NUMBER 13-16-00515-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI—EDINBURG

TEXAS WRECKER SERVICE, RALPH RIVERA, AND NORMA RIVERA, Appellants,

v.

D. R. RESENDEZ AND R. SCHALMAN D/B/A APOLLO TOWING/EASY RIDER WRECKER SERVICE, Appellees.

On appeal from the County Court at Law No. 4 of Nueces County, Texas.

NUMBER 13-16-00698-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI—EDINBURG

IN RE NORMA RIVERA, RALPH RIVERA, AND TEXAS WRECKER SERVICE

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Contreras and Longoria
Memorandum Opinion by Chief Justice Valdez

In cause number 13-16-00515-CV, Norma Rivera, Ralph Rivera, and Texas Wrecker Service have appealed a temporary injunction rendered against them in favor of plaintiffs below, D. R. Resendez and R. Schalman d/b/a Apollo Towing/Easy Rider Wrecker Service. In cause number 13-16-00698-CV, these defendants have filed a petition for writ of mandamus contending that the trial court erred in refusing to dismiss the underlying case for want of prosecution. Because the matters in the appeal and original proceeding are related, we issue this single opinion in both causes in the interest of judicial efficiency. As stated herein, we reverse and remand in the appeal and we conditionally grant the petition for writ of mandamus.[1]

I. BACKGROUND

On August 31, 2007, D. R. Resendez and R. Schalman d/b/a Apollo Towing/Easy Rider Wrecker Service brought suit against Norma Rivera, Ralph Rivera, and Texas Wrecker Service. Both plaintiffs and defendants own towing businesses; the plaintiffs alleged that the defendants filed false claims against them with the City of Corpus Christi, disparaged their businesses, and harassed their employees. On October 16, 2007, the trial court held a hearing and entered a "Preliminary Injunction Order" which states as follows:

[1] These causes both arise from trial court cause number 07-61993-4 in the County Court at Law No. 4 of Nueces County, Texas, and the respondent in the original proceeding is the Honorable Mark H. Woerner.

On this the 16th day of October, 2007 Petitioner made application before the court for its issuance of a preliminary injunction order.

The Court, having examined the pleadings of Petitioner and affidavit, finds that Petitioners and Respondent have agreed that certain actions should be prohibited until final ruling in this case.

It is therefore ordered that the . . . Petitioner and Respondents and their agents and employees are hereby immediately restrained as follows:

1) Petitioner and Respondent shall not make disparaging comments about each other or respective business practices to any customer. Neither party shall file complaints about the other, its agents or employees with any customer or other entity during the period of this order.

2) Upon request of Rod Robertson Enterprises (RRE), Respondent agrees to complete the towing services requested or required by Rod Robertson Enterprises, including delivering property currently held by Respondent to Petitioner when and where directed by RRE. Both parties agree not to hinder or harass the other in the performance of their duties to RRE.

3) Petitioner and Respondent, their employees or agents shall not follow or hinder or harass their employees or agents during the performance of their duties, except to have contact as required under any contract involving both companies.

4) Petitioner and Respondent, their agents and employees shall not conduct surveillance on, photograph or harass or follow each other and their agents and employees to their homes or place of business.

5) Petitioner and Respondent agree to keep the existence of this cause of action confidential and shall not, from the date of this order, inform any customers or potential customers about this litigation, except as required by law.

6) As damages are difficult to estimate for violations of this order, any party proving a violation before this court shall be entitled to $1000.00 per violation and reasonable and necessary attorneys' fees as shown by affidavit. The parties agree to first voluntarily mediate any dispute which may arise in the interpretation or enforcement of this order. The parties further agree to share equally in the costs of any and all mediations.

It is further ordered that:

> This injunction order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law or trial on the merits. This order shall be binding on Petitioner and on Respondents and on their agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
>
> A Bond is [hereby] set in the amount of $100.00.

This order was signed by the judge of the trial court, but not by the parties.[2]

During the remainder of 2007 and 2008, there were minimal activities in the case. The defendants propounded interrogatories and requests for production to the plaintiffs, the parties entered into a Rule 11 agreement regarding discovery, and the plaintiffs filed responses to the defendants' discovery requests. *See* TEX. R. CIV. P. 11. In 2008, the defendants filed a motion to set aside the preliminary injunction. The parties held a docket control conference and the case was set for trial, but that trial did not occur. During this period of time, counsel for the defendants changed three separate times through motions for substitution of counsel which were granted by the trial court. At the end of 2008, the defendants informed the plaintiffs that they were seeking new counsel and asked that no hearings be scheduled until they obtained new counsel. Approximately one month later, new counsel for the defendants made an appearance in the case. The parties subsequently scheduled a "status hearing" which was passed by agreement.

In 2009, one of the defendants filed a motion to set aside the preliminary injunction and a hearing on that motion was set; however, there is no record of any hearing that

[2] This order contains additional provisions, not recited here, that were struck through and initialed by the trial court judge. This order does not appear in the record as sealed, and none of the parties to this appeal or original proceeding have requested that this order be sealed or otherwise treated as confidential. Accordingly, we do not treat it as confidential here.

might have been held or any action taken on the motion. The case was set for trial, but trial did not occur.

In 2010, the trial court held a docket control hearing and the case was set for trial, but no trial occurred. Based on the record, it appears that a hearing on an unspecified matter was set; however, there is no record of any hearing that might have been held or any action taken as a result.

In 2011 and 2012, the case lay dormant.

In 2013, the matter was set on the dismissal docket. There is no record from any proceeding in this case on that date, and the trial court did not dismiss the case.

In 2014 and 2015, the case lay dormant.

In 2016, the defendants filed a "Motion to Dissolve and Dismiss" contending that the 2007 injunction order was void and that the case should be dismissed for want of prosecution. The plaintiffs filed a response to this motion which asserted that the defendants had waived their right to attack the injunction because they had agreed to it and because they failed to appeal it. On September 22, 2016, the trial court held a non-evidentiary hearing on the defendants' motion to dissolve and dismiss. In addition to making arguments regarding dissolving the injunction, the parties focused on the plaintiffs' prosecution of this lawsuit.

Counsel for plaintiffs asserted that he recalled appearing at "some of these dismissal dockets" and asking that the case be retained. He stated that it was a "big problem" that the defendants had been represented by three or four different attorneys. Counsel argued that the parties went forward with discovery and "other things" for a period of time and requested docket control orders. According to plaintiffs' counsel:

> For some reason a trial date was never set, and with the status of the order the way it was I was sort of fine with that at some point, but I knew that we would end up needing to get a trial date, but there was no attorney at some point either to deal with – in regards to that as well. So unfortunately it did sit for a long period of time and the status quo was maintained.

In contrast, counsel for the defendants stated that the record indicated that there were a "couple" of trial settings and a "couple" of docket control orders, but the case never made it to trial. He argued that there was no explanation regarding why the trial court did not dismiss the case for want of prosecution in 2013. He asserted that in 2013, plaintiffs' counsel filed a separate suit in a different court which "involves claims . . . related to this 2007 injunction order and additional claims" such as defamation.[3]

The trial court denied the defendants' motions to dissolve and dismiss. The defendants appealed the trial court's denial of their motion to dissolve the temporary injunction in our cause number 13-16-00515-CV and filed a petition for writ of mandamus seeking to set aside the trial court's denial of their motion to dismiss in our cause number 13-16-00698-CV.

II. Appeal of the Preliminary Injunction

We turn first to the appeal. By one issue, appellants contend that the trial court abused its discretion by refusing to declare the temporary injunction order void and dissolve the injunction when the order is fatally defective for failing to include a trial date or the reasons for its issuance as required by Texas Rule of Civil Procedure 683. *See* TEX. R. CIV. P. 683. In response, appellees contend that the temporary injunction order

[3] The lawsuit, *DRR & RS, Inc. d/b/a Apollo Towing and Easy Rider Wrecker Service v. Ralph Rivera and Norma Rivera and Morgan Towing, Inc. d/b/a Texas Wrecker Service*, was filed as cause number 2013DCV-5577-H in the 347th District Court of Nueces County. This lawsuit references the underlying matter and the injunction rendered herein, and includes causes of action for injunctive relief, tortious interference with contract, libel, slander, defamation per se, and business disparagement.

was reached by agreement between the parties, and any error in the form or substance of the injunction has thus been waived.

A. Standard of Review

We review a trial court's decision to grant or deny a motion to dissolve a temporary injunction under an abuse discretion standard. *Conlin v. Haun*, 419 S.W.3d 682, 686 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *see also Lance v. Robinson*, No. 04–12–00754–CV, 2013 WL 820590, at *2 (Tex. App.—San Antonio 2013, no pet.) (mem. op). A trial court has broad discretion in denying or granting such a motion. *Stewart Beach Condo. Homeowners Ass'n, Inc. v. Gili N Prop Investments, L.L.C.*, 481 S.W.3d 336, 342–43 (Tex. App.—Houston [1st Dist.] 2015, no pet.). We only review the validity of the temporary injunction order; we do not review the merits of the underlying case. *INEOS Grp. Ltd. v. Chevron Phillips Chem. Co.*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.); see TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (West, Westlaw through 2015 R.S.) (granting courts of appeals jurisdiction over interlocutory appeals of orders "grant[ing] or overrul[ing] a motion to dissolve a temporary injunction"). We review the evidence in the light most favorable to the district court's ruling, drawing all legitimate inferences from the evidence and deferring to the district court's resolution of conflicting evidence. *Id.*

B. Analysis

In this case, appellants contend that the injunction fails to meet the requirements of Texas Rule of Civil Procedure 683 insofar as it fails to set forth the reasons that it was issued and it fails to include a provision setting the case for trial on the merits. *See* TEX. R. CIV. P. 683; *see also id*. R. 684. Rule 683 provides:

> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
>
> Every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought. The appeal of a temporary injunction shall constitute no cause for delay of the trial.

TEX. R. CIV. P. 683. The procedural requirements of this rule are mandatory, including the requirement that the order must set the cause for trial on the merits. *Qwest Commc'ns Corp. v. AT&T Corp*., 24 S.W.3d 334, 337 (Tex. 2000). And an order granting a temporary injunction that does not meet this requirement is "subject to being declared void and dissolved." *Id.*; *see also In re Garza*, 126 S.W.3d 268, 271–73 (Tex. App.—San Antonio 2003, orig. proceeding [mand. denied]) (holding that a temporary injunction order that failed to comply with rule 683 was void). "The reason for requiring that an injunction order include a trial date is to prevent [a] temporary injunction from effectively becoming permanent without a trial." *EOG Res., Inc. v. Gutierrez*, 75 S.W.3d 50, 53 (Tex. App.—San Antonio 2002, no pet.).

In this case, the trial court's injunction order does not include a trial date and is thus void. *See Qwest Commc'ns Corp.,* 24 S.W.3d at 337. Appellees contend, however, that any alleged resulting error is nullified because the parties agreed to the injunction. The preliminary injunction order states that the court "finds" that the plaintiffs and defendants have agreed that certain actions should be prohibited until final ruling. At the hearing on this matter, counsel for plaintiffs asserted that the parties had agreed to the

order, and thus the order was rendered unassailable. In support of this argument, appellees cite our Court's opinion in *Henke v. Peoples State Bank*, which states that "a party may not appeal from or attack a judgment to which he has agreed, absent allegation and proof of fraud, collusion, or misrepresentation." 6 S.W.3d 717, 720 (Tex. App.—Corpus Christi 1999, pet. dism'd w.o.j.). In that case, the party challenging the order had "actively agreed" to the temporary injunction. *Id.* We said:

> Henke correctly argues that the orders to which he and Peoples State Bank agreed, and which the trial court signed, are technically subject to being declared void and dissolved because they fail to meet the requirements of Rule 683. However, because Henke failed to appeal the trial court's order granting the temporary injunction and the subsequent modifying orders, we hold Henke has waived his right to complain of any errors in those orders.
>
> Further, the general rule is that a party may not appeal from or attack a judgment to which he has agreed, absent allegation and proof of fraud, collusion, or misrepresentation. *First American Title Ins. Co. v. Adams*, 829 S.W.2d 356, 364 (Tex. App.—Corpus Christi 1992, writ denied) (citing *Bexar County Criminal Dist. Attorney's Office v. Mayo*, 773 S.W.2d 642, 644 (Tex. App.—San Antonio 1989, no writ) and *Charalambous v. Jean Lafitte Corp.*, 652 S.W.2d 521, 525 (Tex. App.—El Paso 1983, writ ref'd n.r.e.)). We find no evidence in the record of fraud, collusion, or misrepresentation. Because he agreed to the orders, we hold Henke has waived any error and has waived his right to appeal.

Id.

We disagree that *Henke* controls our analysis of this case. After we decided *Henke*, the Texas Supreme Court clarified that orders that fail to fulfill the requirements of Rule 683 are not merely voidable, but are void. *See In re Office of Attorney Gen.*, 257 S.W.3d 695, 697 (Tex. 2008) (orig. proceeding); *Qwest Commc'ns Corp.*, 24 S.W.3d at 337. Under this more recent and controlling authority, the analysis in *Henke* no longer stands. Further, in *Henke,* we did not discuss whether a party can agree to a void order because that issue was not presented to the court. *See generally Henke*, 6 S.W.3d at

720. When we subsequently considered this issue, albeit in dicta, we concluded that a party who agrees to a void order has agreed to nothing. *See City of McAllen v. McAllen Police Officers' Union*, No. 13-10-00609-CV, 2011 WL 2175606, at *3 (Tex. App.—Corpus Christi June 2, 2011, no pet.) (mem. op.). Our sister courts who have considered the issue of whether a party can agree to a temporary injunction which is void have soundly rejected this proposition. We agree with our sister courts that a party who has agreed to a void order has agreed to nothing. *See, e.g., Conlin v. Haun*, 419 S.W.3d 682, 686 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *In re Corcoran*, 343 S.W.3d 268, 269 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding); *Leighton v. Rebeles*, 343 S.W.3d 270, 273 (Tex. App.—Dallas 2011, no pet.); *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, orig. proceeding); *Evans v. C. Woods, Inc.*, 34 S.W.3d 581, 583 (Tex. App.—Tyler 1999, no pet); *see also State Bd. for Educator Certification v. Montalvo*, No. 03-12-00723-CV, 2013 WL 1405883, at *1 (Tex. App.—Austin Apr. 3, 2013, no pet.) (mem. op.); *Poole v. U.S. Money Reserve, Inc.*, No. 09-08-00137-CV, 2008 WL 4735602, at *12 (Tex. App.—Beaumont Oct. 30, 2008, no pet.) (mem. op.). Accordingly, we hold that the order granting the temporary injunction is void, and the trial court erred by denying the motion to dissolve the temporary injunction. *See Qwest Commc'ns Corp*., 24 S.W.3d at 337; *Crenshaw v. Chapman*, 814 S.W.2d 400, 402 (Tex. App.—Waco 1991, no pet.) (holding that a temporary injunction order imposing a "freeze" on estate assets was "fatally defective" and void where the order did not set the case for trial).

C. Conclusion

We sustain the appellants' sole issue on appeal. We reverse the trial court's order denying the motion to dissolve the temporary injunction, and we remand with instructions to the trial court to dissolve the temporary injunction.

III. Petition for Writ of Mandamus

By petition for writ of mandamus, the defendants contend that the trial court abused its discretion in refusing to dismiss the underlying case for want of prosecution. According to the defendants, the plaintiffs have failed to prosecute the case with diligence and "binding Supreme Court precedent" establishes that the denial of their motion was an abuse of discretion. This Court requested and received a response to the petition from plaintiffs, who assert generally that the case has been prosecuted fully.

A. Standard for Mandamus Review

To obtain relief by writ of mandamus, a relator must establish that an underlying order is void or a clear abuse of discretion and that no adequate appellate remedy exists. *In re Nationwide Ins. Co. of Am*., 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable, made without regard for guiding legal principles or supporting evidence. *In re Nationwide*, 494 S.W.3d at 712; *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). Similarly, a trial court abuses its discretion when it fails to analyze or apply the law correctly. *In re Nationwide*, 494 S.W.3d at 712; *In re Sw. Bell Tel. Co*., 226 S.W.3d 400, 403 (Tex. 2007) (orig. proceeding). We determine the adequacy of an appellate remedy by balancing the

benefits of mandamus review against the detriments. *In re Essex Ins. Co*., 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding). A trial court's erroneous refusal to dismiss a case for want of prosecution cannot effectively be challenged on appeal, and the refusal is thus subject to review by petition for writ of mandamus. *In re Conner*, 458 S.W.3d 532, 535 (Tex. 2015) (orig. proceeding) (per curiam).

B. Analysis

Trial courts are generally granted considerable discretion when it comes to managing their dockets; however, such discretion is not absolute. *See id.* at 534. The Texas Rules of Judicial Administration require district and statutory county courts to ensure, "so far as reasonably possible," that most civil cases are brought to trial or final disposition within eighteen months of the appearance date. *See* TEX. R. JUD. ADMIN. 6.1(b)(1); *In re Conner*, 458 S.W.3d at 535. Accordingly, a plaintiff has a duty to prosecute its lawsuit to a conclusion with "reasonable diligence" and if the plaintiff fails in that duty, the trial court may dismiss the case for want of prosecution. *In re Conner*, 458 S.W.3d at 534; *Callahan v. Staples*, 161 S.W.2d 489, 491 (Tex. 1942).

The trial court may dismiss a suit that has not been prosecuted with reasonable diligence under either its inherent authority or Rule 165a of the Texas Rules of Civil Procedure. *In re Conner*, 458 S.W.3d at 534; *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). Under Texas Rule of Civil Procedure 165a, the trial court may dismiss a case for want of prosecution when either a party seeking affirmative relief fails to appear for any hearing or trial of which the party had notice or, as applicable here, when a case is "not disposed of within [the] time standards promulgated by the

Supreme Court." TEX. R. CIV. P. 165a. In such cases, "[a] court shall dismiss . . . unless there is good cause for the case to be maintained on the docket." *Id.* If the case is maintained on the docket, the case may be continued thereafter "only for valid and compelling reasons specifically determined by court order." *Id.*

The Texas Supreme Court has held that a trial court abuses its discretion by refusing to grant a motion to dismiss for want of prosecution in the face of "unmitigated and unexplained delay." *In re Conner*, 458 S.W.3d at 534. A delay of an "unreasonable" duration, if not sufficiently explained, will raise a conclusive presumption of abandonment of the plaintiff's suit. *Id.*; *see Callahan*, 161 S.W.2d at 491. The failure to provide "good cause" for the delay "mandates" dismissal. *In re Conner,* 458 S.W.3d at 535. Courts have found that various periods of delay justify application of this presumption. *See e.g., id.* at 534 (finding that a nine-year delay without an explanation of good cause mandated dismissal); *Veterans' Land Bd. v. Williams*, 543 S.W.2d 89, 90 (Tex. 1976) (finding that a seven-and-one-half year delay failed to satisfy the demands of reasonable diligence); *Denton Cnty. v. Brammer*, 361 S.W.2d 198, 201 (Tex. 1962) (same for five-year delay); *Bevil v. Johnson*, 307 S.W.2d 85, 88 (Tex. 1957) (same for eight-year delay).

To decide the diligence issue, trial courts consider the entire history of the case. *Dobroslavic v. Bexar Appraisal Dist*., 397 S.W.3d 725, 729–30 (Tex. App.—San Antonio 2012, pet. denied); *Welborn v. Ferrell Enters., Inc*., 376 S.W.3d 902, 907 (Tex. App.—Dallas 2012, no pet.); *King v. Holland*, 884 S.W.2d 231, 237 (Tex. App.—Corpus Christi 1994, writ denied). A trial court generally will consider four factors in deciding whether to dismiss a case for want of prosecution: (1) the length of time the case has been on file; (2) the extent of activity in the case; (3) whether a trial setting was requested; and (4) the

existence of reasonable excuses for the delay. *Henderson v. Blalock*, 465 S.W.3d 318, 321–22 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *WMC Mortg. Corp. v. Starkey*, 200 S.W.3d 749, 752 (Tex. App.—Dallas 2006, pet. denied); *Scoville v. Shaffer*, 9 S.W.3d 201, 204 (Tex. App.—San Antonio 1999, no pet.). No single factor is dispositive. *Dobroslavic*, 397 S.W.3d at 729; *Scoville*, 9 S.W.3d at 204; *Jimenez v. Transwestern Prop. Co*., 999 S.W.2d 125, 129 (Tex. App.—Houston [14th Dist.] 1999, no pet.). The central issue is whether the plaintiff exercised due diligence in prosecuting the case, and we review the entire record to determine whether the trial court abused its discretion. *Henderson*, 465 S.W.3d at 321.

This case has been on file for almost a decade, which well exceeds the period of time for disposition of the case as suggested by the Texas Rules of Judicial Administration. *See* TEX. R. JUD. ADMIN. 6.1(b)(1). Other courts have concluded that both shorter and similar periods of delay are unreasonable. *See e.g., In re Conner*, 458 S.W.3d at 534; *Veterans' Land Bd.*, 543 S.W.2d at 90; *Denton Cnty.*, 361 S.W.2d at 201; *Bevil*, 307 S.W.2d at 88.

Overall, there has been minimal activity in the case, and the nominal activity that has occurred was instituted almost exclusively by the defendants. It appears that the case was set for trial on three separate occasions, but trial did not occur. Three years ago, the case was set on the dismissal docket, but was not dismissed, and counsel for plaintiffs "recalled that he appeared for the docket and requested [that] the case be retained," but offered no other rationale for maintaining the suit at that time. During the intervening three years, the plaintiffs have not instigated any activities to prosecute the lawsuit.

In this original proceeding, counsel for plaintiffs offers several rationales for the delay in this suit. According to counsel for plaintiffs, the defendants replaced their counsel "five times" and there was an "additional period of delay occasioned by their seeking to retain a third counsel." This argument is not supported by the record. The record shows three different substitutions of defendants' counsel during 2007 and 2008, but none since that time, and the "delay" caused by one of the substitutions encompasses a period of one month. Counsel for plaintiffs argues that he requested trial dates on "several" occasions; however, the record before us shows that the case was set for trial twice, and does not reflect that the matter was set for trial at any specific party's request. Finally, counsel contends that the defendants were aware that plaintiffs were relying on the injunction entered in this case in 2007 as a basis for their pleadings in the separate lawsuit pending in the 347th District Court, "but did nothing for three years" in this case, until they filed the motion to dissolve and dismiss. Counsel's argument here is inapposite because it is the plaintiff who has the duty to prosecute its lawsuit to a conclusion with "reasonable diligence," not the defendant. *See In re Conner*, 458 S.W.3d at 534.

Based upon this record, the plaintiffs have not established good cause for their nearly decade-long delay in prosecuting this suit. The delay of nine years, which is unmitigated and largely unexplained, raises a "conclusive presumption" that the plaintiffs have abandoned their suit. *See id.* Accordingly, the trial court abused its discretion by refusing to grant the defendants' motion to dismiss for want of prosecution. *Id.*; *see Callahan*, 161 S.W.2d at 491.

C. Conclusion

We conditionally grant the petition for writ of mandamus. We direct the trial court to vacate its order denying the defendants' motion to dismiss filed August 31, 2016, and to dismiss this suit for want of prosecution. *See* TEX. R. APP. P. 52.8(c). We are confident the trial court will promptly comply, and our writ will issue only if it does not.

IV. SUMMARY

We lift the stay that was previously imposed in these causes. In cause number 13-16-00515-CV, we reverse the trial court's order denying the motion to dissolve the temporary injunction and we remand with instructions to the trial court to dissolve the temporary injunction. In cause number 13-16-00698-CV, we conditionally grant the petition for writ of mandamus and direct the trial court to (1) vacate its order denying the motion to dismiss and (2) dismiss this suit for want of prosecution.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
23rd day of February, 2017.