

CAUSE No. D-1-GN-19-008617

FRANCISCA ACUNA, <i>et al.</i> ,	§	IN THE DISTRICT COURT
<i>Plaintiffs</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
THE CITY OF AUSTIN, TEXAS, <i>et al.</i>	§	
<i>Defendants</i>	§	201st JUDICIAL DISTRICT

**PLAINTIFFS’ (APPELLEES’) RESPONSE IN OPPOSITION TO
DEFENDANTS’ (APPELLANTS’) REQUEST FOR CLARIFICATION
REGARDING THE SCOPE OF THE COURT’S FINAL JUDGMENT**

TO THE HONORABLE JUDGE JAN SOIFER:

COME NOW Plaintiffs (Appellees) Francisca Acuña, et al. and file this Response in Opposition to Defendants’ (Appellants’) Request for Clarification Regarding the Scope of the Court’s Final Judgment and respectfully show as follows:

I.

PROCEDURAL POSTURE

This case was tried to the Court on March 11, 2020 on stipulated facts. The Court signed the Final Judgment on March 18, 2020, granting the declaratory and injunctive relief sought by Plaintiffs Francisca Acuña, et al.

No motion for new trial or motion to modify the injunction was filed by Defendants The City of Austin, Texas, et al. There having been no post-judgment motions filed that would have extended the Court’s plenary power period, the Court’s plenary power ended on April 17, 2020, when the judgment became final.

The Defendants (Appellants) filed their Notice of Appeal on April 16, 2020. The appeal was transferred to the Fourteenth Court of Appeals where it remains pending.

On July 16, 2020, Defendants (Appellants) filed their Request for Clarification Regarding the Scope of the Court’s Final Judgment (“Request for Clarification”). The Request for Clarification is untimely because it was filed after the Court’s plenary power ended on April 17, 2020. According to Texas Rules of Civil Procedure, Rule 329b(d), a trial court has plenary power “to grant a new trial or to vacate, modify, correct, or reform the judgment within thirty days after the judgment is signed.”

II.

THE TRIAL COURT HAS NO JURISDICTION TO “CLARIFY” THE SCOPE OF THE FINAL JUDGMENT.

As discussed above, the trial court’s plenary power period ended on April 17, 2020, and the judgment became final. Any modification, “clarification” or other change to the March 18, 2020, Final Judgment had to occur prior to April 17, 2020 in the absence of any motion being filed that would have extended the plenary power period.

III.

CONTINUING JURISDICTION TO DISSOLVE OR MODIFY AN INJUNCTION REQUIRES A SHOWING OF CHANGED CONDITIONS, A CHANGE OF LAW, OR FUNDAMENTAL ERROR.

Texas law has long recognized the trial court’s continuing jurisdiction over injunctions in certain specific, limited circumstances. *See Tyler v. St. Louis Southwestern Railway Co.*, 405 S.W.2d 330, 333 (Tex. 1966) (dissolution of injunction upon showing of changed conditions); *Smith v. O’Neill*, 813 S.W. 501, 502 (Tex. 1991) (same).

More recently, the Texas Supreme Court held in *Morath v. Tex. Taxpayer & Student Fairness Coalition*, 490 S.W.3d 826, 886 (Tex. 2016), that a trial court generally retains jurisdiction to “modify a permanent injunction if circumstances change.”

“A trial court may modify [injunctive relief] because [of] changed circumstances (internal citations omitted). The movant must prove that circumstances have changed (internal citations omitted). Changed circumstances are conditions that altered the status quo existing after the [injunctive relief] was granted or that made the [injunctive relief] unnecessary or improper.”

Henke v. Peoples State Bank, 6 S.W.3d 717, 721 (Tex. App.—Corpus Christi 1999, pet. dismissed w.o.j.).

In addition to “changed circumstances,” a change in the law can also give rise to continuing jurisdiction to dissolve an injunction. In *Pidgeon v. Turner*, 538 S.W.3d 73, 84 (Tex. 2017), the Texas Supreme Court held that the trial court retained jurisdiction to “review, open, vacate or modify” an injunction when conditions have changed, “including a change in the law.” In that case, a challenge was made to the City of Houston’s policy of providing employee benefits to same-sex persons who were legally married outside of Texas. An injunction against the same-sex benefits was issued by the trial court. *Id.* at 75. While the case was pending, the United States Supreme Court held that states may not “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.” *Obergefell v. Hodges*, 576 U.S. 644, _____, 135 S. Ct. 2584, 2605 (2015).

“When conditions have changed, including a change in the law, the trial court may consider the injunction anew in light of the new law or circumstances.”

Pidgeon v. Turner, 538 S.W.3d at 84.

Finally, a trial court retains continuing jurisdiction to dissolve or modify an injunction based on fundamental error:

“A trial court may modify [injunctive relief] because of fundamental error or changed circumstances but has no duty to reconsider the grant of [injunctive relief] if the movant fails to present *new* evidence showing fundamental error or changed conditions.”

Universal Health Servs., Inc. v. Thompson, 24 S.W.3d 570, 580 (Tex. App.—Austin 2000, no pet.).

“Fundamental error exists when ‘the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as the interest is declared in the statutes or the Constitution of Texas.’”

Id. (citing *Pirtle v. Gregory*, 629 S.W.3d 919, 920 (Tex. 1982)).

IV.

DEFENDANTS’ REQUEST FOR CLARIFICATION FAILS TO ASSERT CHANGE OF CONDITIONS, CHANGE OF LAW, OR FUNDAMENTAL ERROR.

Defendants do not assert any of the three reasons upon which the trial court could retain continuing jurisdiction over the March 18, 2020, Final Judgment as it pertains to the injunctive relief granted.

Rather, Defendants assert that the scope of the injunction is “unnecessarily broad by applying the notice provision to *either* zoning regulation changes or zoning district boundary changes.” Defendants’ Request for Clarification at p. 2 (emphasis in original).

Defendants now argue that the notice provision requires *both* a change in a zoning regulation *and* a change to a zoning district boundary. However, the statute does not say that. First, protest rights clearly apply to either a change in zoning regulation or a district boundary: *See* Texas Local Govt. Code § 211.006(d) (emphasis added). Notice of a zoning change necessarily precedes protests.¹ Second, the statutory notice requirement is triggered by “a proposed change in a zoning classification.” *See* § 211.007(c). A change in a zoning classification occurs in two possible instances: a change in a zoning regulation, or a change in a zoning district boundary. *See* § 211.002. There is no requirement in Chapter 211 that notice is given only if there is both a

¹ As a procedural failsafe mechanism, Defendants could rely on Texas Local Govt. Code § 211.006(d) and enact a noticed and protested change to a regulation or boundary by a three-fourths vote of the governing body.

change in a zoning regulation *and* a change in a zoning boundary. The Court, in fact, rejected this very argument in its Final Judgment.

The “clarification” sought by Defendants is an attempt to rewrite not just the judgment but the statute, similar to their failed argument that the statute does not apply to “comprehensive zoning revisions.”

V.

CONCLUSION


The clarification sought by Defendants falls outside the court’s plenary power period and should be denied for a lack of jurisdiction.

Defendants do not invoke any of the three situations where the court has continuing jurisdiction over the injunctive relief—*i.e.*, change of circumstances, change in the law or fundamental error.

The Defendants’ Request for Clarification Regarding the Scope of the Court’s Final Judgment should be denied.

Respectfully submitted,

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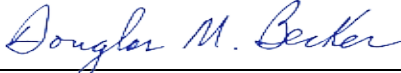
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CERTIFICATE OF SERVICE

I certify that on July 17, 2020, a true copy of the foregoing was served on counsel for Defendants in accordance with Texas Rule of Civil Procedure 21a via e-service through the Texas E-file system.

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