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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2026

SC-2026-0199

Lima One Capital, LLC

v.

City of Birmingham

Appeal from Jefferson Circuit Court
(CV-25-900193)

COOK, Justice.

In early 2025, the City of Birmingham ("the City") determined that a dangerous, dilapidated apartment complex ("the property") located just

west of downtown needed to be condemned and completely demolished. The property consisted of nine buildings.

Thus, the City brought suit against the property's owner, The Vue on Cotton Avenue, LLC ("the Vue"), and the Vue's lender, Lima One Capital, LLC ("Lima One"), in the Jefferson Circuit Court seeking abatement of the nuisance created by the property. The Vue never appeared to defend the suit, so Lima One was left alone to defend its interests in the property.

The City eventually moved for a preliminary injunction, and a hearing on that motion was scheduled and rescheduled several times. After the hearing, the trial court issued an order that applied the standard for evaluating the propriety of a preliminary injunction. However, it issued permanent relief by ordering the property completely demolished and by ordering Lima One to pay the demolition expenses.

That incongruity between the standard applied and the relief granted is the issue that decides this case. Because the parties had no notice that ultimate, permanent relief was at stake at the preliminary-injunction hearing, we reverse and remand.

Facts and Procedural History

The Vue owns the property. To finance the purchase of the property, the Vue executed a promissory note and a mortgage in favor of its lender, Lima One. Over time, the property's buildings have suffered from severe fire damage, and many of its units are uninhabitable.

Because of those conditions, the City determined that the property was a public nuisance. In January 2025, the City filed suit in the Jefferson Circuit Court seeking abatement of the nuisance under §§ 6-5-122, 11-47-117, and 11-47-118, Ala. Code 1975. The City sought to have all the property's buildings completely demolished.

In April 2025, both Lima One and the City jointly moved for the trial court to appoint a receiver for the property. The trial court granted the motion and appointed a receiver who wrote reports and participated in the proceedings for their duration.

Later, in September 2025, the City filed a "Motion for Injunctive Relief," asking the trial court to "[s]et this matter for a preliminary injunction hearing." The trial court set the matter for "Oral Argument" on September 22, 2025. (Emphasis added.) At the receiver's request, the hearing was reset for October 14, 2025. After a joint motion by Lima One and the receiver, it was reset again, this time for November 6, 2025.

Finally, the hearing was indefinitely postponed after Lima One and the City jointly moved to continue it because a potential buyer had emerged.

The City eventually renewed its request, styling it as a "Renewed Motion for an Emergency Hearing for Injunctive Relief" and arguing that it was "likely to succeed on the merits of its claim." (Emphasis added.)

Lima One responded by arguing that the City was not entitled to injunctive relief. It noted that the City "appear[ed] to be seeking a preliminary injunction" even though its motion was "unclear." (Emphasis added.) Lima One also emphasized that, "once this property is destroyed, it is gone forever, thereby making the City's request one for a permanent rather than a preliminary injunction."

In reply, the City reiterated that it had shown a "substantial likelihood of success on the merits."

The trial court held a hearing on the City's renewed motion on January 27, 2026. At the hearing, the City called five witnesses. All of those witnesses testified that the property's buildings were derelict and dangerous. The City's condemnation inspector recommended complete demolition of the property's buildings.

Lima One called only one witness: the receiver. The receiver

testified that the property could be salvaged if certain steps were taken, such as adding perimeter fencing, removing debris, and having the property evaluated by a structural engineer.

Both parties supplemented the record with briefing after the hearing took place. Lima One wrote a "post-hearing" brief, while the City styled its brief as a "post-trial" brief. In its brief, the City argued for the first time that the evidence it had presented at the hearing went "beyond a mere preliminary showing and demonstrate[d] actual success on the merits."

Shortly after, the trial court issued an order stating that

"[t]he City has proven to this Court that it is likely to be successful on the merits at trial. Therefore this court ORDERS the Property completely demolished, with the demolition process to begin within the next forty-five (45) days."

(Capitalization in original; emphasis added.) That same day, the trial court entered a scheduling order, setting the case for a conference on April 6, 2026.

The City was unsure who should bear the costs of the demolition, so it moved the trial court to clarify its order and asked it to assess demolition costs against Lima One. Lima One objected, claiming that,

while there might be a basis for the trial court to assess costs against the Vue, there was no basis for assessing costs against Lima One as the lender. The trial court took the City's side and assessed demolition costs against Lima One. After the entry of that clarifying order, Lima One moved for a stay and appealed to this Court.

Standard of Review

The issue on appeal "concerns a question of law related to the trial court's entry of permanent injunctive relief." JT Constr., LLC v. MW Indus. Servs., Inc., 344 So. 3d 353, 359 (Ala. 2021). Therefore, "we review that judgment de novo." Id.

Discussion

On appeal, Lima One argues that the trial court applied the wrong standard in granting what turned out to be a de facto permanent injunction. Lima One relies on the fact that that the trial court held a hearing on a preliminary injunction but granted permanent relief without providing notice to the parties that permanent relief was at stake. We agree with Lima One and, thus, reverse the trial court's order.¹

¹Lima One argued that the trial court improperly required it to pay the demolition costs because it was the property's mortgagee rather than

Permanent injunctions are "'granted after a final hearing on the merits.'" Ingenuity Int'l, LLC v. Smith, 386 So. 3d 450, 455 (Ala. 2023) (quoting Black's Law Dictionary 938 (11th ed. 2019)); see also Dylan Reeve, Tilley's Alabama Equity § 3:1(d) (6th ed. 2023) ("The court issues a permanent or perpetual injunction after full hearing and decision of the merits of the matter and enjoins the respondent absolutely according to the matter which is specified."). When an injunction provides the plaintiff with "the ultimate relief" sought, that makes it a "permanent injunction." Smith, 386 So. 3d at 455. In contrast, a preliminary injunction is "temporary" and is "'issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case.'" Id. (quoting Black's Law Dictionary 938).

Here, the trial court characterized the relief it granted as a preliminary injunction. This is clear because the injunction order applied the likelihood-of-success-on-the-merits factor, a necessary element for

its owner and because not a single Alabama case has imposed such liability on a mortgagee. We leave that significant issue for another day.

It also argued that the trial court erred by not choosing a less intrusive means of abatement (for instance, ordering that some but not all of the buildings be demolished). We need not reach this issue because we resolve this case on procedural grounds.

issuing a preliminary injunction. The order also contemplated a future trial where the merits ultimately would be determined. Yet the order required the "complete[] demoli[tion]" of the property. Further, in response to the City's motion for clarification, the trial court assessed the costs of demolition against Lima One. At that point, there was essentially nothing left for the trial court to decide. Although labeled "preliminary," the order afforded the City the ultimate relief it sought.

In fact, both parties agree that this is a permanent injunction. In its brief to this Court, the City acknowledges that "the trial court's judgment constituted a permanent injunction." City's brief at 30.

Because the relief was permanent, but the proceedings were preliminary, the rules governing accelerated trials on the merits applied. Alabama courts have a procedure for expediting requests for permanent injunctive relief and consolidating preliminary proceedings with a trial on the merits. That procedure is outlined in Rule 65(a)(2), Ala. R. Civ. P., which states:

"Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application."

In short, the rule says that the trial court "may" consolidate the proceedings if it so chooses. But if it does so, it must "order" the trial to be advanced and consolidated with the hearing on the application for a preliminary injunction. The purpose of Rule 65(a)(2) is straightforward: before a trial court may convert a preliminary-injunction hearing into a final adjudication on the merits, the parties must receive notice that ultimate relief is at stake.

Our decision in JT Construction, LLC v. MW Industrial Services, Inc., 344 So. 3d 353 (Ala. 2021), illustrates this principle. There, MW Industrial Services, Inc. ("MWI"), filed a complaint seeking a preliminary injunction prohibiting JT Construction, LLC ("JTC"), from filing a lien on a piece of property and further requiring the withdrawal of JTC's previously filed lien. Id. at 355. The trial court immediately issued a temporary restraining order and set "'a hearing on the preliminary injunction in this cause, pursuant to Rule 65'" -- not a trial on the merits. Id. at 356, 360-61. At the outset of the hearing, the trial court remarked that the proceeding was, "[a]t least," about preliminary relief, and MWI confirmed that it was "'looking to get a preliminary injunction.'" Id. at 356. As the hearing progressed, the trial court indicated that it would

take the matter under advisement and allow the parties to submit additional authority before ruling. Id. at 356-58. Ultimately, the trial court entered an order issuing a permanent injunction in favor of MWI. Id. at 358.

Our Court observed that the trial court and MWI consistently suggested that "only the issue of preliminary injunctive relief" was before the trial court, that the trial court did not contemplate granting anything beyond preliminary relief until the end of the hearing, and that "neither party appeared certain as to the relief being contemplated by the trial court." Id. at 361. We likewise concluded that the trial court's comments at the close of the hearing, when it suggested the possibility of permanent relief, were not "adequate in this case, in which [the defendant] was not prepared for a trial on the merits." Id. Accordingly, we held that JTC "received inadequate notice of the consolidation of the preliminary-injunction hearing with a final hearing on the merits," and we, thus, reversed the trial court's judgment and remanded the case for further proceedings consistent with our opinion. Id. at 361, 363.

The circumstances here are strikingly similar. Like in JT Construction, the trial court's orders at every stage contemplated only a

preliminary-injunction proceeding. The trial court first set the matter for oral argument and then, after the City renewed its motion for injunctive relief, set the matter for a hearing. In each instance, the scheduled proceeding was in response to the City's request to establish a likelihood of success on the merits.

The City's filings confirm that understanding. Each time the City moved for injunctive relief, renewed its motion, or sought an accelerated proceeding, it asserted only that it was likely to succeed on the merits. At no point before or during the hearing did the City request or suggest that it was seeking a full trial on the merits. Lima One could not have been expected to prepare for a full trial on the merits when the proceeding had been noticed only as oral argument to start and, later, as a preliminary-injunction hearing.

The trial court's own injunctive order reinforces that conclusion. As noted above, the order expressly found that the City was "likely to be successful on the merits at trial." (Emphasis added.) That language presupposes that a trial on the merits remained to be held. It was not until after the hearing, in "post-trial" briefing (as the City characterized it), that the City argued that the evidence presented at the hearing was

sufficient to support a permanent injunction.

Lima One argues that this indicates an asymmetry between what the trial court said it was doing and what it actually did. According to Lima One, the trial court "exceeded its authority in requiring demolition of all buildings on the Property by not applying the correct legal standard." Lima One's brief at 37. We agree. The trial court applied the standard governing preliminary injunctions while awarding the ultimate relief sought in the litigation. Under Rule 65(a)(2) and JT Construction, Lima One was entitled to notice that the preliminary-injunction hearing had been advanced and consolidated with a trial on the merits. It received no such notice.

Lima One was entitled to have the case decided upon the legal standard for a permanent injunction -- that the City had succeeded on the merits -- rather than the legal standard for a preliminary injunction -- that the City was merely likely to succeed on the merits.

Indeed, the record reflects that Lima One recognized this concern before the hearing. In its briefing, Lima One acknowledged that the City's request was not entirely clear but maintained that the City appeared to be seeking only a preliminary injunction. Lima One further argued that

demolition was permanent and irreversible and that granting the City's requested relief would effectively amount to a permanent injunction. Those concerns proved well-founded.

We recognize the compelling reasons why trial courts may wish to expedite proceedings involving dangerous properties. At the hearing, the City presented five witnesses who testified regarding the ramshackle condition of the property and the accompanying safety hazards and increased crime such conditions create. Photographs in the record depict extensive destruction and could lead a reasonable person to conclude that the property's buildings are beyond repair. This Court is sympathetic to the challenges faced by cities like Birmingham in protecting their citizens' health and safety and addressing properties in deplorable condition. And, of course, the trial court has discretion to expedite trials, as appropriate, with reasonable notice to the parties to allow them to fully prepare their evidence and arguments.

However, those practical realities do not eliminate the procedural protections required by Rule 65(a)(2). If a trial court intends to order the drastic and irreversible remedy of complete demolition, it must first provide notice that the parties are proceeding to a final adjudication on

the merits and must decide the claim for injunctive relief under the correct legal standard. Without such notice, neither party can fairly prepare to litigate the case as though ultimate relief is at stake. Here, once the trial court clarified its order by assessing demolition costs against Lima One, there was nothing left to decide. The City had received the ultimate relief it sought, and the proceedings were, for all practical purposes, complete.

Conclusion

Because Lima One was never placed on notice that it needed to prepare for a trial on the merits, the trial court could not treat the preliminary proceedings as final by awarding permanent relief under the legal standard governing a preliminary injunction. Therefore, we reverse the trial court's order and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Stewart, C.J., and Wise, Sellers, and Parker, JJ., concur.