

No. 09-0411

In the Supreme Court of Texas

**IN THE GUARDIANSHIP OF RAQUEL CANTÚ DE VILLARREAL,
AN INCAPACITATED PERSON**

*On Appeal from the Thirteenth Court of Appeals at Corpus Christi
Court of Appeals No. 13-08-00408-CV*

REPLY TO RESPONSE TO PETITION FOR REVIEW

Mike A. Hatchell
State Bar No: 09219000
Sarah B. Duncan
State Bar No. 06219250
Susan A. Kidwell
State Bar No. 24032626
LOCKE LORD BISSELL & LIDDELL LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
Telephone: (512) 305-4700
Facsimile: (512) 305-4800

Attorneys for Petitioners

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TO THE HONORABLE SUPREME COURT OF TEXAS:

This Petition challenges the trial court's June 11 Order granting a "temporary injunction" because it fails to comply with the mandatory procedural requirements designed to protect important substantive rights and argues that, under this Court's established precedent, the June 11 Order is void. *See Qwest Commc'ns Corp. v. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000); *Ex parte Jordan*, 787 S.W.2d 367, 368 (Tex. 1990). The court of appeals, however, held that the mandatory procedural requirements for a temporary injunction do not apply because the June 11 Order is "designed to enforce the final judgment," *i.e.*, a previous order in the underlying guardianship proceeding. *See In the Guardianship of Raquel Cantú de Villarreal*, No. 13-08-00408-CV, 2009 WL 888467, at *4 (Tex. App.—Corpus Christi Apr. 2, 2009, pet. filed). That holding encompasses the substance of the Response. The question before this Court is whether to demand compliance with the procedural requirements or to acquiesce to a new exception created by the court of appeals in this case.

Respondents attempt to divert this Court's attention from the merits of the Petition by (i) asserting that this Court lacks jurisdiction to review an order that "merely compels compliance with a prior unappealed judgment" and (ii) making numerous accusations about underlying "facts" that are neither relevant nor supported by any references to the record. (*See Resp. at v, 1-5.*) However, Respondents' first argument is simply incorrect. The June 11 Order goes well beyond compelling compliance with a previous order entered in the ongoing guardianship proceeding. And as this Court has recognized, post-judgment enforcement orders "in the nature of a mandatory injunction" – like the June 11

Order – *are* appealable. *See Schultz v. Fifth Judicial Dist. Court of Appeals*, 810 S.W.2d 738, 740 (Tex. 1991). Consequently, re-labeling the June 11 Order a “post-judgment enforcement order” (Resp. at 6) does not deprive this Court of jurisdiction. And the limited number of relevant facts that are pertinent to the issues presented are conclusively established by the record. Neither Respondents’ erroneous jurisdictional argument nor their unsupported accusations should deflect the Court’s attention from the question of whether the Rules’ mandatory procedural requirements apply to all temporary injunctions. To that important question, Respondents have, in essence, no answer. They simply cite to cases recognizing that trial courts need not comply with various procedural requirements when issuing ordinary writs to enforce money judgments or when granting injunctive relief pursuant to the Turnover Statute. But the June 11 Order neither enforces a prior money judgment nor grants relief pursuant to the Turnover Statute.

This Court not only has jurisdiction to review the June 11 Order, it must do so to ensure that the court of appeals’ opinion does not embolden trial courts to ignore procedural requirements both mandated by due process and necessary to protect a litigant’s substantive rights.

1. **This Court has jurisdiction to grant the Petition.**

The June 11 Order purports to enforce a previous order in the ongoing guardianship proceeding – the February 14 Order approving the Irrevocable Family Settlement Agreement (“IFSA”) and appointing a permanent guardian of the person – by

granting a “temporary injunction.” (See App. 1.¹) An interlocutory order granting or denying a temporary injunction is made appealable by statute. See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). And this Court has “conflicts jurisdiction” to review interlocutory appeals. See TEX. GOV’T CODE § 22.225(c). Nevertheless, Respondents contend that the Court lacks jurisdiction because the June 11 Order “merely compels compliance with a prior unappealed final judgment.” (See Resp. at v.) However, characterizing the June 11 Order as a “post-judgment enforcement order” (*id.* at 6) has no bearing on whether the Order is appealable – or on whether this Court has jurisdiction to review it.

It is beyond dispute that a party to a judgment may not appeal a post-judgment enforcement order that “merely imposes upon [that party] the same obligations which were imposed by the [prior] judgment.” *Wagner v. Warnasch*, 295 S.W.2d 890, 892 (Tex. 1956).² However, if a “post-judgment enforcement order is in “the nature of a mandatory injunction,” a party may appeal. That is the import of this Court’s decision in *Schultz*, in which the Court held that a turnover order is a final, appealable judgment because it is “in the nature of a mandatory injunction.” *Schultz*, 810 S.W.2d at 740; see also *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 909 S.W.2d 505, 506 (Tex. 1995) (same). Consequently, whether the June 11 Order is appealable does not depend upon whether it is a “post-judgment enforcement order” but upon whether it (i) merely

¹ Citations to the Appendix (“App.”) refer to tab numbers in the Appendix attached to the Petition.

² See also *Schultz*, 810 S.W.2d at 740 (recognizing that “the usual writs and orders to aid in execution to collect a final money judgment are not, in general, appealable orders”); *Kennedy v. Hudnall*, 249 S.W.3d 520, 523 (Tex. App.—Texarkana 2008, no pet.) (recognizing general rule that “an order made for the purpose of carrying into effect an already-entered judgment is not a final judgment or decree and cannot be appealed as such”).

imposes the same obligations on Petitioners as the order it purports to enforce, *i.e.*, the February 14 Order approving and incorporating the IFSA (App. 5 at 3) or (ii) is “in the nature of a mandatory injunction.”

By comparing the relevant terms of the February 14 and April 11 Orders, the following table provides the answer:

<u>IFSA (App. 4)</u>	<u>June 11 Order (App. 1)</u>
¶ 14: “[A]ll parties shall <i>instruct their attorneys to take all necessary steps to have these funds [i.e., “the 34 million pesos in the form of a check in a court in Mexico”] released and delivered to below mentioned Mexican Trust that shall be created.</i> ”	Petitioners “are Ordered, within 10 days from the entry of this Order, to <i>deposit the \$35,000,000.00 pesos listed in paragraph 14 of the [IFSA] . . . into an account created for the benefit of the trust referenced in said paragraph 14 of the [IFSA].</i> ”
¶ 24: “All parties shall cooperate to name Ignacio Villarreal Cantu as Guardian of the Person of the ward to return her immediately to Mexico and <i>upon the ward’s exit from the United States all parties shall cooperate to . . . establish a Mexican Trust . . .</i> ”	“IT IS FURTHER ORDERED” that Petitioners “ <i>deposit said funds into an account which will be under the joint control of Ignacio Villarreal and Marcelo Villarreal.</i> ”
¶ 21: “Except for Carlos Villarreal Cantú’s accounting of the loans and his partial payments thereon as described and required hereinabove, <i>each party waives an accounting from all other parties regarding any property.</i> ”	Petitioners “are Ordered, within 10 days from the entry of this Order, to <i>provide a detailed accounting to this Court as to the whereabouts of said \$35,000,000.00 pesos listed in paragraph 14 of the [IFSA].</i> ”
¶ 14: The real estate properties in Exhibits 1 and 2 “shall be placed into hotchpotch and distributed among and between the seven children of Raquel Cantu de Villarreal.”	“IT IS FURTHER ORDERED” that Petitioners “are enjoined from selling, encumbering or otherwise transferring any of the real estate properties described in Exhibits 1 and 2 of the [IFSA] in any manner inconsistent with the disposition of said properties as provided in said [IFSA].”

As shown by this table, the June 11 Order does not “merely compel[] compliance with a prior unappealed final judgment,” as Respondents incorrectly contend. (*See Resp. at v.*) To the contrary, whereas the IFSA directs Petitioners to “instruct their attorneys” to take steps to have funds in a Mexican court released and deposited into a trust account to be established after Doña Raquel was returned to Mexico, the June 11 Order requires Petitioners to deposit the funds into an account “under the joint control of Ignacio Villarreal and Marcelo Villarreal.” And, whereas in the IFSA, Respondents waived a right to any accounting from Petitioners, the June 11 Order requires Petitioners “to provide a detailed accounting to [the trial court] as to the whereabouts of [the] \$35,000,000.00 pesos.” Finally, although the parties to the IFSA agreed only to place various real estate properties into a “hotchpotch” to be divided amongst the children, the June 11 Order prohibits Petitioners from “selling, encumbering or otherwise transferring any of th[ose] real estate properties.”

In sum, although the June 11 Order purports to “enforce” a previous order, it in fact imposes new and different obligations and enforces those new and different obligations with a mandatory injunction. Consequently, the June 11 Order is appealable. *See Schultz*, 810 S.W.2d at 740. Respondents’ challenge to this Court’s jurisdiction should therefore be summarily rejected.

2. The relevant facts are undisputed.

The relevant facts – those that are “pertinent to the issues or points presented” in the Petition, *see* TEX. R. APP. P. 38.1(f) – are conclusively established by orders and other documents in the mandamus record:

- On June 20, 2007, the trial court appointed a temporary guardian of Doña Raquel's person without prior notice and hearing.³
- On February 14, 2008, the trial court signed an order approving the IFSA, which purports to divide assets belonging to Doña Raquel and a Mexican corporation among her children. (App. 4, ¶ 14.)
- On June 11, 2008, the trial court signed the June 11 Order, which grants a "temporary injunction" based upon an unverified application (App. 6), after a non-evidentiary hearing (6/9/08 RR), and without setting a bond. (See App. 1.)
- And on June 27, 2008, in an attempt to enforce the June 11 Order, the trial court signed an order for issuance of writs of attachment. (App. 3.) The June 27 Order is based on an unverified motion for contempt (App. 6), is not supported by any evidence admitted at the contempt hearing (which was held without Petitioners' presence (6/27/08 RR)), and was signed while the June 11 Order was on interlocutory appeal (3 CR 1064).

These limited procedural facts are all that are necessary to decide the issues presented concerning the validity of the June 11 and June 27 Orders. Nevertheless, the Response contains numerous inflammatory accusations about the underlying family dispute. (See Resp. at 1-5.) Those accusations are not "uncontroverted," as Respondents incorrectly assert. (*Id.* at 5.) Nor are they established by the record, as indicated by Respondents' failure to support their accusations with record references. Most

³ These facts are relevant to Petitioners' first issue, which has been reserved for possible briefing on the merits in this case and is also before the Court in a related proceeding, *In re Consuelo Villarreal Cantú*, No. 09-0441 (briefing on the merits requested Oct. 23, 2009). At a minimum, this Court should hold this Petition pending further consideration of the Petition in case number 09-0441.

importantly, they have no bearing on any of the legal issues presented in the Petition or this Court's jurisdiction to resolve those issues. The Court should ignore these diversions and focus on the critical question raised by the court of appeals' opinion:

Do the mandatory procedures for granting a temporary injunction apply when a trial court uses a mandatory injunction to create obligations beyond those in an order sought to be enforced?

3. **This Court should confirm that all temporary injunctions are subject to the procedural requirements necessary to protect a litigant's substantive rights.**

Although Respondents cite to cases holding that various procedural requirements need not be satisfied in post-judgment enforcement proceedings, most of those cases involve injunctions issued pursuant to the Turnover Statute,⁴ which sets forth its own mandatory procedures. (See Resp. at 7-9.⁵) But, as explained, the June 11 Order was not issued pursuant to the Turnover Statute. (See Pet. at 9-10.) Consequently, the turnover cases are wholly irrelevant to whether the mandatory procedural rules apply to "temporary injunctions" that purport to enforce previous orders by creating new obligations.

⁴ TEX. CIV. PRAC. & REM. CODE § 31.002.

⁵ See *Ex parte Johnson*, 654 S.W.2d 415, 418 (Tex. 1983) (Turnover Statute "allows ex parte entry of [an] order without notice and hearing"); *In re Estate of Herring*, 983 S.W.2d 61, 65 (Tex. App.—Corpus Christi 1998, no pet.) (bond not required for application of receiver pursuant to Turnover Statute); *Thomas v. Thomas*, 917 S.W.2d 425, 433 (Tex. App.—Waco 1996, no writ) (notice and hearing not required for turnover order); *Roosth v. Roosth*, 889 S.W.2d 445, 460 (Tex. App.—Houston [14th Dist.] 1994, writ denied) ("typical requirements for an injunction are not applicable to an injunction granted pursuant to [the Turnover Statute]"); *Plaza Court, Ltd. v. West*, 879 S.W.2d 271, 276 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding) (no right to notice or a hearing before enforcement of a turnover order); *Schultz v. The Cadle Co.*, 825 S.W.2d 151, 155 (Tex. App.—Dallas 1992, writ denied) (bond not required for appointment of receiver pursuant to Turnover Statute); *Ross v. 3D Tower Ltd.*, 824 S.W.2d 270, 272 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (notice and hearing not required by Turnover Statute).

The only remaining authority cited by Respondents involves a writ of garnishment to enforce a money judgment. See *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285, 289 (1924) (notice and hearing not required before issuance of writ of garnishment). However, the June 11 Order was not issued to enforce a money judgment; nor is it a writ of garnishment. *Endicott-Johnson* has no relevance to the present case.

Misplacing their reliance on irrelevant authorities, Respondents provide no other response to the issues presented in the Petition. Consequently, Petitioners' arguments stand unrebutted.


CONCLUSION & PRAYER

The questions raised in the Petition remain unanswered: May a trial court grant temporary injunctive relief that purports to enforce a previous court order when the injunction imposes new obligations on the parties, decides the substantive rights to property held by non-parties, and was signed without any regard for the mandatory procedural requirements that are designed to preserve important substantive rights? And if a temporary injunction is on appeal, may a trial court enforce the order based on an unverified motion for contempt without giving the alleged contemnors notice and an opportunity to be heard?

The answers to these questions must be "no." Accordingly, Petitioners renew their prayer that the Court grant their Petition, dissolve the trial court's orders of June 11 and June 27, and order the writs of attachment withdrawn. Petitioners also pray for all such additional relief to which they may be entitled.

Respectfully submitted,

LOCKE LORD BISSELL & LIDDELL LLP

By: 

Sarah B. Duncan

State Bar No. 06219250

Mike A. Hatchell

State Bar No. 09219000

Susan A. Kidwell

State Bar No. 24032626

100 Congress Avenue, Suite 300

Austin, Texas 78701

(512) 305-4700 Telephone

(512) 305-4800 Facsimile

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2009, a true and correct copy of the foregoing was served on the following counsel of record via U.S. mail, postage prepaid:

Craig S. Smith

LAW OFFICES OF CRAIG S. SMITH

14493 S.P.I.D., Suite A, P.M.B. 240

Corpus Christi, Texas 78418

Attorney for Respondents



Susan A. Kidwell