Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-23-00008-CV

IN THE MATTER OF THE MARGARET M. MARQUART AND DAVID D. MARQUART TRUST

From the 451st Judicial District Court, Kendall County, Texas
Trial Court No. 22-311
Honorable Kirsten Cohoon, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: July 12, 2023

REVERSED AND REMANDED; TEMPORARY INJUNCTION DISSOLVED

In this interlocutory appeal, the dispositive question is whether the order memorializing some terms read into the record and agreed to by the parties in open court is a Rule 11 agreement or an agreed temporary injunction. Appellants argue the terms are an agreed temporary injunction, and the trial court's order that memorialized the terms is void due to its lack of required elements.

We conclude the order's character and function show it is a temporary injunction, which we have jurisdiction to review. Because the order fails to comply with Rules 683 and 684, it is void. We reverse the trial court's order, dissolve the temporary injunction, and remand this cause to the trial court.

BACKGROUND

The case underlying this appeal pertains to the ownership and control of a 155-acre ranch in Kendall County; we recite the relevant facts from the parties' pleadings.[1]

A. Property, Ownership

In May 2019, Margaret M. Marquart established the Margaret M. Marquart and David D. Marquart Trust. Margaret and her son David were designated as co-trustees. Margaret, who owned the ranch as her separate property, conveyed it by special warranty deed into the Trust. In July 2020, Margaret passed away, and David became the Trust's sole trustee.

B. Joint Business Venture

In October 2020, Brittney Sabula, David's daughter; Nicholas Sabula, Brittney's husband; and David agreed to jointly own and operate a business on the ranch. To that end, Brittney and David formed DB Farm & Ranch LLC; their intent was to use the property for, inter alia, whitetail and axis deer hunts for paying customers.

On December 6, 2020, Brittney visited David and presented him with some "LLC documents" to sign. He signed several documents, including a special warranty deed transferring ownership of the ranch to the LLC.

C. Lawsuit: Claims, Counterclaims

On June 6, 2022, David sued Brittney, Nicholas, and the LLC (collectively Appellants). He sought, inter alia, to set aside the deed and quiet title to the ranch. He also sought injunctive relief against Appellants. Appellants filed a general denial and asserted counterclaims against David; they also sought injunctive relief.

[1] We express no opinion about the truth of the parties' pleaded facts in the underlying case.

D. Temporary Injunctions Hearing

The trial court set the applications and motions to be heard on July 6, 2022.

At the hearing, Brittney advised the trial court that the parties had conferred and had agreed on almost all the terms to maintain the status quo of the real and personal property in dispute during the pendency of the case. She stated she "[had] no issues with those parts of [David's] injunction [and] I don't think [David] has any issues with our parts where we want everything frozen in place. We don't want [David] selling any of our personal property or anything of the things out there."

The trial court noted the parties were close to an agreement, and it urged the parties to confer and reach an agreement to resolve the remaining matters. The trial court recessed the hearing, and the parties conferred.

After the parties conferred, the trial court resumed the hearing, and the parties advised the court they had reached an agreement:

> The parties have reached an agreement with respect to our temporary injunction wherein the plaintiffs asked that the defendants desist and refrain from selling or encumbering with a lien of real property that's the subject of this lawsuit of the Marquart Ranch where David Marquart currently resides.

The parties then read the rest of their agreed terms into the record.

The trial court asked each side if they agreed to what the other read into the record, and each side agreed. The trial court summarized: "All right, excellent. Then Gentlemen, it sounds like we have an agreement to the issues that were before the Court today."

David offered to draft a written agreement, and the trial court responded:

> All right. You take a stab at it.
>
> I think it can just be in a little Rule 11 and you guys can file that since it's on the record, and I have accepted that agreement. But if you want me to sign off on the Rule 11, just send it to me. And I will—after you two have signed off and then I will sign it too.

E. Hearing on Pending Motions

The parties did not execute a written Rule 11 agreement, and each side filed more motions. On November 30, 2022, the trial court held a hearing to consider, inter alia, David's motion to enforce the putative Rule 11 agreement and Brittney's motion to quash and her applications for injunctive relief. At the hearing, the trial court denied Brittney's motion to quash and then heard arguments on David's motion to enforce the July 6, 2022 agreement.

1. Motion to Enforce Rule 11 Agreement

David suggested that the July 6, 2022 agreement was "sort of an agreed Temporary Injunction," but he acknowledged that the trial court had considered it a Rule 11 agreement. He asked the trial court "to enter an order sustaining that agreement that was made in this court and accepted by you [the trial court]."

Brittney argued that the agreement was limited to sixty days, but because that period had expired, it could not be an indefinite agreement: it was "a de facto injunction." She insisted that "[i]f [the agreement] was indefinite, it is effectively an injunction, because the parties started their discussion saying it is an injunction."

The trial court questioned the respective parties about their compliance with the terms of the agreement and then stated the following:

> Okay. Gentlemen, it sounds to me that the Rule 11 Agreement is, in fact, in force and effect and has been complied with . . . . [T]here is a Rule 11 underneath the agreement in full force and effect for the pendency of this lawsuit which we have agreed to as of July 6th of 2022, and I'll write an order.

2. Applications for Temporary Injunctions

After the trial court confirmed that it viewed the July 6, 2022 agreement as a Rule 11 agreement, it considered the parties' respective applications for a temporary injunction. It

reviewed with the parties the portions of their respective applications for which they were seeking judicial rulings.

After several minutes where David and Brittney clarified their requests, each agreed to the other's proposed terms, and the trial court summarized their progress: "Then on the record I have agreements to everything that was in issue before this Court . . . ." The trial court set dates for a ranch inspection, depositions, and trial; it then adjourned the hearing.

F. Order Recognizing Rule 11 Agreement

The same day of the hearing, November 30, 2022, the trial court signed an order which reads in its entirety as follows:

> On July 6, 2022, the Court considered the Parties' competing requests for Temporary Injunction in the above referenced cause.
>
> The Parties announced that they reached an agreement between them with respect to the issues before the Court. The Court heard the agreement and entered same into the record. The Court finds that the agreement was made in open Court, agreed to by the Parties, and entered into the record.
>
> The Court hereby adopts the agreement of the Parties as set forth in the transcript at Exhibit A attached hereto.

Exhibit A included pages 7–11 from the July 6, 2022 temporary injunctions hearing, which stated the terms of the parties' agreement.

G. Appeal

Appellants filed a notice of interlocutory appeal; it cites section 51.015(a)(4), the provision authorizing an appeal from a trial court's ruling that "grants or refuses a temporary injunction." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4); *Qwest Commc'ns Corp. v. AT & T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000). They argue that the trial court's order should be set aside because it is "a void temporary injunction masquerading as a Rule 11 Agreement."

David argues the trial court's order reflects the parties' Rule 11 agreement, it is enforceable, and because the order is not subject to interlocutory appeal, this appeal must be dismissed for want of jurisdiction.

The first question we must address is whether the trial court's November 30, 2022 order—which memorializes the terms read into the record and agreed to by the parties in open court—is a Rule 11 agreement or an agreed temporary injunction.

APPLICABLE LAW

Before we address the parties' arguments, we briefly recite the applicable law.

A. Rule 11 Agreement

A Rule 11 agreement is an agreement made between attorneys or parties in a pending suit; it is enforceable if "it be in writing, signed and filed with the papers as part of the record, or . . . made in open court and entered of record." TEX. R. CIV. P. 11; *accord Shamrock Psychiatric Clinic, P.A. v. Tex. Dep't of Health & Hum. Servs.*, 540 S.W.3d 553, 561 (Tex. 2018).

B. Temporary Injunction

Rules 683 and 684 establish the essential elements for a temporary injunction including the reasons for its issuance, the act or acts to be restrained, a trial setting date, and the amount of security required of the applicant. TEX. R. CIV. P. 683, 684; *Qwest Commc'ns*, 24 S.W.3d at 337; *InterFirst Bank San Felipe, N.A. v. Paz Const. Co.*, 715 S.W.2d 640 (Tex. 1986) (per curiam); *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, no pet.).

"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) (citing *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993)); *accord In re M-I L.L.C.*, 505 S.W.3d 569, 576 (Tex. 2016).

If a "trial court's order places restrictions on [a party] and is made effective immediately so that it operates during the pendency of the suit, it functions as a temporary injunction." *Qwest Commc'ns*, 24 S.W.3d at 337; *accord City of Houston v. Downstream Env't, L.L.C.*, No. 01-13-01015-CV, 2014 WL 5500486, at *5 (Tex. App.—Houston [1st Dist.] Oct. 30, 2014, pet. dism'd) (mem. op.).

C. Determining an Order's Classification

When we review an order to identify its nature, "it is the character and function of an order that determine its classification." *Qwest Commc'ns*, 24 S.W.3d at 336 (citing *Del Valle Indep. Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992)); *In re Tex. Nat. Res. Conservation Comm'n*, 85 S.W.3d 201, 205 (Tex. 2002) ("Whether an order is . . . an appealable temporary injunction depends on the order's characteristics and function, not its title.").

"One function of injunctive relief is to restrain motion and to enforce inaction." *Qwest Commc'ns*, 24 S.W.3d at 336; *In re Estate of Skinner*, 417 S.W.3d 639, 642 (Tex. App.—Houston [14th Dist.] 2013, no pet.).

If an order functions as a temporary injunction, such as by restraining motion and enforcing inaction, but lacks some of a temporary injunction's mandatory requirements, those omissions "may render the trial court's order void but they do not change the order's character and function defining its classification." *Qwest Commc'ns*, 24 S.W.3d at 337; *In re Garza*, 126 S.W.3d 268, 273 (Tex. App.—San Antonio 2003, no pet.). Thus, if "the trial court's order places restrictions on [a party] and is made effective immediately so that it operates during the pendency of the suit, it functions as a temporary injunction." *Qwest Commc'ns*, 24 S.W.3d at 337; *Downstream Env't*, 2014 WL 5500486, at *5.

STANDARD OF REVIEW

"We construe orders under the same rules of interpretation as those applied to other written instruments." *Icon Benefit Administrators II, L.P. v. Mullin*, 405 S.W.3d 257, 264 (Tex. App.—Dallas 2013, no pet.); *accord Kourosh Hemyari v. Stephens*, 355 S.W.3d 623, 626 (Tex. 2011). "[W]e must examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless." *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003); *accord Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

"[U]nderstanding the context in which an agreement was made is essential in determining the parties' intent *as expressed in the agreement*, but it is the parties' *expressed intent* that the court must determine." *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 765 (Tex. 2018).

"If the written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law." *Coker*, 650 S.W.2d at 393; *see Yammine v. HDH Fin., LLC*, No. 07-14-00169-CV, 2015 WL 3750339, at *2 (Tex. App.—Amarillo June 12, 2015, pet. denied) (mem. op.) (noting that "interpreting an order implicates a question of law").

We review questions of law, including a trial court's legal conclusions, de novo. *URI, Inc.*, 543 S.W.3d at 763; *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 651 (Tex. 1999).

NATURE OF CHALLENGED ORDER

Before the July 6, 2022 hearing, both sides had filed applications for temporary injunctions.

A. July 6th Hearing

At the hearing, the trial court asked "[A]re we only proceeding on the temporary injunction?"

David responded that "you are right about your—what's the issue today." He added that the parties' remaining disagreements were just for a few personal items.

Brittney noted that "[w]e have no issues with those parts of his injunction [regarding the transfer or encumbrance of the property and] I don't think he has any issues with our parts where we want everything frozen in place." She added that "[e]verything stays in place and maintains a status quo except [certain items]."

B. November 30th Hearing

In the November 30, 2022 hearing, as the court discussed the parties' July 6th agreement with them, the court observed that "[t]he question is whether or not the parties during the pendency of this lawsuit can reach an agreement to maintain the status quo." The court noted that "[w]hat is relevant is whether or not we can maintain the entirety of that property in a status quo standing as it is for the pendency of the lawsuit; from today until we finish it, which we're going to get a jury trial."

Addressing the parties, the court asked "[c]an everything be maintained in status quo as it is today during the pendency of this case?" The parties agreed, and the court summarized the agreement: "So the property can be maintained as status quo as it is today."

Addressing Brittney, the court asked "Can everything be maintained in status quo as it is today during the pendency of this case?" Brittney answered: yes.

Addressing David's counsel, the court asked "So the property can be maintained as status quo as it is today. Does that satisfy your client with the remaining issues on the Temporary Injunction during the pendency of this case?" David agreed that it did.

At the conclusion of the hearing, the trial court signed its November 30, 2022 order.

C. Character and Function of Order

The complained-of order followed a hearing on the parties' respective applications for temporary injunctions and the pleadings seeking temporary injunctive relief. *Cf. Downstream Env't*, 2014 WL 5500486, at *5; *Young v. Golfing Green Homeowners Ass'n, Inc.*, No. 05-12-00651-CV, 2012 WL 6685472, at *2 (Tex. App.—Dallas Dec. 21, 2012, no pet.) (determining that an order was not a temporary injunction because, inter alia, the appellant had not sought injunctive relief and the complained-of order "was not based on any pleadings seeking temporary injunctive relief").

Having considered the entire order and the circumstances in which it was created, *see URI, Inc.*, 543 S.W.3d at 765, we conclude that the order's function and "purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits," *see Butnaru*, 84 S.W.3d at 204; *Mullin*, 405 S.W.3d at 264 (recognizing that we construe orders like other written instruments). The order places restrictions on Brittney's actions, it went into effect immediately, and it operates during the pendency of the suit: "it functions as a temporary injunction." *See Qwest Commc'ns*, 24 S.W.3d at 337; *Downstream Env't*, 2014 WL 5500486, at *5 ("[T]he fact that the document also satisfied the requirements of Rule 11 does not preclude it from also being classified as a temporary injunction subject to interlocutory appellate review.").

Because the trial court's order grants a temporary injunction, we have jurisdiction to hear this interlocutory appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) ("A party may appeal from an interlocutory order of a district court . . . that . . . grants or refuses a temporary injunction."); *Qwest Commc'ns*, 24 S.W.3d at 337; *Downstream Env't*, 2014 WL 5500486, at *5.

We sustain Appellants' first issue.

CHALLENGE TO VOID ORDER

In their second issue, Appellants argue that the trial court's November 30, 2022 order does not comply with the requirements for a temporary injunction, and it is void.

We agree.

An order's "failure to meet the requirements of rule 683 renders the injunction order 'fatally defective and void, whether specifically raised by point of error or not.'" *In re Garza*, 126 S.W.3d at 271 (quoting *EOG Res., Inc. v. Gutierrez*, 75 S.W.3d 50, 53 (Tex. App.—San Antonio 2002, no pet.)). Because the trial court's November 30, 2022 order does not, inter alia, set a trial date or the amount of security, it is void. *See* TEX. R. CIV. P. 684, 684; *In re Garza*, 126 S.W.3d at 273 ("[B]ecause the temporary injunction here failed to comply with rules 683 and 684, it is void."); *Reiss v. Hanson*, No. 05-18-00923-CV, 2019 WL 1760360, at *2 (Tex. App.—Dallas Apr. 22, 2019, no pet.); *Conlin v. Haun*, 419 S.W.3d 682, 687 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (recognizing that an agreed temporary injunction order that did not set the case for trial was void).

We sustain Appellants' second issue.

CONCLUSION

The trial court's November 30, 2022 order—that memorialized the parties' July 6, 2022 agreement read into the record in open court—sought to maintain the status quo of the real and personal property during the pendency of the litigation. It places restrictions on Brittney's actions, it went into effect immediately, and it operates during the pendency of the suit: it is a temporary injunction, which is subject to interlocutory appellate review. However, because the order does not comply with Rules 683 and 684, it is void. Accordingly, we reverse the trial court's November 30, 2022 order, dissolve the temporary injunction, and remand this cause to the trial court.

Patricia O. Alvarez, Justice