NUMBER 13-20-00006-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CONCERNED CITIZENS OF PALM VALLEY, INC., **Appellant,**

v.

CITY OF PALM VALLEY, **Appellee.**

On appeal from the 357th District Court of Cameron County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Contreras

In this accelerated interlocutory appeal, appellant Concerned Citizens of Palm Valley, Inc. (CCPV) argues that the trial court erred by denying a temporary injunction in a suit it brought against the City of Palm Valley (the City) seeking to prevent the City from spending public funds to improve a privately-owned golf course. We affirm.

I. BACKGROUND

CCPV is a non-profit corporation comprised of sixty City residents. Its original petition, filed on July 30, 2019, alleged that the City "is planning on spending hundreds of thousands of dollars, and perhaps being responsible for millions of dollars" to construct improvements on the Harlingen Country Club golf course. The petition alleged that the mayor and three members of the City council are "members and/or employees" of the country club, and it posited that this was the reason public funds were being expended. CCPV argued that "[a]ny expenditure by the [City] in support of the Harlingen Country Club (a privately-held corporation) will be for the benefit of private parties and not to accomplish a public purpose, but to improve the lakes, and other facilities within the Harlingen Country Club." It contended that such expenditures would therefore violate Article 3, § 52 of the Texas Constitution. *See* TEX. CONST. art. 3, § 52(a) ("Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever . . . .").

CCPV requested declaratory judgment, as well as temporary and permanent injunctions barring the City from spending any additional funds to improve the golf course. In the section of its petition requesting a temporary injunction, CCPV argued:

> [CCPV] is entitled to a temporary injunction pending a decision on a permanent injunction and declaratory judgment. There is irreparable injury to the citizens and taxpayers of [the City] represented by [CCPV] which face the illegal and unconstitutional misappropriation of their tax dollars in support of the Harlingen Country Club prior to having an opportunity for a decision on the merits on the constitutionality of the decision of the Mayor and Council of the [City].

The City filed a one-page answer generally denying CCPV's allegations. The answer did not address the elements of a temporary injunction or the propriety of such relief in this case. No plea to the jurisdiction or motion to dismiss appears in the record.

CCPV moved for summary judgment on October 16, 2019, and the City filed a response in which it alleged generally as follows:

> The [City] owns and operates a Sewage Treatment Plant pursuant to a TCEQ [Texas Commission on Environmental Quality] Permit. As part of the requirements of the permits, the [City] acquired a Public Easement from the Harlingen Country Club so that it may discharge effluent from the Sewage Plant into Ponds that are integral to the system and a TCEQ required component of the Sewage Treatment Plant. As part of the permit, and pursuant to the Easement Agreement, the [City] is financially responsible for the improvement and maintenance of the entire Sewage System, including Pond 3 and the other connected Ponds. Said Ponds have silted over and are in need of maintenance. Pursuant to the Texas Local Government Code, the [City] through its governing body is authorized to make said expenditures in accordance with the Texas Government Code related to public bidding/awarding. The City Council for the [City] has taken these steps as authorized by law and said measures are consistent with the requirements established by the Texas Supreme Court in analyzing the Texas Constitution Article III, Section 52, and are not violative of the Texas Constitution.

Neither CCPV's summary judgment motion nor the City's response addressed the elements of a temporary injunction or the propriety of such relief in this case.

The trial court denied the summary judgment motion on December 3, 2019. After a two-part hearing, it denied CCPV's request for temporary injunction on December 16, 2019. The trial court later signed findings of fact and conclusions of law, which included the following:

> 13. Based on the evidence presented at the Temporary Injunction Hearing, the Court finds that (1) [the City] operates a wastewater treatment plant in accordance with its TCEQ Permit for a public purpose; (2) The Easement Agreement is required in order for the [City] to discharge[] effluent as part of its wastewater treatment plant operations; (3) the

> Easement Agreement unambiguously conveys from the Harlingen Country Club to the [City] a perpetual easement for the discharge by the [City] of effluent water; (4) the Easement Agreement unambiguously requires the [City] to improve and maintain the Ponds and interconnecting pipes granted as part of the Easement Agreement; (5) the TCEQ permit granted to the [City] for operation of its wastewater sewage treatment plant requires City to be solely responsible for the maintenance and improvements to the Ponds described in the Easement Agreement; (6) the members of the City Council were authorized to approve expenditures and payments of invoices for the professional services of Ferris, Flinn & Medina, LLC; (7) Pond Three (3) needs to be dredged and retaining bulkhead walls need to be installed; and (8) expenditures for the dredging and installation of retaining bulkhead walls are for a public purpose and the governing body of [the City] is authorized by the Texas Local Government Code and Article Ill, Section 52 to appropriate necessary funds for said public purpose.
>
> 14. Accordingly, The Court finds that [CCPV] has failed to show that the [City] and its governing body, have performed any act, or are likely to perform any act, that it [sic] not expressly authorized by the Texas Constitution or the Texas Local Government Code. The Court further finds that [CCPV] is not likely to prevail on the merits of its case and has shown no probable injury.

This interlocutory appeal followed. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (authorizing immediate appeal from interlocutory order denying temporary injunction).

II. DISCUSSION

A. Applicable Law and Standard of Review

A temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Its purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Id.* To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*

In considering an application for a temporary injunction, a trial court must balance

the equities between the parties as well as the resulting conveniences and hardships. *Burkholder v. Wilkins*, 504 S.W.3d 485, 493 (Tex. App.—Corpus Christi–Edinburg 2016, no pet.); *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 578 (Tex. App.—Austin 2000, no pet.); *see In re Gamble*, 71 S.W.3d 313, 317 (Tex. 2002) (orig. proceeding). Consideration of the equities involves weighing the public interest against the injury to the parties from the grant or denial of injunctive relief. *Int'l Paper Co. v. Harris County*, 445 S.W.3d 379, 395 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

The decision to deny a temporary injunction—including the balancing of equities—lies within the trial court's sound discretion. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993) (per curiam); *see Butnaru*, 84 S.W.3d at 211; *Layton v. Ball*, 396 S.W.3d 747, 753–54 (Tex. App.—Tyler 2013, no pet.); *Universal Health Servs.*, 24 S.W.3d at 579. We do not review or decide the underlying merits, and we will not disturb the order unless it is "so arbitrary that it exceed[s] the bounds of reasonable discretion." *Henry v. Cox*, 520 S.W.3d 28, 33–34 (Tex. 2017). The trial court does not abuse its discretion if some evidence reasonably supports its decision. *Id.*; *Marketshare Telecom, L.L.C. v. Ericsson, Inc.*, 198 S.W.3d 908, 916 (Tex. App.—Dallas 2006, no pet.). We draw all legitimate inferences from the evidence in the light most favorable to the trial court's decision. *Marketshare Telecom*, 198 S.W.3d at 916.

B. Analysis

CCPV cites *In re State Board for Educator Certification*, where two concurring justices opined that: (1) in deciding whether to grant a temporary injunction, "the trial court must indicate that it weighed the competing equities"; (2) "if the record does not affirmatively indicate the trial court did so, then this failure is a departure from guiding

principles and amounts to an abuse of discretion"; and (3) "[i]n such cases, a remand is appropriate to enable the trial court to demonstrate that it weighed the competing equities." 452 S.W.3d 802, 809–10, 811 (Tex. 2014) (orig. proceeding) (Guzman, J., concurring) (noting that "the record (such as findings of fact or a hearing transcript) provides our only method of knowing that balancing occurred"). CCPV argues that the trial court erred because the record does not show that it "balance[d] the equities when considering the application for temporary injunction."

A concurring opinion of a higher court may have persuasive value, but it is not binding on this Court. *Unkart v. State*, 400 S.W.3d 94, 101 (Tex. Crim. App. 2013). In any event, assuming but not deciding that the record must affirmatively show the trial court balanced the equities, we conclude such a requirement has been met in this case. The transcript of the temporary injunction hearing, which was held over two days, reveals that the trial court was fully apprised of the parties' respective arguments and the equitable considerations applicable to the case. The extensive findings of fact and conclusions of law further demonstrate that no remand for further findings is necessary. *See In re State Board*, 452 S.W.3d at 811 (Guzman, J., concurring).

CCPV also contends more generally that the trial court erred in denying the temporary injunction because: (1) "the Easement Agreement [does not allow] the City to spend public funds to make aesthetic improvements (to the golf course) that are unnecessary and that do not benefit the public"; and (2) it satisfied the elements necessary to obtain temporary injunctive relief.

We disagree. Although neither party addresses it, and it is not mentioned in the trial court's findings and conclusions, we observe that CCPV's standing to obtain relief in

this lawsuit is highly dubious. Standing, as a component of subject matter jurisdiction, is a constitutional prerequisite to the filing of suit, the absence of which may be raised for the first time on appeal or *sua sponte* by this Court. *See, e.g.*, *Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993). The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a "justiciable interest" in its outcome. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005). Generally, a citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts. *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001); *see Andrade v. NAACP of Austin*, 345 S.W.3d 1, 7–8 (Tex. 2011) ("[N]either citizens nor taxpayers can appear in court simply to insist that the government and its officials adhere to the requirements of law."). "[T]his rule recognizes that other branches of government may more appropriately decide 'abstract questions of wide public significance,' particularly when judicial intervention is unnecessary to protect individual rights." *Andrade*, 345 S.W.3d at 7 (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)); *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992) (holding that a citizen raising "only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy"). To have standing to challenge an allegedly illegal governmental action, a plaintiff must "allege some injury distinct from that sustained by the public at large." *Andrade*, 345 S.W.3d at 8; *Brown*, 53 S.W.3d at 302 ("No Texas court has ever recognized that a plaintiff's status as a voter, without more, confers standing to challenge the lawfulness of

government acts."); *see Heckman*, 369 S.W.3d at 155 ("The plaintiff must be personally injured—he must plead facts demonstrating that he, himself (rather than a third party or the public at large), suffered the injury."); *City of San Antonio v. Stumburg*, 7 S.W. 754, 755 (Tex. 1888) (holding that "no action lies to restrain an interference with a mere public right, at the suit of an individual who has not suffered or is not threatened with some damage peculiar to himself").

CCPV did not allege in its petition or provide any evidence that it or any of its members suffered or would likely suffer any particularized injury as a result of the City's work on the golf course. Specifically, there is no allegation that the golf course renovation would affect any plaintiff's property in any way. Instead, CCPV seems to assert standing to sue based exclusively on its members' status as residents, voters, and taxpayers of the City. They claim that the City should spend its funds on storm drainage projects rather than on improving the golf course. This is not enough to establish a justiciable interest in the outcome of the suit. *See Heckman*, 369 S.W.3d at 155; *Andrade*, 345 S.W.3d at 7–8; *Brown*, 53 S.W.3d at 302; *Stumburg*, 7 S.W. at 755.[1]

For the same reasons it lacks standing, CCPV has not shown a "probable, imminent, and irreparable injury" if the injunction were not granted. *See Henry*, 520 S.W.3d at 34; *Butnaru*, 84 S.W.3d at 204. Accordingly, the trial court did not abuse its

[1] CCPV cited the Uniform Declaratory Judgments Act (UDJA) in its petition. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a) ("A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."). But the UDJA "does not enlarge a trial court's jurisdiction, and a litigant's request for declaratory relief does not alter a suit's underlying nature." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex. 2009).

discretion in denying the temporary injunction.

III. Conclusion

The trial court's judgment is affirmed.

DORI CONTRERAS
Chief Justice

Delivered and filed the
13th day of August, 2020.