

REPORTER'S RECORD

CAUSE NO. C10369

3	THE STATE OF TEXAS)	IN THE DISTRICT COURT
	on the Relation of)	
4	GEORGE DARRELL BEST,)	
	Plaintiff)	
5)	
	v.)	SOMERVELL COUNTY, TEXAS
6)	
	PAUL REED HARPER,)	
7	In His Official Capacity as)	
	Director for the Somervell)	
8	County Hospital District,)	
	Defendant)	249TH JUDICIAL DISTRICT

HEARING ON EX PARTE
TEMPORARY RESTRAINING ORDER

JANUARY 15, 2015

On JANUARY 15, 2015, the following proceedings
came on to be heard in the above-entitled and numbered cause
before the Honorable C.C. "KIT" COOKE, Judge presiding, held
in Cleburne, Johnson County, Texas:

Proceedings reported by Machine Shorthand.

COPY

A P P E A R A N C E S

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23
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I N D E X

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P R O C E E D I N G

1
2 THE COURT: Okay. This is Judge Cooke, and I
3 have taking this down Robin Howe, the same lady that took
4 down everything we did in Glen Rose the other day. I got a
5 call this morning from Gina that said that, Andy, you had
6 filed an application for Emergency Ex Parte Temporary
7 Restraining Order and Order Setting Hearing for Temporary
8 Orders. So that is what I need to talk to you-all about and
9 see what, if anything, I can work out between the two
10 parties, and, you know, see -- tell me what's going on.

11 MR. LUCAS: Okay. That is correct, Judge. I
12 filed this application. It's -- it's my belief that the
13 four members of the Board at a meeting tomorrow night --
14 it will take place tomorrow night at 7 o'clock. It's my
15 belief that the CEO and Administrator of Glen Rose Medical
16 Center will be terminated at that meeting. And I think
17 the facts I've alleged are all contained within the
18 application and the corresponding affidavit from Ron
19 Hankins.

20 And, essentially, Judge, I want the Court
21 to consider three things based on this application. One
22 is that, you know, I have -- personally have some
23 responsibility in this matter in that I issued a subpoena
24 to a man and as a result of his testimony, which was
25 made at my demand, he may lose his job. That is the

1 first thing.

2 The second thing is that Harper's testimony
3 in October made it fairly clear that he does not add an
4 agenda item unless he has -- unless he knows he has a
5 consensus to take the action. So in this case Harper has
6 the votes, the four votes; and I think he knows it. And
7 based on my knowledge of this Board and given the Board's
8 history, what is likely to happen tomorrow night is that
9 the item will be called; there will be no discussion; a
10 motion and a second, and a vote will follow. And you can
11 clearly infer by such actions that an improper meeting
12 took place prior to the item being called with the public
13 knowing nothing about it and seeing none of it. So it
14 goes back to my complaint about open meetings violations.

15 The third thing, Judge, and the last thing --
16 and Mr. Dowell may know better than I because he is a
17 labor lawyer -- but I -- I believe that Ray Reynolds could
18 clearly be identified as a whistle-blower if this
19 termination takes place. So I think the Court may be
20 doing these four gentlemen on the Board a favor by
21 preventing this -- this action from occurring. I think
22 they can subject themselves to a significant lawsuit if
23 they take this action.

24 So the -- the facts I have -- I have
25 contained in my application corresponds with the

1 affidavit. I think the Court and Brad have had a chance
2 to review it, and so that is what I am asking for. I -- I
3 think the temporary restraining order is warranted, and I
4 think it's absolutely necessary. So that -- that's all I
5 have, Judge.

6 THE COURT: Okay. Brad.

7 MR. DOWELL: Yes, sir. Thank you, Your
8 Honor. I have got you on the speaker. I have my
9 associate Chris Brown in here, Judge. Is it okay if I
10 continue on speaker?

11 THE COURT: Sure.

12 MR. DOWELL: Thank you, sir. First off, I
13 want to clear up any miscommunication I had with Gina this
14 morning. She had forwarded us at our request a copy of
15 the application. When I got around to my office, I had --
16 (Indiscernible.)

17 (Court Reporter requests that Mr. Dowell
18 speak louder.)

19 THE COURT: Speak up a little louder. She's
20 not quite hearing you.

21 MR. DOWELL: Yes, sir. I wanted to make it
22 clear on the record when I had spoken to Gina this
23 morning, it was my belief that we had not yet received the
24 emergency application. When I got around to my office, I
25 found that I had been sent one appropriately by -- by Andy

1 Lucas. So I didn't want anyone to think that I was
2 accusing him of not serving us. I appreciate the Court's
3 indulgence in notifying us and letting us have this
4 hearing.

5 Judge, as you know, to receive a TRO, you
6 have got to show three things. You have got to show that
7 there is an immediate need, that there is a risk of
8 irreparable harm, and that there is a likelihood that the
9 seeker of the TRO is going to prevail on the merits. And
10 I don't think we've got any of those three, but right now
11 I will focus on the irreparable harm.

12 There's no evidence in the record before the
13 Court to show the possibility of any irreparable harm.
14 Mr. Harper's affidavit falls woefully short in that he --
15 even he, himself, admits that he is doing this upon his
16 information and belief and not upon any facts that he
17 said. In fact, we would object to the paragraphs -- each
18 of the paragraphs that state, "Upon his belief", he is
19 making these assertions.

20 If any cause of action were to exist, it
21 would be a cause of action that would belong solely to
22 Mr. Reynolds. And until the Board takes some action, he
23 has no -- no right, nor any remedy for any cause of
24 action. There's nothing to show that this is being done
25 in retaliation except for the speculation of one board

1 member; and there's certainly nothing in the record that
2 indicates that any impropriety has existed prior to the
3 public hearing that is going to be held tomorrow or
4 whatever time and date that it is going to be held.

5 I believe that the bylaws of the hospital
6 district remain a part of the record in the initial
7 hearing that we had, Judge; and under the bylaws, it takes
8 either the president or three of the directors to request
9 a meeting. There is nothing that indicates that this was
10 doings solely by Mr. Harper or that it was done in any
11 form or fashion of retaliation by him. This was the Board
12 transacting its business, and I don't think it's something
13 the Court should intervene in. That's really all I've got,
14 Judge.

15 THE COURT: All right. Andy.

16 MR. LUCAS: In terms of the affidavit, you
17 know, I believe that the board member would -- would have
18 more knowledge than any of us about what has gone on with
19 the Board. And I think he's drawing reasonable inferences
20 based on his personal knowledge of the activities of the
21 Board. And so I think the -- the affidavit lays out the
22 case very well. You know, if after this -- after this
23 occurs tomorrow night, it -- it's too late for -- for
24 anything to happen other than Mr. Reynolds being left with
25 a lawsuit. That's what I'm trying to prevent.

1 THE COURT: Well, but, you know, my
2 understanding -- and maybe I just heard it all wrong. I
3 thought that's what this was all about anyway. They -- if
4 he got back on the Board, they were going to try to fire
5 him. I mean, that's the indication that I had from the
6 day one we started this. I mean, you know, it was a 4-3
7 vote, and they didn't like him. Right?

8 MR. LUCAS: Judge, that may be -- that may be
9 true; but I think that the timing of this is interesting
10 in that, you know, Reynolds testifies under oath, under
11 subpoena; and then two months -- you know, Harper is off
12 the Board for two months. And the first thing he does
13 when he is reinstated is take this action. And that's
14 what we're complaining of.

15 MR. DOWELL: Well -- excuse me. I didn't
16 mean to interrupt you there, Andy. The only action
17 Mr. Harper has taken is what he was instructed to do under
18 the bylaws, which was to post the agenda item. There's no
19 showing that this was at his instance or at his request.
20 And, Judge, I go back to the issue of irreparable harm.
21 There's certainly no showing of irreparable harm. In
22 fact, the only time that that is even mentioned is in the
23 last paragraph of Mr. Hankins' affidavit where it says,
24 "there will be irreparable harm done"; but it never says
25 what that irreparable harm is or -- or how it manifests

1 itself. If the actions are improper, then there is a
2 legal avenue for Mr. Reynolds or whomever to -- to address
3 any -- any harm that occurs.

4 THE COURT: Anything else, Andy?

5 MR. LUCAS: No, that's all we have, Judge.

6 THE COURT: You are asking me to -- well, and
7 basically do a prior restraint, which we all know -- we
8 studied right from the first year of law school -- is the
9 most extreme remedy you can take in any type thing. You
10 are stopping something from happening before it ever gets
11 there, you know; and generally we -- we don't do that.
12 And, you know, this to me -- and maybe I am just reading
13 the undercurrent, just hearing the testimony, but I saw
14 this was probably coming. I mean, when it was three to
15 three, you know, they had a stalemate. But when -- when
16 Harper -- I mean, when he went back on the Board, I
17 anticipated that something like this was probably going to
18 happen; and then it was going to come down to some type of
19 vote. And I -- I don't disagree with you that he might be
20 a whistle-blower, and he might have action; but that's
21 something that needs to -- we need to see if that's what
22 they do.

23 I take it this was posted properly, and
24 everybody was given notice because everybody is down here
25 filing petitions. Somebody got notice of it all. Is

1 there any gripe about how the notice was posted?

2 MR. LUCAS: Your Honor, the only thing I have
3 seen, there -- I read the newspaper article this morning.
4 And there was a question as to whether it was posted on
5 the medical center's website as -- as was required to be
6 done. I know it was posted at the County Clerk's Office.

7 THE COURT: I've got -- I've got a copy, I
8 mean, that I show it was filed and posted there outside
9 the District Clerk's Office, which --

10 MR. LUCAS: I -- I think that did occur,
11 Judge. So I don't -- I don't know about the -- I have no
12 personal knowledge of what the -- the web --the website
13 issue is. It's just I am getting that from the newspaper
14 story.

15 THE COURT: Yeah, I got you. I don't -- I
16 don't see what else I can do. If I had a hearing, what
17 would you ask me to do? Just stop the meeting?

18 MR. LUCAS: Just prevent Harper's action,
19 the -- the action he would take, which I would claim would
20 be in retaliation -- the action being terminating the
21 CEO.

22 THE COURT: Well, I think -- it's my opinion
23 that action ought to come after. Let's see if he does it
24 first. I am not going to stop with a prior restraint
25 something that I don't know for sure what's going to

1 happen. And we've got seven board members who were
2 elected by the people, and I am not going to grant the
3 TRO. I am going to let -- I'm going to let them have the
4 meeting, and then we are going to go from there.

5 MR. LUCAS: Okay. Thank you, Judge. I
6 appreciate you hearing it.

7 THE COURT: You bet. That's all.

8 MR. DOWELL: Thank you, sir.

9 (End of Proceeding.)
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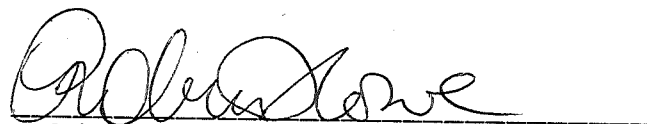
1 THE STATE OF TEXAS)

2 COUNTY OF SOMERVELL)

3 I, Robin S. Howe, Deputy Official Court
4 Reporter in and for the 249th District Court of Somervell
5 County, State of Texas, do hereby certify that the above
6 and foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 in writing by counsel for the parties to be included in
9 the volume of the Reporter's Record, in the above-styled
10 and numbered cause, all of which occurred in open court or
11 in chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 27th day of
16 January, 2015.

17 

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