

COURT OF APPEALS OF TEXAS, HOUSTON (14TH DIST.)

Greathouse Insurance Agency, Inc. v. Tropical Investments, Inc.

718 S.W.2d 821 (Tex. App.—Houston [14th Dist.] 1986) · No. No. A14-86-502-CV · Decided September 18, 1986

SUMMARY

The Texas Court of Appeals held that a trial court lacked authority to order funds impounded in support of an unliquidated claim absent statutory authorization. The court also held that a temporary injunction is void when it fails to include a trial date as required by Texas Rule of Civil Procedure 683, and it reversed and dissolved the injunction.

CASE DETAILS

COURT	Court of Appeals of Texas, Houston (14th Dist.)
WRITING FOR THE COURT	Robertson, Justice; J. Curtiss Brown, C.J.; Murphy, J.; Robertson, J.
JURISDICTION	Texas
DECIDED	September 18, 1986
DOCKET	No. A14-86-502-CV
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an interlocutory order granting a temporary injunction requiring Carolyn Greathouse to deposit \$140,000 into the court registry.
STANDARD OF REVIEW	A temporary-injunction ruling is reviewed for clear abuse of discretion. Although the trial court ordinarily has broad discretion, that discretion does not extend to an erroneous application of law to undisputed facts.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Greathouse Insurance Agency, Inc., Carolyn Greathouse, Michael Greathouse, Craig Greathouse, David Greathouse, Faith Mosley v. Tropical Investments, Inc., Charles Burton, Flora Van Ness, Independent Executrix for the Estate of Samuel Van Ness, Deceased

TOPICS

- injunctions
- interlocutory appeal
- appellate jurisdiction
- remedies
- insurance

PRACTICE AREAS

civil procedure

injunctions

appellate procedure

remedies

insurance

QUESTIONS PRESENTED

1. Whether the interlocutory order granting a temporary injunction was appealable even though it did not dispose of all issues and parties.
2. Whether the trial court abused its discretion by ordering the deposit of assets to secure an admittedly unliquidated claim that had not been reduced to judgment.
3. Whether the temporary-injunction order was void because it failed to set the cause for trial on the merits as required by Texas Rule of Civil Procedure 683.

HOLDINGS

1. An order granting a temporary injunction is appealable even though it is interlocutory and does not dispose of all issues and parties, because section 51.014 of the Texas Civil Practice and Remedies Code expressly authorizes an appeal from such an order.
2. Absent a permissive statute, a court lacks authority to impound assets for the contingent application to an unliquidated claim that has not been reduced to judgment.
3. A temporary-injunction order that does not include a date setting the cause for trial on the merits is void under Texas Rule of Civil Procedure 683.

KEY QUOTATIONS

“It is firmly established that in the absence of a permissive statute a court is without authority to impound assets for the contingent application to an unliquidated claim not yet reduced to judgment.” (718 S.W.2d at 821)

“It is the opinion of this court that failure to include such date voids the injunction order.” (718 S.W.2d at 822)

FACTUAL BACKGROUND

Carolyn Greathouse had authority to write checks on appellees' corporate checking account but made unauthorized withdrawals totaling at least \$140,000. Appellees sued to recover the funds and sought to secure repayment by requiring Greathouse to deposit \$140,000 from proceeds of two life-insurance policies totaling \$1,500,000. The trial court issued a temporary injunction requiring the deposit.

PROCEDURAL HISTORY

Appellees sued appellants to recover at least \$140,000 allegedly withdrawn without authorization from a corporate checking account. They also sought a temporary injunction requiring Carolyn Greathouse to deposit \$140,000 from proceeds of two life-insurance policies into the court registry. The trial court granted the injunction. The Court of Appeals held that the interlocutory order was appealable, reversed the trial court, and dissolved the injunction.

DISPOSITION

reversed

CASES CITED

- City of Spring Valley v. Southwestern Bell Telephone Co., 484 S.W.2d 579, 581 (Tex. 1972)
- Perryton Feeders, Inc. v. Feldman, 483 S.W.2d 386 (Tex. Civ. App.—Amarillo 1972, writ ref'd n.r.e.)

OPINION

ROBERTSON, J.

718 S.W.2d 821 (1986) GREATHOUSE INSURANCE AGENCY, INC., Carolyn Greathouse, Michael Greathouse, Craig Greathouse, David Greathouse and Faith Mosley, Appellants, v. TROPICAL INVESTMENTS, INC., Charles Burton and Flora Van Ness, Independent Executrix for the Estate of Samuel Van Ness, Deceased, Appellees. No. A14-86-502-CV. Court of Appeals of Texas, Houston (14th Dist.).

September 18, 1986. Rehearing Denied October 16, 1986. Gary L. McConnell, Angleton, for appellants. *822 A.G. Crouch, Alvin, Bobby D. Dyess, Dallas, J.K. Gayle, Alvin, Kevin J. Cook, Dallas, Scott Thrash, Alvin, John R. Gilberts, Angleton, for appellees.

Before J. CURTISS BROWN, C.J., and MURPHY and ROBERTSON, JJ. OPINION ROBERTSON, Justice. This is an appeal from a temporary injunction commanding appellant Carolyn Greathouse to deposit funds into the registry of the court "until judgment in this cause is entered by this court."

We find the entry of such order unauthorized and order the injunction dissolved. The undisputed facts show that appellant Carolyn Greathouse, who had the authority to write checks on a corporate checking account of appellees, made unauthorized withdrawals from that account of at least \$140,000. Appellees filed suit against appellants for the recovery of the funds.

In addition, appellees requested that a temporary injunction be issued commanding appellant Carolyn Greathouse to deposit into the registry of the court \$140,000 from the proceeds of two life insurance policies totalling \$1,500,000 which she either had received or was to receive from the death of her husband.

The trial court granted the temporary injunction. Appellee Burton contests our jurisdiction, arguing the temporary injunction order is interlocutory since it "did not dispose of all issues and parties." While we agree that the order is interlocutory, we do not agree that it is not appealable. Section 51.014 Tex.Civ.Prac. & Rem.Code (Vernon 1986) specifically provides for an appeal from an interlocutory order granting a temporary injunction.

Therefore, appellee Burton's counter-point is denied. Appellant Carolyn Greathouse contends the trial court abused its discretion in ordering her to deposit funds into the registry of the court. We agree. Ordinarily, a trial court has broad discretion in determining whether to issue a temporary injunction, and its judgment will not be overturned unless the record discloses a clear abuse of discretion.

However, that discretion does not extend to the erroneous application of law to undisputed facts. *City of Spring Valley v. Southwestern Bell Tel. Co.*, 484 S.W.2d 579, 581 (Tex.1972). It is firmly established that in the absence of a permissive statute a court is without authority to impound assets for the contingent application to an unliquidated claim not yet reduced to judgment.

Perryton Feeders, Inc. v. Feldman, 483 S.W.2d 386 (Tex.Civ.App.Amarillo 1972, writ ref'd n.r.e.). We therefore find the trial court abused its discretion in granting a temporary injunction based on appellees' admittedly unliquidated claim. While not raised by appellant, we notice that the order granting the temporary injunction does not include a trial date.

All trial courts should be aware that Rule 683, Tex.R.Civ.P., mandates "that every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought." (emphasis added). It is the opinion of this court that failure to include such date voids the injunction order.

The judgment of the trial court is reversed and the injunction is dissolved.