Injunction Dissolved; Attorney's Fees Vacated; Dismissed and Opinion filed August 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00275-CV

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ATTORNEY GENERAL OF TEXAS, Appellant

V.

EDWARD V. HAWES, Appellee

On Appeal from the 245th District Court
Harris County, Texas
Trial Court Cause No. 92-12109

O P I N I O N

This appeal arises from a permanent injunction granted to appellee, Edward V. Hawes, against appellant, the Attorney General of Texas. The Attorney General appeals the trial court's order granting the permanent injunction and award of attorney's fees, complaining that: (1) the trial court lacked subject matter jurisdiction, (2) the evidence was insufficient to support the injunction, and (3) the trial court erred in awarding attorney's fees. Because we determine the trial court lacked jurisdiction to enter the injunction, we dissolve the permanent injunction, vacate the award of attorney's fees, and dismiss the case.

BACKGROUND

Hawes and his former wife, Jennifer Hawes Marasek, divorced on June 1, 1992. The divorce decree ordered Hawes to pay $1,000 per month in child support for his two children. Due to financial difficulties, Hawes was unable to pay the full amount of child support ordered. Hawes filed a motion to modify the child support order, and Marasek filed a motion to enforce it. On July 31, 1995, the trial court entered an agreed judgment, signed by counsel for both parties, that: (1) reduced Hawes' monthly child support obligation from $1,000 to $500; (2) reduced the aggregate arrearages to a final judgment of $13,100, bearing interest at the rate of ten percent, compounded annually; and (3) provided for the principal amount of the $13,100 arrearage to be paid in monthly installments of $125, without interest. Thereafter, Hawes made the payments as agreed.

From May through July 1998, Hawes received several written communications from the Office of the Attorney General. Among this correspondence was a notice of intent to report unpaid child support and payment amounts to credit reporting agencies. The notice apprized Hawes of the amounts to be reported and of his right to dispute the information to be released. The notice advised that Hawes could resolve the matter informally or in an administrative hearing. Hawes' attorney sent a letter to the Office of the Attorney General disputing the amount to be reported as shown on the notice of intent to report. Hawes asserted that neither the amount the Attorney General intended to report nor the interest should be included in his credit report. Hawes' attorney set an informal appointment to discuss the matter with an Attorney General caseworker. Hawes' attorney, however, neither kept the appointment, nor requested an administrative hearing.

On July 13, 1998, Hawes' self-owned business received a letter requesting employment information regarding Hawes. Hawes claimed that former employers and associates received similar letters and that as a result of these communications, he suffered irreparable damage.

On July 28, 1998, Hawes sought a temporary injunction against the Attorney General,

claiming the Attorney General was (1) providing false information concerning his payment of child support to his former employers and associates and (2) threatening to falsely report to credit reporting agencies that he was delinquent in the payment of child support. Hawes sought this relief from the court of continuing jurisdiction in the underlying suit affecting the parent-child relationship.

Although Hawes requested only temporary injunctive relief, after a hearing, the court entered an order granting Hawes a permanent injunction.[1] The permanent injunction entered on November 20, 1998, enjoined the Office of the Attorney General from (1) contacting Hawes, (2) contacting or communicating with Hawes' former employers, and (3) contacting anyone other than Hawes' attorney regarding Hawes' child support obligation. The order further required the Attorney General to pay $1,050.00 in attorney's fees and to notify in writing all individuals or entities to whom information regarding Hawes' alleged arrearages in child support had been provided and advise them that such information was incorrect.

TRIAL COURT JURISDICTION

As a threshold matter, we must determine if Hawes invoked the jurisdiction of the trial court. Subject matter jurisdiction is a question of law we review *de novo*. *See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998).

A trial court's lack of subject matter jurisdiction is fundamental error that must be noted and reviewed by an appellate court any time it appears. *See Rogers v. Clinton*, 794 S.W.2d 9, 11 (Tex.1990). The lack of subject matter jurisdiction cannot be waived. *See Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443-44 (Tex. 1993). "Jurisdiction of a court must be legally invoked; and when not legally invoked, the power to act is as absent as if it did not exist." *State v. Olson*, 360 S.W.2d 398, 400 (Tex. 1962), *overruled on other grounds by Jackson v. State*, 548 S.W.2d 685, 690 n.1 (Tex. Crim. App. 1977)).

[1] Neither party disputes that despite its description as a temporary injunction, the order was permanent in scope.

Generally, the jurisdiction of a court is invoked by the filing of a petition whose subject matter is within the jurisdiction of the court. *See Morgan v. Chandler*, 906 S.W.2d 584, 588 (Tex. App.—Amarillo 1995) (Reynolds, C.J., concurring and dissenting) (citing *Cleveland v. Ward*, 116 Tex. 1, 285 S.W. 1063, 1069 (1926)). The petition must allege facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *See Texas Ass'n of Bus.*, 852 S.W.2d at 446. "An injunction is an equitable remedy, not a cause of action." *Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. App.—San Antonio 1999, pet. denied) (citations omitted). To obtain an injunction, a party must first assert a claim or cause of action. *See id*. If no claim or cause of action is alleged, the trial court lacks authority to issue an injunction. *See id*.

In this case, Hawes did not file a petition alleging a cause of action to invoke the jurisdiction of the trial court. The only "pleading" Hawes placed before the trial court was the motion for temporary injunction which asserted no cause of action. Because an injunction is not a cause of action, and Hawes asserted no cause of action, we find that Hawes' motion for temporary injunction failed to invoke the jurisdiction of the trial court.[2] According to Hawes' application for temporary injunction, the trial court's jurisdiction was premised on the continuing, exclusive jurisdiction acquired when it rendered the final order in the underlying suit affecting a parent-child relationship. However, this action is not a dispute related to the underlying order on the suit affecting the parent-child relationship.[3] Therefore, in the absence of a pleading asserting a cause of action against the Attorney General, the trial court had no

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[2] The Attorney General argues the trial court was without jurisdiction for two reasons: (1) Hawes did not have legislative consent or statutory authority to sue and (2) courts do not have jurisdiction to enjoin or interfere with the lawful performance by an executive of official duties committed to him by law. While we do not find the Attorney General's particular jurisdictional arguments persuasive, we nonetheless find the trial court lacked subject matter jurisdiction to enter the permanent injunction in this case.

[3] A suit affecting the parent-child relationship is one involving appointment of a conservator, access to or support of a child, or establishment or termination of the parent child relationship. *See* TEX. FAM. CODE 101.032(a) (Vernon 1996). This case involves none of the above.

jurisdiction over Hawes' motion for temporary injunction.[4] Accordingly, we dissolve the trial court's order granting Hawes' permanent injunction, vacate the award of attorney's fees, and dismiss the case.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed August 24, 2000.

Panel consists of Justices Fowler, Edelman, and Frost.

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[4] Having determined that Hawes did not invoke the jurisdiction of the trial court, we need not address the Attorney General's other points of error.