

COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN

Texas Quarter Horse Association; Texas Thoroughbred Association; Texas Horsemen's Partnership; Gillespie County Fair and Festivals Association, Inc.; Global Gaming LSP, LLC d/b/a Lone Star Park at Grand Prairie; and Sam Houston Race Park, LLC v. American Legion Department of Texas, Temple Post 133; Kickapoo Traditional Tribe of Texas; Thompson Allstate Bingo Supply, Inc.; and Moore Supplies, Inc.

Texas Quarter Horse Association v. American Legion Department of Texas · No. 03-15-00118-CV · Decided June 15, 2015

SUMMARY

This document is an unopposed motion by the appellants to abate a Texas Third Court of Appeals proceeding for 90 days. The appeal concerns the validity of Texas Racing Commission rules authorizing pari-mutuel wagering on historical horse racing, and the motion cites the Commission's anticipated future action as the basis for suspending appellate deadlines.

CASE DETAILS

COURT	Court of Appeals for the Third District of Texas at Austin
JURISDICTION	Texas
DECIDED	June 15, 2015
DOCKET	03-15-00118-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellants filed an unopposed motion to abate the appeal for 90 days and to suspend or toll existing appellate deadlines while the Texas Racing Commission considered its future position regarding historical horse-racing rules.
PRECEDENTIAL VALUE	not_applicable
PARTIES	Texas Quarter Horse Association, Texas Thoroughbred Association, Texas Horsemen's Partnership, Gillespie County Fair and Festivals Association, Inc., Global Gaming LSP, LLC d/b/a Lone Star Park at Grand Prairie, Sam Houston Race Park, LLC v. American Legion

TOPICS

appellate procedure administrative law rulemaking pari-mutuel wagering gambling

PRACTICE AREAS

Administrative law Appellate procedure Gaming and gambling law

QUESTIONS PRESENTED

1. Whether the appeal should be abated for 90 days and existing appellate deadlines suspended or tolled while the Texas Racing Commission considered its future position regarding historical-racing rules.

FACTUAL BACKGROUND

The appeal concerns the validity of administrative rules adopted by the Texas Racing Commission authorizing pari-mutuel wagering on historical horse racing. The district court determined that the Commission's August 2014 adoption of those rules was ultra vires and invalid. While the appeal was pending, the Commission was considering whether to maintain, revise, or abandon its position on historical racing, potentially affecting the appeal's status.

PROCEDURAL HISTORY

The district court held that the Texas Racing Commission's August 2014 adoption of rules authorizing pari-mutuel wagering on historical horse racing was an ultra vires act and that the rules were invalid. Appellants appealed that decision to the Third Court of Appeals and then moved to abate the appeal. The appellees did not oppose the requested abatement, although they disagreed with appellants' characterization of the facts and rationale.

DISPOSITION

other

OPINION

PER CURIAM.

ACCEPTED 03-15-00118-CV 5686565 THIRD COURT OF APPEALS AUSTIN, TEXAS
6/15/2015 9:12:09 PM JEFFREY D. KYLE CLERK No. 03-15-00118-CV
FILED IN 3rd COURT OF APPEALS AUSTIN,
TEXAS IN THE COURT OF APPEALS 6/15/2015 9:12:09 PM FOR THE THIRD DISTRICT OF
TEXAS JEFFREY D. KYLE AUSTIN, TEXAS Clerk
TEXAS QUARTER HORSE ASSOCIATION;

TEXAS THOROUGHBRED ASSOCIATION; TEXAS HORSEMEN'S PARTNERSHIP; GILLESPIE COUNTY FAIR AND FESTIVALS ASSOCIATION, INC.; GLOBAL GAMING LSP, LLC d/b/a LONE STAR PARK AT GRAND PRAIRIE; and SAM HOUSTON RACE PARK, LLC, Appellants v. AMERICAN LEGION DEPARTMENT OF TEXAS, TEMPLE POST 133; KICKAPOO TRADITIONAL TRIBE OF TEXAS; THOMPSON ALLSTATE BINGO SUPPLY, INC.; and MOORE SUPPLIES, INC., Appellees

UNOPPOSED MOTION TO
ABATE APPEAL _____ TO THE
HONORABLE THIRD COURT OF APPEALS: Pursuant to Tex. R. App.

P. 2 and 10.1, Appellants move to abate this appeal for 90 days. In support of the requested 90-day abatement, Appellants would show the following: 1 1. This cause concerns the validity of administrative rules adopted by the Texas Racing Commission ("Commission") that authorize pari-mutuel wagering on historical horse racing. 2.

The district court below held that the Commission's adoption of the historical racing rules in August 2014 constituted an ultra vires act, and that those rules are therefore invalid. 3. Appellants have appealed the district court's decision to this Court. 4.

The Commission is currently considering its future plans with respect to the issue of historical racing. At this time, it is unclear what the Commission will ultimately decide. For example, the Commission could decide to maintain its current position in support of historical racing. Alternatively, it could decide to maintain its current support of historical racing, but do so through a new rule.

Or it could decide to switch gears and abandon the issue of historical racing entirely and permanently, by announcing in no uncertain terms that the Commission will repeal the rule and will not replace it with another historical racing rule at any time in the future. Depending on which course the Commission ultimately suggests, that decision may or may not impact the status of this appeal.

5. The Commission is expected to make a final decision about historical racing, one way or another, in or around August 2015. Until then, there is no need for this Court or for the parties to expend further resources on this appeal. 2 6.

Accordingly, Appellants ask the Court to suspend or toll all current appellate deadlines and to abate the appeal for 90 days. The requested 90-day abatement will avoid a potentially needless waste of time and expense involved in briefing issues raised by both sides in this Court. 7. Appellees do not agree with Appellants' characterization of the facts or rationale expressed in this Motion, but Appellees do not oppose the granting of the relief sought.

WHEREFORE, Appellants pray that the Court grant this unopposed motion to abate and render an order suspending or tolling all existing appellate deadlines and abating this appeal for a period of 90 days. Appellants also request such other and further relief to which it may be entitled. DATED: June 15, 2015 Respectfully submitted, By: /s/ J. Bruce Bennett J. Bruce Bennett 3 Martha S. Dickie, J. Bruce Bennett State Bar No. 00000081 State Bar No. 02145500 Boone Almanza John A. Cardwell State Bar No. 01579001 State Bar No. 03791200 ALMANZA, BLACKBURN & DICKIE, LLP CARDWELL, HART & BENNETT, LLP 2301 South Capital of Texas Highway, 807 Brazos, Suite 1001 Building H Austin, Texas 78701 Austin, Texas 78746 Tel: (512) 322-0011 Tel: (512) 478-9486 Fax: (512) 322-0808 Fax: (512) 478-7151 cardwell53@earthlink.net mdickie@abdlawfirm.com jbb.chblaw@me.com balmanza@abdlawfirm.com --and-- COUNSEL FOR APPELLANT GILLESPIE Dudley D. McCalla COUNTY FAIR AND FESTIVALS State Bar No. 13354000 ASSOCIATION, INC. JACKSON WALKER, LLP 100 Congress Avenue Ste 1100 James C. Ho Austin, Texas 78701-0000 State Bar No. 24052766 Tel: (512) 236-2071 Bradley G. Hubbard Fax: (512) 236-2002 State Bar No. 24090174 dmccalla@jw.com GIBSON, DUNN & CRUTCHER LLP 2100 McKinney Avenue, Suite 1100 COUNSEL FOR APPELLANT GLOBAL GAMING Dallas, Texas 75201 LSP, LLC D/B/A LONE STAR PARK AT Tel: (214) 698-3100 GRAND PRAIRIE Fax: (214) 571-2934 jho@gibsondunn.com Robert G. Hargrove bhubbard@gibsondunn.com State Bar No. 24032391 Ana Maria Marsland Griffith COUNSEL FOR APPELLANT SAM State Bar No. 13049300 HOUSTON RACE PARK, LLC OSBORN, GRIFFITH & HARGROVE 515 Congress Ave., Suite 2450 Austin, Texas 78701 Tel: (512) 476-3529 Fax: (512) 476-8310 rob@texasenergylaw.com anamaria@texasenergylaw.com 4 COUNSEL FOR APPELLANTS TEXAS QUARTER HORSE ASSOCIATION, TEXAS THOROUGHBRED ASSOCIATION, AND TEXAS HORSEMEN'S PARTNERSHIP CERTIFICATE OF CONFERENCE I hereby certify that I have conferred with counsel for Appellees regarding this Motion.

Appellees do not agree with Appellants' characterization of the facts or rationale expressed in this Motion, but Appellees do not oppose the granting of the relief sought. /s/ J. Bruce Bennett J. Bruce Bennett CERTIFICATE OF SERVICE I certify that a true copy of foregoing Motion was served via electronic means on all counsel of record in this case on this 15th day of June 2015: /s/ J. Bruce Bennett J. Bruce Bennett 5