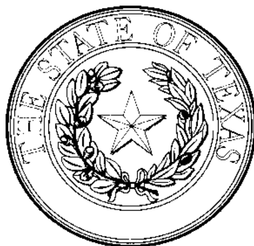
Opinion issued July 2, 2020



In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00286-CV

WOODY K. LESIKAR, INDIVIDUALLY, AND AS TRUSTEE OF THE WOODY K. LESIKAR SPECIAL TRUST, Appellant

V.

WOODROW V. LESIKAR FAMILY TRUST BY AND THROUGH ITS BENEFICIARY, CAROLYN ANN LESIKAR MOON SPECIAL TRUST, AND ITS TRUSTEE, WOODY K. LESIKAR SPECIAL TRUST, AND CAROLYN ANN LESIKAR MOON, INDIVIDUALLY, Appellees

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On Appeal from the 334th District Court
Harris County, Texas
Trial Court Case No. 2008-65920-A

MEMORANDUM OPINION

Appellant, Woody K. Lesikar, individually, and as Trustee of the Woody K. Lesikar Special Trust, appeals from a February 25, 2020 order of the trial court requiring him to deposit or hold proceeds from a settlement in a different lawsuit (the "disputed funds") into a trust account maintained by his legal counsel, known as an "IOLTA" account, and ordering the disputed funds not to be disbursed without an order of the trial court. On May 21, 2020, the trial court amended the February 25, 2020 order and required appellant to deposit the disputed funds into the court registry. Appellant has filed a petition for writ of mandamus with this Court to challenging the trial court's May 21, 2020 order. Appellees, Woodrow V. Lesikar Family Trust by and through its Beneficiary, Carolyn Ann Lesikar Moon Special Trust, and its Trustee, Woody K. Lesikar Special Trust, and Carolyn Ann Lesikar Moon, individually, have filed a motion to dismiss this appeal for lack of jurisdiction.

We grant appellees' motion and dismiss the appeal for lack of jurisdiction.

Background

The underlying lawsuit involves a family dispute that has been pending in the trial court, and various other courts, for more than a decade, and as such, the facts are well known to the parties. We will therefore only recite those facts which are relevant to our analysis of appellees' motion to dismiss, and whether this Court has jurisdiction over appellant's appeal of the trial court's February 25, 2020 order.

On February 19, 2020, appellees filed, in the trial court, an "Emergency Motion for an Order Requiring the Deposit of Funds into the Registry of [the Trial] Court." In their motion, appellees requested that the trial court order the disputed funds in the possession of appellant to be deposited into the registry of the court during the pendency of the parties' lawsuit. On February 25, 2020, the trial court granted appellees' request. However, in doing so, the trial court modified appellees' proposed order. Instead of requiring appellant to deposit the disputed funds into the registry of the court, which was the relief requested by appellees, the trial court required appellant to "deposit or hold" the disputed funds "in the IOLTA account of one [of appellant's] lawyers and not disburse those funds without an order from th[e] [c]ourt."

Subsequently, appellees moved to amend the trial court's February 25, 2020 order, and on May 21, 2020, the trial court signed an "Amended Order Granting Emergency Motion for an Order Requiring the Deposit of Funds into the Registry of th[e] Court." By its express terms, the May 21, 2020 order amended and replaced the trial court's February 25, 2020 order and required appellant to deposit the disputed funds into the trial court's registry within three days of the date of the order.

Jurisdiction

The parties agree that the trial court has the inherent authority to order a party to deposit disputed funds into the court's registry if there is evidence that those funds

are in danger of being lost or depleted. *See In re Reveille Res. (Tex.), Inc.*, 347 S.W.3d 301, 304 (Tex. App.—San Antonio 2011, orig. proceeding). On appeal, appellant argues that when the trial court, on February 25, 2020, modified appellees' proposed order and required the disputed funds to be placed in an IOLTA account, as opposed to the registry of the court, the trial court exceeded its inherent authority and morphed the February 25, 2020 order into a temporary injunction. Under Texas law, orders for injunctive relief are bound by certain procedural requirements to be enforceable, defined both statutorily and by case law. *See, e.g.*, TEX. R. CIV. P. 683; *see also Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

In this appeal of the trial court's February 25, 2020 order, appellant argues that the February order failed to comply with the procedural requirements for injunctive relief. Thus, appellant requests that this Court hold that the February 25, 2020 order, assuming it constitutes an order granting injunctive relief, is void and should be dissolved. In fact, in the "Conclusion and Request for Relief" in his brief, appellant asks this Court to "reverse, vacate, dissolve, and void" the trial court's February 25, 2020 order.

After appellant filed his notice of appeal, challenging the trial court's February 25, 2020 order, the trial court, on appellees' motion, entered the May 21, 2020 order. By its terms, the May 21, 2020 order amended the trial court's February 25, 2020 order. By amending the February 25, 2020 order, the trial court superseded, and as

such, dissolved, its February 25, 2020 order, relieving appellant from any obligation to comply with its terms. *See Nexus Fuels, Inc. v. Hall*, 05-98-02147-CV, 1999 WL 993929, at *2 (Tex. App.—Dallas Nov. 1, 1999, no pet.) (not designated for publication) ("Once an amended order is entered, it supersedes the original order."). Therefore, by issuing the May 21, 2020 order, the trial court effectively granted the relief requested by appellant in this appeal.

Yet, despite this, appellant asserts, in response to appellees' motion to dismiss, that the trial court was without the authority to issue the May 21, 2020 order based on Texas Rule of Appellate Procedure 29.5. Rule 29.5 provides that a trial court "retains jurisdiction" over a case while an appeal from an interlocutory order is pending. *See* TEX. R. APP. P. 29.5. During the pendency of the appeal, the trial court is expressly permitted to make further orders, including one dissolving the order complained of on appeal. *Id.* However, the trial court "must not make an order that interferes with or impairs the jurisdiction of the appellate court or [the] effectiveness of any relief sought or that may be granted on appeal." TEX. R. APP. P. 29.5(b).

Appellant argues that the trial court's May 21, 2020 order runs afoul of Texas Rule of Appellate Procedure 29.5 because the order "interfere[s] with the effectiveness of relief sought or that may be granted by this Court." We disagree. Here, we cannot conclude that the trial court runs afoul of Rule 29.5 because the trial court's subsequent, amended order, i.e., the May 21, 2020 order, grants appellant the

specific relief he requests in his appeal of the February 25, 2020 order. *See Christus Spohn Health Sys. Corp. v. Rios*, No. 13-05-070-CV, 2005 WL 1039791, at *1 (Tex. App.—Corpus Christi–Edinburg May 5, 2005, no pet.) (mem. op.) (determining trial court's subsequent order dissolving interlocutory order then on appeal did not interfere with or impair effectiveness of relief sought by appellant on appeal where dissolution of earlier order was relief requested by appellant). To find otherwise would defy all logic and reason.

The May 21, 2020 order addressed any alleged procedural deficiency in the trial court's February 25, 2020 order, notably, including the precise procedural deficiency that appellant complained of on appeal and we decline to hold that the trial court interfered with the jurisdiction of this Court by taking such action. *See Tex. Health & Human Servs. Comm'n v. Advocates for Patient Access, Inc.*, 399 S.W.3d 615, 624 (Tex. App.—Austin 2013, no pet.) ("Logic and reason preclude us from construing TRAP Rule 29.5 as hamstringing trial courts from correcting procedural defects while an interlocutory appeal is pending based on those defects."). Stated differently, it would be counterintuitive and illogical to conclude that the trial court's May 21, 2020 order interfered with the effectiveness of the relief sought by appellant on appeal where "the relief sought on appeal . . . has already been granted by the trial court." *See Christus Spohn Health Sys. Corp.*, 2005 WL 1039791, at *1. For these reasons, we hold that the trial court acted within its

authority and scope of its jurisdiction in issuing the May 21, 2020 order, amending, and thus dissolving, the February 25, 2020 order.

We now address the question of this Court's jurisdiction over appellant's appeal of the February 25, 2020 order. In analyzing this question, we must note that, even assuming the February 25, 2020 order did amount to an improper temporary injunction, that order has been rendered moot by the trial court's May 21, 2020 order. *See City of Houston v. Dolcefino Comms., LLC*, No. 01-17-00979-CV, 2018 WL 5539447, at *3 n.8 (Tex. App.—Houston [1st Dist.] Oct. 30, 2018, no pet.) (mem. op.) ("Because the trial court rendered an amended order on March 29, 2018, the trial court's previous December 6, 2017 order is rendered moot."). Further, as is acknowledged by the parties, an order requiring a party to deposit disputed funds into the registry of the trial court, such as the May 21, 2020 order, is not reviewable by interlocutory appeal. *See Zhao v. XO Energy LLC*, 493 S.W.3d 725, 735 (Tex. App.—Houston [1st Dist.] 2016, no pet.). Instead, such an order may only be reviewed through a petition for writ of mandamus.[1] *Id.*

Because the trial court's May 21, 2020 order renders the February 25, 2020 order moot, we hold that we lack jurisdiction to consider this appeal. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012) ("If a case is or becomes moot,

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[1] Appellant has filed a petition for writ of mandamus challenging the trial court's May 21, 2020 order which is pending in this Court in appellate cause number 01-20-00391-CV.

the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction.”).

Conclusion

We grant appellees’ motion to dismiss and dismiss the appeal for lack of jurisdiction. *See* TEX. R. APP. P. 42.3(a), 43.2(f). We dismiss any other pending motions as moot.

Evelyn Keyes
Justice

Panel consists of Justices Keyes, Kelly, and Landau.