

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

---

**NO. 09-08-241 CV**  
**NO. 09-08-200 CV**

---

**PATRICIA F. WESTBO, Appellant**

**V.**

**MARK A. METZGER, Appellee**

**and**

**IN RE PATRICIA F. WESTBO**

---

---

**On Appeal from the 1-A District Court**  
**Tyler County, Texas**  
**Trial Cause No. 20,735**  
**and**  
**Original Proceeding**

---

---

**MEMORANDUM OPINION**

In cause number 09-08-241-CV, Patricia F. Westbo appeals and challenges the subject matter jurisdiction of the district court in Tyler County over this case. In its judgment, the Tyler County district court declared that the funds deposited with the Harris County District

Clerk and associated with the parties' Harris County divorce belonged to Mark A. Metzger. The judgment also enjoined Westbo from asserting any claim to those funds. Westbo contends that the Tyler County district court erred because the injunction sought to stay proceedings of the Harris County district court concerning its judgment in the parties' divorce. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 65.023(b) (Vernon 2008).

In this appeal, Westbo argues the injunction is void and requests that we dismiss the case. Westbo also filed a petition for writ of mandamus, cause number 09-08-200-CV, seeking the same relief. We consolidated the two proceedings and address both in this opinion. We hold that the district court in Tyler County did not have jurisdiction to enjoin the parties from proceeding in Harris County; therefore, we vacate the trial court's judgment and dismiss Metzger's claims without prejudice. We dismiss the writ of mandamus as moot.

#### Background

Westbo and Metzger divorced in Harris County in 2002. *See Metzger v. Metzger*, No. 01-04-00893-CV, 2007 WL 1633445 (Tex. App.–Houston [1st Dist.] June 7, 2007, pet. denied). The 247th District Court of Harris County entered the divorce decree. Westbo subsequently filed in that court a petition seeking clarification of some of the terms of the decree; this case was assigned cause number 2002-21703. *Id.* The trial court clarified the divorce decree as it related to the division of the marital estate. *Id.* at \*\*1-3. Metzger then appealed the clarification order and deposited funds to supersede the divorce court's

judgment.<sup>1</sup> *Id.* The First Court of Appeals held that the 247th District Court exceeded its jurisdiction and erred when it ruled on the ownership of assets in a particular trust. *Id.* at \*7. As a result, the First Court of Appeals reformed the clarification order to delete the provisions concerning the trust assets; otherwise, as modified, the First Court of Appeals affirmed the clarification order. *Id.*

At that point, and to prevent Westbo from collecting on the funds deposited in the registry of the court, Metzger filed two separate suits. On November 26, 2007, Metzger filed cause number 20,735, which is the case now before us on appeal, in a district court in Tyler County. The suit sought to enjoin further proceedings by any party in Harris County. In cause number 20,735, Metzger asserted that in May 2006, Westbo signed a “Full Release” in which she released her interest in the funds that Metzger had deposited with the District Clerk of Harris County. Then, in December 2007, Metzger filed an almost identical suit in Harris County against Westbo. In his Harris County suit, he included the District Clerk of Harris County as a defendant. Metzger’s Harris County suit, in which he asserted his claim

---

<sup>1</sup>In several proceedings, the parties litigated issues concerning the amount that Metzger had been ordered to deposit in the registry to secure the district court’s judgment in the divorce. See *In re Metzger*, No. 01-06-00622-CV, 2006 WL 2075940 (Tex. App.–Houston [1st Dist.] July 27, 2006, orig. proceeding); *In re Metzger*, No. 01-06-00651-CV, 2006 WL 2076030 (Tex. App.–Houston [1st Dist.] July 27, 2006, orig. proceeding); *In re Metzger*, No. 01-05-00437-CV, 2005 WL 1111078 (Tex. App.–Houston [1st Dist.] May 3, 2005, orig. proceeding).

that Westbo released the funds on deposit in Harris County, was assigned cause number 2007-74745.

Westbo did not file an answer in cause number 20,735 (Metzger's Tyler County suit), and she did not attend the injunction hearing which occurred on February 8, 2008. After the hearing, the Tyler County trial court entered its judgment and enjoined Westbo from attempting to collect the funds on deposit in Harris County. The record before us also includes an order entered by the Harris County trial court directing that the funds on deposit with the Harris County District Clerk remain in the registry of the court until further order of the Harris County court.

#### Analysis

This appeal requires that we construe section 65.023 of the Texas Civil Practice and Remedies Code. This section provides: "A writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending *or the judgment was rendered.*" TEX. CIV. PRAC. & REM. CODE ANN. § 65.023(b) (emphasis added).

Westbo contends that section 65.023(b) requires that an action to enjoin the execution of a judgment be brought in the court where the judgment was rendered. According to Westbo, the Civil Practice and Remedies Code deprives the district court in Tyler County of

jurisdiction to enter an injunction to prohibit her from executing on the judgment she obtained in Harris County.

Metzger, on the other hand, 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. According to Metzger, “this is a suit to enforce a final judgment construing a full release.” Metzger asserts the trial court’s jurisdiction in this case is provided by Article 5, Section 8 of the Texas Constitution, which states in part as follows: “District Court judges shall have the power to issue writs necessary to enforce their jurisdiction.”

First, we address whether section 65.023 concerns a trial court’s jurisdiction to act. Courts interpreting section 65.023 have held that the statute’s requirement to file injunctions in the court in which the suit is pending or from which the judgment emanated does not relate merely to venue; it is jurisdictional. *Gardner v. Stewart*, 223 S.W.3d 436, 438 (Tex. App.–Amarillo 2006, pet. denied); *Hageman/Fritz, Byrne, Head & Harrison, L.L.P. v. Luth*, 150 S.W.3d 617, 629 (Tex. App.–Austin 2004 no pet.); *Butron v. Cantu*, 960 S.W.2d 91, 94 (Tex. App.–Corpus Christi 1997, no writ); *McVeigh v. Lerner*, 849 S.W.2d 911, 914 (Tex. App.–Houston [1st Dist.] 1993, writ denied); *see also Evans v. Pringle*, 643 S.W.2d 116, 117-18 (Tex. 1982). In *Butron*, the Corpus Christi Court of Appeals stated: “The statute [section 65.023] controls not just venue of this type of suit, but also jurisdiction as well, so

long as the judgment in question is valid on its face.” 960 S.W.2d at 95. We likewise conclude that the statute as applied to the facts before us is jurisdictional.

Next, we note that, among other things, section 65.023 concerns enjoining execution on judgments. In this case, the trial court enjoined the parties from executing on the funds Metzger deposited to supersede the judgment. The *Butron* Court, under a situation involving executing on a supersedeas bond, held “that enjoining recovery on the supersedeas bond is the same as enjoining execution or collection of the judgment.” 960 S.W.2d at 95. We likewise hold that enjoining the parties from seeking recovery on funds posted in the court’s registry is the same as enjoining the parties from the execution or collection of the judgment for purposes of section 65.023(b).

Next, we address Metzger’s argument that the trial court’s jurisdiction over this case arises under Article 5, Section 8 of the Texas Constitution. We conclude otherwise, as we are not persuaded by Metzger’s argument that the Tyler County district court’s injunction serves the purpose of enforcing the two judgments it had previously entered in litigation between these same parties. In the first of the Tyler County cases (cause number 18,770), Metzger filed a trespass to try title suit. The parties settled, and the trial court approved a mediated settlement agreement. Under the judgment approving the settlement, Metzger received the ownership of stock in a corporation and the title to real property located in Tyler County in exchange for his \$45,000 payment to Westbo. After the judgment was entered,

Westbo apparently failed to sign deeds to the property that the court had awarded to Metzger. As a result, Metzger filed a petition to enforce the judgment. Ultimately, to resolve the issues raised by Metzger's enforcement action, Westbo signed the "Full Release" and Metzger subsequently non-suited his request to enforce the judgment. The judgment entered by the Tyler County district court in cause number 18,770 does not attempt to interpret the terms of the "Full Release" now in dispute between the parties.

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.

In contrast, the 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.

In conclusion, the 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). Accordingly, we vacate the Tyler County district court's judgment in cause number 20,735 and dismiss Metzger's claims without prejudice. *See* TEX. R. APP. P. 43.2(e). We dismiss Westbo's petition for mandamus in cause number 09-08-200-CV. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding) ("[M]andamus will not issue where there is an adequate remedy by appeal[.]").

ORDER VACATED; PETITION FOR WRIT OF MANDAMUS DISMISSED.

---

HOLLIS HORTON  
Justice

Submitted on October 15, 2008  
Opinion Delivered November 26, 2008  
Before McKeithen, C.J., Gaultney and Horton, JJ.