

Opinion issued April 3, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00339-CV

**TRUE LEVEL MASONIC LODGE #226, INC., GREGORY AUGUST,
JOHNNIE L. JONES, MACK PRINCE DESHAY, AND ARTHUR C. MAYS,**
Appellants

V.

**MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF TEXAS AND
JURISDICTIONS FREE AND ACCEPTED MASONS, Appellee**

**On Appeal from the 133rd District Court
Harris County, Texas
Trial Court Case No. 2013-59319**

MEMORANDUM OPINION

This is an appeal from a declaratory judgment obtained by the statewide governing body of a Masonic lodge. Members and officers of True Level Lodge

No. 226 attempted to surrender their charter and continue their activities under a similar name, operating from the same building with the same assets.

Appellee Most Worshipful Prince Hall Grand Lodge of Texas and Jurisdictions Free and Accepted Masons sought a declaratory judgment to confirm the continuing existence of its constituent lodge, the ownership of its assets, and the right to use the name “True Level Lodge No. 226.” After a jury trial, the trial court granted a motion for directed verdict, and it determined that the constituent lodge did not properly surrender its charter, so it continued to exist, and it was entitled to continued possession of all its property, as well as the use of the name “True Level Lodge No. 226” to the exclusion of appellant True Level Masonic Lodge No. 226, Inc.

Gregory August, Johnnie L. Jones, Mack Prince Deshay, and Arthur C. Mays appealed, along with the independent lodge, raising three issues. In their first issue, they contend that the trial court’s judgment is void because it violates the statute of frauds and includes a property description too vague to be implemented without the aid of extrinsic evidence. In their second issue, they argue that the court erred by determining that the original constituent lodge had a superior right to use the name “True Level Lodge No. 226.” In their third issue, they assert that the court erred by admitting evidence of a witness’s prior criminal record.

We affirm.

Background

Most Worshipful Prince Hall Grand Lodge of Texas and Jurisdictions Free and Accepted Masons (the “Grand Lodge”) is a nonprofit, benevolent organization formed in 1875 in Texas to regulate the practice of freemasonry, advance the moral and social interests of its members, and encourage charitable acts. True Level Lodge No. 226, the constituent lodge at issue in this dispute, was established in 1905 as a voluntary association, and in 1906 it became a local affiliate of the Grand Lodge. The relationship between the two entities is governed by the Grand Lodge’s constitution, which established broad powers over its constituent lodges. The constitution establishes that constituent lodges are not independent entities. It further provides that all property of a constituent lodge is deemed to be held in trust for the benefit of the Grand Lodge. When a constituent lodge dissolves or ceases to function as a lodge, its ritual items, money, and dues receivable will be collected by the Grand Master or his authorized representative. Furniture, fixtures, and other personal property may be sold to satisfy debts, if any, and remaining proceeds will “accrue to the Grand Lodge.”

The Grand Lodge’s constitution requires that constituent lodges give their membership ten days’ written notice before a vote on any “proposition that affects the entire membership such as adopting By-Laws, consolidating with another lodge, moving or building a hall, levying assessments on membership, [or] buying

or selling property.” Under the constitution, the Grand Lodge retains “full authority to approve or disapprove such transaction as each Local Lodge is a subsidiary or integral part of the Grand Lodge and as such, Grand Master has full authority in the premises.” The Grand Master or the Grand Lodge also has “full and final authority” to determine whether a constituent lodge has ceased to function due to “inactivity, demise, or dissolution.”

In April 2013, the Grand Lodge asked all constituent lodges to identify lodge-owned property and provide an Employee Identification Number (EIN) or other information indicating that each lodge was operating as a nonprofit organization. True Level Lodge No. 226 refused to provide the information, responding that its ownership of land was a matter of “public record,” and its “land or property” was “not to be used or included in documentation to secure or obtain any loans or financial gains without the express written consent” of the members or officers. Among its assets, True Level Lodge No. 226 owned four parcels of real property, including a lodge building at 4212 Lyons Avenue, which was acquired in 1952. The remaining real property was comprised of the properties commonly known as: 4201 Lyons Avenue, 4200 New Orleans, and 1414 Copeland Street, all of which are located in Houston, Texas. True Level Lodge No. 226 also owned a van. According to the appellants, the Grand Master, Wilbert M. Curtis, told

August, who was then the leader of True Level Lodge No. 226, that it had three days to comply with the request or surrender its charter.

With less than ten days' notice, August convened a meeting, and the members decided to refuse the request. August and Johnnie L. Jones, then-secretary of True Level Lodge No. 226, wrote to the Grand Lodge, saying that concerns about lack of confidentiality drove their decision not to disclose the EIN. They declared that Article XVI, § 22 of the constitution was not binding upon them or their lodge, and they asserted sole ownership over all property belonging to True Level Lodge No. 226. Finally, they declared that their charter had been returned by mail and they intended to fully and immediately sever ties with the Grand Lodge.

When the Grand Lodge received the charter, the Grand Master summoned the members of True Level Lodge No. 226 to a meeting in Fort Worth regarding the attempted surrender of the charter, explaining that the lodge had not notified the membership or surrendered the charter properly as set forth in the constitution. The Grand Master voided the actions previously taken by True Level Lodge No. 226. Only one member attended the meeting, and he paid dues and continued his membership. August, Mays, Jones, and Deshay were expelled for "unmasonic behavior." Among other things, this behavior included entering into a repair contract, which resulted in the imposition of a lien on the lodge building, without the prior approval of the Grand Master. The Grand Lodge later invited those

members of True Level Lodge No. 226 who wished to remain affiliated to pay dues and elect new officers. Thus, the Grand Lodge maintained that True Level Lodge No. 226 continued to exist without August, Mays, Jones, and Deshay.

Unbeknownst to the Grand Lodge, in October 2011, August, Mays, Jones, Deshay, and others had formed a new entity called True Level Masonic Lodge #226, Inc. (the “independent lodge”). After their expulsion, August, Mays, Jones, and Deshay continued their communal and fraternal activities, operating as “True Level Masonic Lodge,” “True Level Lodge No. 226,” or “True Level Lodge 226,” using the same lodge building and lodge assets as they had before their expulsion. They later became affiliated with the “Most Worshipful St. John Union Grand Lodge of Free and Accepted Ancient York Masons.”

Asserting that there were no material disputed issues of fact, the Grand Lodge sought a declaratory judgment that: (1) the constituent lodge was the owner of the name “True Level Lodge 226,” had a greater right to use it, and the independent lodge must stop using the name “True Level Lodge 226” or referring to “any existence prior to October 2011”; (2) the procedure used to surrender the charter was contrary to the constitution and invalid, and the original constituent lodge continued to be affiliated with the Grand Lodge; and (3) property possessed by the original constituent lodge before the appellants were expelled was held in trust for the Grand Lodge and should be returned.

The appellants disagreed that there were no issues of fact. In answering the lawsuit, they contended that the Grand Lodge had waived its right to enforce its constitution. In particular, they maintained that when the Grand Master demanded that True Level Lodge No. 226 comply with the request for information or surrender its charter within three days, the Grand Lodge was in violation of its constitution. The appellants asserted that this waived the Grand Lodge's right to insist that True Level Lodge No. 226 comply with the constitution in reaching its decision to respond to the information request or surrender its charter. The appellants also filed counterclaims against the Grand Lodge for adverse possession, trespass to try title, suit to quiet title, and tortious interference with a contract.

The court denied a pretrial motion in limine regarding August's prior convictions, and a jury trial was held on the issues and claims with questions of fact. The court submitted one question to the jury: Did the Grand Lodge "waive its rights under its Charter and Constitution with regard to True Level Lodge No. 226?" The jury answered: "no."

The trial court granted a directed verdict on all counterclaims. The court ruled that True Level Lodge No. 226 never ceased to exist as a constituent lodge, and the Grand Lodge never accepted the attempted surrender of its charter. The court declared the original constituent lodge was "entitled to possession of all

property, both real and personal, of every kind or nature wherever situated,” which had been acquired by “True Level Lodge No. 226,” and it ruled that the independent lodge and its members had “no interest in any of the property.” The court found that August, Mays, Jones, and Deshay “had been expelled” by the Grand Lodge, and it “permanently enjoined” them from “going to or exercising any control over any property owned by or in possession of” the Grand Lodge and its constituent lodge “for any reason.”

The court ordered that the original constituent lodge had a greater right to use the name “True Level Lodge No. 226” than did the independent lodge. The court did not specify a reason for the ruling.

August, Mays, Jones, Deshay, and the independent lodge filed a notice of appeal.

Analysis

I. Validity of judgment

In their first issue, the appellants argue that the trial court’s judgment is void for vagueness. They contend the judgment violates the statute of frauds, TEX. BUS. & COM. CODE § 26.01, because the description of the property in the judgment is too vague to be enforced without the use of extrinsic evidence. The Grand Lodge responds that the statute of frauds does not apply to a declaratory judgment, the judgment was sufficiently certain to protect the parties’ rights, and the appellants

have waived their complaint about the judgment by failing to challenge the take-nothing judgment on their trespass-to-try-title and adverse-possession claims.

Relying on *In re Estate of McNutt*, 405 S.W.3d 194 (Tex. App.—San. Antonio 2013, no pet.), the appellants contend that the judgment in this case awarded property to the Grand Lodge and must comply with the statute of frauds. Their reliance is misplaced. The majority in *McNutt* remanded the case in the interest of justice for a new trial on the theory of an oral gift of a house. 405 S.W.3d at 197. The dissent stated the well-established rule that “[g]enerally, a conveyance of real property must ‘be in writing’ and ‘subscribed and delivered by the conveyor’ or his agent.” *Id.* at 199 (Marion, J., dissenting) (quoting TEX. PROP. CODE § 5.021 and citing TEX. BUS. & COM. CODE § 26.01(a), (b)(4)).

The judgment in this case is distinguishable from *McNutt*, which concerned an alleged conveyance of property. Here, the Grand Lodge filed suit for a declaratory judgment. *See* TEX. CIV. PRAC. & REM. CODE § 37.004. It sought a legal determination of the status of the parties and their respective rights to the property that had been acquired by True Level Lodge No. 226 from its inception onward, based on the Grand Lodge’s constitution. There was only one fact question presented to the jury: Did the Grand Lodge waive its right to enforce its constitution? The jury found in favor of the Grand Lodge, and the appellants have not challenged that finding on appeal. Thus, the court was left with a question of

contract interpretation: under the constitution, what was the status of the parties and the property of True Level Lodge No. 226? The Grand Lodge contended that it owned the property as trust beneficiary, and the appellants contended that it was theirs because they had purchased the property with their own money, not money contributed by Grand Lodge.

The Grand Lodge's constitution specifies a procedure before a constituent lodge votes on a proposition that affects the entire membership. That procedure mandates ten days' prior written notice of a meeting to vote on the matter. This did not occur. In addition, the constitution authorizes the Grand Master to void any such matter voted on by the membership of a local lodge: "The Grand Master shall have full authority to approve or disapprove such transaction as each Local Lodge is a subsidiary or integral part of the Grand Lodge and as such, Grand Master has full authority in the premises." The parties do not dispute that the Grand Master promptly notified True Level Lodge No. 226 in writing that he disapproved the attempted surrender of the charter.

The Grand Lodge's constitution sets forth specific provisions regarding surrender of a charter:

Section 7. When any Lodge shall contemplate the surrender, voluntarily, of its charter, the proposition therefore shall be submitted at a stated meeting, or if for any reason, its stated meetings are omitted, the proposition may be presented to the Master or Secretary. If presented at a stated meeting, action thereon shall not be taken until the next stated meeting. If presented to the Master or Secretary for the

reason that there are no meetings of the Lodge, then action shall not be taken until the second stated meeting after it is presented. Such action shall not be taken until each member of the Lodge has been duly notified over the Seal of the Lodge, addressed to him at the last known place of residence, at least ten days before such action.

Section 8. At the time specified, proof of service having been filed, the Lodge may act on the proposition if legally constituted. The Master shall submit the question: "Shall the Charter be surrendered?" The vote shall be by written ballot, "Yes" or "No". A majority of vote will decide the proposition. If the vote is in favor of surrender, the Grand Master may, upon the application of three members, order another ballot, provided that such application is made within sixty days thereafter, the Grand Master fixing the time and place.

The trial court determined that True Level Lodge No. 226 never ceased to exist and that the Grand Lodge never accepted the attempted surrender of the charter. Based on the constitution, and as stated in the trial court's judgment, the original constituent lodge was "entitled to possession of all property, both real and personal, of every kind or nature, where ever situated" which had been acquired by "True Level Lodge No. 226," and the independent lodge was not entitled to any of the property. This was not a conveyance of real or personal property to the Grand Lodge: it was a declaration that the Grand Lodge was and always had been the beneficial owner of all property owned by its constituent lodge, which never ceased to exist. Because True Level Lodge No. 226 never ceased to exist, it continued to be the legal owner of the property.

Moreover, the appellants have not challenged the take-nothing judgment against them on their trespass-to-try-title cause of action against the Grand Lodge.

As such, that part of the trial court’s judgment is final. *See* TEX. R. APP. P. 44.1(b); *Haider v. Jefferson Cty. Appraisal Dist.*, No. 09-14-00311-CV, 2016 WL 1468757, at *2 n.3 (Tex. App.—Beaumont Apr. 14, 2016, pet. denied) (mem. op.). Ordinarily, a take-nothing judgment in a trespass-to-try-title cause of action is a determination that the defendant has superior title to the property. *City of Houston v. Miller*, 436 S.W.2d 368, 372 (Tex. Civ. App.—Houston [14th Dist.] 1968, writ ref’d n.r.e.). When determining the scope of a take-nothing judgment on a trespass-to-try-title claim, the parties’ pleadings may be considered. *Id.*

In their amended petition and counterclaims, the appellants identified the legal descriptions of four parcels of real property, commonly known as: 4212 Lyons Avenue, 4201 Lyons Avenue, 4200 New Orleans, and 1414 Copeland Street, all in Houston, Texas. Thus, the unchallenged take-nothing judgment in the trespass-to-try-title claim filed by appellants determined that Grand Lodge had superior title to 4212 Lyons Avenue, 4201 Lyons Avenue, 4200 New Orleans, and 1414 Copeland Street. *See City of Houston*, 436 S.W.2d at 372; *Haider*, 2016 WL 1468757, at *2 n.3.

We overrule the first issue.

II. Superior right to the name “True Level Lodge No. 226”

In their second issue, the appellants argue that the court erred in its determination that the original constituent lodge had a superior right to the name

“True Level Lodge No. 226.” The appellants contend that the Grand Lodge’s constitution does not support the judgment because it prohibits the use of the same name by more than one lodge, and the names were not identical. They also argue that section 5.053 of the Business Organizations Code, which prohibits identical and deceptively similar names of filing entities, does not apply because the Grand Lodge is not a filing entity.

Appellants’ arguments were not raised in the trial court, and their brief does not demonstrate that the trial court’s ruling about use of the name was based on the Grand Lodge’s constitution or section 5.053 of the Business Organizations Code. The appellants’ argument on this issue in the trial court was different. Their motion for new trial argued that the court erred by failing to submit jury questions about the use of the name “True Level Lodge No. 226.” That motion also argued that the evidence was legally insufficient to support the ruling about use of the name, among other reasons, because the Grand Lodge produced no evidence that the name was eligible for protection or that it would suffer irreparable injury unless the independent lodge was enjoined from using it.

“As a prerequisite to presenting a complaint for appellate review, the record must show that . . . the complaint was made to the trial court by a timely request, objection, or motion that . . . stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court

aware of the complaint, unless the specific grounds were apparent from the context” TEX. R. APP. P. 33.1. We conclude that the arguments presented on appeal were not preserved in the trial court, and accordingly they are waived. *See id.*

We overrule the second issue.

III. Prior convictions

In their third issue, the appellants argue that the court erred by admitting evidence of August’s prior convictions. We review a trial court’s decision to admit or exclude evidence for abuse of discretion. *In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005). To preserve a complaint about the admission of evidence for appeal, a party must make a timely and specific objection in the trial court. TEX. R. APP. P. 33.1; TEX. R. EVID. 103.

August filed a motion in limine regarding his prior felony convictions, which the trial court denied. The motion in limine requested that the trial court order all parties and witnesses “not to refer in any manner” to his prior convictions “until the Court has had an opportunity to rule on their admissibility.” In the motion, August argued that his prior convictions should not be admitted for impeachment purposes because they were too remote under Rule 609(a). He further argued, under Rule 609(b), that the probative value did not substantially outweigh the danger of unfair prejudice. The Grand Lodge opposed the motion in

limine on the basis that the prior convictions were for crimes of moral turpitude and were being offered under Rule 403 due to their similarity to the facts at issue in this case.

During trial, the appellants did not object to any of questions about August's criminal history. On appeal, the appellants contend that error was "properly preserved" by the motion in limine. A motion in limine does not preserve error on evidentiary rulings because it does not seek a ruling on admissibility." *Wackenhut Corp. v. Gutierrez*, 453 S.W.3d 917, 920 n.3 (Tex. 2015). When a trial court has denied a motion in limine, a party must object when the evidence is offered to preserve error for appellate review. *See In re Toyota Motor Sales, U.S.A., Inc.*, 407 S.W.3d 746, 760 (Tex. 2013). Because the appellants did not object at trial when August was questioned about his criminal history, we conclude that they did not preserve error as to the admission of evidence regarding his prior convictions. We overrule the third issue.

Conclusion

We affirm the judgment of the trial court.

Michael Massengale
Justice

Panel consists of Justices Higley, Massengale, and Lloyd.