Tyler District Court in cause number 20,735, the judgment is not void on the basis that the Tyler District Court lacked subject matter jurisdiction to enter it.

We sustain Westbo's issues.

## **Conclusion**

We reverse the judgment of the trial court and remand for proceedings consistent with our opinion.

Terry Jennings  
Justice

Panel consists of Justices Jennings, Alcala, and Massengale.