

No. 09-0411

In the Supreme Court of Texas

In the Guardianship of
Raquel Cantú de Villarreal,
an Incapacitated Person

*Interlocutory Appeal of Temporary Injunction from the Court of Appeals
for the Thirteenth District of Texas
Court of Appeals No. 13-08-00408-CV*

Brief of Respondent Raquel Villarreal Cantú

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Statement of Facts

In 1996, Madame Raquel Cantú de Villarreal inherited some \$20 million from her husband, who left it all to her with instructions that what remained at her death was to be divided equally among their seven children.¹ In this dispute, the children have divided into two camps: Ignacio, Fernando, Martha, and Consuelo Cantú are the Petitioners (the “Ignacio Faction”); Raquel Cantú is the Respondent; Carlos and Marcelo Cantú are not parties but are aligned with Raquel.²

Beginning in 2002, Raquel cared for all her mother’s daily needs: she even had an intercom installed in their houses in Monterrey, Nuevo Leon, Mexico, so that they could talk at any time.³ Raquel was with her mother constantly.⁴ After Madame Villarreal had a stroke in 2004, Raquel and her brother Marcelo, an attorney, began handling her personal, legal, and financial matters.⁵

Among her many properties, Madame Villarreal owned a house in Brownsville, Texas.⁶ San Pedro Impulsora de Inmuebles, a shell corporation, was formed in 2003 to hold the property,⁷ with Madame Villarreal as 99% shareholder.⁸ Ignacio, who holds the remaining 1% interest,⁹ is the corporation’s administrator.¹⁰ The corporation’s assets

¹ RR1 at 9; RR2 at 15, 16; RR4 at 8.

² RR2 at 15.

³ RR3 at 27.

⁴ *Id.* at 28.

⁵ *Id.* at 28–30.

⁶ App. 9 at 33–34 (bound with this brief).

⁷ *Id.*

⁸ *Id.* at 1.

⁹ *Id.*

¹⁰ *Id.* at 1, 4.

consist of 50,000 pesos start-up capital and the proceeds of the late 2005 or early 2006¹¹ sale of the house and its furnishings.¹² The corporation did no other business,¹³ and the value of its assets never exceeded \$500,000.¹⁴

On August 21, 2006, Ignacio received the proceeds from the sale of the shell corporation's assets and deposited the money in one of Madame Villarreal's personal Mexican bank accounts.¹⁵ A trust instrument was drafted two days later,¹⁶ but when Madame Villarreal's children met the next day, the two groups split.¹⁷ According to Raquel, the Ignacio Faction planned to sell Madame Villarreal's land and divide the money among the children, contrary to their deceased father's will.¹⁸ The Ignacio Faction proposed a trust, under which only they would have the power to make all decisions concerning Madame Villarreal's estate and would replace Raquel with another caregiver.¹⁹ Raquel and her brothers Carlos and Marcelo refused to sign.²⁰ Ignacio acknowledged that the children quarreled about the trust, but he claimed that

¹¹ *Id.* at 3–4, 8.

¹² *Id.* at 18–19.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3 (start-up capital of 50,000 pesos), 18 (received \$8,000 for furniture), 19 (received \$484,000 for house).

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 10–11.

¹⁷ RR3 at 36–39.

¹⁸ *Id.* at 35–36.

¹⁹ *Id.* at 36–39.

²⁰ *Id.* at 39.

their mother had set the terms,²¹ and claimed further that Marcelo had control of 70 million pesos belonging to her that he didn't want to give back.²²

The next day, August 25, Consuelo Cantú, her son José Luiz de Alba Villarreal, and others forcibly kidnapped Madame Villarreal and took her to Fernando Cantú's house.²³ Three days later, Ignacio, as administrator of the shell corporation, gave his nephew José Luiz de Alba Villarreal a broad power of attorney to act for the corporation,²⁴ including the authority to file a sham lawsuit against Madame Villarreal.²⁵

The Ignacio Faction (Petitioners here) characterized the sham lawsuit as a subterfuge intended to remove Marcelo as their mother's financial manager and return possession and control of her 70 million pesos to her by funneling it through the shell corporation and then transferring it back to her.²⁶ Ignacio testified that no property was ever actually transferred to the corporation²⁷ and that Madame Villarreal always intended for the property to be divided among her children.²⁸

A promissory note dated May 16, 2005²⁹ (but prepared sometime after August 23, 2006)³⁰ contained Madame Villarreal's purported acknowledgment that she owed a

²¹ App. 9 at 10.

²² *Id.* at 4.

²³ RR3 at 39–40.

²⁴ App. 4 at 9–10.

²⁵ *Id.* at 11.

²⁶ RR1 at 31, 36; App. 9 at 4, 5–6, 7, 10–11.

²⁷ App. 9 at 24–25.

²⁸ *Id.* at 24.

²⁹ *Id.* at 5–6.

³⁰ *Id.* at 5.

70-million-peso debt to the shell corporation.³¹ Although the note was unsigned at the time,³² the corporation filed the sham lawsuit on August 31, falsely claiming that it had lent Madame Villarreal 70 million pesos.³³ Madame Villarreal owed no such debt,³⁴ but she was induced to sign the note on September 19³⁵ and confess to the false 70-million-peso debt to the shell corporation.³⁶ The Ignacio Faction then took 34 million pesos from one of her personal bank accounts in Mexico³⁷—even though Ignacio claimed that the account was controlled by his brother Marcelo and implied that his mother had no access to it.³⁸ Ignacio transferred the money to another Mexican bank and deposited it under the shell corporation’s name,³⁹ in an account for which he was the sole signatory.⁴⁰ Then he transferred the funds to *another* account he established under the corporation’s name, this time at Lone Star National Bank in Texas;⁴¹ again, he was the sole signatory—even Madame Villarreal having no access to her own money.⁴² The remaining money (in another of Madame Villarreal’s personal Mexican bank accounts)⁴³ was seized by a Mexican federal court after Marcelo filed a *judicio de*

³¹ *Id.* at 4–6.

³² RR1 at 38 (note was signed on 19 Sept. 2006).

³³ App. 9 at 5–7.

³⁴ *Id.* at 6.

³⁵ RR1 at 38.

³⁶ *Id.* at 33, 35–36; App. 9 at 4, 5–6, 7, 10–11.

³⁷ App. 9 at 24.

³⁸ *Id.* at 4, 18.

³⁹ RR2 at 74; CR 1360 at 134; App. 9 at 19–22.

⁴⁰ *Id.* (all three citations).

⁴¹ App. 9 at 14, 19–22.

⁴² CR 1359; App. 9 at 14.

⁴³ App. 9 at 27.

Amparo (a type of restraining order) and asked the court to force Madame Villarreal's money into a trust conforming with Madame Villarreal's and her late husband's wishes.⁴⁴

Ignacio admitted that the funds seized by the Mexican court belonged to Madame Villarreal.⁴⁵ He also admitted that he had personally received the proceeds from the sale of the house in Brownsville, deposited them in the corporation's Mexican account, then transferred that account's funds to the Texas bank.⁴⁶ Additional property belonging solely to Madame Villarreal was sold and the payments were received after August 25, 2006.⁴⁷ Ignacio admitted that the payments were deposited in one of Madame Villarreal's personal bank accounts in Mexico before being transferred to the corporation's Mexican bank account, and then to the corporation's bank account in Texas.⁴⁸ In October 2006, Ignacio received money from the sale of other properties that were solely owned by his mother and sold in December 2005.⁴⁹ He deposited those funds, too, in the corporation's bank account in Texas.⁵⁰ Ignacio admitted that even though the corporation's name was on the account, the money was actually his mother's⁵¹ and that she did not open the Texas account.⁵² He contradicted himself about whether (1) she had directed him to transfer funds from her personal bank account to

⁴⁴ CR 1531–32.

⁴⁵ App. 9 at 24–25.

⁴⁶ *Id.* at 18–19.

⁴⁷ *Id.* at 19–21.

⁴⁸ *Id.* at 18–19, 23, 26–27.

⁴⁹ *Id.* at 19–22.

⁵⁰ *Id.* at 19–22.

⁵¹ *Id.* at 22.

⁵² *Id.*

one in the corporation's name in Mexico, then to move the money to Texas, or (2) he had done these things without her knowledge.⁵³

In November 2006, the Ignacio Faction moved Madame Villarreal from Mexico to Texas.⁵⁴ But on December 20, 2006, while Madame Villarreal was still under their control, they briefly returned her to Mexico to execute deeds transferring all her real estate—some 70 properties⁵⁵—to them.⁵⁶ Ignacio testified that she said the transfers were only for safekeeping until the property could be equally divided among all seven of her children in accordance with her and their father's wishes,⁵⁷ but the deeds conveyed the property without reservation. An arbitrator later valued the properties at \$10 million.⁵⁸

At a corporate “shareholders’ meeting” in February 2007, Ignacio was the only shareholder present.⁵⁹ Although he had no authority to act on behalf of the 99% shareholder (his mother Madame Villarreal),⁶⁰ he unilaterally “removed” himself as administrator and appointed a replacement, Hector Garza.⁶¹ He admitted knowing almost nothing about Garza⁶²—not even the location of his office, his phone number, his home address, his employer, or his qualifications.⁶³ But despite his “removal” as

⁵³ *Id.* at 22–24.

⁵⁴ RR1 at 43–45, 48.

⁵⁵ App. 14 at ¶ 19.

⁵⁶ App. 9 at 26.

⁵⁷ RR1 at 35; RR2 at 80, 83–85; App. 9 at 25, 29, 38.

⁵⁸ *See* App. 28 at 13.

⁵⁹ App. 9 at 16.

⁶⁰ *Id.* at 17.

⁶¹ *Id.*

⁶² *Id.* at 13–14, 30–31.

⁶³ *Id.* at 30–31.

administrator, Ignacio retained full control over all the corporation's assets until at least June 2007.⁶⁴

It was in June 2007 that Madame Villarreal was rescued from the Ignacio Faction,⁶⁵ and guardianship proceedings began the same day.⁶⁶

In the county court, Ignacio admitted that he was subject to criminal charges in Mexico for defrauding his mother of 70 million pesos.⁶⁷ He agreed that the \$2.7 million in the Lone Star bank account should be subject to the court's control and that his name should be taken off the account.⁶⁸ After the court appointed Raquel guardian of her mother's person⁶⁹ and Jaime Diez guardian of Madame Villarreal's estate,⁷⁰ the county court issued numerous orders for all of Madame Villarreal's children to cooperate to release the 34 million pesos frozen by the *Amparo* proceedings in Mexico and to deposit those funds in a U.S. bank.⁷¹

The Ignacio Faction ignored every order and expressly told their counsel not to comply.⁷²

Then after several mediation sessions and negotiations,⁷³ on February 12, 2008, all seven of Madame Villarreal's children executed an Irrevocable Family Settlement

⁶⁴ CR 1359; App. 9 at 14.

⁶⁵ RR2 at 37–38. *See* App. 2 (bound with this brief). For a full and graphic account, see Real Parties' Amended Brief in Response, No. 09–0441, filed in this Court on 26 July 2010, at 8–10.

⁶⁶ App. 3.

⁶⁷ RR2 at 63–64.

⁶⁸ *Id.* at 64–65, 70–74, 84–85.

⁶⁹ RR4 at 67–68; App. 5.

⁷⁰ App. 8.

⁷¹ RR5 at 5–6, 8; RR11 at 62–70; CR 128; 328–29; 388–91. *See* App. 10 (CR 197); App. 11 (CR 328).

⁷² RR11 at 62–70. CR 128; 328; 388. *See* App. 10 (CR 197); App. 11 (CR 328).

⁷³ *See* App. 28 at 1.

Agreement and Rule 11 Agreement (collectively, the “Settlement Agreement”).⁷⁴ It recited agreements and promises (1) to resolve their differences, (2) to cooperate in having Madame Villarreal’s 34 million pesos held by the Mexican court released, (3) to have all the money (from the Texas bank account and from the court in Mexico) used to fund a trust for their mother’s benefit, and (4) to divide the properties that she had conveyed to the Ignacio Faction among all seven children.⁷⁵ The Settlement Agreement stipulated that Madame Villarreal’s estate consisted of 34 million pesos held in Mexico plus whatever money was in the account controlled by Diez in the United States.⁷⁶ Unanimously, Madame Villarreal’s children and their counsel agreed to “take all necessary steps” to have all the funds released and delivered to a Mexican trust to be drafted jointly by attorneys Carlos Lugo and Miguel Martínez (respectively, separate Mexican counsel for the Ignacio Faction and for Raquel, Carlos, and Marcelo).⁷⁷ Two days later, the court signed an agreed judgment that incorporated this Settlement Agreement as an integral part (“2008 Final Judgment”).⁷⁸ This judgment was never appealed and became final.⁷⁹

Martinez asked the court in Mexico to dismiss the *Amparo* and then notified Lugo that the 34 million pesos had been released.⁸⁰ Although the attorneys had discussed creating a trust according to the 2008 Final Judgment, nothing was done.⁸¹

⁷⁴ See App. 14.

⁷⁵ See *Id.* at ¶ 14.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ App. 15.

⁷⁹ CR 571–79, App. 14 at ¶ 14; App. 3; App. 28.

⁸⁰ RR11 at 66.

⁸¹ *Id.* at 68–69.

Meanwhile, Hector Garza, the corporation’s putative administrator, had collected the money.⁸² It has since vanished.⁸³ Lugo, after consulting with his Ignacio Faction clients (the Petitioners here), ceased contact with Martinez.⁸⁴ The trust ordered by the county court has still not been formed.⁸⁵

The Ignacio Faction refused to perform any part of the Settlement Agreement, whether concerning their mother’s care, her estate, or any other duty.⁸⁶ Instead, they tried to nullify their obligations.⁸⁷ Despite the Settlement Agreement, they now claimed that the 34 million pesos held by the Mexican court was outside the Texas court’s jurisdiction⁸⁸ and that all the money in the Texas bank account was the property of the shell corporation.⁸⁹ In May 2008, the county court learned that the Ignacio Faction was trying to alienate the properties they had agreed to share with their siblings through the Settlement Agreement.⁹⁰ On June 11, it ordered emergency relief compelling the Ignacio Faction to protect Madame Villarreal’s funds and enjoining them from transferring her real property (“June 11 Compliance Order”).⁹¹ Once again the court ordered all four children in the Ignacio Faction to comply with the Settlement

⁸² *Id.* at 67.

⁸³ RR12 at 19–22. *See also* App. 18 (CR 919), App. 19 (CR 923) (court informed that released funds were in hands of Ignacio Faction).

⁸⁴ RR11 at 68–69.

⁸⁵ *Id.*

⁸⁶ RR9 at 15.

⁸⁷ App. 16 (CR 842).

⁸⁸ RR11 at 29 (statement by Attorney Bellamy, counsel for Ignacio Faction).

⁸⁹ *Id.*

⁹⁰ RR12 at 4–7, 10–19; RR9 at 15; RR11 at 29–31; App. 19 (CR 923).

⁹¹ App. 20 (CR 983); App. 21 (CR 1045); App. 16.

Agreement and the 2008 Final Judgment.⁹² Specifically, it ordered them to deposit the 34 million pesos in a U.S. bank account within 10 days⁹³ and to show compliance at a hearing on June 27, 2008.⁹⁴

The Ignacio Faction appealed the order,⁹⁵ and the 10 days passed without compliance.

Raquel once again sought relief, this time through a contempt motion.⁹⁶ The county court set a hearing for June 27, the same day it would hear other motions and give the Ignacio Faction an opportunity to explain their failure to comply with the court's orders.⁹⁷ The Ignacio Faction responded by asking the court of appeals to stay the June 27 hearing for all purposes.⁹⁸ On June 26, the court refused.⁹⁹ The next day, not one of the Ignacio Faction appeared in the county court,¹⁰⁰ and the court issued writs of attachment against each of them.¹⁰¹

Meanwhile, the Ignacio Faction sought a writ of mandamus to vacate the trial court's orders. The court of appeals denied the writ.¹⁰² Still, the Ignacio Faction did not appear in the county court or produce the 34 million pesos.¹⁰³

⁹² App. 21 (CR 1045) at 1.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ App. 23.

⁹⁶ App. 19 (CR 923). *See also* App. 22.

⁹⁷ *Id.*

⁹⁸ App. 25.

⁹⁹ *Id.*

¹⁰⁰ CR 1171.

¹⁰¹ *Id.*

¹⁰² *In re Cantu*, 2008 WL 2930189 (Tex. App. – Corpus Christi, 30 July 2008).

¹⁰³ CR 1171.

Since May 2008, the Ignacio Faction has arbitrated their complaints about the Settlement Agreement twice¹⁰⁴ and filed at least *six* notices of appeal in the Corpus Christi Court of Appeals. Since July 2008, they have filed at least five petitions in the Supreme Court of Texas for writs of mandamus, motions for temporary relief, and appeals—this proceeding being just one of them.¹⁰⁵

The members of the Ignacio Faction have still not performed any of their obligations under the Settlement Agreement or the 2008 Final Judgment.

Argument

Issue #1: Injunctive Power

Every Texas court has the inherent power to enforce its judgments by any suitable method. An injunction is a suitable enforcement tool when a party's litigation is calculated to prevent or delay enforcement of a judgment. Because the Ignacio Faction has refused to comply with a final judgment and various other orders, and instead have flooded the courts with obstructive litigation, the county court issued an injunction to gain compliance. Was doing so erroneous?

A. The county court, having the inherent power to enforce its judgment by any suitable means, properly issued the temporary injunction to enforce its judgment.

The core functions of the judiciary are to hear evidence, decide issues of fact raised by pleadings, decide questions of law, enter final judgments, and enforce those judgments.¹⁰⁶ A court has inherent powers enabling it to exercise its jurisdiction,

¹⁰⁴ App. 28 at 2 (noting previous arbitration in May 2008).

¹⁰⁵ *In re Ignacio Villarreal Cantù, Fernando Villarreal Cantù, and Consuelo Villarreal Cantù*, No. 08-0553 (Tex., filed 11 July 2008; denied 18 July 2008); *In re Ignacio Villarreal Cantù, Fernando Villarreal Cantù, and Consuelo Villarreal Cantù*, No. 08-0645 (Tex., filed 13 Aug. 2008; denied 15 Aug. 2008); *In re Ignacio Villarreal Cantù, Guardian of the Person of Raquel Cantù de Villarreal*, No. 08-0646 (Tex., filed 13 Aug. 2008; denied 15 Aug. 2008); *In re in the Guardianship of Raquel Cantù de Villarreal, an Incapacitated Person*, No. 09-0411 (filed 18 May 2009); *In re Consuelo Villarreal Cantù*, No. 09-0441 (filed 27 May 2009).

¹⁰⁶ *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239–40 (Tex. Crim. App. 1990).

administer justice, and preserve its independence and integrity.¹⁰⁷ And it has inherent powers to enforce its judgments by any suitable method¹⁰⁸—including the power to change, set aside, or otherwise control its judgments.¹⁰⁹ There is no question about the validity of the county court’s 2008 Final Judgment, which incorporated the Settlement Agreement. The only question is whether this Court should let the Ignacio Faction continue to flout it.

Under Texas Rule of Appellate Procedure 29.4, a temporary injunction that is on appeal can be enforced only by the appellate court unless that court permits the trial court to continue with the enforcement proceeding.¹¹⁰ But “the appellate court may refer *any* enforcement proceeding to the trial court”¹¹¹ to hear evidence and grant relief.¹¹²

On June 24, 2008, the Ignacio Faction asked the court of appeals to stay the county court’s enforcement of the injunction, the trial on the merits scheduled for June 27, and any contempt proceedings.¹¹³ A day later, the court of appeals unequivocally denied the request,¹¹⁴ knowing that the injunction and contempt hearings would proceed as scheduled. By choosing not to retain exclusive jurisdiction and allowing the hearing

¹⁰⁷ *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979).

¹⁰⁸ Tex. R. Civ. P. 308; *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982) (citing *Ex parte Gorena*, 595 S.W.2d 841, 844 (Tex. 1979)); *Hunt Prod. Co. v. Burrage*, 104 S.W.2d 84, 86 (Tex. Civ. App. – Dallas 1937, writ dism’d w.o.j.) (granting injunction for purpose of enforcing judgment).

¹⁰⁹ *Eichelberger*, 582 S.W.2d at 399 n.1 (citing *A.F. Jones & Sons v. Republic Supply Co.*, 246 S.W.2d 853, 854, 855 (Tex. 1952) (noting “fact that a trial court has inherent jurisdiction over its judgments” and “inherent power to ‘alter, modify, or set aside its judgments’”)).

¹¹⁰ Tex. R. App. P. 29.4.

¹¹¹ *Id.* (emphasis added); *In re Sheshtawy*, 154 S.W.3d 114, 122 (Tex. 2004).

¹¹² Tex. R. App. P. 29.4.

¹¹³ App. 25.

¹¹⁴ *Id.*

to proceed, the court of appeals authorized the county court to enforce its own judgment through the injunction against the Ignacio Faction.

A county court has the inherent power to enjoin interference with the exercise of its jurisdiction and may issue any writ necessary to protect it.¹¹⁵ The county court's power to issue injunctions is a statutory power, drawn from Article 5, § 8, of the Texas Constitution,¹¹⁶ and couched in text identical to the empowerment of a district court.¹¹⁷

In its 2008 Final Judgment, the county court incorporated the Settlement Agreement. By collecting the 34 million pesos from the Mexican court and refusing to place it in a trust for Madame Villarreal, and by attempting to alienate the properties they agreed to put into hotchpot,¹¹⁸ the Ignacio Faction made it clear that they had no intention of complying with the court's 2008 Final Judgment, just as they had *never* complied with *any* of the court's previous orders.¹¹⁹ To enforce its own judgment, the court had to exercise its power to issue a writ of injunction.

The circumstances in *Hunt Production Co. v. Burrage*¹²⁰ are in some ways similar. There, the district court entered a judgment that certain lands belonged to Burrage.¹²¹ Hunt failed to get the court to set aside its judgment and then lost numerous

¹¹⁵ *Allen v. Brazos River Conservation & Reclamation Dist.*, 166 S.W.2d 386, 388 (Tex. Civ. App. – Eastland 1942) (citing *Cleveland v. Ward*, 285 S.W. 1063, 1068 (Tex. 1926)), *aff'd*, 171 S.W.2d 842 (Tex. 1943).

¹¹⁶ “[A]nd said court [district] and the judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari, and all writs necessary to enforce their jurisdiction.”

¹¹⁷ *Cf.* Tex. Gov’t Code § 26.051 *with* § Tex. Gov’t Code § 24.011 (Vernon’s 2009).

¹¹⁸ RR11 at 64–72; RR12 at 7; 19, 64; RR13 at 23–29, 43–48, 51. *See* App. 18 (CR 919), App. 19 (CR 923) (court informed that released funds were in hands of Ignacio Faction).

¹¹⁹ RR5 at 5–6, 8; RR11 at 62–70; RR13 at 23–29, 43–48, 51; CR 328–29, 388–91. *See* App. 10 (CR 197); App. 11 (CR 328)

¹²⁰ 104 S.W.2d 84 (Tex. Civ. App. – Dallas 1937, writ *dism’d w.o.j.*).

¹²¹ *Id.* at 85–86.

appeals in multiple courts.¹²² Hunt then sued Burrage in another county, alleging trespass to try title.¹²³ Burrage asked the original district court for an injunction, which the court issued.¹²⁴ Hunt appealed that order, and the appellate court considered whether Burrage’s motion to enjoin was an effort to have the district court enforce its judgment.¹²⁵ It applied the test articulated in 1914 by the Texas Supreme Court in *Milam County Oil Mill Co. v. Bass*¹²⁶ to determine the motion’s purpose by considering whether Hunt’s litigious actions amounted to interfering with the judgment’s enforcement.¹²⁷ Although cautioning that each case must be considered on its own peculiar facts and circumstances,¹²⁸ the appellate court determined that Burrage’s right to the property had been settled by the judgment and that the only purpose of Hunt’s present suit was to “embarrass, hinder, frustrate, and delay the final and successful enforcement of the judgment.”¹²⁹ The district court had properly acted to enforce its own judgment.¹³⁰

Even if Raquel Cantú had not asked the county court to issue a temporary injunction, the court had the power to do so sua sponte. The county court had plentiful evidence that the Ignacio Faction had no intention of complying with the Settlement

¹²² *Id.* at 86–87.

¹²³ *Id.* at 87.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ 163 S.W. 577, 578 (Tex. 1914).

¹²⁷ *Hunt Prod. Co.*, 104 S.W.2d at 88. *See Milam*, 163 S.W. at 578 (“The power to enforce its judgments necessarily inheres in a court as an essential attribute of its jurisdiction.”).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 89.

Agreement, the 2008 Final Judgment, or the court’s June 11 Compliance Order—still don’t—and that they were trying to avoid and violate the judgment:

- Under the Settlement Agreement and 2008 Final Judgment, they were to deposit the 34 million pesos into a trust for Madame Villarreal’s benefit within 90 days.¹³¹ The Ignacio Faction did not do so and have not offered any satisfactory explanation for their failure.¹³²
- On April 23, 2008, Hector Garza, Ignacio’s putative administrator of the shell corporation, collected the 34 million pesos released by the Mexican court,¹³³ then failed to deliver it to be placed in trust for Madame Villarreal. Now that money is unaccounted for.¹³⁴
- The Ignacio Faction’s Mexican attorney refused to cooperate to create the Mexican trust for Madame Villarreal.¹³⁵ It wasn’t unreasonable (in fact, it was *perfectly* reasonable) for the court to believe that the Ignacio Faction had—again—ordered their Mexican counsel not to comply¹³⁶ and that they had instead directed Hector Garza to take the money and conceal it.
- Then in May 2008, the county court learned that the Ignacio Faction was trying to sell the \$10 million worth¹³⁷ of real property they had promised

¹³¹ App. 14 at ¶ 14; App. 15 at 2–3.

¹³² RR12 at 19–22

¹³³ RR11 at 67.

¹³⁴ RR12 at 19–22.

¹³⁵ RR11 at 64–70.

¹³⁶ *Id.* at 62–70. *See* App. 10 (CR 197).

¹³⁷ *See* App. 28 at 13.

to contribute to the hotchpot,¹³⁸ a promise that was incorporated into the 2008 Final Judgment.

Given all this, the county court had good reason to believe that the Ignacio Faction would disobey the judgment again unless the court acted to enforce it. Indeed, the Ignacio Faction has not shown they have complied with the Settlement Agreement's terms, the 2008 Final Judgment, the June 11 Compliance Order, or *any* order. Instead, they have continually bombarded the Texas courts, including this Court, with motions and appeals, all frivolous and obstructive.

The county court acted correctly and necessarily in enjoining the Ignacio Faction from alienating the properties in violation of the 2008 Final Judgment.

Issue #2: Trial Court's Authority

The Texas Constitution gives district courts broad authority to enforce their judgments, and statutes give county courts authority in language mirroring that used for district courts. The Ignacio Faction sought to alienate assets that are subject to a county-court judgment. After the county court enjoined them from doing so, the court of appeals quite properly refused to stay the injunction. Should this Court now grant the Faction's request to void the injunction?

B. The June 11 Compliance Order enforces the judgment's provisions without materially changing them.

1. The county court exercised its jurisdiction over matters incident to the guardianship by issuing orders to protect the ward's property and to determine whether the parties had complied with the judgment.

The county court's jurisdiction over the guardianship of Madame Villarreal includes jurisdiction over matters incident to the guardianship¹³⁹—including issues about the settlement, partition, or distribution of the ward's estate¹⁴⁰—when the ward's

¹³⁸ App. 14 at ¶¶ 14, 19.

¹³⁹ See Tex. Prob. Code §§ 606(i), 607.

¹⁴⁰ See *Palmer v. Coble Wall Trust Co.*, 851 S.W.2d 178, 181–82 (Tex. 1992) (affirming

guardian is a party.¹⁴¹ In June 2008, Madame Villarreal’s guardian was Ignacio;¹⁴² now Raquel is her guardian.¹⁴³

The county court did not impose any new obligations in its June 11 Compliance Order. It ordered the Ignacio Faction to show compliance with the Settlement Agreement and the 2008 Final Judgment, and it directed them to perform.

Although the parties waived all demands for an accounting from one another,¹⁴⁴ the county court’s order does not indicate that its own demand for an accounting was done solely at Raquel’s request. The controlling issue was the settlement, partition, or distribution of the ward’s estate,¹⁴⁵ so the court could exercise its jurisdiction and order an accounting to show compliance with its judgment.¹⁴⁶ That’s exactly what the court ordered the Ignacio Faction to do.¹⁴⁷ The court did not change any of the Ignacio Faction’s obligations under the Settlement Agreement or 2008 Final Judgment; it only ordered them to show that they were complying. But they ignored that order, just as they have ignored every previous order to produce or account for the 34 million pesos.¹⁴⁸

The court took reasonable action to enforce the judgment by directing the Ignacio Faction’s first step toward compliance with the obligation to deliver the money

applicability of the controlling-issue test in determining whether or not a matter is appertaining to or incident to an estate).

¹⁴¹ See Tex. Prob. Code §§ 606(i), 607.

¹⁴² App. 14 at ¶ 24; App. 15 at 3–5.

¹⁴³ App. 29.

¹⁴⁴ App. 14 ¶ 21.

¹⁴⁵ See *Palmer*, 851 S.W.2d at 181–82 (affirming applicability of the controlling-issue test in determining whether or not a matter is appertaining to or incident to an estate).

¹⁴⁶ See Tex. Prob. Code §§ 606(i), 607.

¹⁴⁷ App. 21 (CR 1045) at 1–2.

¹⁴⁸ RR5 at 5–6, 8; RR9 at 9–10, 12; RR13 at 43–48, 51–53; CR 328–29; 388–91; App. 10 (CR 197); App. 11 (CR 328).

to a trust and ensuring that they would have to cooperate with their siblings. These were not new obligations but directions to perform existing ones.

2. *The county court acted to prevent the Ignacio Faction from violating its judgment by improperly alienating the real estate intended for all seven of Madame Villarreal's children.*

The Settlement Agreement reached by all of Madame Villarreal's children promised that the 70 properties transferred by Madame Villarreal to the Ignacio Faction in December 2006 would be put into a hotchpot and divided equally.¹⁴⁹ This agreement was incorporated into the county court's 2008 Final Judgment.¹⁵⁰ When the court learned that the Ignacio Faction was trying to unilaterally alienate the properties,¹⁵¹ it acted to enforce its judgment by stopping them.¹⁵² This did not impose a new obligation; it preserved the properties that are subject to an unperformed obligation under the Settlement Agreement¹⁵³ and the court's judgment.¹⁵⁴

¹⁴⁹ App. 14 ¶¶ 14, 19.

¹⁵⁰ App. 15 at 2.

¹⁵¹ App. 19 (CR 923) (Bates #00923).

¹⁵² App. 21 (CR 1045) at 2.

¹⁵³ App. 14 at ¶¶ 14, 19.

¹⁵⁴ App. 15 at 2–3.

Issue #3: Necessary Remedy

Under the final judgment's terms, the Ignacio Faction was obliged to produce money, establish a trust, and share real property. They have refused to account for the money, have refused to create the trust, and have attempted to alienate the real property. The court ordered an accounting of the missing money, directed the Ignacio Faction to take specific action to protect the money, and enjoined the alienation of the property without consent. Did the court have the power to make this order?

C. The Ignacio Faction has no valid claim that the statutory requirements for the motion seeking injunctive relief were not met.

1. *The Ignacio Faction waived all alleged errors in the motion underlying the June 11 Compliance Order.*

The Ignacio Faction now complains that the motion underlying the June 11 Compliance Order did not comport with Texas Rules of Civil Procedure 682 and 684 because (1) it allegedly failed, among other things, to plead and prove a claim “upon which she [Raquel Cantú] has a probable right to the relief sought and a probable, imminent, and irreparable injury,” and (2) it was not sworn.¹⁵⁵ Yet under Texas Rule of Civil Procedure 90 and Texas Probate Code § 9, the Ignacio Faction was obliged to object to any alleged errors in Raquel’s pleading in the county court and to put their exceptions in writing.¹⁵⁶ Raquel filed her motion on May 19, 2008, and a hearing was held on June 9. Three attorneys representing the Ignacio Faction were present. None of them informed the court of any defects in the motion or excepted to the motion as allegedly defective.¹⁵⁷ They complained of errors for the first time 13 days later and

¹⁵⁵ Petitioners’ Brief on the Merits, at 13, 14.

¹⁵⁶ Tex. R. Civ. P. 682; Tex. Prob. Code § 9 (Vernon’s 2010).

¹⁵⁷ See RR12 (containing no objections to motion’s form or information about errors).

then to the court of appeals only.¹⁵⁸ Appellate courts have uniformly held as waived any claimed error not made to the trial court and not preserved in writing.¹⁵⁹

In *Onoray Davis Trucking Co. v. Lewis*, for example, the issue involved the applicability of Rules 682 and 684 to a temporary injunction issued to enforce a previous order.¹⁶⁰ The probate court opined that not issuing the injunction would have been contrary to its power to enforce its judgment.¹⁶¹ On appeal, Onoray's complaints were all based on one question: had the motion for temporary injunction satisfied the provisions of Texas Rules of Civil Procedure 680, 682, 683, and 684?¹⁶² Onoray asserted that the motion for temporary injunction was not supported by a sworn application, that there was no evidentiary hearing, and that the order did not require a bond.¹⁶³ The court of appeals declared that the lower court had "power to preserve the assets of an estate and effectuate its decrees,"¹⁶⁴ adding: "When it so acts, the rules appellant relies on under this point are inapposite"¹⁶⁵ because they would negate the probate court's inherent power to preserve the estate's assets and enforce its judgment.¹⁶⁶ Most significantly to this issue, the appellate court held that Onoray had

¹⁵⁸ CR 1094.

¹⁵⁹ See, e.g., *Onoray Davis Trucking Co. v. Lewis*, 635 S.W.2d 622 (Tex. App. – Houston [14th Dist.] 1982, writ dismissed w.o.j.); *Jones v. Garcia*, 538 S.W.2d 492, 495 (Tex. Civ. App. – San Antonio 1976, no writ); *McKee v. City of Mt. Pleasant*, 328 S.W.2d 224, 227 (Tex. Civ. App. – Texarkana 1959, no writ); *Zanes v. Mercantile Bank & Trust Co.*, 49 S.W.2d 922, 927 (Tex. Civ. App. – Dallas 1932, writ refused).

¹⁶⁰ 635 S.W.2d 622, 624–25 (Tex. App. – Houston [14th Dist.] 1982, writ dismissed w.o.j.).

¹⁶¹ *Id.* at 624.

¹⁶² *Id.* at 624–25.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 625.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

waived any errors because he did not comply with Texas Rule of Civil Procedure 90 and Texas Probate Code § 9, both of which required Onoray to object to the motion's alleged flaws and to notify the probate court of them before appealing.¹⁶⁷

The Ignacio Faction waived any errors when they failed to raise their complaints in the trial court as required under Texas Rule of Civil Procedure 90 and Texas Probate Code § 9, so they have no right to assert them on appeal.¹⁶⁸ The Court should dismiss the Ignacio Faction's complaints that are based on Rule 682.

2. *The \$0 bond was adequate because the Ignacio Faction did not show that any harm could possibly result from the temporary injunction barring them from alienating any jointly owned properties.*

Rule 684 requires a court to set a bond, but no statute or caselaw dictates the amount of the bond. Courts have considerable discretion to determine what is appropriate.¹⁶⁹ The purpose of the bond is to provide the enjoined party protection against any damages that might result if the injunction is later dissolved.¹⁷⁰ But the Ignacio Faction did not claim and could not show that any harm would result from the injunction.

The Ignacio Faction claims that neither they nor any other child has a justiciable interest in any real estate because it is all owned by Madame Villarreal. But in

¹⁶⁷ *Id.* See Tex. R. Civ. P. 90; Tex. Prob. Code § 9.

¹⁶⁸ *Onoray*, 635 S.W.2d at 625; *J. D. Abrams, Inc. v. Sebastian*, 570 S.W.2d 81, 84 (Tex. Civ. App. – El Paso 1978, writ ref'd n.r.e.).

¹⁶⁹ *Ranchos Real Developers, Inc. v. County of El Paso*, 138 S.W.3d 441, 445 (Tex. App. – El Paso 2004, no pet.); *Biodynamics, Inc. v. Guest*, 817 S.W.2d 128, 131 (Tex. App. – Houston [14th Dist.] 1991, writ dism'd by agr.).

¹⁷⁰ *Goodin v. Jolliff*, 257 S.W.3d 341, 353 (Tex. App. – Ft. Worth 2008, no pet); *Biodynamics*, 817 S.W.2d at 130.

December 2006, Madame Villarreal purportedly transferred about 70 pieces¹⁷¹ of real property to the Ignacio Faction,¹⁷² who did not inform the responsible attorney that she had any intent other than to transfer the property to them.¹⁷³ In January 2007, the Ignacio Faction filed the deeds establishing their ownership.¹⁷⁴ Though acknowledging that the property belongs to Madame Villarreal,¹⁷⁵ they have not reconveyed the property to their mother¹⁷⁶ or shown any inclination to do so. And in February 2008, after five mediation sessions and direct settlement negotiations,¹⁷⁷ the Ignacio Faction agreed in the Settlement Agreement to divide all the property equally among all their siblings,¹⁷⁸ which accords with their father's will¹⁷⁹ and their mother's expressed wishes.¹⁸⁰ That agreement was adopted into the county court's 2008 Final Judgment. The properties were described as belonging to all seven of Madame Villarreal's children,¹⁸¹ so each child had an agreed and adjudicated 1/7 undivided present interest in any and all real property.

¹⁷¹ App. 14 at ¶ 19.

¹⁷² App. 9 at 25–27. *See* App. 14 (with attached deeds naming Ignacio, Consuelo, Fernando, and Marta Cantú as owners).

¹⁷³ App. 9 at 38.

¹⁷⁴ *Id.* at 25–26. *See* App. 14 (with attached deeds).

¹⁷⁵ App. 9 at 25–26, 38.

¹⁷⁶ *See* App. 14 ¶¶ 14, 19 with attached deeds.

¹⁷⁷ *See* App. 28 at 1.

¹⁷⁸ *See* App. 14 ¶¶ 14, 19.

¹⁷⁹ RR4 at 8; App. 9 at 25–26, 38.

¹⁸⁰ RR1 at 35; RR2 at 80, 83–85; App. 9 at 25–26, 38.

¹⁸¹ *See* App. 14 ¶¶ 14, 19.

The Settlement Agreement does not authorize alienating the properties; it only authorizes placing them into a hotchpot to be shared equally by all seven children.¹⁸² To alienate a property, all seven would have to agree because none of them may act as another's agent without consent.¹⁸³ Raquel objected to the Ignacio Faction's attempts to alienate all her interests in the properties and sought the temporary injunction to stop them from doing so in violation of the Settlement Agreement.¹⁸⁴ The Ignacio Faction cannot establish that an injunction preventing a sale that *they couldn't legally make* could possibly cause them any harm, so a \$0 bond is ample under these odd circumstances.

The Ignacio Faction also claims that Raquel had to establish a probable right to recover on the merits. But with a 1/7 undivided interest in the property yet no say in its disposition, Raquel had more than a probable right to recover—she had a present interest in real property (still does). She asked the county court to enforce its judgment to protect her interest. Meanwhile, the Ignacio Faction and the shell corporation alike had *no* interest to be protected by a bond.

¹⁸² See App. 14 ¶¶ 14, 19.

¹⁸³ *Bradley v. Bradley*, 540 S.W.2d 504, 512–13 (Tex. Civ. App. – Ft. Worth 1976, no writ) (citing *Heller v. Heller*, 269 S.W. 771, 776 (Tex. 1925)).

¹⁸⁴ App. 19 (CR 923) (Bates #000925–000926).

Issue #4: Waiver

Under Texas Rule of Civil Procedure 90 and Texas Probate Code § 9, a party must preserve error in writing with the county court, or else the objection is waived on appeal. In the trial court, the Ignacio Faction made no oral or written objection to various procedural errors, but complained for the first time on appeal about the motion underlying the court's temporary injunction. Did they waive their complaints?

D. The county court has the inherent power to enforce its judgment by contempt orders, including writs of attachment.

1. The county court used its inherent power to issue valid writs of attachment.

Texas trial courts have an inherent power, codified in the Texas Government Code,¹⁸⁵ to punish for contempt.¹⁸⁶ The power “enables courts to persuade parties to obey an order or decree of the court so that the order will not be rendered ineffectual by recalcitrant litigants.”¹⁸⁷ Texas Rule of Appellate Procedure 29.4 does not deprive a trial court of its power to enforce its *final judgment*, so it may issue contempt orders while an appeal is pending.¹⁸⁸

This Court has repeatedly stated that when a final judgment is not superseded, a trial court has not just jurisdiction but an affirmative duty to enforce it.¹⁸⁹ And it specifically held in *In re Sheshtawy* that if a final judgment has not been superseded or stayed, no statute or rule of procedure removes the trial court's authority to act on a motion for contempt.¹⁹⁰ In *Sheshtawy*, after the trial court's decree of divorce became final, Sheshtawy filed a notice of appeal and refused to comply with the decree's

¹⁸⁵ See Tex. Gov't Code §§ 21.001, 21.002 (Vernon's 2010).

¹⁸⁶ *Ex parte Pryor*, 800 S.W.2d 511, 512 (Tex. 1990); *Owens-Corning Fiberglas Corp. v. Caldwell*, 807 S.W.2d 413, 415 (Tex. App. – Houston [1st Dist.] 1991, orig. proceeding).

¹⁸⁷ *Ex parte Pryor*, 800 S.W.2d at 512.

¹⁸⁸ *In re Sheshtawy*, 154 S.W.3d at 122.

¹⁸⁹ See, e.g., *In re Sheshtawy*, 154 S.W.3d at 116; *In re Crow-Billingsley Air Park, Ltd.*, 98 S.W.3d 178, 179 (Tex. 2003); *Ex parte Preston*, 347 S.W.2d 938, 943 (Tex. 1961).

¹⁹⁰ 154 S.W.3d 114, 116, 124 (Tex. 2004).

provisions for spousal maintenance.¹⁹¹ Sheshtawy's ex-wife moved for contempt, and Sheshtawy sought to bar contempt proceedings while his appeal was pending.¹⁹² But a motion for contempt, being a motion to enforce a judgment, is not affected by Rule 29.4.¹⁹³

Under the Settlement Agreement, the 2008 Final Judgment, and the June 11 Compliance Order, the Ignacio Faction must deliver Madame Villarreal's 34 million pesos to the court.¹⁹⁴ They have never complied, never offered the county court any satisfactory explanation for their failure, and never accounted for the missing money. The Ignacio Faction having defied the court's 2008 Final Judgment, the court properly began contempt proceedings by issuing writs of attachment against them and by ordering them to produce the money. The county court properly exercised its power to issue the writs of attachment as the first step in contempt proceedings against the Ignacio Faction.

¹⁹¹ *Id.* at 116.

¹⁹² *Id.*

¹⁹³ *Id.* at 120–24 (examining and explaining why trial courts retain jurisdiction to enforce own judgments despite pending appeals).

¹⁹⁴ App. 14 at ¶¶ 14, 19; App. 15 at 2–3.

2. ***Decisions in contempt proceedings are not appealable, and in any event the Ignacio Faction waited much too long (11 months) to complain.***

A contempt order cannot be appealed,¹⁹⁵ even if it is coupled with a judgment that is appealable.¹⁹⁶ The only remedy to review contempt proceedings is by habeas corpus¹⁹⁷ or writ of mandamus.¹⁹⁸ The Ignacio Faction has not presented either writ to this Court on these issues, so the complaints about the writs of attachment should be dismissed.

Further, the Ignacio Faction has waited too long to complain. The case of *Wallace v. First National Bank*,¹⁹⁹ in this Court more than a century ago, is illustrative. There, a district court issued a writ of attachment against lands claimed by Wallace, who waited three years before filing a plea in abatement to the writ and motion to quash the writ.²⁰⁰ The appellate court and this Court both held that because so much time had passed, Wallace had waived any defects in the writ: “Such objection should be presented with reasonable diligence, for a failure to do so would work many inconveniences and embarrassments in the prosecution of suits in the courts, and it must

¹⁹⁵ See, e.g., *Ex parte Williams*, 690 S.W.2d 243, 243 n. 1 (Tex. 1985); *Ex parte Cardwell*, 416 S.W.2d 382, 384 (Tex. 1967); *Metzger v. Sebek*, 892 S.W.2d 20, 54 (Tex. App. – Houston [1st Dist.] 1994, writ den.); *Mendez v. Attorney Gen. of Texas*, 761 S.W.2d 519, 521 (Tex. App. – Corpus Christi 1988, no writ); *Smith v. Holder*, 756 S.W.2d 9, 10–11 (Tex. App. – El Paso 1988, no writ); *Gensco, Inc. v. Thomas*, 609 S.W.2d 650, 651 (Tex. Civ. App. – San Antonio 1980, no writ).

¹⁹⁶ *Metzger*, 892 S.W.2d at 54–55; *Mendez*, 761 S.W.2d at 521; *Gensco*, 609 S.W.2d at 650; *Grace v. McCrary*, 390 S.W.2d 397, 398 (Tex. Civ. App. – Waco 1965, writ dism’d).

¹⁹⁷ *Ex parte Cardwell*, 416 S.W.2d at 384.

¹⁹⁸ *Deramus v. Thornton*, 333 S.W.2d 824, 827 (Tex. 1960).

¹⁹⁹ 65 S.W. 180 (Tex. 1901).

²⁰⁰ *Id.* at 180.

be held that so great delay operates to bar the defendant from interposing an objection of this character.”²⁰¹

3. *The Ignacio Faction had notice of the contempt hearing (6-27-08).*

The Ignacio Faction suggests that they had no notice that the June 27, 2008 hearing would include a hearing for contempt, but they filed an emergency motion to stop the hearing on June 24, the same day that Raquel’s fifth motion for contempt was filed.²⁰² Their effort was unsuccessful.²⁰³ Yet they still did not personally appear at the hearing, and their counsel did not show that the Ignacio Faction had complied or would comply with the court’s orders.²⁰⁴

They had notice even earlier than June 24. Raquel’s May 19 motion clearly asks the court—for the fourth time—to hold the Ignacio Faction in contempt.²⁰⁵ The county court’s June 11 Compliance Order commanded each member of the Ignacio Faction to appear on June 27 and either to show compliance or to explain their failure.²⁰⁶ Raquel’s June 24 motion reinforced her earlier motion.²⁰⁷ The Ignacio Faction had ample notice to appear in the county court on June 27, 2008, to show why they should not be found in

²⁰¹ *Id.* at 181.

²⁰² App. 25.

²⁰³ *Id.*

²⁰⁴ RR13 (reflecting no appearances by Ignacio Faction and containing no excuses for their contempt).

²⁰⁵ App. 19 (CR 923).

²⁰⁶ App. 21 (CR 1045) (at Bates #1047).

²⁰⁷ App. 22.

contempt of court.²⁰⁸ They have never offered a credible explanation for their failure to appear; they only complain of the writs of attachment that were issued in consequence.

4. *The Ignacio Faction waived any alleged defect in the writs of attachment.*

Even though Texas Rule of Civil Procedure 692 calls for a verified affidavit to initiate a contempt proceeding, this Court has held that a contempt judgment may still be valid even if the verified affidavit isn't presented.²⁰⁹ In *Ex parte Winfree*, the district court initiated a contempt proceeding based on an unquestionably unsworn complaint.²¹⁰ In reviewing Winfree's writ of habeas corpus, this Court noted that Rule 692 expressly required a sworn complaint²¹¹ but decided, as had many other courts, that the show cause procedure substitutes for a formal complaint.²¹² The Court also noted:

While one cannot say that attachments of the person are foreign to the initial stages of contempt proceedings, they are unlikely to occur except when the defendant fails to appear in response to service of a rule nisi or show cause order apprising him of the charges. In this connection it is perhaps noteworthy that Rule 692, . . . which requires an affidavit of accusation in all cases of contempt for disobedience of an injunction, authorizes attachment of the person of the defendant in lieu of a show cause order.²¹³

In this case, the county court ordered the Ignacio Faction to appear in court and show cause.²¹⁴ But because they did not appear, only the writs of attachment have issued. None of the Ignacio Faction has been confined, and the contempt actions remain pending.

²⁰⁸ App. 26.

²⁰⁹ *Ex parte Winfree*, 263 S.W.2d 154, 158 (Tex. 1953).

²¹⁰ *Id.* at 155.

²¹¹ *Id.* at 156.

²¹² *Id.* at 157.

²¹³ *Id.* at 156–57.

²¹⁴ App. 21 (CR 1045) (at Bates #1047).

Issue #5: Restoration to Ward

The Ignacio Faction admits that they have no right to the ward's money, and the administrator of the shell corporation gave testimony showing conclusively that the corporation also has no right to the money. May a court order a party to return property belonging to a ward when the possessor has no right to it?

E. Madame Villarreal's money should be returned to her as its rightful owner even though she is not a party to this lawsuit.

The Ignacio Faction asserts that this Court cannot return Madame Villarreal's property to her because she is not a party to this suit and the county court's 2008 Final Judgment declared that Madame Villarreal has no estate in Texas.²¹⁵ But the Settlement Agreement that is incorporated into the 2008 Final Judgment provides that Madame Villarreal's estate includes the 34 million pesos in Mexico and the money in the United States accounts.²¹⁶ Because that property is incident to the guardianship, the court has jurisdiction over it.²¹⁷

Members of the Ignacio Faction have testified repeatedly that the property belongs to Madame Villarreal,²¹⁸ and in the Settlement Agreement they irrevocably promised to return it to her estate,²¹⁹ knowing that they could receive the money once it was released. And the testimony of Ignacio, the shell corporation's administrator, established that the corporation has no claim to any part of the money.²²⁰

It would be wrong to leave Madame Villarreal's money in the hands of the people who deprived her of it and have no right to it. Although Madame Villarreal is

²¹⁵ App. 15.

²¹⁶ App. 14 at ¶ 14.

²¹⁷ See Tex. Prob. Code §§ 606(i), 607.

²¹⁸ RR2 at 71–73; App. 9 at 13–14, 22, 23, 25, 27, 28, 38; App. 14 at ¶ 14.

²¹⁹ App. 14 at ¶ 14.

²²⁰ RR1 at 38, 54–55; App. 9 at 5–7, CR 1335 at 37, ll.12–25; 1342 at p.62, ll.18–22; 1343 at 68–72.

not a party to this suit, she has always been represented through her guardian, and a ward is bound by any judgment rendered in a suit to which the guardian is a party.²²¹ Under the county court’s 2008 Final Judgment, Madame Villarreal owns the 34 million pesos,²²² and the court correctly ordered the money accounted for and deposited into an account where it can be watched over until the Mexican trust for Madame Villarreal’s benefit is created and the money delivered to the trustee.²²³

This Court should order the Ignacio Faction to deliver their mother’s money into safekeeping and so put an end to their efforts to withhold her property unlawfully.

Conclusion

The precedents of this Court speak of “working an embarrassment.” This case has worked embarrassments aplenty. The byword for this appeal — and the related appellate proceedings — is found toward the end of the current edition of *Black’s Law Dictionary*: it is *vitiligation* (= vexatious litigation). If only the word — and the thing that it denotes — did not exist. Alas, they do. One can well understand the trial judge’s exasperated statement: “I don’t like what I’m seeing. I don’t like all of this.”²²⁴

As with the petitioner in *Hunt Production Company v. Burrage*,²²⁵ the Ignacio Faction has continually pursued arbitration and litigation, losing at every turn, to hinder and avoid enforcement of the judgment they agreed to. In their petition for review in this case, they prayed that this Court would “stop this insanity.”²²⁶ Raquel trusts that the

²²¹ *Taylor v. Sturgell*, 553 U.S. 880, 128 S. Ct. 2161, 2172–73 (2008).

²²² App. 15 at 2, 3. See App. 14 at ¶¶ 14, 19.

²²³ App. 21 (CR 1045) (at Bates #000923–000925, 000929–000932).

²²⁴ RR1 at 66.

²²⁵ 104 S.W.2d 84, 86 (Tex. Civ. App. – Dallas 1937, writ dismissed w.o.j.).

²²⁶ Petition for Review, at ix.

Court will read this statement, and other assertions of its ilk by the Ignacio Faction, with especial keenness (and a hearty sense of irony).

The Ignacio Faction has always admitted and acknowledged that the money in the Texas bank account belongs solely to Madame Villarreal. Ignacio himself, the administrator of the shell corporation of which Madame Villarreal owns 99%, has admitted and acknowledged that the shell corporation has no claim to the money either. Further, it is undisputed that the Ignacio Faction agreed that the 70 properties described in the Settlement Agreement were transferred to the Ignacio Faction, agreed to divide them among all seven of Madame Villarreal's children, and knew that Raquel did not consent to alienating her interest in the properties.

The county court exercised its inherent power to enforce its 2008 Final Judgment (an agreed judgment, please note) despite the Ignacio Faction's determination both to flout the judgment and the court's orders and to breach their promises. The county court properly enjoined the Ignacio Faction from wrongfully alienating property jointly owned by seven people, not all of whom consented to the alienation. And it also properly exercised its powers incident to the guardianship by ordering the Ignacio Faction—again—to comply with the 2008 Final Judgment and to produce Madame Villarreal's money.

For nearly a year, both before and after the 2008 Final Judgment, the Ignacio Faction has flouted the court's orders and shown no signs of complying. The county court patiently gave them chance after chance before finally holding them in contempt and issuing writs of attachment. Not one of the Ignacio Faction has shown a valid reason for refusing to comply with the Settlement Agreement, the judgment, or any of the orders to enforce that judgment.

Raquel prays that this Court will order the Ignacio Faction—all four Petitioners—to deposit the outstanding 34,258,901.88 pesos that belong to Madame Villarreal²²⁷ plus postjudgment interest at the legal rate of 5% annually.²²⁸ At today's exchange rate (12.99 pesos = \$1)²²⁹ that amounts to \$2,699,204.62 that this Court should order the Ignacio Faction to deposit.

The Ignacio Faction has several more appeals pending in the 13th Court of Appeals and will undoubtedly petition this Court yet again. Raquel further prays that this Court will enter appropriate orders to the fullest extent of its lawful exercise of power when the Ignacio Faction tries to avoid the judgment and their promises yet again.

Further, under Texas Rule of Appellate Procedure 43.6, this Court should make whole Raquel Villarreal Cantú for her appellate fees in retaining Bryan A. Garner as lead appellate counsel in this matter—an expense that Raquel will detail if the Court is inclined to grant this well-deserved relief.

Cantú prays that this Court deny the Ignacio Faction's petition and order that Cantú be made whole for her appellate expenses.

²²⁷ App. 28 at 16; App. 32.

²²⁸ http://www.occc.state.tx.us/pages/int_rates/Index.html (judgment-rate summary) (last visited 2 Apr. 2010). *See Office of Pub. Util. Counsel v. PUC.*, 878 S.W.2d 598, 600 (Tex. 1994) (Court may take judicial notice of applicable interest rates).

²²⁹ <http://www.x-rates.com/> (last visited 2 June 2010).

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Certificate of Service

I certify that on 26 July 2010, a true and correct copy of this brief was served on the following by United States Mail, postage prepaid.

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