AFFIRMED and Opinion Filed February 7, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-01309-CV

CITY OF DALLAS, Appellant
V.
DALLAS SHORT-TERM RENTAL ALLIANCE, SAMMY AFLALO, VERA ELKINS, DANIELLE LINDSEY, AND DENISE LOWRY, Appellees

On Appeal from the 95th District Court
Dallas County, Texas
Trial Court Cause No. DC-23-16845

MEMORANDUM OPINION

Before Justices Garcia, Smith, and Rodriguez[1]
Opinion by Senior Justice Rodriguez

The City of Dallas appeals the trial court's order granting appellees' application for a temporary injunction and enjoining the City from enforcing two ordinances concerning short-term rentals within the city limits. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

[1] The Hon. Yvonne T. Rodriguez, Senior Justice, Assigned.

Background

The City enacted ordinance numbers 32482 and 32473 in 2023 after studying the proliferation of short-term housing rentals in the Dallas market. Ordinance 32482 banned short-term rentals in areas zoned for "single-family residential" use while ordinance 32473 regulated the remaining short-term rentals and provided the process, including fees, through which owners could acquire the necessary permits to operate a short-term rental in Dallas. The Dallas Short-Term Rental Alliance—joined by Sammy Aflalo, Vera Elkins, Danielle Lindsey, and Denise Lowry—challenged the constitutionality of these two ordinances and requested injunctive and declaratory relief. After an evidentiary hearing, the trial court granted appellees' application for a temporary injunction and found appellees met their burden to establish they have a probable right of recovery on their cause of action against the City of Dallas and without injunctive relief, they faced a substantial risk of probable, imminent, and irreparable injuries.

Issues on appeal

In four issues on appeal, the City contends the trial court abused its discretion when it (1) granted appellees' application, (2) concluded appellees satisfied their extraordinary burden to prove their probable right to relief, (3) concluded appellees satisfied their extraordinary burden to prove a probable, imminent, and irreparable injury, and (4) granted equitable relief despite the Alliance's allegedly unclean hands. More specifically, the City argues the ordinances are not preempted by House

Bill 2127 (which it argues is unconstitutional), the trial court erred when it granted equitable relief to the Alliance's members despite it being "likely (if not certain) that some portion of [its] members have not registered or paid [hotel occupancy tax] on their [short-term rental] properties," and the trial court erred when it found appellees are likely to prevail on their arguments concerning due course of law, equal protection, regulatory takings, retroactivity, and the Zoning Enabling Act.

Temporary Injunctions and the Standard of Review

The purpose of a temporary injunction is to preserve the status quo of the subject matter of the litigation pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). We review a trial court's order granting a temporary injunction for an abuse of discretion. *Tex. Educ. Agency v. Hous. Indep. Sch. Dist.*, 660 S.W.3d 108, 116 (Tex. 2023); *see also City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied). A trial court abuses its discretion when it misapplies the law to established facts or when the evidence does not reasonably support the trial court's determination of probable injury or probable right of recovery. *Brown*, 373 S.W.3d at 208. Under this standard, we defer to the trial court's factual findings if the evidence supports them, but we review legal determinations de novo. *State v. Loe*, 692 S.W.3d 215, 226 (Tex. 2024). We view the evidence in the light most favorable to the trial court's order, indulging every reasonable inference in its favor, and defer to the trial court's resolution of

conflicting evidence. *Amend v. Watson*, 333 S.W.3d 625, 627 (Tex. App.—Dallas 2009, no pet.).

To obtain a temporary injunction, an 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. *Butnaru*, 84 S.W.3d at 204. The applicant has the burden of production to offer some evidence on each of these elements. *See In re Tex. Nat. Res. Conservation Comm'n*, 85 S.W.3d 201, 204 (Tex. 2002) (orig. proceeding). At the hearing for a temporary writ of injunction, the trial court is not determining the ultimate rights of the parties; instead, the only question before the trial court is whether applicants demonstrated their entitlement to preservation of the status quo pending trial on the merits. *See Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993) (citing *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981)); *Keystone Life Ins. Co. v. Mktg. Mgmt., Inc.*, 687 S.W.2d 89, 93 (Tex. App.—Dallas 1985, no pet.) ("[T]he only question before the trial court was whether to maintain the status quo—not to determine the ultimate rights of the parties.").

The City's brief does not attack appellees' pleading or proof of a cause of action against it under the Declaratory Judgment Act. Thus, we focus our analysis on appellees' proof of a probable right to the relief sought and a probable, imminent, and irreparable injury in the interim. *See* TEX. R. APP. P. 47.4 ("If the issues are

settled, the court should write a brief memorandum opinion no longer than necessary to advise the parties of the court's decision and the basic reasons for it.").

Analysis

A. Probable right to relief

In its second issue, the City argues the trial court erred when it concluded appellees "satisfied their extraordinary burden to prove a probable right to relief sufficient to enjoin enforcement of the [o]rdinances." In support of this contention, the City cites *Thompson v. City of Palestine* for the proposition that, "When the requested injunction would prevent enforcement of a municipal ordinance, the burden of proof is 'extraordinary.'" The City is mistaken; *Thompson* did not involve a temporary judgment and the supreme court did not require applicants for temporary injunctions against municipal ordinances to meet an "extraordinary" burden of proof. *See* 510 S.W.2d 579, 581 (Tex. 1974).[2]

Similarly, the City cites *Mayhew v. Town of Sunnyvale* for the proposition that, "To overcome this presumption [of an ordinance's validity], plaintiffs have the burden to prove that a challenged ordinance 'has no foundation in reason and is a mere arbitrary or irrational exercise of power.'" *See Mayhew*, 964 S.W.2d at 938.

[2] Instead, *Thompson* says: "We have also held that an 'extraordinary burden' rests on the party attacking the ordinance to show that no conclusive or even controversial issuable facts or conditions exist which would authorize the City Council to exercise the discretion confided to it, and that if reasonable minds may differ as to whether or not a particular zoning ordinance has a substantial relationship to the public health, safety, morals or general welfare, no clear abuse of discretion is shown and the ordinance must stand as a valid exercise of the city's police power." 510 S.W.2d at 581.

Again, the City mistaken. Instead, *Mayhew* (which does not contain the words "enjoin" or "injunction") says,

> A court should not set aside a zoning determination *for a substantive due process violation* unless the action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial elation to the public health, the public morals, the public safety or the public welfare in its proper sense.

Id. (cleaned up and emphasis added). Thus, both *Thompson* and *Mayhew* are inapposite.

Properly construed, the probable right to relief element requires an applicant to present some evidence supporting every element of at least one valid legal theory that raises a *bona fide* issue as to their right to ultimate relief. *See Young Gi Kim v. Ick Soo Oh*, No. 05-19-00947-CV, 2020 WL 2315854, at *2 (Tex. App.—Dallas May 11, 2020, no pet.) (mem. op.). A party can prove their probable right of recovery by alleging the existence of a right and presenting evidence tending to show that the right is being denied. *Bureaucracy Online, Inc. v. Schiller*, 145 S.W.3d 826, 829 (Tex. App.—Dallas 2004, no pet.). State law creates and defines property rights. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

Appellees' pleading alleges they enjoy the right to lease their properties under Texas law. *See Calcasieu Lumber Co. v. Harris*, 77 Tex. 18, 13 S.W. 453, 454 (1890) ("The ownership of land, when the estate is a fee, carries with it the right to use the land in any manner not hurtful to others; and the right to lease it to others, and therefore derive profit, is an incident of such ownership."); *Severance v. Patterson*,

370 S.W.3d 705, 709 (Tex. 2012) (op. on reh'g) ("Private property rights have been described 'as fundamental, natural, inherent, inalienable, not derived from the legislature[,] and as pre-existing even constitutions.'"); *see also City of Grapevine v. Muns*, 651 S.W.3d 317, 346 (Tex. App.—Fort Worth 2021, pet. denied); *cf. id.* at 347 ("The right to lease is a stick within a property owner's metaphorical bundle of rights.") (citing Emily M. Speier, Comment, *Embracing Airbnb: How Cities Can Champion Private Property Rights Without Compromising the Health and Welfare of the Community*, 44 Pepp. L. Rev. 387, 395–97 (2017)). Appellees also introduced evidence the individual appellees had invested hundreds of thousands of dollars, excluding mortgages which exceed millions of dollars, into the short-term rental industry in Dallas and that the City intended to enforce the ordinances as soon as December 13, 2023.

The Texas Constitution provides: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of law of the land." TEX. CONST. art. I, § 19. Appellees have "a vested right to lease their properties and this right is sufficient to support a viable due-course-of law claim." *City of Grapevine*, 651 S.W.3d at 347. Under the circumstances, we conclude appellees proved their probable right of recovery under their due-course-of-law argument because they alleged they possessed well-established rights to lease their property and presented evidence tending to show that the City would deny them those rights by enforcing the two ordinances at issue. *See*

Bureaucracy Online, Inc., 145 S.W.3d at 829; *see also Young Gi Kim*, 2020 WL 2315854, at *2 (requiring "some evidence supporting every element of at least one valid legal theory" to demonstrate a probable right to recovery). Thus, the trial court did not abuse its discretion when it concluded appellees met their burden to establish that they have a probable right of recovery on a cause of action against the City of Dallas. *See Grapevine*, 651 S.W.3d at 346; *see also* TEX. R. APP. P. 47.4; *cf. Brown*, 373 S.W.3d at 208 (a trial court abuses its discretion if the evidence does not reasonably support the trial court's determination of probable injury or probable right of recovery). We overrule the City's second issue.

B. Irreparable injury

While the City's brief purports to assign error concerning the trial court's findings that appellees faced irreparable injury, its arguments are restricted to (1) "A regulatory-taking claim necessarily implies that the purported harm is readily compensable with money damages," and (2) "injunctive relief is inappropriate if a plaintiff has stated a viable regulatory takings claim." The City cites no authority in support of the former and quotes *Patel v. City of Everman* in support of the latter. *See* 179 S.W.3d 1, 13 (Tex. App.—Tyler 2004, pet. denied) ("[Where] a party seeks monetary damages, he seeks a legal remedy, not an equitable one.").

Appellees did not make a regulatory-taking claim and their petition does not seek monetary damages. Instead, appellees sought injunctive and declaratory relief based on the alleged unconstitutionality of the City's ordinances. *See Wilburn v.*

Dacus, No. 05-16-00522-CV, 2017 WL 2464679, at *1 (Tex. App.—Dallas June 7, 2017, pet. denied) (mem. op.) ("It is an appellant's burden to discuss his or her assertions of error, and appellate courts have no duty—or even the right—to perform an independent review of the record and the applicable law to determine whether there was error."); *id.* at *2 ("We will not do the job of the advocate.") (quoting *Happy Harbor Methodist Home, Inc. v. Cowins*, 903 S.W.2d 884, 886 (Tex. App.—Houston [1st Dist.] 1995, no writ)). We recognize the City extensively briefed the viability of appellees' regulatory-taking claim, that appellees alleged the zoning ordinance is a taking, and that the City apparently perceived appellees' allegation to constitute a regulatory-taking claim. We disagree; instead of requesting monetary relief, appellees' allegation supported their argument for injunctive relief.

Additionally, the record contains both ordinances, both of which state they "take effect immediately from and after [their] passage and publication in accordance with the provisions of the Charter of the City of Dallas with enforcement action being taken no earlier than six months" from and after passage. This evidence supports the trial court's finding that without injunctive relief, appellees would suffer probable, imminent, and irreparable injury to their vested property rights. *See City of Grapevine*, 651 S.W.3d at 347 (concluding homeowners had "a vested right to lease their properties and that this right is sufficient to support a viable due-course-of law claim."); *cf. State v. Morales*, 869 S.W.2d 941, 943–44 (Tex. 1994) (to overcome prohibition against civil challenge to penal statute, litigant must allege that

penal statute is unconstitutional and "threatens irreparable injury to vested property rights"). Finally, the record contains at least some evidence supporting the trial court's effectively unchallenged finding that appellees would suffer irreparable injury without injunctive relief, thereby making the trial court's finding binding. *See McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986); *Walker v. Anderson*, 232 S.W.3d 899, 907 (Tex. App.—Dallas 2007, no pet.). Thus, we overrule the City's third issue.

C. Irrelevance of House Bill 2127

In its first issue, the City argues the trial court abused its discretion when it granted appellees' request for injunctive relief. Here, the City does not address whether appellees pled or proved a cause of action against the defendant, a probable right to the relief sought, or a probable, imminent, or irreparable injury in the interim. *See Butnaru*, 84 S.W.3d at 204. Instead, the City argues that its ordinances are not pre-empted by House Bill 2127 (which it argues is unconstitutional). The City also expressly argues that "to determine whether the trial court abused its discretion in granting the [temporary injunction application], it is necessary to address the merits of [appellees'] statutory pre-emption claim."

Assuming *arguendo* that House Bill 2127 does not preempt the City's ordinances, the constitutionality thereof is irrelevant to our review of the trial court's order for an abuse of discretion concerning appellees' due-course-of-law point. *See* TEX. R. APP. P. 47.4. Thus, we overrule the City's first issue on appeal.

D. Hotel occupancy taxes

In its fourth issue, the City argues the trial court erred when it enjoined the City from enforcing the two ordinances at issue because (1) at least 40% of existing short-term rental properties in Dallas have not registered or paid their hotel occupancy taxes, (2) it is more likely than not that some portion of the Alliance's members have not registered or paid their hotel occupancy taxes, and (3) the Alliance therefore sought equitable relief with unclean hands. However, the City cites no cases—and we have found none—in which the payment or nonpayment of hotel occupancy taxes by short-term rental owners prevents the granting of a temporary injunction where an applicant has proven a cause of action against the defendant, a probable right to the relief sought, and a probable, imminent, and irreparable injury in the interim. *See Butnaru*, 84 S.W.3d at 204. Further, the City has failed to show that the Alliance has a duty to pay such taxes or enforce the payment of such taxes amongst its members. Finally, while there is evidence that appellee Elkins was not current on her hotel occupancy tax payments at one time, there is also evidence she has paid it "faithfully since learning of her obligation to do so"; there is no other evidence in the record regarding non-payment of the hotel occupancy tax by any other plaintiff. We therefore conclude the City has not shown the trial court abused its discretion and overrule the City's fourth issue.

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Having overruled the City's four issues on appeal, we affirm the judgment of the trial court.

/Yvonne T. Rodriguez/
YVONNE T. RODRIGUEZ
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CITY OF DALLAS, Appellant No. 05-23-01309-CV V. DALLAS SHORT-TERM RENTAL ALLIANCE, SAMMY AFLALO, VERA ELKINS, DANIELLE LINDSEY, AND DENISE LOWRY, Appellees	On Appeal from the 95th District Court, Dallas County, Texas Trial Court Cause No. DC-23-16845. Opinion delivered by Justice Rodriguez. Justices Garcia and Smith participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees DALLAS SHORT-TERM RENTAL ALLIANCE, SAMMY AFLALO, VERA ELKINS, DANIELLE LINDSEY, AND DENISE LOWRY recover their costs of this appeal from appellant CITY OF DALLAS.

Judgment entered this 7th day of February, 2025.