

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

**T. Christian Cooper v. Sanders H. Campbell/Richard T. Mullen, Inc.
d/b/a The Mullen Company**

No. 05-17-00878-CV · No. No. 05-17-00878-CV · Decided July 18, 2018

SUMMARY

The Texas Court of Appeals for the Fifth District at Dallas held that the trial court's judgment on equitable forfeiture was void because the successor judge rendered factual findings based on evidence the judge had not personally heard. The court concluded that it lacked jurisdiction to reach the merits, set aside the judgment, remanded the cause for further proceedings, and dismissed the appeal. The decision also discusses the factors governing equitable forfeiture and the requirement for an evidentiary proceeding or agreed statement of facts on remand.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	David Evans; Justice Lang-Miers; Justice Evans; Justice Schenck
JURISDICTION	Texas
DECIDED	July 18, 2018
DOCKET	No. 05-17-00878-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cooper appealed the trial court's post-remand final judgment denying equitable forfeiture. The court of appeals raised its jurisdiction sua sponte and determined that the judgment was void because the successor judge made factual determinations based on evidence the judge had not personally heard.
STANDARD OF REVIEW	The appellate court independently considered its subject-matter jurisdiction and the validity of the judgment. It reviewed whether the successor trial judge had authority to render judgment after a bench-trial-related factual determination based on evidence the judge had not personally heard.
PRECEDENTIAL VALUE	Published memorandum opinion; no standard reporter citation appears in the provided source.

PARTIES

T. Christian Cooper v. Sanders H. Campbell/Richard T. Mullen, Inc.
d/b/a The Mullen Company

TOPICS

appellate jurisdiction

appellate procedure

civil procedure

equitable relief

remedies

PRACTICE AREAS

civil procedure

appellate procedure

remedies

commercial litigation

QUESTIONS PRESENTED

1. Whether the successor trial judge had authority to make factual determinations and render judgment on the remanded equitable-forfeiture issue without personally hearing the evidence.
2. Whether the court of appeals had jurisdiction to review the merits of an appeal from that judgment.

HOLDINGS

1. A judge may not render judgment following a bench trial or a remanded bench-trial issue when the judgment requires factual findings based on evidence the judge did not personally hear, absent an agreed statement of facts or another authorized procedure.
2. A void judgment cannot support an appeal on the merits; the court of appeals has jurisdiction only to determine the validity of the challenged judgment and to make an appropriate disposition.

KEY QUOTATIONS

“There is no rule which allows rendition of a judgment following a bench trial by a judge who has heard no evidence.” (at 5)

“Because Judge Moore did more than make legal conclusions; she made factual determinations, as our previous opinion stated she had to do, but she based her judgment on evidence that she personally did not hear.” (at 6)

FACTUAL BACKGROUND

A jury previously found that Mullen failed to comply with a fiduciary duty to Cooper in connection with a settlement involving Newnan Crossing Partnership, but found no damages caused by the breach. The prior appellate decision remanded the equitable-forfeiture issue for the trial judge to consider whether there was a clear and serious breach and to apply the ERI Consulting factors. After the original judge died, successor Judge Maricela Moore relied on the existing trial evidence and counsel's arguments, without conducting an evidentiary hearing or receiving an agreed statement of facts, and denied equitable forfeiture.

PROCEDURAL HISTORY

In the prior appeal, the court affirmed in part, reversed and remanded in part, and remanded the equitable-forfeiture claim for the trial court to apply the factors identified in ERI Consulting. After the original trial judge

died, a successor judge held a hearing based on the existing trial record and counsel's arguments, made findings of fact, and rendered judgment denying forfeiture. Cooper appealed that judgment. The court of appeals set aside the judgment as void, remanded for further proceedings, and dismissed the appeal for want of jurisdiction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court's judgment is set aside as void. The cause is remanded for further proceedings consistent with this opinion and the court's previous opinions. The appeal is dismissed for want of jurisdiction, and each party bears its own costs of appeal.

CASES CITED

- Cooper v. Campbell, No. 05-15-00340-CV, 2016 WL 4487924 (Tex. App.—Dallas 2016, no pet.)
- ERI Consulting Eng'r, Inc. v. Swinnea, 318 S.W.3d 867, 874–75 (Tex. 2010)
- Burrow v. Arce, 997 S.W.2d 229, 245 (Tex. 1999)
- Dernick Res., Inc. v. Wilstein, 471 S.W.3d 468, 482 (Tex. App.—Houston [1st Dist.] 2015, pet. denied)
- Masa Custom Homes, LLC v. Shahin, 547 S.W.3d 332, 336, 338 (Tex. App.—Dallas 2018, no pet.)

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