

COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS,
CORPUS CHRISTI–EDINBURG

John S. Bulliner Jr. v. El Chico Garcia Jr. and Tyson Garcia

Bulliner · No. 13-21-00118-CV · Decided April 6, 2023

SUMMARY

The Texas Thirteenth Court of Appeals affirmed the denial of John S. Bulliner Jr.'s application for a temporary mandatory injunction requiring removal of a home inadvertently built on his property. The court held that Bulliner failed to demonstrate probable, imminent, and irreparable injury or the exceptional circumstances required for temporary mandatory injunctive relief, particularly given the unintentional trespass and the severe hardship that demolition would cause the homeowners.

CASE DETAILS

COURT	Court of Appeals for the Thirteenth District of Texas, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice L. Aron Peña; Chief Justice Contreras; Justice Silva; Justice Peña
JURISDICTION	Texas
DECIDED	April 6, 2023
DOCKET	13-21-00118-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of an application for a temporary mandatory injunction requiring appellees to remove a residential structure allegedly encroaching on appellant's land.
STANDARD OF REVIEW	A trial court's ruling on a temporary injunction is reviewed for abuse of discretion. The trial court abuses its discretion when it acts arbitrarily, unreasonably, without regard to guiding legal principles, or without supporting evidence.
PRECEDENTIAL VALUE	Published memorandum opinion of the Court of Appeals of Texas; precedential status is not otherwise stated in the provided text.
PARTIES	John S. Bulliner Jr. v. El Chico Garcia Jr., Tyson Garcia

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying Bulliner's application for a temporary mandatory injunction requiring removal of the Garcias' home from Bulliner's land.
2. Whether Bulliner established a probable, imminent, and irreparable injury, including the exceptional circumstances or extreme hardship required for temporary mandatory injunctive relief.
3. Whether the balance of equities and relative hardships supported issuance of the injunction.

HOLDINGS

1. Bulliner failed to establish the requirements for temporary injunctive relief, including a probable, imminent, and irreparable injury and the exceptional circumstances or extreme hardship required for a temporary mandatory injunction.
2. The trial court did not abuse its discretion in concluding that denial of the injunction would cause only slight injury to Bulliner while granting it would cause significant injury to the Garcias.

KEY QUOTATIONS

"A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits." (4)

"To obtain a temporary injunction, an applicant must establish the following: (1) a cause of action; (2) a probable right to relief; and (3) a probable, imminent, and irreparable injury in the interim." (4)

"There are two general types of temporary injunctions: prohibitive and mandatory." (5)

"A temporary mandatory injunction generally changes the status quo and should be granted only in cases of extreme hardship." (5)

"When one builds a structure on another's property, the owner can either treat the encroachment as a permanent trespass, and sue for damages, or pray for an injunction compelling its removal." (7)

FACTUAL BACKGROUND

The Garcias commissioned a professional survey before constructing a roughly \$300,000 home in 2016, but the home was inadvertently built partly on Lots 13 and 14, which they did not own. Bulliner owned Lot 14, which was an unimproved lot that he rarely visited and had not occupied or listed for sale. Bulliner claimed that the encroachment temporarily prevented him from selling the lot, while removal of the home would destroy the Garcias' concrete-slab residence.

PROCEDURAL HISTORY

The Garcias built a home after obtaining a survey that mistakenly placed the home on their own lots. After other property owners asserted encroachment claims, Bulliner intervened and asserted trespass, nuisance, and negligence claims, seeking damages and temporary and permanent injunctive relief. The trial court denied Bulliner's application for a temporary injunction, and Bulliner brought an interlocutory appeal under Texas Civil Practice and Remedies Code section 51.014(a)(4).

DISPOSITION

affirmed

CASES CITED

- Super Starr Int'l, LLC v. Fresh Tex Produce, LLC, 531 S.W.3d 829, 838 (Tex. App.—Corpus Christi—Edinburg 2017, no pet.)
- Butnaru v. Ford Motor Co., 84 S.W.3d 198, 204 (Tex. 2002)
- Bocquet v. Herring, 972 S.W.2d 19, 21 (Tex. 1998)
- Tex. Ass'n of Bus. v. City of Austin, 565 S.W.3d 425, 437 (Tex. App.—Austin 2018, pet. denied)
- Dyer v. Weedon, 769 S.W.2d 711, 715 (Tex. App.—Waco 1989, no writ)
- Clark v. Hastings Equity Partners, LLC, 651 S.W.3d 359, 366 (Tex. App.—Houston [1st Dist.] 2022, no pet.)
- Pharaoh Oil & Gas, Inc. v. Ranchero Esperanza, Ltd., 343 S.W.3d 875, 880–83 (Tex. App.—El Paso 2011, no pet.)
- Canteen Corp. v. Republic of Tex. Props., Inc., 773 S.W.2d 398, 401 (Tex. App.—Dallas 1989, no writ)
- RP & R, Inc. v. Territo, 32 S.W.3d 396, 400–01 (Tex. App.—Houston [14th Dist.] 2000, no pet.)
- Lifeguard Benefit Servs., Inc. v. Direct Med. Network Sols., Inc., 308 S.W.3d 102, 112 (Tex. App.—Fort Worth 2010, no pet.)
- Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 208 (Tex. 1981)
- In re Gamble, 71 S.W.3d 313, 317 (Tex. 2002) (orig. proceeding)
- 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.)
- T.F.W. Mgmt., Inc. v. Westwood Shores Prop. Owners Ass'n, 162 S.W.3d 564, 575 (Tex. App.—Houston [14th Dist.] 2004, no pet.)
- Coastal Marine Serv. of Tex., Inc. v. City of Port Neches, 11 S.W.3d 509, 515 (Tex. App.—Beaumont 2000, no pet.)
- Allen v. Va. Hill Water Supply Corp., 609 S.W.2d 633, 636 (Tex. App.—Tyler 1980, no writ)
- Triantaphyllis v. Gamble, 93 S.W.3d 398, 401 (Tex. App.—Houston [14th Dist.] 2002, pet. denied)
- Coleman v. Forister, 497 S.W.2d 530, 533 (Tex. App.—Austin 1973), rev'd on other grounds, 514 S.W.2d 899 (Tex. 1974)
- Nolte Irr. Co. v. Willis, 180 S.W.2d 451, 455 (Tex. App.—Amarillo 1944, writ ref'd w.o.m.)
- Boatman v. Lites, 888 S.W.2d 90, 92 (Tex. App.—Tyler 1994, no writ)
- Davis v. Westphal, 405 P.3d 73, 87 n.10 (Mont. 2017)

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