Affirmed in Part, Reversed and Remanded in Part, and Plurality, Concurring, and Dissenting Opinions filed July 16, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-01063-CV

LAW OFFICE OF JOSEPH ONWUTEAKA, P.C., JOSEPH ONWUTEAKA, AND SAMARA PORTFOLIO MANAGEMENT, LLC, Appellants

V.

ROLANDA SERNA, Appellee

On Appeal from the County Court at Law No. 5
Fort Bend County, Texas
Trial Court Cause No. 18-CCV-062344

D I S S E N T I N G O P I N I O N

The plurality opinion creates an unworkable standard for starting the timetable to request a de novo hearing that will lead to uncertainty not only with lawyers but also with associate and referring judges, creating traps for all. I dissent.

A. No written order is necessary—until it is.

Relying on a similar family law provision and our caselaw, the plurality opinion concludes that a written order is not necessary to invoke the requirement that a party timely request a de novo hearing before the district judge. Yet at the same time the plurality opinion concludes that the written order appointing a receiver was necessary in this case to invoke that requirement.

B. The plurality opinion's standard is unworkable.

The plurality opinion announces a confusing standard for what the "substance" of a ruling is, equating it to the essence of the decision. The plurality concludes that the essence of the rulings on the motion for new trial and for the motion to vacate is that they were both orally *denied*, even though the written orders stated grounds for the denials. Yet, the plurality opinion concludes that *granting* a motion for receivership is not the essence of the associate judge's ruling, because it failed to include the grounds for granting the motion and the receiver's name—those were in the written ruling. Are we to infer from this opinion that all orally *granted* motions do not start the time for requesting a de novo hearing or is the opinion limited solely to the granting of a receivership? What if the judge had named the receiver—would that be enough? What if the associate judge had included some details but not all? What standard will a referring judge and lawyers use to answer this question? The plurality opinion does not answer those questions.

The plurality opinion states that there is a "qualitative and quantitative difference" between the associate judge's ruling on the Onwuteaka motions and the judge's statements as to Serna's motion, but we are left to guess exactly what that means. The plurality opinion states that the associate judge unequivocally stated that each motion was denied. Are we to infer that the associate judge's decision granting the motion for receivership was equivocal, and if so, in what way? Did the associate

judge fail to say the motion was granted "in all things" and would that have made a difference?

There is no family-law case making such a distinction.[1] And for good reason: such a distinction is just unworkable. The plurality opinion creates no workable standard for lawyers or judges to follow to determine whether an oral ruling suffices to start the timetable to request a de novo hearing.

C. The plurality opinion will create traps for both lawyers and judges.

This unworkable standard will lead to endless hearings as to whether the associate judge provided sufficient details when ruling. And it will lead to appellate traps: a lawyer may file to timely appeal the associate judge's ruling, erroneously believing his client is entitled to a de novo hearing. A referring judge may hold a new hearing and enter a new order, and the losing party will file a mandamus or an appeal saying the referring judge had no authority to do so as the request was untimely. *See In the Interest of L.G.*, 517 S.W.3d 275, 276–77(Tex. App.—San Antonio 2017, pet. denied) (where request for de novo hearing was untimely, the associate judge's decision was the final and appealable judgment, and the referring judge's de novo hearing and judgment did not restart the appellate timetable).

D. The proposed receivership order and the signed order are not materially different.

Serna's motion to appoint a receiver stated:

> Plaintiff further moves the Court to appoint a receiver pursuant to §31.002 (b) (3), to take possession of the nonexempt assets and documents related to the assets, sell the assets and apply the proceeds from the sale to satisfy the judgment, including the receiver's fee and

[1] The five cases cited in the plurality opinion do not make such a distinction and I have been unable to find any case that concluded that an oral ruling by an associate judge was insufficient to start the time to request a de novo hearing.

> costs, which should be taxed against the defendant as a cost. Plaintiff requests this court to appoint Mike Bernstein, [address, telephone, and fax number redacted] as Receiver. Mr. Bernstein has extensive experience as a receiver in turnover matters.

Serna's motion was accompanied by a written order filed with the court and served on Onwuteaka.

The plurality opinion points out the minor differences between the proposed order and the signed order on the matter of attorney's fees and a bond. Is this the standard we should be looking at? As this is an after-the-fact-review, it sheds no light on whether the associate judge's ruling conveyed the essence of his decision at the time of his ruling.

E. What would have triggered the appellate timetable?

The plurality opinion does not discuss the appealability of a receivership order but it is instructive to consider the issue. If the judge had signed a written order stating, "Serna's motion to appoint a receiver is granted," would that have been an appealable order under section 51.014(a)(1) of the Texas Civil Practices and Remedies Code? That section provides: A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that: (1) appoints a receiver or trustee . . . ." TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(1). I believe the written order "granting" Serna's motion would have been appealable and would have started the appellate timetable.

We allow appeals from defective temporary injunction orders and dissolve them if the order is defective. *See, e.g., Hoist Liftruck Mfg., Inc. v. Carruth–Doggett, Inc.*, 485 S.W. 3d 120, 123 (Tex. App.—Houston [14th Dist.] 2016, no pet.). A written order granting a motion to appoint a receiver, even if defective, should similarly be sufficient for an interlocutory appeal. *Cf. Ex Parte E.H.*, No. 18-0932,

__S.W.3d__, 2020 WL 2516846, at *7 (Tex. May 15, 2020) ("[C]ourts should avoid inquiring into the merits of an appeal when deciding whether the appellant 'procedurally invoked the court of appeals' jurisdiction.'" (quoting *Sweed v. Nye*, 323 S.W.3d 873, 875 (Tex. 2010) (per curiam))). Likewise, an oral ruling granting the motion to appoint a receiver should have been enough to trigger the request for a de novo hearing.

F. Conclusion

If an oral ruling starts the timetable, then an oral ruling granting the motion for receivership is enough. An ad hoc, after-the-fact-review, as to whether the associate judge's ruling was sufficient to start the timetable for requesting a de novo hearing is unworkable and will lead to traps for both lawyers and the judges.

I respectfully dissent.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Bourliot (Bourliot, J., plurality; Frost, C.J., concurring).