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

P L U R A L I T Y O P I N I O N

After receiving adverse rulings on three motions from an associate judge, appellants, Law Office of Joseph Onwuteaka, P.C., Joseph Onwuteaka, and Samara Portfolio Management, LLC (the "Onwuteaka Parties"), requested de novo hearings on the motions before the referring judge. The referring judge denied the request on the ground that the request was untimely. The Onwuteaka Parties now

challenge the trial court's order denying their request for de novo hearings and complain that they did not receive proper notice of their right to request de novo hearings. Concluding that the Onwuteaka Parties received proper notice of their right but timely requested a de novo hearing on only one of the three motions, we affirm in part and reverse and remand in part.

Background

Appellee Rolanda Serna won a judgment against the Onwuteaka Parties in federal court and filed this action to domesticate that judgment pursuant to the Uniform Enforcement of Foreign Judgments Act. *See* Tex. Civ. Prac. & Rem. Code §§ 35.001–.008. The matter was referred to an associate judge pursuant to Texas Government Code section 54A.106(a). Serna filed a motion for post-judgment receivership under section 31.002 of the Texas Civil Practice and Remedies Code, and the Onwuteaka Parties filed a motion for new trial and a motion to vacate or abate.[1]

The associate judge held a hearing on all three motions on August 30, 2018, at which both sides provided argument and Serna presented evidence. During the hearing, the associate judge expressly denied the motion for new trial as well as the motion to vacate or abate. The associate judge then said that he was "inclined to grant the motion for a receiver" and "I'm going to grant the motion for a receiver . . . I'm telling you that now." Subsequently, the judge stated that he was "making a docket entry that's granting the motion for receiver." The associate judge further explained that although he had the order appointing a receiver before him at that time, he would wait to sign it until he had orders for all three motions

[1] In the motion for new trial, the Onwuteaka Parties requested a new trial regarding the merits of the federal judgment. In the motion to vacate or abate, they sought to have the federal judgment vacated and the proceedings abated.

before him so that they could all be filed together and there was no confusion. The associate judge did not recite any details of the receivership order on the record. The docket sheet entries for that date confirm that the Onwuteaka Parties' motions were denied, Serna's motion was granted, and the court would sign orders reflecting those rulings when all three orders were before the court. The docket sheet entries did not contain any details about the receivership order.

The associate judge signed three written orders on September 4, 2018, and the referring judge also signed each order. These orders were filed with the court clerk on September 11, 2018. The Onwuteaka Parties filed a request for a de novo hearing on each of the three motions with the referring judge on September 12, 2018. The referring judge denied the request on the ground that it was untimely. The referring judge stated in the denial order that "the parties had notice of the substance of the Associate Court's decisions on Plaintiff's Motion for Post-Judgment Receivership and Defendants' Motions for New Trial and to Vacate and/or Abate on August 30, 2018 when the Associate Judge orally granted Plaintiff's motion and denied Defendants' motions." The court did not hold a hearing on the request. The Onwuteaka Parties filed a subsequent motion to reconsider that was overruled by operation of law.

Governing Law

The primary dispute in this appeal concerns the proper interpretation and application of the statutory provisions governing the deadlines for requesting a de novo hearing before a referring judge of an associate judge's decision in a civil district court or county court at law. The proper interpretation of statutory language is a matter for de novo review. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625 (Tex. 2008). Our objective in construing a statute is to determine and give effect to the legislature's intent. *See Nat'l Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525,

527 (Tex. 2000). If possible, we must ascertain that intent from the language in the statute and not look to extraneous matters. *Id*. If the wording of the statute is unambiguous, we adopt the interpretation supported by the plain meaning of the provision's words and do not engage in forced or strained construction. *St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). We presume that every word was deliberately chosen and that excluded words were intentionally excluded. *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). We further review a trial court's application of the law under a de novo standard. *See, e.g.*, *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016); *Bennett v. Comm'n for Lawyer Discipline*, 489 S.W.3d 58, 67 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

Government Code Chapter 54A, Subchapter B governs the appointment of associate judges for civil cases in district courts and county courts at law. Tex. Gov't Code §§ 54A.101-.118. Section 54A.106 authorizes the referral of civil cases or portions of civil cases to associate judges. Section 54A.108(a) gives associate judges broad powers to hold hearings and make recommended rulings, orders, and judgments, among other things. After hearing a matter, an associate judge is required, under section 54A.111(a), to notify each attorney participating in the hearing of the decision. "To 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)]." *Id.* § 54A.111(b). "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." *Id.* § 54A.115(a).

Reading these provisions 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 with the clerk of the referring court not later than the seventh working day after receiving notice of the substance of the associate judge's decision. *See id.* §§ 54A.111, 54A.115.

If no request for a de novo hearing is timely filed or the right to a de novo hearing is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court when the referring court signs the proposed order or judgment. *See id*. § 54A.113(b). Parties are entitled to receive notice of the right to a de novo hearing before the referring court, which may be provided by oral statement in open court, by posting inside or outside the courtroom of the referring court, or as otherwise directed by the referring court. *Id*. § 54A.112.

Discussion

The Onwuteaka Parties contend that their request for de novo hearings on the three motions was timely because it was filed within seven working days of the date the associate judge and the referring judge signed the three orders and, in fact, the day after those orders were filed with the court clerk. In contrast, Serna contends—and the referring court held—that the Onwuteaka Parties' request was untimely because it was filed more than seven working days after the associate judge pronounced his rulings during the hearing on the three motions. As mentioned, the associate judge stated during the hearing that he was denying the Onwuteaka Parties' motions for a new trial and to vacate or abate and granting Serna's motion for appointment of a receiver.

As set forth above, the seven working days a party has to request a de novo

hearing starts to run when the party receives "notice of the substance of the associate judge's decision." *See id.* §§ 54A.111, 54A.115. The question then is just what is required to convey "notice of the substance of the associate judge's decision." Because the legislature did not define the key word "substance" for purposes of this section, we apply the common, ordinary meaning of the word unless a contrary meaning is apparent from the statute's language. *See Sunstate Equip. Co., LLC v. Hegar*, No. 17-0444, 2020 WL 1660036, at *8 (Tex. Apr. 3, 2020). The dictionary defines "substance" as "essence," "essential nature," and "a fundamental or characteristic part or quality." Webster's Ninth New Collegiate Dictionary 876 (1990); *see also* Black's Law Dictionary 1428 (6th ed. 1990) ("Essence; the material or essential part of a thing").

The Onwuteaka Parties argue that notice of the substance can only occur once a written order is signed by the associate judge. Serna argues that notice occurred when the associate judge announced his rulings on the three motions in open court and noted them on the docket sheet. Both sides analogize to similar statutory provisions governing associate judges in family law courts.

Under Texas Family Code section 201.015, a party has three days to request a de novo hearing before the referring court, calculated from "the date the party receives notice of . . . the substance of the associate judge's report as provided by Section 201.011 . . . or the rendering of the temporary order, if the request concerns a temporary order . . . ." Tex. Fam. Code § 201.015. Section 201.011(a) requires that the associate judge's report be "in writing in the form directed by the referring court." Section 201.011(c) provides that notice of the substance of an associate judge's report may be given "(1) in open court, by an oral statement or a copy of the associate judge's written report, including any proposed order; (2) by certified mail . . . ; or (3) by facsimile." Thus, while the Family Code provisions

are similar in that they also hinge on notice of the substance of the associate judge's decision, they are more explicit in requiring a written report and describing how such notice may be conveyed. Still, our interpretation of Chapter 54A, Subchapter B may be informed by how courts have read the Family Code sections.

The Onwuteaka Parties argue that the Family Code provisions and interpretive case law indicate that receipt of a written ruling is required in order for notice to be effective. To the contrary, however, although Family Code section 201.011 requires a written report, the section also contemplates notice of the substance of the report by oral statement in open court. Moreover, courts, including this one, have consistently upheld oral notice as starting the timetable for requesting a de novo hearing when the substance of the report or ruling was conveyed orally, regardless of when the written report was prepared or filed. *See, e.g.*, *M.J.M. v. Tex. Dep't of Family & Protective Servs.*, No. 03-19-00336-CV, 2019 WL 6795860, at *3 (Tex. App.—Austin Dec. 13, 2019, no pet.) (mem. op.) (holding notice of the substance of the report was provided when "the associate judge orally rendered judgment and a summary of his findings"); *In re A.P.*, No. 11-14-00278-CV, 2014 WL 6755631, at *1 (Tex. App.—Eastland Nov. 26, 2014, no pet.) (mem. op.) (holding associate judge's in-court statement at end of hearing that certain termination grounds had been proven and termination was in the child's best interest was sufficient notice of substance under section 201.011); *In re B.M.A.J.*, No. 12-12-00225-CV, 2012 WL 6674428, at *2–3 (Tex. App.—Tyler Dec. 20, 2012, pet. denied) (mem. op.) (same); *Marshall v. Wilkes*, No. 14-02-00163-CV, 2003 WL 22232626, at *1 (Tex. App.—Houston [14th Dist.] Sept. 30, 2003, no pet.) (mem. op.) (concluding associate judge provided notice of the substance of the report in the associate judge's oral ruling on child support modification and contempt); *Robles v. Robles*, 965 S.W.2d 605, 613 (Tex. App.—

Houston [1st Dist.] 1998, pet. denied) ("[A]t the hearing . . . , the associate judge announced the substance of his findings in detail in open court and on the record. This hearing was sufficient to provide the parties with notice of the substance of his recommendations to the trial court.").

Nothing in Government Code Chapter 54A, Subchapter B requires an associate judge to give written notice of the substance of the judge's decision or prescribes a manner or form for this notice, and we interpret this subchapter as permitting an associate judge to give notice of the substance of a decision by oral statements during the hearing. *See* Tex. Gov't Code § 54A.101. Consequently, if an associate judge orally conveys the substance of a decision in open court, the timetable begins for requesting a de novo hearing.[2]

There is a qualitative and a quantitative difference 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 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. Because the granting of either motion would have rendered Serna's motion moot, the associate judge considered the Onwuteaka Parties' motions first. After hearing argument on the merits of the Onwuteaka Parties' motions, the associate judge unequivocally stated that each motion was denied. Later in the hearing, the associate judge

[2] Unlike the Family Code provisions governing associate judges, Chapter 54A, Subchapter B does not require a written report from the associate judge, although certainly some decisions, orders, and judgments would be expected to be in writing. The omission of this requirement in Subchapter B does not affect the analysis as to whether the statute allows the associate judge to give notice of the substance of the judge's decision by oral statements during the hearing.

reiterated that he had denied each of the Onwuteaka Parties' motions. The substance or essence of each decision was that all of the relief requested by the Onwuteaka Parties was denied. If the associate judge had granted any of this relief, Serna's motion would have been moot.

Accordingly, the Onwuteaka Parties received notice of the substance of the associate judge's decisions on each of their motions during the hearing, and the timetable for requesting de novo review began on the day of the hearing. *See* Tex. Gov't Code §§ 54A.111, 54A.115. Although the subsequent written orders on the Onwuteaka Parties' motions stated grounds for denying the motions, the inclusion of grounds in the written orders does not alter our conclusion that the substance of the decisions was provided orally during the hearing. The Onwuteaka Parties then failed to make a timely request within seven working days. The referring judge therefore did not err in denying as untimely the request for a de novo hearing as to those two motions. *See id*. §§ 54A.111, 54A.115.

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. 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.). In his motion, Serna asked the trial court to (1) order the Onwuteaka Parties to turn over to a receiver all nonexempt property in their possession or subject to their control together with all related documents; (2) appoint a receiver 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.

As recounted above, after hearing argument on Serna's motion, the associate judge initially made several statements indicating that he would not make a decision on Serna's motion on that date. After further discussion, however, the associate judge stated that he was "going to" grant the motion for a receiver and that he was "making a docket entry that's granting the motion for receiver." Even though these latter statements clearly indicated the associate judge was granting the motion, the question remains whether the associate judge conveyed the substance of his decision. The associate judge did not state that the motion was granted in all things. The associate judge noted that he had a proposed order from Serna granting the motion, but he did not say unequivocally that he would be signing that order. Indeed, the order that the judge later signed was not the same as Serna's proposed order. The signed order included changes to the preamble, awarded $750 in attorney's fees, and addressed whether the receiver was required to post a bond. 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, (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.

In the written order that followed, the associate judge named the receiver being appointed and established the receiver's powers in some detail. In the written order, the associate judge further (1) commanded the Onwuteaka Parties to turn over certain items to the receiver, (2) stated that the order constituted a charging order and a lien on any partnership interest of the judgment debtor, (3) set the

receiver's fee, (4) awarded $750 in attorney's fees to Serna, although Serna had only asked for $500 in attorney's fees and costs in his motion, and (5) ordered the Onwuteaka Parties to update their discovery responses. Though the associate judge conveyed to those present at the hearing that he denied all of the relief requested by the Onwuteaka Parties in their motions, the judge did not convey that he was granting all of the relief requested in Serna's motion. Although certain aspects of Serna's motion were discussed 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 would later 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. *See* Tex. Civ. Prac. & Rem. Code § 31.002(b); c*f. M.J.M.*, 2019 WL 6795860, at *3; *In re A.P.*, 2014 WL 6755631, at *1; *In re B.M.A.J.*, 2012 WL 6674428, at *2–3; *Marshall*, 2003 WL 22232626, at *1; *Robles*, 965 S.W.2d at 613.

The seven-day deadline for requesting a de novo hearing before the referring judge promotes judicial efficiency, as does the requirement that the parties receive notice of the substance of the associate judge's decision before the seven days begins to run. Requiring parties to make a request before receiving notice of the substance of a decision or risk losing the right to a de novo hearing could result in many unnecessary requests being made, as parties might anticipate complaints or problems that are ultimately baseless once the substance of the decision is known. Requiring the associate judge to disclose the substance of the decision before triggering the timeline for requesting a de novo hearing promotes efficiency and conserves resources.

As a practical matter, the Onwuteaka Parties could have requested the

associate judge provide the missing information at the hearing or go on record that those decisions had yet to be made. However, the Legislature has provided that after hearing a matter, the associate judge must notify each attorney participating in the hearing of the substance of the associate judge's decision, and that any party seeking a de novo hearing before the referring court must file a written request for this hearing not later than the seventh working day after receiving notice of the substance of the associate judge's decision. *See* Tex. Gov't Code §§ 54A.111, 54A.115. Accordingly, the Onwuteaka Parties did not waive their right to seven days by failing to request the missing details during the hearing.

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. As explained above, the order was not signed until September 4, 2018, and it was not file-stamped until September 11, 2018. We conclude that the Onwuteaka Parties' request for a de novo hearing with the referring judge filed on September 12, 2018, was therefore timely as it relates to the associate judge's decision to grant Serna's motion to appoint a receiver. *See id*. § 54A.115.

In a footnote in her brief, Serna suggests that the referring judge also could have denied the Onwuteaka Parties' de novo hearing request because the request lacked sufficient specificity regarding the issues on which a hearing was sought. *See id*. § 54A.115(b) (stating the request "must specify the issues that will be presented to the referring court"). Serna neither makes a detailed argument nor cites any authority in support of this suggestion. Moreover, the Onwuteaka Parties' request did not lack sufficient specificity. We sustain the Onwuteaka Parties' sole issue to the extent the Onwuteaka Parties challenge the denial of their request for a de novo hearing on the motion to appoint a receiver.

The Onwuteaka Parties also contend that they did not receive proper notice of their right to request a de novo hearing as required by section 54A.112 and that this failure to notify deprived them of their constitutional rights to due process. The only point in the trial court proceeding in which the Onwuteaka Parties complained of the associate judge's alleged failure to give notice of their right to request a de novo hearing was in their motion for reconsideration of the denial of their request for de novo hearing. The Onwuteaka Parties attached no evidence to this motion showing that they did not receive the notice required by section 54A.112, and they did not obtain an adverse ruling on this motion. Thus, the Onwuteaka Parties failed to preserve error on this point in the trial court. *See Williams v. Bayview–Realty Assocs*., 420 S.W.3d 358, 364, 366 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding party failed to preserve error by not raising complaint based on a lack of notice in the trial court and obtaining an adverse ruling). Accordingly, we find no merit in the Onwuteaka Parties' argument regarding notice.

Conclusion

Because the Onwuteaka Parties did not timely request a de novo hearing regarding the associate judge's denial of their motions for new trial and to vacate or abate, we overrule their sole issue to the extent they challenge the denial of their request for a de novo hearing as to these decisions, and we affirm the trial court's order to the extent the trial court denied the requests for a de novo hearing on those motions. Because the Onwuteaka Parties timely requested but did not receive a de novo hearing on the associate judge's granting of Serna's motion to appoint a receiver, we reverse the order appointing a receiver and the portion of the trial court's order denying the de novo hearing request on the motion to appoint a receiver and remand for a de novo hearing of that motion before the referring judge.

/s/ Frances Bourliot
Justice

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