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

CONCURRING OPINION

Under chapter 54A, subchapter B of the Government Code, the timetable for a party to request a de novo hearing before the referring court does not start to run until the party receives notice of the substance of the associate judge's decision. A review of the reporter's record from the hearing before the associate judge shows that (1) the associate judge conveyed to the parties at the hearing the substance of

his decision on the two motions filed by appellants Law Office of Joseph Onwuteaka, P.C., Joseph Onwuteaka, and Samara Portfolio Management, LLC (the "Onwuteaka Parties"); and (2) the associate judge did not convey to the parties the substance of his decision on the motion to appoint a receiver filed by appellee Rolanda Serna. Thus, the plurality correctly affirms as to the denial of a de novo hearing on the Onwuteaka Parties' motions and correctly reverses and remands as to the denial of a de novo hearing on Serna's receivership motion.

Notice of the Substance of the Associate Judge's Decision Triggering Timetable for Requesting De Novo Hearing

Section 54A.111(a) requires that after hearing a matter, an associate judge for civil cases in a district court or county court at law must notify each attorney participating in the hearing of the decision.[1] Section 54A.111(b) states that "[t]o appeal an associate judge's decision, other than the issuance of a temporary restraining order or temporary injunction, a party must file an appeal in the referring court not later than the seventh day after the date the party *receives notice of the decision* under [section 54A.111(a)]."[2] Section 54A.115 provides that "[a] party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives *notice of the substance of the associate judge's decision as provided by Section 54A.111*."[3] Reading these two statutes together, the Legislature has provided that after hearing a matter, an associate judge must notify each attorney participating in the hearing of the substance of the associate judge's decision, and any party seeking a de novo hearing before the referring court must file a written request for this hearing with the clerk of the referring court no later than the seventh

[1] *See* Tex. Gov't Code § 54A.111(a).

[2] *Id.* § 54A.111(b) (emphasis added).

[3] *Id.* § 54A.115(a) (emphasis added).

working day after receiving notice of the substance of the associate judge's decision.[4] Chapter 54A, subchapter B of the Government Code permits an associate judge to give notice of the substance of the judge's decision by oral statements during the hearing.[5] So, if an associate judge orally conveys the substance of a decision in open court, the timetable begins for requesting a de novo hearing.

Substance of the Associate Judge's Decision on the Onwuteaka Parties' Motions

Significant differences exist between the associate judge's statements as to his decisions regarding the Onwuteaka Parties' motions and his statements as to Serna's motion. In response to Serna's motion for a post-judgment receivership under section 31.002 of the Civil Practice and Remedies Code, the Onwuteaka Parties filed a motion to vacate or abate and a motion for new trial. In each motion, the Onwuteaka Parties asked the trial court to vacate the judgment that Serna sought to collect by means of his motion. After hearing argument on the Onwuteaka Parties' motions, the associate judge unequivocally stated that each motion was denied. Later in the hearing, the judge reiterated that he had denied each of the Onwuteaka Parties' motions. The substance of each decision was that the associate judge denied all of the relief the Onwuteaka Parties sought in the motion. If the associate judge had granted any of this relief, Serna's motion would have been rendered moot. Thus, during the hearing, the Onwuteaka Parties received notice of the substance of the associate judge's decisions on each of their motions, triggering the timetable for requesting de novo review on the day of the hearing.[6] Because the Onwuteaka Parties failed to make a timely request within seven working days, the referring judge did not err in denying as untimely the request for a de novo hearing as to those

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[4] *See id.* §§ 54A.111, 54A.115.

[5] *See id.* § 54A.101, *et seq*.

[6] *See id*. §§ 54A.111, 54A.115.

two motions.[7]

Substance of the Associate Judge's Decision on Serna's Motion for Appointment of a Receiver

The associate judge's decision on Serna's motion to appoint a receiver differs from the simple denial of the Onwuteaka Parties' two motions. The appointment of a receiver requires more than just making the determination that a receiver should be appointed. Under the Texas Turnover Statute, a court may appoint a receiver with the authority to take possession of non-exempt property, to sell it, and to pay the proceeds to the judgment creditor to satisfy the judgment.[8] In his motion, Serna asked the trial court to (1) order the Onwuteaka Parties to turn over all nonexempt property in their possession or subject to their control, together with all related documents to a receiver with authority to take possession of the nonexempt property, sell it and pay the proceeds to the plaintiff to the extent required to satisfy the judgment, including the receiver's fees and costs; (2) appoint a receiver under section 31.002(b)(3) of the Civil Practice and Remedies Code to take possession of the nonexempt property and related documents, sell the property, and apply the proceeds from the sale to satisfy the judgment, including the receiver's fees and costs; (3) tax the receiver's fees and costs against the Onwuteaka Parties as a cost; (4) appoint Mike Bernstein of Garland, Texas as the receiver; and (5) award Serna $500 as attorney's fees, expenses, and costs under Civil Practice and Remedies Code section 31.002(e).

After hearing argument on Serna's motion, the associate judge made several statements indicating that he would not make a decision on Serna's motion that day. The associate judge stated, "I'm going to hold on the [motion to appoint receiver],

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[7] *See id.* §§ 54A.111, 54A.115.

[8] *See* Tex. Civ. Prac. & Rem. Code § 31.002(b); *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 754 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

because I want to see a couple of things." The judge stated that he would hold another hearing on the motion in the future. The associate judge said, "I'm not going to sign — I'm inclined to grant the motion [for a receiver]. I'm not going to sign it today, because I want to get all the orders together and sign them at once." The judge added "so I'm *going to*[9] grant the motion for a receiver. . . I'm telling you that now. . . But I'm also going to tell you I haven't signed the order yet. I'm not signing the order — even though I have the order in front of me, I'm not signing the order now because I'm going to wait and sign all three orders at the same time." Shortly thereafter, the judge stated, "[l]ike I said, I'm making a docket entry that's granting the motion for receiver."

After saying that he was not going to rule on Serna's motion, the associate judge then said he was "going to grant the motion" but that he would not be signing an order until later. The judge then added that he made a docket entry indicating that he was granting the motion. After saying he would postpone a ruling, at the end of the hearing the associate judge changed his mind and indicated he would grant the motion. Nonetheless, the question we must decide is whether the associate judge conveyed the substance of his decision to grant the motion.

The associate judge did not state that the motion was granted in all things. Though the associate judge noted that he had a proposed order from Serna granting the motion, the associate judge did not say that he would be signing that order. The order that the judge later signed was not the same as Serna's proposed order. The beginning of the signed order differs from the beginning of the proposed order. In addition, in the signed order the trial court awarded $750 in attorney's fees and addressed whether the receiver was required to post a bond. Yet, the associate judge

[9] (emphasis added).

did not convey his decisions on key parts of the motion, leaving important details unaddressed and undisclosed. Neither in his statements at the hearing nor in the docket entry did the associate judge (1) describe the terms of any order he was granting at the time of the hearing, (2) name the receiver, (3) address the authority he was granting the receiver, or (4) state the amount of fees and costs, if any, that he was awarding to Serna under Civil Practice and Remedies Code section 31.002(e).

Notably, the associate judge spoke in less global terms in announcing his ruling on Serna's more complicated and multifaceted motion. Though the associate judge conveyed to those present at the hearing that he denied all of the relief the Onwuteaka Parties requested in their motions, the judge did not convey that he was granting all of the relief Serna requested in his motion. An associate judge may say he is "granting" a motion that requests various types of relief and then sign an order in which he does not grant all of the relief requested, especially when the motion contains a myriad of possibilities and various forms of requested relief. The associate judge indicated that he was granting Serna's motion but did not say what amount, if any, of attorney's fees and costs the associate judge would be awarding under Civil Practice and Remedies Code section 31.002(e).[10] Although the associate judge and the parties discussed certain aspects of Serna's motion during the hearing, including the identity of the person Serna proposed to be named as the receiver, the associate judge did not convey the substance of the receivership order that he stated he intended to sign. At the hearing, the associate judge did not announce his decision with respect to the identity of the receiver or other essential details of the receivership, but instead left the substance of any ruling on these essential matters undisclosed, perhaps to be decided after further study and reflection but, in any

[10] *See* Tex. Civ. Prac. & Rem. Code § 31.002(e).

event, not shared with the parties at the hearing.

Serna claims that the associate judge mentioned at the conclusion of the hearing that he had a copy of Serna's proposed order at the bench but was not going to sign it until he received written orders memorializing the denial of the Onwuteaka Parties' two motions. Serna appears to suggest that this comment indicates that the Onwuteaka Parties had notice of what would be in the eventual order. The record from the hearing shows that the associate judge did not say that he would sign Serna's proposed order in the future and, in fact, the associate judge did not sign it, opting instead to sign an order that differed in the material respects set forth above.

On this record, the Onwuteaka Parties did not receive notice of the substance of the associate judge's decision on the motion to appoint a receiver until they received the signed order.[11] Therefore, the Onwuteaka Parties' request for a de novo hearing before the referring judge, filed on September 12, 2018, was timely as it relates to the associate judge's decision to grant Serna's motion to appoint a receiver.[12]

Conclusion

Because the Onwuteaka Parties did not timely request a de novo hearing as to the associate judge's denial of their motions for new trial and to vacate or abate, this court properly affirms the trial court's order to the extent the trial court denied the requests for a de novo hearing on those motions. Because the trial court erroneously denied the Onwuteaka Parties' timely request for a de novo hearing on the associate judge's granting of Serna's motion to appoint a receiver, this court properly reverses the portion of the trial court's order denying the de novo hearing request on the

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[11] *See* Tex. Gov't Code §§ 54A.111, 54A.115.

[12] *See id*. § 54A. 115.

motion for receiver and remands for a de novo hearing of that motion before the referring judge.

/s/ Kem Thompson Frost
Chief Justice

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