

Court Affirms Orders Against A Trustee Granting Injunctive Relief And Appointing A Receiver

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In *In re Bumstead Irrevocable Trust*, beneficiaries of a trust sued a trustee for various causes of action and sought, and obtained, orders suspending his powers as trustee, appointing a receiver, and ordering him to prepare an adequate accounting. No. 13-20-00350-CV 2022 Tex. App. LEXIS 1686 (Tex. App.—Corpus Christi March 10, 2022, no pet. history). The trustee appealed. The court of appeals first addressed whether it had jurisdiction over the orders that suspended the trustee's powers and ordered him to prepare an accounting. The court first noted that it would conduct a "fair" reading of the interlocutory appeal statutes (as opposed to a conservative reading of those statutes):

[T]he supreme court recently acknowledged the growing prevalence of interlocutory appeals and clarified our standard of review for such appeals. See *Dall. Symphony Ass'n, Inc. v. Reyes*, 571 S.W.3d 753, 758 (Tex. 2019) (stating that the tenet that typically only final judgments and orders are appealable "may have been the general rule once upon a time"). Specifically, the supreme court stated that that "[l]imiting appeals to final judgments can no longer be said to be the general rule." *Id.* And, rather than applying a strict construction of statutes authorizing interlocutory appeals, the supreme court held that "the real goal is simply a 'fair' reading of the [statutory] language." *Id.* (quotation omitted).

Id. The court then noted that at least one court of appeals had held that an order suspending a trustee's powers was not the permissible basis for an interlocutory appeal. *Id.* (citing *Vranac v. Huddleston*, No. 05-08-00982-CV, 2008 WL 3412229, at *1 (Tex. App.—Dallas Aug. 13, 2008, no pet.) (holding that "[n]othing in [§] 51.014 provides for an interlocutory appeal from an order that suspends a trustee under section 114.008 of the Texas Property Code."). The court distinguished this case, however, in that the order suspending the trustee's powers was coupled with an appealable order appointing a receiver:

[T]he trial court's order necessarily suspends Taylor's powers as trustee because the trial court appointed a receiver to handle the trusts. In other words, Taylor's ability to serve as a trustee was obviated upon the appointment of a receiver, and an order appointing a receiver is subject to interlocutory review by statute. See Tex. Civ. Prac. & Rem. Code Ann. §

51.014(a)(1). ... Given the foregoing, and applying a fair reading of the statute, we reject appellees' contention that we lack jurisdiction over any part of the appeal pertaining to the suspension of Taylor's position as trustee.

Id.

The court also acknowledged that courts had held that orders requiring an accounting were not subject to interlocutory appeal. However, because the accounting order was contained in an injunction order, the court held that it was also appealable:

The portion of the order requiring Taylor to provide accountings for the trusts is encompassed in the section of the order granting appellees' request for a temporary injunction and ordering injunctive relief. To the extent the trial court grants a temporary injunction as well as non-injunctive relief that is not appealable, § 51.014(a)(4) provides for an interlocutory appeal only from the part of the order granting the temporary injunction. We agree with the beneficiaries that an order on a request for accounting, standing alone, is generally not final and appealable. However, here, the order requiring an accounting is encompassed within the temporary injunction, which is itself subject to appeal, and the provision requiring Taylor to provide an accounting functions as a mandatory injunction because it orders him to engage in particular conduct. Accordingly, under the circumstances present here, we have jurisdiction to review this directive.

Id. The court held that it had jurisdiction.

The appellants contended that the trial court's order disrupts the status quo insofar as it orders the trustee to transfer property to the receiver for distribution and directs the receiver to take control of trust assets and affairs and to distribute the trust assets upon application to the trial court. The court of appeals agreed in part with this complaint:

To the extent that appellants' contentions regarding the status quo concern the receiver's ability pursuant to the order to take control, possession, and custody of the receivership estate, we disagree with the premise of this argument. Appellants raise no issue on appeal regarding the appointment of a receiver, and a receiver is endowed with the power and duty to handle receivership property as previously stated. Further, it is clear that injunctive relief is available to preserve assets that are the subject matter of pending litigation and to secure an equitable remedy. Nevertheless, we agree with appellants' argument, in part, that certain aspects of the order subject to appeal impermissibly alter the status quo. ... "[I]t is not the purpose of a temporary injunction to transfer property from one person to another, but rather to preserve the original status of the property pending a final decision on the rights of the parties." Accordingly, to the extent that the trial court's order envisions any change in ownership of trust assets by sale or distribution, the trial court erred.

Id. The court disagreed with the appellants' argument that the interlocutory order granted the ultimate relief sought in the suit:

Fundamentally, appellants' argument fails to consider the nature of the relief sought by the beneficiaries. The beneficiaries sought temporary and interlocutory relief pursuant to the rules and law pertaining to temporary injunctions and § 114.008(a) of the Texas Property Code. The trial court's order parallels the relief sought. Further, the specificity of the trial court's order was necessitated by the rules and law pertaining to temporary injunctions. Rule 683 delineates the requirements for the form and scope of a temporary injunction and provides in relevant part that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained." ... We reject appellants' contention that the trial court's order impermissibly reaches the merits or provides the ultimate relief sought in the underlying lawsuit.

Id. The court also disagreed with the appellants' argument that they were denied due process and the right to a jury trial. The court noted that parties were not entitled to jury trials for temporary injunctive relief and that the appellants had notice of the hearing and the opportunity to present evidence.

The appellants argued that there was insufficient evidence to support the trial court's findings that the trustee breached various duties. The court first discussed these duties:

Certain formal relationships such as those between a trustee and a trust beneficiary give rise to fiduciary duties as a matter of law. In summary, a fiduciary "owes its principal a high duty of good faith, fair dealing, honest performance, and strict accountability." High fiduciary standards are imposed upon trustees, who must handle trust property solely for the beneficiaries' benefit." The property code requires a trustee to administer a trust "in good faith" according to its terms and the applicable provisions of the property code, and in the absence of any contrary provisions, "the trustee shall perform all of the duties imposed on trustees by the common law." Trustees "owe beneficiaries 'a fiduciary duty of full disclosure of all material facts known to them that might affect [the beneficiaries'] rights.'" A fiduciary "has an affirmative duty to make a full and accurate confession of all his fiduciary activities, transactions, profits, and mistakes." "[T]he trustee's duty of loyalty prohibits him from using the advantage of his position to gain any benefit for himself at the expense of his trust and from placing himself in any position where his self-interest will or may conflict with his obligations as trustee." There is a presumption of unfairness regarding transactions between a fiduciary and a party to whom he owes a duty of disclosure, and thus the profiting fiduciary bears the burden of showing the fairness of the transactions. The fiduciary must show proof of good faith and that the transaction was fair, honest, and equitable.

Id. (internal citations omitted). The court then found that there was adequate evidence to support the trial court's findings of breach. The court noted that the trustee admitted that he would not fund a trust until he received a release, he could have distributed assets to the beneficiaries but did not do

so, did not know the provisions of certain trusts and did not know what assets certain trusts owned, and that he had the trusts pay certain expenses in a nonproportional manner with his personal interests. He also admitted that he had trust assets pay for his personal expenses. He admitted that he failed to disclose a major transaction that his predecessor trustee executed. He admitted that he commingled the trusts' assets together. This was sufficient to support a finding of a breach of the duty of loyalty, duty to disclose, duty to not commingle. An interesting note to the trustees' arguments is that he centered many of his positions on the fact that he was just continuing the pattern and practice of his predecessor trustees, who were the settlors. The court noted that the trustee's attempt to do so was unavailing.

The court next addressed whether there was sufficient evidence to support the irreparable injury requirement for injunctive relief. The court noted the following regarding the normal elements for injunctive relief:

To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable imminent, and irreparable injury in the interim. "An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard." Monetary damages may not adequately "compensate an injured party for the loss of property deemed to be legally 'unique' or irreplaceable." "The 'uniqueness' rule is most commonly applied when the disputed property involves real estate." "Accordingly, it may be proper for a trial court to grant equitable relief when real property is at the heart of the dispute."

Id. The court held that the evidence showed that the assets at issue in the case included, but were not limited to, several different tracts of real property. The evidence showed that the real estate was unique and that there was concerns that the trustee would commit to developing the property without authority during the litigation. The court then held that "[w]e conclude that the trial court did not abuse its discretion in concluding that the beneficiaries had presented sufficient evidence showing that they would suffer an irreparable injury if the temporary injunction were not granted." *Id.* Interestingly, the court did not address whether there was sufficient evidence to sustain the injunction regarding the non-real estate trust assets.

The court of appeals did make a very interesting footnote regarding whether the common-law elements for injunctive relief are required for an injunction issued under the Texas Trust Code:

Where injunctive relief is provided by a specific statute, an applicant may not need to prove these common law elements to obtain temporary relief. See, e.g., *Cook v. Tom Brown Ministries*, 385 S.W.3d 592, 599 (Tex. App.—El Paso 2012, pet. denied) (analyzing Tex. Elec. Code Ann. § 273.081); *8100 N. Freeway Ltd. v. City of Houston*, 329 S.W.3d 858, 861 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (analyzing Tex. Loc. Gov't Code Ann. § 243.010); see also *Marauder Corp. v. Beall*, 301 S.W.3d 817, 820 (Tex. App.—Dallas 2009, no pet.). In such cases, we review the trial court's decision on a temporary injunction application for an abuse of discretion. *Hughs v. Dikeman*, 631 S.W.3d 362, 383 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *8100 N. Freeway Ltd.*, 329 S.W.3d at 861. However, not all statutory sources for temporary injunctions obviate the need to meet the common law requirements for injunctive relief. See, e.g., *Sonwalkar v. St. Luke's Sugar Land P'ship, L.L.P.*, 394 S.W.3d

186, 199 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (discussing when a statute will eliminate the need to meet the common law requirements to obtain a temporary injunction). The parties in this case appear to assume that the traditional common law elements are required under the statutory provisions at issue and have not separately addressed or briefed this issue. Accordingly, we assume, without deciding, that the common law elements are required in this case.

Id.

The court finished this rather lengthy opinion by addressing the trustee's argument that the trial court's order requiring him to prepare an accounting was in error as it required him to do so when he had no access to relevant information. The court first noted that the appellants waived this issue by failing to raise it in the trial court. At trial, appellants objected that the trustee was not required to examine the accounts, records, or actions of a previous trustee, and that as a successor trustee, he was not liable for any actions or omissions committed by a previous trustee. On appeal, appellants asserted that the trial court's order requiring him to provide accountings encompassed records he has no access to and allegedly required use of estate funds to which he has no access. The court concluded: "Appellants' objection to the trial court does not correspond to the argument made on appeal. Because appellants did not raise the argument in the trial court that they now raise on appeal, they have not preserved this issue for our review." *Id.* In any event, the court addressed the argument and disagreed. It held that the court's order only required an accounting for the period while the trustee was the trustee. The court also noted that the order did not require the trustee to hire accountants. The court concluded: "As trustee, Taylor was required to comply with the property code and provide accountings for the trusts that are compliant with the statutory requirements. We are confident that if Taylor lacks the statutorily required information, he can so inform the trial court and the omission can be resolved accordingly." *Id.*

Accordingly, the court of appeals affirmed the trial court's orders in all respects except regarding the receiver being able to distribute trust assets.

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