



NUMBER 13-16-00088-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**JOE VERA, INDIVIDUALLY
AND JOSE VERA D/B/A
BORDERFEST ASSOCIATION
AND BORDERFEST ASSOCIATION,**

Appellants,

v.

**CITY OF HIDALGO, A TEXAS
MUNICIPAL CORPORATION,**

Appellee.

**On appeal from the 398th District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Longoria¹
Memorandum Opinion by Justice Benavides**

¹ The Honorable Gregory T. Perkes, former Justice of this Court, did not participate in this decision because his term of office expired on December 31, 2016.

This interlocutory appeal concerns the trial court’s granting of a temporary injunction regarding the rights to BorderFest, an annual cultural festival based in Hidalgo, Texas for the last four decades. By one issue, appellants Joe Vera, individually, and BorderFest Association (“the Association”) assert that the trial court abused its discretion in granting appellee the City of Hidalgo’s (“Hidalgo” or “the city”) application for temporary injunction and in denying the appellants’ own application for temporary injunction. We affirm.

I. BACKGROUND

At the heart of this litigation is the ownership and rights to BorderFest, a beloved annual festival held during the first weekend in March that showcases musical acts, parades, food, and fun for the Rio Grande Valley region and beyond. On one side of the docket is Hidalgo, which has hosted the festival for the last forty years, and on the other side of the docket is the Association, an unincorporated entity made up of volunteers who have served as event organizers since the festival’s inception, and Vera, Hidalgo’s former city manager and former executive director of the Association.

In January of 2016—less than three months before BorderFest’s 40th anniversary festival—media outlets reported that Hidalgo’s neighboring city of McAllen intended to host the annual festival in its city rather than in Hidalgo, where BorderFest had been held for the past thirty-nine years.² Hidalgo alleged that Vera, who is now an assistant city manager with the City of McAllen, and/or the Association incorrectly claimed ownership and control over the festival. As a result, Hidalgo sued Vera and the Association

² The record shows that prior to being named BorderFest, the festival was known as International Fiesta Fronteriza.

seeking, among other things, declaratory relief that it is the exclusive owner of the BorderFest name, as well as injunctive relief restraining Vera and the Association from operating a festival using the BorderFest name.

Vera and the Association answered the suit by denying Hidalgo's allegations, invoking various affirmative defenses and asserting counterclaims against the City for federal trademark infringement, common law trademark infringement, and unfair competition. By its pleadings, the Association claimed sole ownership and rights to the BorderFest brand and sought its own injunctive relief against Hidalgo from using the BorderFest mark, name, and goodwill.

At the two-day temporary injunction hearing, Hidalgo called various city employees as witnesses that each testified about the city's involvement in BorderFest over the last few years. Martina Irma Padron, the city's purchasing director, brought forth numerous purchase orders, some totaling thousands of dollars, paid for by Hidalgo related to BorderFest. The purchase orders included, among other things: advertising expenses for the festival, sound and stage lighting expenses, and equipment rentals. Padron also testified that the city's expenditures for BorderFest also included an unspecified number of "man hours" for all of the city workers that worked during the festival. Padron further stated that the Association would sometimes send money to Hidalgo in order to "defray" some of the city's costs, but the reimbursement was not for the full amount.

Ricardo Mendoza serves as the city's information technology director and testified that he helped create and design the BorderFest website, which included basic information about the festival including the dates, ticket pricing, and the musical acts scheduled to perform. Mendoza testified that Vera, while employed as city manager for

Hidalgo, directed what to publish on the BorderFest website.

Hidalgo's planning director Virgilio Gonzalez testified that most recently, he was responsible for the "logistics" of BorderFest. Gonzalez explained that the city staff begin planning for the next year's festival soon after the previous year's festival. More specifically, Gonzalez testified that various city employees built floats and food booths used during the festival, erected perimeter fencing, and generally prepare the grounds leading up to the festival.

Freddy Sanchez, Hidalgo's director of streets and parks, testified that all of his department's twenty employees work on setting up the festival grounds leading up to the first day of the annual BorderFest. Furthermore, Sanchez asserted that all of the food booths were built and paid for by the city and acted under Vera's direction. Finally, Sanchez testified that in the days leading up to the 2016 BorderFest, workers from the City of McAllen showed up at the Hidalgo City Hall and took possession of several floats at the direction of the new Hidalgo city manager, Mike Perez, who told Sanchez that the floats belonged to the Association.

The Association called former Hidalgo mayor John David Franz as its first witness. Franz testified that he served as mayor from 1990 until 2012. According to Franz, BorderFest was an endeavor brought about by the Association in the 1980s. Franz testified that during his time as mayor, the city contributed cash and in-kind donations to the festival in exchange for the "fame" associated with the festival.

Vera also testified at length. Vera told the trial court during the hearing that Hidalgo had no involvement in the naming of BorderFest, but rather, it was the brainchild of Association members in 1984. Vera also confirmed that while city manager of Hidalgo,

he also served as the Association's executive director. According to Vera, the Association is the sole owner of the BorderFest trademark. The trial court admitted certain documents purportedly from the United States Patent and Trademark Office showing that the Association was the owner of the registered "BorderFest" trademark. Furthermore, Vera classified the city's annual involvement with the festival as donations between \$25,000 and \$30,000, as well as other unspecified in-kind donations. Next, Vera claimed that after the 2015 BorderFest festival, discord developed between the Association and certain Hidalgo city officials who demanded from Vera and the Association that Hidalgo be named the owner of BorderFest. After discussing the city officials' concerns with the Association, the Association voted to look for a new city to host the festival if the city officials continued to make the same demands. Finally, Vera testified that the Association learned in January 2016 that Hidalgo formed its own entity known as "Texas BorderFest LLC" and sought to hold its own BorderFest festival. In response, the Association and the City of McAllen entered into a contract to hold BorderFest in McAllen.

The trial court granted Hidalgo's request for injunctive relief and enjoined Vera and the Association from: (1) interfering in any way with Hidalgo's possession and/or use of the BorderFest name; (2) using, promoting, advertising, assigning, and marketing the BorderFest name and the operation of any BorderFest event; (3) using or possessing any parade floats or other equipment removed from Hidalgo or purchased by the City of Hidalgo; and (4) preventing or interfering with the operation of Border Fest in Hidalgo, Texas or taking other action or inaction that infringes on Hidalgo's right to exclusively use the BorderFest name in the 2016 BorderFest promotion or festival, including but not

limited to allowing another party to use BorderFest in any promotion or event. Conversely, the trial court denied the Association's application for temporary injunction and found that the Association "has one or more causes of action" but "did not use the BorderFest registered trademark designation." This interlocutory appeal followed. See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (West, Westlaw through 2015 R.S.).

II. TEMPORARY INJUNCTION

By one issue, the Association and Vera contend that the trial court abused its discretion by granting Hidalgo's application for temporary injunction and denying their application for temporary injunction.

A. Standard of Review

A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Id.* To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.* An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Id.*

Whether to grant or deny a temporary injunction is within the trial court's sound discretion. *Id.* We will reverse an order granting injunctive relief only if the trial court abused that discretion. *Id.* The reviewing court must not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the

bounds of reasonable discretion. *Id.*

B. Discussion

With regard to the trial court's ruling granting Hidalgo's temporary injunction, the record shows that Hidalgo sought a declaratory action seeking numerous declarations, including a judgment that it is the exclusive owner of BorderFest due to the actions of Vera. In the alternative, Hidalgo seeks judgment for "recovery of all additional personal property purchased with Hidalgo taxpayer money" which was misappropriated by Vera and the Association. Hidalgo also put forth evidence that it had expended a sizable amount of taxpayer money, manpower, and other efforts in planning and preparation for the 40th anniversary of BorderFest, which was eventually held shortly after the trial court's temporary injunction order. The preliminary record further shows that BorderFest has been held exclusively in Hidalgo for the previous thirty-nine years and has brought the city "fame" over these years. The record further shows that the 40th anniversary of the festival being held in Hidalgo was threatened by the actions of the Association agreeing to hold the BorderFest festival in McAllen. Based on these facts, we hold that the trial court was within its discretion to grant Hidalgo's temporary injunction application because Hidalgo plead and proved that it had (1) a cause of action against Vera and the Association; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *See id.*

With regard to the Association's separate application for temporary injunction, we note that the trial court found that the Association had "one or more causes of action" against the city, but also found that the Association "did not use the BorderFest registered trademark designation" and had "no assumed name certification" on file with Hidalgo

County. While these findings are not as robust as we would prefer when engaging in this type of review, we nevertheless hold that the trial court could have reasonably—and within its discretion—concluded that the Association would not suffer “a probable, imminent, and irreparable injury” while its case remained pending for a trial on the merits and the 40th anniversary of BorderFest proceeded as originally scheduled in Hidalgo.

In summary, the trial court acted within its discretion in granting Hidalgo’s temporary injunction and did not abuse its discretion in denying the Association’s separate application for temporary injunctive relief. *See id.* Stated again, a temporary injunction’s purpose is to preserve the status quo of the subject matter of the litigation. *See City of Corpus Christi v. Maldonado*, 398 S.W.3d 266, 269 (Tex. App.—Corpus Christi 2011, no pet.). The trial court’s rulings show that it sought to preserve the status quo because these orders were issued approximately a month prior to BorderFest’s 40th anniversary, while the underlying ownership issues would be resolved later at trial. Finally, we emphasize that our narrow ruling today expresses no opinion with regard to the strength or ultimate success of either side’s underlying causes of action. Vera and the Association’s issue is overruled.

III. CONCLUSION

We affirm the trial court’s orders: (1) granting Hidalgo’s temporary injunction; and (2) denying the Association’s request for temporary injunction.

GINA M. BENAVIDES,
Justice

Delivered and filed the
5th day of January, 2017.