Affirmed and Memorandum Opinion filed January 20, 2011.

In The

Fourteenth Court of Appeals

NO. 14-09-00630-CV

JOHN HATTON, Appellant

V.

DANIEL D. GRIGAR, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 97-DCV-098376

MEMORANDUM OPINION

Appellant John Hatton contests the validity of the trial court's entry of a permanent injunction permitting appellee Daniel D. Grigar to grade and maintain an easement in Fort Bend County, Texas. In two issues, Hatton claims that the trial court's injunction was void and that the trial court abused its discretion by finding Hatton in contempt of its injunction. We affirm.

BACKGROUND

Much of the underlying factual background of this case is well-documented in earlier opinions from this court, and we refer the parties to those cases for a more detailed

description of the background of this case. *See Hatton v. Griggar* (Hatton I), 66 S.W.3d 545, 548–553 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (affirming the trial court's declaratory judgment); *Hatton v. Griggar* (Hatton II), No. 14-05-0-1053-CV, 2006 WL 3365494, at *1 (Tex. App.—Houston [14th Dist.] Nov. 21, 2006, no pet.) (mem. op.) (affirming the trial court's summary judgment in favor of Grigar, which denied Hatton's bill of review on same issues raised in *Hatton I*). In short, this appeal follows a longstanding dispute over the ownership and use of a gravel road, which in 2000, the trial court declared (a) was a public road and (b) that an easement of ingress and egress existed by necessity, prescription, and implication in favor of Grigar. We affirmed the trial court's judgment in 2002. *Hatton I,* 66 S.W.3d at 557. Hatton subsequently filed related appeals in this court, which were either affirmed or dismissed.[1]

The current appeal arises from injunctive relief granted in favor of Grigar in April 2009. In October 2008, Grigar filed a motion for enforcement and injunctive relief based on the trial court's 2000 declaratory judgment.[2] In this motion, Grigar stated that, on June 22, 2008, he attempted to have a dirt contractor grade the road as permitted by the trial court's 2000 declaratory judgment. According to Grigar, Hatton and his son blocked the contractor from clearing the road. Grigar thus requested that the trial court enforce its

[1] *See Hatton II*, 2006 WL 3365494, at *1; *Hatton v. Grigar* (Hatton III), No. 14-03-01210-CV, 2004 WL 583045, at *1–2 (Tex. App.—Houston [14th Dist.] Mar. 25, 2004, no pet.) (mem. op.) (dismissing Hatton's appeal from contempt proceedings in trial court following Hatton's violation of permanent injunction and awarding sanctions to Grigar for Hatton's frivolous appeal); *Hatton. v Grigar* (Hatton IV), No. 14-02-00767-CV, 2003 WL 124464, at *1 (Tex. App.—Houston [14th Dist.] Jan. 16, 2003, no pet.) (mem. op., per curiam) (dismissing Hatton's appeal from temporary injunction as moot following trial court's entry of permanent injunction).

[2] This motion was filed pursuant to Texas Civil Practice & Remedies Code section 37.011, which provides:

> Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application must be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

Tex. Civ. Prac. & Rem. Code § 37.011 (West 2008).

2000 declaratory judgment by citing Hatton to appear and show cause why Hatton should not be enjoined from interfering with or obstructing Grigar's efforts to maintain and improve the surface of the road. Hatton responded by arguing that the subject road had been declared a public road by this Court. Thus, according to Hatton, Grigar had no right to grade and maintain this public road; only the Fort Bend County Commissioners could authorize maintenance of the road.

The trial court conducted a hearing on Grigar's motion for enforcement and injunctive relief on March 20, 2009. After hearing testimony and argument, the trial court concluded that this Court's decision in *Hatton I*, 66 S.W.3d at 557, did not disturb its 2000 declaratory judgment that an easement of ingress and egress existed by necessity, prescription, and implication in favor of Grigar. The trial court further determined that the existence of this easement entitled Grigar to maintain the property. The trial court enjoined Hatton from "interfering with ingress, egress, maintenance or any other rights of the dominant estate contained by Mr. Grigar in this case as to that property." Hatton objected to the trial court's ruling, to which the trial court responded: "I have ruled that there is an easement. It was not - - the appellate court did not take it up, so my ruling stands." After Hatton's motion to reconsider/motion for new trial was overruled by operation of law, this appeal timely ensued.

ANALYSIS

A. Hatton's Appeal

In his first issue, Hatton asserts that the trial court abused its discretion and denied him due process and equal protection under the law by granting Grigar a "void" order for enforcement and injunction. Hatton argues that, because this Court "failed to affirm that

an easement existed" in *Hatton I*,[3] the trial court was without jurisdiction to grant Grigar's motion for an injunction. We disagree.

In *Hatton I*, we affirmed the trial court's judgment, not simply one of the trial court's declarations. 66 S.W.3d at 557 ("Accordingly, the *judgment* of the trial court is affirmed." (emphasis added)). The trial court's 2000 declaratory judgment thus became final upon issuance of our mandate. *Cf. Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 416 n.19 (Tex. 2009) (listing cases establishing that issuance of mandate renders judgment final). Further, as noted *supra*, the Declaratory Judgment Act provides that further relief based on a declaratory judgment may be granted whenever "necessary and proper." Tex. Civ. Prac. & Rem. Code § 37.011.

It is well established that a landowner may not interfere with the right of the easement holder to use the landowner's property for the purpose of the easement. *See Severance v. Patterson*, —S.W.3d—, No. 09-387, 2010 WL 4371438, at *9 (Tex. Nov. 5, 2010); *Ferrara v. Moore*, 318 S.W.3d 487, 490 (Tex. App.—Texarkana 2010, pet. denied). The purpose of the easement at issue here is to permit Grigar ingress and egress from his landlocked property. Grigar attempted to maintain the easement so that he could continue to enjoy the purpose of the easement, and Hatton interfered with his attempted maintenance. We conclude that Hatton was not permitted to interfere with Grigar's right to use and maintain the easement as necessary so that Grigar could enjoy the purpose of the easement. *See Whaley v. Cent. Church of Christ of Pearland*, 227 S.W.3d 228, 231 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (explaining that easements carry with them the right to do whatever is "reasonably necessary for full enjoyment of the rights granted") (quoting *Roberts v. Friendswood Dev. Co.*, 886 S.W.2d 363, 367 (Tex. App.—Houston [1st Dist.] 1994, writ denied). Thus, the trial court properly enjoined Hatton

[3] 66 S.W.3d at 557 (concluding that because sufficient evidence existed to uphold trial court's finding that the road was public, appellate court "need not reach" the issues regarding whether the trial court's easement findings were proper).

from interfering with Grigar's right to maintain the easement so that Grigar could enjoy the purpose of the easement. *See id.* We overrule Hatton's first issue.

In his second issue, Hatton maintains that the trial court abused its discretion when it found him in contempt for violating its injunction. Decisions in contempt proceedings cannot be reviewed through a direct appeal. *See Hatton III*, 2004 WL 583045, at *1 (citing *Metzger v. Sebek*, 892 S.W.2d 20, 55 (Tex. App.—Houston [1st Dist.] 1994, writ denied)). Contempt orders may only be reviewed through a habeas corpus proceeding or by writ of mandamus. *Metzger*, 892 S.W.2d at 55. Accordingly, we overrule Hatton's second issue.[4]

B. Grigar's Request for Sanctions

Grigar asserts that Hatton's appeal is frivolous and requests sanctions under Texas Rule of Appellate Procedure 45, which provides:

> If the court of appeals determines that an appeal is frivolous, it may—on motion of any party or on its own initiative, after notice and a reasonable opportunity for a response—award each prevailing party just damages. In determining whether to award damages, the court must not consider any matter that does not appear in the record, briefs, or other papers filed in the court of appeals.

Tex. R. App. P. 45. Hatton has not responded to Grigar's motion for sanctions.

The decision to award sanctions is a matter within our discretion, which we exercise with prudence and caution after careful deliberation. *Bridges v. Robinson*, 20 S.W.3d 104, 115 (Tex. App.—Houston [14th Dist.] 2000, no pet.). In objectively determining whether an appeal is frivolous, we review the record from the viewpoint of the advocate and decide whether he had reasonable grounds to believe the case could be reversed. *Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied).

[4] Of course, had we reversed the trial court's injunctive relief, the contempt order would have been rendered moot.

The right to appeal is a most sacred and valuable one. *Bradt v. West*, 892 S.W.2d 56, 78 (Tex. App.—Houston [1st Dist.] 1994, writ denied). However, as our sister court has acknowledged,

> [w]e will not permit spurious appeals, which unnecessarily burden parties and our already crowded docket, to go unpunished. Such appeals take the court's attention from appeals filed in good faith, wasting court time that could and should be devoted to those appeals. No litigant has the right to put a party to needless burden and expense or to waste a court's time that would otherwise be spent on the sacred task of adjudicating the valid disputes of Texas citizens.

Id. at 79.

After considering the record and papers on file with this Court, we agree that this appeal is frivolous. We find Hatton had no reasonable grounds to believe the case could be reversed. *See Smith*, 51 S.W.3d at 381; *Hatton III*, 2003 WL 124464, at *2. Under Rule 45, we award damages to Grigar against Hatton and his appellate attorney, jointly and severally, in the amount of $2,500.00 for the filing of a frivolous appeal. *See* Tex. R. App. P. 45.

We affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Jamison, and Senior Justice Price.[*]

[*] Senior Justice Frank C. Price sitting by assignment.