

COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

N.W. Enterprises, Inc. d/b/a Gaslight News & Video v. City of Houston

N.W. Enterprises · No. 14-09-00561-CV · Decided February 4, 2010

SUMMARY

The Fourteenth Court of Appeals dismissed an appeal from a temporary injunction that barred N.W. Enterprises from operating an adult arcade. The court held that the appeal became moot after the appellant vacated the premises and the premises were permanently enjoined from use as a sexually oriented business, making review of the temporary injunction an impermissible advisory opinion.

CASE DETAILS

COURT	Court of Appeals for the Fourteenth District of Texas
WRITING FOR THE COURT	Per Curiam; Justice Frost; Justice Boyce; Justice Sullivan
JURISDICTION	Texas
DECIDED	February 4, 2010
DOCKET	14-09-00561-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from an order granting a temporary injunction; the appellee moved to dismiss the appeal as moot after the injunction became inoperative.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	N.W. Enterprises, Inc. d/b/a Gaslight News & Video v. City of Houston

TOPICS

mootness

appellate procedure

injunctions

interlocutory appeal

civil procedure

PRACTICE AREAS

Appellate procedure

Mootness

Injunctions

Municipal law

QUESTIONS PRESENTED

1. Whether the appeal from the temporary injunction became moot after the appellant vacated the premises and the temporary injunction became inoperative.
2. Whether the court could review the validity of the moot temporary injunction without issuing an impermissible advisory opinion.

HOLDINGS

1. An appeal from a temporary injunction is moot when the injunction becomes inoperative, and the appellate court must dismiss the case once it becomes moot.

KEY QUOTATIONS

“We are prohibited from reviewing a temporary injunction that is moot because such a review would constitute an impermissible advisory opinion.”

“When a temporary injunction becomes inoperative, the issue of its validity is moot.”

FACTUAL BACKGROUND

The trial court temporarily enjoined N.W. Enterprises from operating an adult arcade and ordered it to secure that portion of its premises. N.W. Enterprises subsequently vacated the premises pursuant to a lease termination agreement, after which the City and the landlord entered an agreed interlocutory declaratory judgment and permanent injunction declaring the premises ineligible for operation as a sexually-oriented business.

PROCEDURAL HISTORY

The 133rd District Court of Harris County granted a temporary injunction barring N.W. Enterprises from operating an adult arcade and requiring it to secure that portion of the premises. The appellant later vacated the premises under a lease termination agreement, and the appellee and landlord entered an agreed interlocutory declaratory judgment and permanent injunction concerning the premises. The Fourteenth Court of Appeals granted the motion to dismiss because the appeal from the temporary injunction was moot.

DISPOSITION

dismissed

CASES CITED

- National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)
- Isuani v. Manske-Sheffield Radiology Group, P.A., 802 S.W.2d 235, 236 (Tex. 1991)

OPINION

PER CURIAM.

Dismissed and Memorandum Opinion filed February 4, 2010. In The Fourteenth Court of Appeals
_____ NO. 14-09-00561-CV _____ N.W. ENTERPRISES, INC., D/B/A

GASLIGHT NEWS & VIDEO, Appellant V. CITY OF HOUSTON, Appellee On Appeal from the 133rd District Court Harris County, Texas Trial Court Cause No. 2008-44756 M E M O R A N D U M O P I N I O N This appeal is from an order signed June 9, 2009, in which the trial court granted a temporary injunction.

Appellee filed a motion to dismiss the appeal as moot and appellant responded. In the order on appeal, the trial court enjoined appellant from operating an adult arcade and ordered appellant to secure that section of the premises. Subsequently, in accordance with a lease termination agreement between appellant and the landlord, appellant vacated the premises.

Appellee and the landlord of the premises then entered into an agreed interlocutory declaratory judgment and permanent injunction declaring the premises ineligible for the operation of any sexually-oriented business. Appellee claims the appeal is moot because appellant no longer occupies or operates an adult arcade at the premises. Appellant argues the appeal is not moot because appellant has an interest in recovering damages, resuming operations at another location, and protecting the operation of a second store that is under threat of similar injunction.

We are prohibited from reviewing a temporary injunction that is moot because such a review would constitute an impermissible advisory opinion. *Nat'l Collegiate Athletic Ass'n v. Jones*, 1 S.W.3d 83, 86 (Tex. 1999). When a temporary injunction becomes inoperative, the issue of its validity is moot. *Id.* We must dismiss the case once it becomes moot on appeal. *Isuani v. Manske-sheffield Radiology Group, P.A.*, 802 S.W.2d 235, 236 (Tex.

1991). The temporary injunction on appeal has clearly become inoperative. Any opinion regarding whether the trial court erred in granting the temporary injunction would therefore be advisory and without any practical legal effect. Appellee's motion is granted and the appeal is ordered dismissed. PER CURIAM Panel consists of Justices Frost, Boyce, and Sullivan.