In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00336-CV

BRIGHT LAND & CATTLE, LLC, APPELLANT

V.

PG-M INTERNATIONAL, LLC, PG-M INTERNATIONAL OPERATIN, LLC AND MATRA PETROLEUM U.S.A., APPELLEES

On Appeal from the 100th District Court
Carson County, Texas
Trial Court No. 11430, Honorable Stuart Messer, Presiding

March 9, 2017

MEMORANDUM OPINION

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

Appellant, Bright Land & Cattle, LLC, (Bright) appeals from a temporary injunction granted in favor of appellees, PG-M International, LLC (a/k/a Matra Petroleum Oil & Gas, LLC), PG-M International Operating, LLC (a/k/a Matra Petroleum Operating, LLC), and Matra Petroleum U.S.A., Inc., collectively "Matra." The trial court's temporary injunction declared a 100′ wide power line easement across certain sections of Bright's ranch, described the easement by metes and bounds, and ordered that Bright refrain from interfering with or disconnecting the power lines running along the easement. On

appeal from that order, Bright contends that the trial court abused its discretion by granting injunctive relief for a number of reasons. We reverse.

Background

The evidence takes us back to 2007 when Lera, LLC (a company owned by Randy Dixon) and SNW JB Properties (a company owned by Jerry Nolen) proposed to drill an oil and gas well on a ranch. Though the ranch contained electrical poles and lines, the site at which the well was to be drilled lacked access to them. To address the situation, Nolen approached the ranch owner, Montford Johnson.

Johnson and Nolen discussed the matter and the two men came to an oral agreement, consent to which was represented by a handshake. Per the agreement, Nolen would connect to the ranch's existing electrical line located on Section 12 for purposes of powering the mineral well. To do that though, the line would have to cross over other sections of the ranch, which sections were also owned by Johnson. As part of the arrangement, Nolen also agreed to provide electricity to a nearby water well of Johnson (without cost to Johnson) once the line to the mineral well was completed.

The mineral well was drilled and electrical lines were built. The situation remained so until the entity who bought Johnson's interest in the ranch (*i.e.,* Bright) discovered that the water well had no electricity. This occurred in November of 2015, and Bright concluded that Matra, Nolen and Dixon's purported successor, had disconnected or severed the electrical wire to the water well. Prior thereto, Bright had received a communication from Matra regarding use of the electricity at the mineral well site. Matra apparently believed that Bright impermissibly tapped into the line. Therefore, it demanded that Bright stop using the power for free. So, when Bright

discovered that the water well was not getting electricity, it deduced, correctly or not, that Matra caused the circumstance and decided to respond by disconnecting the electrical lines from Section 12 to the mineral well.

The circumstances resulted in Bright suing Matra and Matra counterclaiming against Bright. Needless to say, their respective pleadings allege numerous causes of action, but the one of import here is the declaratory relief sought by Matra. Among other things, it requested the trial court to declare that it "as well as any and all successors in interest, have an easement to run power across the Ranch to service the oil and gas leases at issue." Matra also sought the following relief:

> Matra requests that the Court issue a temporary restraining order and set the request for an injunction for hearing and, after hearing, enter a temporary injunction and, after trial, a permanent injunction declaring that the claimed easement is valid and inures to Matra, as well as its successors in interest.

The trial court convened a hearing on the request for temporary injunctive relief and granted same. In doing so, it found a probable right of recovery, but then it "ORDERED and DECLARED that a One Hundred Foot (100′) power line easement exists in favor of Matra and its successors over land belonging to Bright Land & Cattle, LLC, specifically lying in Sections 10, 11, and 12." In addition to being 100′ wide, the easement exceeded two miles in length.

Bright appealed. It asserted various grounds purporting to illustrate that the trial court abused its discretion in granting the "temporary" relief.

Standard of Review

The purpose of a temporary injunction is to preserve the status quo pending a final hearing on the merits. *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 555

(Tex. 2016); *SHA, LLC v. NW. Tex. Healthcare Sys.*, *Inc.,* No. 07-13-00320-CV, 2014 Tex. App. LEXIS 38, at *2 (Tex. App.—Amarillo Jan. 3, 2014, no pet.) (mem. op.). Indeed, the only question to be decided by the trial court is whether the status quo should be preserved. *Transp. Co. v. Robertson Transps., Inc*., 152 Tex. 551, 261 S.W.2d 549, 552 (1953). Consequently, the temporary relief awarded cannot accomplish the object of the suit. *See Tex. Foundries, Inc. v. Int'l Moulders & Foundry Workers Union*, 248 S.W.2d 460, 464 (1952); *Friona Indep. Sch. Dist. v. King*, 15 S.W.3d 653, 657 (Tex. App.—Amarillo 2000, no pet.). As we said in *Friona I.S.D.*, "[t]o do so is tantamount to adjudicating the litigants' respective rights without the benefit of a trial and, therefore, is error." *Id.* More importantly, when accomplishing that object divests a party of a property right without a trial, the order is void. *See James v. E. Weinstein & Sons*, 12 S.W.2d 959, 961 (Tex. Comm'n App. 1952, holding approved); *Hidden Valley Civic Club v. Brown,* 702 S.W.2d 665, 667 (Tex. App. Houston—[14th Dist.] 1985, no writ) (involving a temporary injunction and stating that "[t]he court is without authority to divest a party of property rights without a trial and any attempt to do so is void"); *Williamson v. Cty. of Dallas*, 519 S.W.2d 495, 498 (Tex. Civ. App.—Waco 1975, writ ref'd n.r.e.) (involving a temporary injunction and stating that "[t]he court is without authority to divest a party of property rights without a trial and any attempt to do so is void"). A temporary injunction may run afoul of this prohibition even though the trial court does not grant all the relief sought. *See Friona Indep. Sch. Dist.*, 15 S.W.3d at 657. It is enough that the decision gives him most or substantially all of it. *Id.*

Next, the party moving for the extraordinary relief of a temporary injunction must establish both the existence of a probable right to recovery and a probable injury. *See*

id. "A probable right of recovery is proven by alleging the existence of a right and presenting evidence tending to illustrate that the right is being denied." *Id.* It is unnecessary to prove ultimate success; rather, the burden is met by the movant simply alleging a cause of action and presenting evidence tending to sustain it. *See SHA, LLC*, 2014 Tex. App. LEXIS 38, at *3. In turn, the element of probable injury is satisfied through evidence of imminent harm, irreparable injury, and inadequate legal remedy; and "a legal remedy is inadequate if, among other things, damages are difficult to calculate or their award may come too late." *Id.*

Additionally, the decision to grant the temporary relief lies in the trial court's discretion, and we review it under the standard of abused discretion. *Id.* at *2–3*; Friona Indep. Sch. Dist.*, 15 S.W.3d at 657. Such an abuse arises when the trial court acts without reference to applicable guiding principles, acts arbitrarily or unreasonably, misinterprets or misapplies the law, or renders a decision without sufficient evidentiary basis. *Friona Indep. Sch. Dist.*, 15 S.W.3d at 657. In making this determination, we must remember to forego the opportunity to resolve factual disputes. *See SHA, LLC*, 2014 Tex. App. LEXIS 38, at *3–4. Instead, we must interpret potentially conflicting evidence in a light most favorable to the trial court's decision as well as draw all legitimate inferences from it in a like way. *Id.* at *4

Order Void

As previously mentioned, Matra filed a counterclaim against Bright. The facts alleged in support of the counterclaim focused, for the most part, on the agreement between Nolen and Johnson and its purported creation of an easement. And though various causes of action were averred in the pleading, most involved the existence of

that easement. For instance, in its first cause of action it sought declaratory relief. That relief consisted of a declaration that (1) its mineral leases were valid and Bright's interests therein as a "third-party beneficiary" were limited, and (2) Matra "as well as any and all successors in interest, *have an easement to run power across the Ranch* to service the oil and gas leases at issue." (Emphasis added). The next claim concerned tortious interference with existing and prospective business relationships. Such interference occurred, according to Matra, when "Bright willfully and intentionally *interfered with Matra's easement*, its leases, and its existing and prospective business relationships *by cutting the power to the lease at issue*." (Emphasis added). And, the final claim alleged (promissory estoppel) appears founded, in large part, upon Bright's initial acknowledgement and affirmation of the easement's existence followed by conduct purporting to negate such affirmation. Thus, one cannot logically deny that at least a substantial portion of the relief sought by Matra via its counterclaim pertained to the easement and its existence.

Nor can it be denied that in granting Matra a temporary injunction, it "ORDERED and DECLARED that a One Hundred Foot (100′) power line easement *exists* in favor of Matra and its successors over land belonging to Bright Land & Cattle, LLC." (Emphasis added). It then proceeded to specify the boundaries of that 100′ wide easement. Finding that such an easement actually existed and specifying its actual metes and bounds afforded Matra not only part of the declaratory relief it sought but effectively resolved pivotal issues underlying the claims of tortious interference and promissory estoppel.

Simply put, the trial court addressed more than the mere question regarding maintenance of the status quo pending trial on the merits. The status quo encompassed little more than whether the electrical line or electricity from Section 12 to the mineral well should be reestablished. Instead, the trial court effectively litigated the existence of the easement and awarded Matra, at the very least, a substantial part of the relief sought via its counterclaim. In doing so, it granted Matra a property right in realty. *See Greenwood v. Lee*, 420 S.W.3d 106, 113 (Tex. App.—Amarillo 2012, pet. denied) (stating that an easement is an interest in realty). So too did it necessarily divest Bright of an interest in that property subject to the easement. Consequently, the decision to adjudicate the easement's existence was erroneous per *Friona I.S.D.* and *Texas Foundries*, and that portion of the accompanying order granting the easement is void per *Hidden Valley* and *Williamson.*[1]

Temporary Injunction

To the extent that aspects of the temporary injunction may stand despite our avoidance of that part of the trial court's order granting the easement, we next address whether the trial court abused its discretion by temporarily enjoining Bright from disconnecting the power line. Upon doing so, we focus on the second prong of the two-part test. Again, it requires the party seeking injunctive relief to prove imminent harm, irreparable injury, and an inadequate legal remedy. *See SHA, LLC*, 2014 Tex. App. LEXIS 38, at *2–3.

[1] That we raised this *sua sponte* matters not, for a void order deprives us of the jurisdiction to consider the merits of an appeal. *See Freedom Comm., Inc. v. Coronado*, 372 S.W.3d 621, 623–24 (Tex. 2012) (per curiam). And, we must always consider our own jurisdiction even if we do so *sua sponte*. *Id.*

The record before us discloses that when Bright terminated the electricity to the mineral well, the compressors then present became inoperative. Matra replaced them with gas compressors which apparently operate off of gas from the well. Furthermore, the undisputed evidence revealed that they operate more economically than the prior ones and would continue to do so if gas prices do not rise to some undisclosed level. No evidence that gas prices would rise to such a level was presented.

Matra did present evidence that gas coolers and heat trace or tape present at the well also needed electricity to run and were not being operated by the gas compressors. Whether they could be so operated is unclear given the rather nonspecific descriptions of the gas compressors, their functions, and their capabilities. Nor did anyone present evidence addressing the economic or practical burden or ease of providing electricity to the coolers and tape by means other than the electrical line de-energized by Bright.

Yet, it was disclosed that the coolers were "sometimes" operated in the "summertime" to cool the gas. They were not operated in the winter, though. And, lacking the ability to cool the gas could affect the condensates produced and that meant "dollars." The likelihood of that occurring went unmentioned, though, as did the temperature at which the condensate would be affected, the likelihood that such temperatures would occur before trial on the merits, and the ability, if any, to quantify the "dollars" alluded to.

Similar deficiencies existed with regard to the heat tape. One witness said that "it's nice to have heat tape out there to keep things thawed out." Whether it was necessary to the well's operation went unmentioned. Nor did anyone develop the effect the absence of heat tape would have on the well's production and whether that effect

was quantifiable in damages. Nor did anyone mention the degree to which the temperature must fall before the heat tape was "nice to have" and the likelihood of that temperature occurring before trial on the merits. Indeed, one could surmise that the need for such tape was marginal given that the electricity to it was disconnected in November and remained disconnected through the winter months and until the temporary injunction hearing in March of 2016.

Other evidence of record indicated that the mineral well continued to produce once the gas compressors were installed and despite the absence of electricity to both the coolers and heat tape. Though the production was down, that was attributed to a delay in manipulating some device in the compressor as opposed to the provision of electricity. Once the device was manipulated or corrected, production should rise.

Imminent or immediate injury is not injury that may arise at some point. *See DGM Servs. v. Figueroa*, No. 01-16-00186-CV, 2016 Tex. App. LEXIS 13808, at *8 (Tex. App.—Houston [1st Dist.] Dec. 29, 2016, no pet.) (mem. op.) (quoting *Frey v. DeCordova Bend Estates Owners Ass'n*, 647 S.W.2d 246, 248 (Tex. 1983), for the proposition that "fear or apprehension of the possibility of injury alone is not a basis for injunctive relief"); *Friona Indep. Sch. Dist.*, 15 S.W.3d at 657. It is not injury that is conjectural or speculative. *See Wash. DC Party Shuttle, LLC v. IGuide Tours*, 406 S.W.3d 723, 742 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (noting that "[a]n injunction is not proper when the claimed injury is merely speculative"). The evidence at bar, even when viewed in a way most favorable to the trial court's decision, does not indicate that Bright's decision to terminate electricity to the mineral well exposed Matra to imminent injury. The well remains operative due to alternate and more economical

measures, and the need for either heat tape or coolers is a mere possibility or conjecture.

Nor is there evidence indicating that any potential injury sufferable by Matra due to the absence of a power line is not easily susceptible to recompense through damages. The latter deficiency alone is enough to illustrate that Matra failed to carry its burden to show the lack of a legal remedy. *See SHA, LLC*, 2014 Tex. App. LEXIS 38, at *3 (stating that the element of probable injury is satisfied through evidence of imminent harm, irreparable injury, and inadequate legal remedy; and "a legal remedy is inadequate if, among other things, damages are difficult to calculate or their award may come too late").

We conclude that an insufficient evidentiary base underlies the trial court's finding that Matra would suffer irreparable injury and lacked a legal remedy if electricity were not restored to the mineral well through Bright's power line. Consequently, it abused its discretion in issuing the temporary injunction.

The order granting the temporary injunction is reversed. The temporary injunction itself is vacated, and the cause is remanded to the trial court.

Brian Quinn
Chief Justice