

Not Reported in S.W.2d, 1987 WL 5188 (Tex.App.-Hous. (1 Dist.))
 (Cite as: 1987 WL 5188 (Tex.App.-Hous. (1 Dist.)))

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Court of Appeals of Texas, Houston (1st Dist.).
 CHAMPION FOREST BAPTIST CHURCH, APPELLANT,

vs.v

John W. ROWE, III, et al., Appellees.

No. 01-86-654-CV.

Jan. 8, 1987.

On Appeal from the 281st District Court of Harris County, Texas, Trial Court Cause No. 86-21839.

Before SAMBASS, COHEN and DUNN, JJ.

OPINION

PER CURIAM.

*1 This is an accelerated appeal from a temporary order enjoining appellant from constructing a parking garage on its property.

Since 1973, appellant has owned 8.89 acres on Champion Forest Drive, located in the Greenwood Forest subdivision, a planned residential subdivision. In 1980, appellant decided to build a parking garage to facilitate parking for its 6,000 member congregation. Appellees are homeowners residing in the Greenwood Forest Subdivision. In March of 1986, after they were informed of appellant's intent to construct the parking garage on the southwest portion of the property, appellees instituted an action to permanently enjoin the construction of the garage and for monetary damages,

and requested a temporary injunction.

Between June 4th and July 28, 1986, a hearing was held on appellees' request for a temporary injunction. At the hearing appellees presented evidence that the garage would block wind and light, and that the residents viewed it as an eyesore and health hazard. There was testimony that the noise following church services and use of the parking lot at night by teenagers bothered neighbors, who had called both the church and the sheriff in the past. Residents testified that the view from the garage would invade their privacy and that they were concerned about fumes, lights, noise, and criminal activities associated with parking garages, which would be introduced into their residential neighborhood. There was evidence that the church was currently using a shuttle bus to bring the approximately 3,000 members to services, and that speed and traffic problems would be augmented by use of a garage.

In response, the appellant presented evidence that it had made all reasonable efforts to plan an aesthetic two-story garage, with efficiency traffic flow and good security provisions. There was also evidence that although the church sought to accommodate its neighbors by prosecuting those who abused its property, and installing lights to discourage vandalism, there were some residents who objected to every action by the church.

After hearing the evidence, the trial court granted appellees' request for a temporary injunction.

In six grounds of error, appellant contends that the trial court erred in granting a temporary injunction because: 1) the injunction was premature, 2) appellees had an adequate remedy at law, 3) appellees' aesthetic objections to the structure do not constitute it a nuisance, 4) the injunction was based on irrelevant evi-

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dence, 5) the court refused to balance the equities, and 6) appellees failed to prove a probable right to relief.

The question before the trial court in a temporary injunction hearing is whether the applicant is entitled to preservation of the status quo pending trial on the merits. See Davis v. Huey, 571 S.W.2d 859 (Tex.1978). "Status quo" means the last, actual, peaceable, non-contested status that preceded the pending controversy. State v. Southwestern Bell Tel. Co., 526 S.W.2d 526 (Tex.1975). To warrant issuance of a temporary injunction, the applicant need only plead a cause of action and show a probable right on final trial to the relief sought and probable injury in the interim. *Id.* at 528. The applicant is not required to establish that he will finally prevail. Transport Co. of Texas v. Robertson Transports, 152 Tex. 551, 261 S.W.2d 549 (1953). The applicant must further show that no adequate legal remedy exists. In order for a legal remedy to be adequate, it must give the applicant complete, final, and equal relief. David v. Bache Halsey Stuart Shields, Inc., 630 S.W.2d 754 (Tex.App.-Houston [1st Dist.] 1982, no writ). Once the applicant has established a probable right and probable injury, the determination of whether to issue a temporary injunction is within the sound discretion of the trial court. Transport Co. of Texas v. Robertson Transports, 152 Tex. 551, 261 S.W.2d 549.

*2 On appeal from a temporary injunction, this Court may determine only whether the trial court abused its discretion. In determining whether there has been an abuse of discretion, this Court must draw all inferences from the evidence in the light most favorable to the trial court's judgment. David, 630 S.W.2d at 757. The trial court's order must be sustained if there is any evidence to sustain the findings. Becker v. Becker, 623 S.W.2d 757 (Tex.App.-Houston [1st Dist.] 1981, no writ).

Appellant correctly contends that a church is not a nuisance per se, that "ancient lights" are not protected under Texas law, and that conditions that annoy

because they are disagreeable, unsightly, and undesirable are not nuisances simply because they affect the value of property. Dallas Land & Loan Co. v. Garrett, 276 S.W. 471 (Tex.Civ.App.-Dallas 1925, no writ). The right to use one's own property, however, is not without limitation. Rogers v. Scaling, 298 S.W.2d 877 (Tex.Civ.App.-Fort Worth 1957, writ ref'd n.r.e.); see also Hoover v. Horton, 209 S.W.2d 646, 649 (Tex.Civ.App.-Amarillo 1948, no writ). The Supreme Court of Texas has held that any structure, including a church, by the time and manner of its use, may interfere with the rights of others so as to be subject to injunction. Waggoner v. Floral Heights Baptist Church, 116 Tex. 187, 288 S.W. 129 (1926).

Whether the use of a building will necessarily create a nuisance is a question of fact which can be tried in advance of the construction of the building, provided that pleadings state that a resulting nuisance is a necessary consequence of the proposed use. Assembly of God Church of Tahoka v. Bradley, 196 S.W.2d 696 (Tex.Civ.App.-Amarillo 1946, no writ); compare Orsinger v. Schoenfeld, 269 S.W.2d 561, 564 (Tex.Civ.App.-San Antonio 1954, writ ref'd n.r.e.).

The court heard relevant evidence supporting each party's position and considered the equities. The temporary injunction preserves the status quo pending final determination of whether the proposed use would constitute a nuisance. We may not substitute our own judgment for that of the trial court, and the issue is not whether we would have made the same ruling, but whether the trial judge abused his discretion. We find no abuse of discretion. Appellant's six points of error are overruled.

The order granting the temporary injunction is affirmed.

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