

THIRD COURT OF APPEALS OF TEXAS, AUSTIN

John Green v. Memorial Park Medical Center, Inc.

Green · No. 03-15-00141-CV · Decided March 31, 2015

SUMMARY

This document is an appellant's response to an appellee's motion to dismiss an appeal for lack of jurisdiction in the Texas Third Court of Appeals. The response addresses the validity of a temporary injunction, a dispute concerning a mechanic's and materialman's lien, and related proceedings in Travis and Brown Counties.

CASE DETAILS

COURT	Third Court of Appeals of Texas, Austin
JURISDICTION	Texas
DECIDED	March 31, 2015
DOCKET	03-15-00141-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellant filed a response opposing appellee's motion to dismiss the appeal for lack of jurisdiction. The response asks the court to deny dismissal and continue the appeal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	John Green v. Memorial Park Medical Center, Inc.

TOPICS

[appellate jurisdiction](#)[appellate procedure](#)[injunctions](#)[mechanics liens](#)[quiet title](#)

PRACTICE AREAS

[civil procedure](#)[appellate procedure](#)[real estate](#)[construction law](#)[remedies](#)

QUESTIONS PRESENTED

1. Whether the Court of Appeals should dismiss the appeal for lack of jurisdiction under Texas Rule of Appellate Procedure 42.3(a).
2. Whether the challenged trial-court order was void for failure to comply with Texas Rule of Civil Procedure 683.

3. Whether the appeal should continue despite the subsequent nonsuit and order of dismissal.

FACTUAL BACKGROUND

According to appellant's response, the dispute concerned a mechanic's and materialman's lien recorded in Brown County and a prior final judgment involving the same lien, subject matter, and parties. Memorial Park sought relief in Travis County that Green contended could invalidate or effectively remove the lien and interfere with the Brown County judgment. Green also contended that the trial court's injunction order contained a clerical error and failed to comply with Texas Rule of Civil Procedure 683.

PROCEDURAL HISTORY

Memorial Park Medical Center, Inc. filed a Travis County district-court action seeking to invalidate a mechanic's and materialman's lien, remove a cloud on title, enjoin enforcement of a Brown County judgment, and obtain damages and attorney fees. John Green challenged jurisdiction, sought sanctions and a venue transfer, and later appealed from orders concerning the temporary injunction and dismissal. The case was nonsuited on February 2, 2015, followed by an order of dismissal, and Green filed this response to the appellee's motion to dismiss the appeal.

DISPOSITION

other

OPINION

PER CURIAM.

ACCEPTED 03-15-00141-CV 4714304 THIRD COURT OF APPEALS AUSTIN, TEXAS 3/31/2015 3:19:41 PM JEFFREY D. KYLE CLERK CAUSE NO. 03-15-00141-CV FILED IN IN THE THIRD COURT OF APPEALS 3rd COURT OF APPEALS AUSTIN, TEXAS AUSTIN, TEXAS 3/31/2015 3:19:41 PM JEFFREY D. KYLE Clerk JOHN GREEN, Appellant, v. MEMORIAL PARK MEDICAL CENTER, INC. Appellee. FROM THE 126TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS TRIAL COURT CAUSE NO. D-1-GN-14-000373 APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION Robert E. Reich SBN 16741300 309 N. Fisk Brownwood, Texas 76801 Telephone: 325-643-1569 Facsimile: 325-643-3105 ATTORNEY FOR APPELLANT APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION Appellant asks the Court to deny Appellee's motion to dismiss the appeal or affirm the trial court's judgment.

A. Introduction 1. Appellant is John Green, appellee is Memorial Park Medical Center, Inc. B. Argument & Authorities 2. Although the Court has the authority under Texas Rule of Appellate Procedure 42.3(a) to dismiss an appeal for lack of jurisdiction, this is not a case in which the Court should do so. C. Procedural History 3. Appellee, Memorial Park Medical Center, Inc. filed its

petition in the Travis County District Court seeking to invalidate a mechanic's and materialman's lien filed in the Deed Records of Brown County to remove the cloud from the title to its real property in Brown County, Texas and to enjoin the enforcement of a final judgment of the 35th Judicial District Court of Brown County, Texas involving the same mechanics and materialman's lien or subject matter and the same parties in Cause No. CV0904121.

Appellee also sought affirmative relief for actual damage, exemplary damage for violation of a statute, attorney fees and costs. Appellant, John Green, asked the court for affirmative relief by filing a Motion to Dismiss For Lack of Jurisdiction and a Motion for Sanctions for Appellee's filing of a frivolous lawsuit and TRCP 13 violations. Appellant also filed a Motion to Transfer Venue to which CPRC 65.023, 15.011 and 15.013 are applicable.

At the show-cause hearing for a temporary injunction, February 2, 2014, Appellant presented evidence to support his Motion to Dismiss For Lack of Jurisdiction by introducing into evidence the final judgment of the 35th Judicial District Court of Brown County, Texas in Cause No. CV0904121 and the Mandate of the 11th Court of Appeals affirming the judgment as modified through the sworn testimony of William Ruth, attorney for Appellee.

The Trial Court extended the temporary restraining order and set a show-cause hearing for March 4, 2014. Judge Charles Ramsey presided over the March 4, 2014 hearing. 4. The Court should deny Appellee's motion to dismiss for lack of jurisdiction because the order relied on by the Appellee is void on its face for failure to comply with TRCP 683 and contained a clerical error granting a permanent injunction when a temporary was granted by the Trial Court.

The Trial Court pronounced the injunction is extended" and made the docket sheet entry order II II extending TRO granted" at the show cause hearing on the temporary injunction March 4, 2014. Appellee filed an Amended Petition April 14, 2014 and Appellant filed a Motion for Summary Judgment July 16, 2014.

The real issue in this appeal is the legal basis for the Travis County District Court to enter an order, at a show-cause hearing on a temporary injunction, without a trial on the merits or even any evidence being presented, that in its broadest sense could be construed as invalidating or effectively removing an encumbrance on real property in Brown County, Texas, the validity and enforceability of which had been established by a final judgment of the 35th District Court of Brown County and affirmed as modified by the 11th Court of Appeals.

Also additional issues raised by Appellee, as plaintiff, in its pleadings remained unresolved until a non-suit was taken on the trial date of February 2, 2015. The Trial Court then prepared and entered an Order of Dismissal referencing the permanent injunction and dismissing the case, leaving to anyone's guess the legal rights of the parties as a result of these proceedings when the Court denied Green's Motion to Clarify March 2, 2015.

D. Conclusion Appellant has filed notice of an appeal involving the order signed March 13, 2014 and other points of error. The appellate record is being prepared and Appellant asks the Court to take the motion with the case and set all issues for oral argument when the appeal is heard. E. Prayer For these reasons, Appellant asks the Court to deny Appellee's motion and continue with this appeal.

Respectfully submitted, ROBERT E. REICH 309 N. Fisk Ave. Brownwood, TX 76801 Tel. (325) 643-1569 Fax. (325) 643-3105 Robert E. Reich Texas Bar No. 16741300 Email: rereich@harrisbb.com Attorney for Appellant John Green CERTIFICATE OF SERVICE I certify that on /11~.J/,2015 a true and correct copy of Appellant's Response to Appellee's Motion to Dismiss for Lack of Jurisdiction was served by fax on Frederick F. Hoelke (210)787-3881.

Robert E. R ich