

Keigley v. Texas

Texas Court of Appeals UNPUBLISHED, 2003 WL 21999891 August 25, 2003

Summary of Opinion

Keigley's ownership of horses and goats was taken away by a court on the ground he had cruelly treated them. In this opinion, the Court of Appeals agrees with the trial court's decision to order the animals sold at public sale.

Text of Opinion

In three issues Mark Keigley challenges the trial court's order of sale of Keigley's horses and goats on grounds of cruel treatment pursuant to section 821.023 of the health and safety code. *See* Tex. Health & Safety Code Ann. § 821.023(e) (Vernon 2003). Resolving Keigley's issues against him, we affirm the order of sale. Because the issues are settled, we issue this memorandum opinion. *See* Tex.R.App. P. 47.

BACKGROUND

The Grayson County Sheriff's Department obtained a warrant and seized seven horses and thirty-nine goats from seventy-two acres of land located in rural Grayson County belonging to Keigley and his father, Paul Keigley. Keigley pleaded nolo contendere before the justice of the peace, who rendered judgment against Keigley. *See* Tex. Health & Safety Code Ann. § 821.022 (Vernon 2003). Keigley filed a notice of appeal to appeal the case to the County Court at Law. After a hearing before the court, the trial court signed a judgment. The judgment, entitled an order of sale, recited that the court found Keigley had cruelly treated the animals, divested Keigley of ownership, and ordered that the animals be sold at public auction. *See id.* §§ 821.021, 821.023(e). Keigley filed a motion for new trial, which was denied. Keigley timely appeals the order of sale.

JURY DEMAND

In his first issue, Keigley contends that the trial court abused its discretion when it refused to grant Keigley's jury demand. Keigley is entitled to a jury trial in the county court under chapter 821. *Granger v. Folk*, 931 S.W.2d 390, 393 (Tex.App.-Beaumont 1996, orig. proceeding). A litigant must take affirmative action to avoid a waiver of his right to jury trial. *Walker v. Walker*, 619 S.W.2d 196, 197-98 (Tex.Civ.App.-Tyler 1981, writ ref'd n.r.e.). A party perfects its right to a jury trial by following the procedure set out in the rules of civil procedure: not less than thirty days before trial, the party must make a written request for a jury and pay a jury fee or, if he is unable to make the jury fee deposit, file an oath of inability. *Higginbotham v. Collateral Prot., Inc.*, 859 S.W.2d 487, 489 (Tex.App.-Houston [1st Dist.] 1993, writ denied); *see also* Tex. Rs. Civ. P. 216, 217.

It is undisputed that Keigley did not file a written request for a jury, pay a jury fee, or file an oath of inability to make the jury fee deposit. Keigley contends that he could not comply with either rule 216 or 217 because the court gave him insufficient notice.

The deadline for requesting a jury is triggered by the trial court's notice that the case is set for trial. *See Hardin v. Hardin*, 932 S.W.2d 566, 567 (Tex.App.-Tyler 1995, no writ). A court may set contested cases on any parties' request or on the court's own motion, with reasonable notice of not less than forty-five

days' notice to the parties of the first trial setting, absent agreement otherwise. Tex.R. Civ. P. 245. Keigley argues that the record does not show that he received forty-five days' notice. However, error resulting from a trial court's failure to provide parties proper notice under rule 245 is waived if a party proceeds to trial and fails to object timely and specifically to the lack of notice. *State Farm Fire & Cas. Co. v. Price*, 845 S.W.2d 427, 432 (Tex.App.-Amarillo 1992, writ dismissed by agreement); see Tex.R.App. P. 33.1 (providing for preservation of complaints on appeal).

When the case was called for trial, Keigley told the court that he had not been informed of a jury fee and he wanted a jury trial. However, Keigley failed to pay the jury fee, failed to object to proceeding without a jury, and failed to file a motion for continuance. See *Walker*, 619 S.W.2d at 197-98; see also *Sunwest Reliance Acquisitions Group, Inc. v. Provident Nat'l Assurance Co.*, 875 S.W.2d 385, 387 (Tex.App.-Dallas 1993, no writ) (litigant must take affirmative action to avoid a waiver of his perfected right to jury trial). Because the record shows that Keigley proceeded to trial and failed to object to the lack of notice, Keigley waived any error resulting from insufficient notice pursuant to rule 245. We resolve his first issue against him.

SUFFICIENCY OF THE EVIDENCE

In his second issue, Keigley argues the trial court abused its discretion in ordering the goats sold at public auction by finding that Mark Keigley committed cruelty to the goats. In the third issue, Keigley contends the trial court abused its discretion in finding that Keigley treated the animals cruelly. We construe these issues as attacks on the sufficiency of the evidence supporting the trial court's finding. We apply the well-established standards of review. See *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex.1994) (providing that trial court's fact findings are reviewed for legal and factual sufficiency of evidence on same standard as review of evidence supporting jury findings); *Pine v. State*, 921 S.W.2d 866, 874-75 (Tex.App.-Houston [14th Dist.] 1996, writ dismissed w.o.j.) (stating standards of review for legal and factual sufficiency of evidence).

"Cruel treatment" includes unreasonably depriving animals of necessary food, care, or shelter or cruelly confining them. Tex. Health & Safety Code Ann. § 821.021. If the court finds that an owner has cruelly treated an animal that is farm livestock, including goats and horses, the owner shall be divested of ownership, and the court shall order a public sale of the animal. *Id.* § 821.023(e).

In his second issue, Keigley argues the evidence showed that Paul Keigley, Mark's father, owned the goats. Keigley points to Paul's testimony that he owned the goats and Mark owned the horses. However, Mark testified that he and his father bought the goats together and both were responsible for feeding and looking after them. Further, the State presented evidence that an entire trailer was "full of goats" without food or water, that they were hungry, and that the hay in the trailer was soaked with urine and feces. A veterinarian's report showed that some of the goats were underweight and in poor condition. Paul testified that he fed the goats hay every ten days, fed them corn every day, and locked them in the trailer every night to protect the young goats. Paul testified that the waste made good bedding.

Regarding the horses, there was evidence that the horses were in poor condition because they were underweight and lethargic. There was evidence the horses did not have sufficient food. There was evidence the horses had protruding backbones and ribs, indicating undernourishment and poor health. One of the horses was in a corral with hock-deep mud, which the veterinarian described as "unacceptable." There was evidence that the fences were in poor condition and horses had gotten out of the pasture. Although Mark, not Paul, lived on the property, Paul testified he fed the horses every day in Mark's absence. Paul further testified that he fed the horses grain that he kept in his truck, not on the property. Mark testified that two of the horses had recently been brought from another farm and were thin. Mark testified that the horses were properly fed and were in "adequate" condition.

Applying the appropriate standard of review to this evidence and all the record evidence, we conclude that the evidence is legally and factually sufficient to support the trial court's finding that Keigley cruelly treated both the goats and the horses. Thus, we resolve Keigley's second and third issues against him, and affirm the trial court's judgment.