



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00199-CV

JODY STONE AND WIFE, BRENDA STONE, APPELLANTS

V.

J.W. RESOURCES, INC., APPELLEE

**On Appeal from the 69th District Court
Sherman County, Texas
Trial Court No. 5033; Honorable Ronald E. Enns, Presiding**

November 9, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

This is a land rights case wherein Appellants, Jody Stone and his wife, Brenda Stone, were denied a permanent injunction against Appellee, J.W. Resources, Inc., following a bench trial. The Stones had sought to shut down a saltwater disposal well located on their property based on the alleged failure of J.W. Resources, Inc. to fulfill its obligations under the rules and regulations of the United States Environmental Protection Agency ("EPA") to prepare and implement a Spill Prevention and Control

Plan. By a single issue restated four different ways, the Stones contend the trial court abused its discretion by refusing to issue the permanent injunction requested. We affirm.

BACKGROUND

The Stones are the owners of the surface estate of two tracts of ranchland located in Sherman County, Texas, containing 431 acres, more or less. The Stones operate a cow-calf operation on that land. The land itself contains part of the North Palo Duro Creek, a part of the watershed of the Palo Duro dam and reservoir located in Hansford County.

At the time the Stones acquired the property, it was subject to the terms and provisions of a saltwater disposal lease,¹ as well as an oil and gas lease. For several years, the disposal well was a source of irritation to the Stones, with the main complaint being the inadequacy of the dikes constructed around saltwater retention facilities. The Stones maintain the dikes were inadequately designed and maintained, thereby allowing contaminants to pollute their property. As a result of these problems, the Stones filed suit seeking monetary damages and injunctive relief. They subsequently abandoned all claims except their claim for injunctive relief. During the course of discovery, the Stones requested production of “[a]ll spill prevention control and counter measure plan or plans as required by the Environmental Protection Agency” During the deposition of J.W. Resources, Inc.’s corporate representative, Joe W. Watkins, testimony was given that an EPA compliant plan was in place. Despite the

¹ A disposal well is a well into which waste fluids can be injected for safe disposal. Disposal wells are typically subject to regulatory requirements to avoid the contamination of freshwater aquifers.

representation of counsel that those plans would subsequently be produced, no efforts were made to compel their production and no plans were ever provided. At trial, Watkins again testified that an EPA mandated *Spill Prevention and Control Plan* for the disposal well was in place.

At the conclusion of the hearing, the trial court initially deferred its ruling, but later issued a letter denying the requested injunctive relief. In its *Findings of Fact and Conclusions of Law*, the trial court found J.W. Resources, Inc. to be in compliance with both EPA and Texas Railroad Commission rules and regulations.

Presented as four “points of error,” the Stones contend the trial court erred when it denied injunctive relief because the evidence was legally (“point of error one”) and factually (“point of error two”) insufficient to establish compliance with the applicable EPA regulations mandating a *Spill Prevention and Control Plan*. The Stones further contend the trial court abused its discretion by denying injunctive relief (“point of error three”) and that the evidence was legally insufficient to support the trial court’s conclusions of law 8, 9, 11, and 13 pertaining to the denial of their requested injunctive relief (“point of error four”). We will address all four points of error together under the general discussion of whether the trial court abused its discretion in denying injunctive relief.

INJUNCTIVE RELIEF

An injunction is an extraordinary remedy, the purpose of which is to preserve the status quo so as to prevent future damages. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993). To be entitled to injunctive relief, the Stones had the burden to plead and

prove three specific elements: (1) the existence of a wrongful act by the party to be enjoined; (2) a probable right to the relief sought; and (3) the likelihood of imminent and irreparable injury. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An injury is irreparable if the injured party cannot be adequately compensated by the recovery of monetary damages or if the damages cannot be measured by any certain pecuniary standard. *Id.*

STANDARD OF REVIEW

The decision to grant or deny an injunction rests within the sound discretion of the trial court. *Id.* As such, we review the denial of an application for a permanent injunction under an abuse of discretion standard. See *Operation Rescue-Nat'l v. Planned Parenthood*, 975 S.W.2d 546, 560 (Tex. 1998). Under an abuse of discretion standard, legal and factual sufficiency of the evidence are not independent grounds of error, but are instead relevant factors for this court to assess in determining whether the trial court abused its discretion. *Henry v. Henry*, 48 S.W.3d 468, 475 (Tex. App.—Houston [14th Dist.] 2001, no pet.). In that regard, a trial court abuses its discretion by ruling without supporting evidence. *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). The test for abuse of discretion is whether the trial court acted without reference to any guiding rules and principles, or alternatively, whether the trial court's actions were arbitrary and unreasonable based on the circumstances of the individual case. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985).

ANALYSIS

At trial and on appeal, the substance of the argument being made by the Stones is that J.W. Resources, Inc. was in violation of applicable EPA regulations by failing to

have a *Spill Prevention and Control Plan* in place. J.W. Resources, Inc. contends the problem with their argument is simple—there is no evidence that such a plan was not in place. To the contrary, J.W. Resources, Inc. argues that the only evidence of record is that there was such a plan in place and that, consistent with that evidence, the trial court entered a conclusion of law that it was “in compliance with both Environmental Protection Agency Regulations and Texas Railroad Commission Regulations.”

Furthermore, there was no evidence of imminent harm and the trial court was well within its discretion in finding none. The record established that there had been no leaks of petroleum products or saltwater for several years and that J.W. Resources, Inc. had been quite responsible when it came to responding to any inevitable leaks. Additionally, there was no evidence of any irreparable injury in that there was no evidence indicating that compensation was not available or ascertainable for any alleged harm, past, present, or future. Consequently, the Stones were not irreparably harmed because they had an adequate remedy at law and they failed to establish that there was no other remedy at law available to compensate them for any perceived injury. Because the Stones failed to meet their burden to establish an entitlement to injunctive relief, their four-part issue is overruled.

CONCLUSION

The trial court’s judgment is affirmed.

Patrick A. Pirtle
Justice