

Supreme Court of Texas

No. 26-0384

In re Juan Pardo,

Relator

On Petition for Writ of Mandamus

JUSTICE HAWKINS, joined by Justice Young and Justice Sullivan, concurring in the denial of the petition for writ of mandamus.

Lurking somewhere in this murky dispute is an interesting question: Does Texas Rule of Civil Procedure 592, which authorizes certain “writs of attachment” for “property,” permit the arrest and confinement of an uncooperative deponent? I would think the answer is no. Yet the Relator here tells us that the trial court deployed the rule for that very purpose. If so, and if the practice recurs, we should intervene in an appropriate case.

Rule 592, “Application for Writ of Attachment and Order,” addresses a trial court’s power to “preserve[]” “property” pending “further orders of the court.” Its purpose seems clear enough: to freeze the defendant’s assets so that they are available to satisfy whatever judgment the plaintiff eventually wins. The rule combats the age-old problem of defendants rendering themselves judgment-proof by liquidating assets or moving them out of state over the course of

protracted litigation. Its text erects safeguards to protect property rights, including the requirement that the plaintiff seeking attachment must submit an application backed by sworn statements, and the judge—not a clerk—must issue a written order supported by findings. TEX. R. CIV. P. 592. There are valuation ceilings, bond and replevy terms, and preservation requirements—all to guard against error and abuse. *Id.*; see *In re Argyll Equities, LLC*, 227 S.W.3d 268, 271 (Tex. App.—San Antonio 2007, no pet.) (discussing writ of attachment requirements); see also TEX. CIV. PRAC. & REM. CODE § 61.001 (setting out prerequisites for writs of attachment).

Each of these features is incongruous with the seizure of a *person*. What is the maximum value of a deponent? What does it mean to keep him “safe and preserved subject to further orders”? What bond does he post to replevy himself? None of those provisions makes sense when it comes to depriving someone of his liberty.

And yet, that appears to be what happened here. The Relator has put before us an order signed by the trial judge and styled “Order for Issuance of Writ of Attachment of Juan Pardo.” It orders “any sheriff or constable” to “immediately take” Pardo into “custody” in “jail with cash [b]ond.” It was issued “[o]n the basis of” his litigation opponent’s affidavit. It is hard to see how this order could be justified as an application of Rule 592.

Of course, our Texas Rules of Civil Procedure already provide ample tools to rein in and, when appropriate, punish litigation misconduct. See, e.g., TEX. R. CIV. P. 176.8 (Enforcement of Subpoena), 215.2 (Failure to Comply with Order or with Discovery Request). So, too,

does the Texas Government Code. *See, e.g.*, TEX. GOV'T CODE §§ 21.002 (Contempt of Court), 82.061 (Misbehavior or Contempt). Rule 176.8 specifically provides for “confinement” as a punishment for the failure to “obey a subpoena,” subject to the requirements of due process. TEX. R. CIV. P. 176.8(a); *See* U.S. CONST. amend. XIV; *In re Zandi*, 270 S.W.3d 76, 77 (Tex. 2008) (“Texas courts have consistently held that alleged constructive contemnors are entitled to procedural due process protections before they may be held in contempt.” (quoting *Ex parte Johnson*, 654 S.W.2d 415, 420 (Tex. 1983))). These rules come with critical protections to guard against a wrongful deprivation of freedom. The trial court here perhaps could have justified the Relator’s arrest, but it would have required invoking a different authority, and making a higher showing than Rule 592 demands. *See* TEX. R. CIV. P. 592.

I nevertheless agree with the Court’s decision to deny review. For one thing, the parties dispute whether the trial court really understood itself to be applying Rule 592, or whether it simply mislabeled its order, or misidentified the source of its authority. On this point, the parties’ briefs largely talk past each other, and the Relator has filed no reply brief to rebut his opponent’s characterization of the proceedings below. Moreover, the writ has now expired, the claims have been nonsuited, and nothing suggests the Relator faces a similar punishment again.

That said, if this arises again in a future case, our intervention may be warranted.

Kyle D. Hawkins
Justice

OPINION FILED: October 9, 2026