

Appealing Temporary Injunctive Relief In Texas

By

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Introduction

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Introduction

- Because injunctive relief can impact valuable rights, the Texas Legislature has provided for a right to an interlocutory appeal of a trial court's decision granting or denying a request for a temporary injunction.
- Parties routinely seek interlocutory appeal in these circumstances, and there are many different and unique appellate procedural issues that arise regarding such an appeal.
- This presentation addresses some of those interesting and important issues.

Purpose of Injunctive Relief



Purpose of Injunctive Relief

- A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be had on a temporary injunction.
- The purpose of a temporary injunction is to preserve the status quo pending a full trial on the merits.
- The status quo is the last actual peaceable, noncontested status that preceded the controversy.
- Status quo may be a state of action.

Elements For Injunctive Relief



Elements For Injunctive Relief

- Equitable elements: cause of action, probable right to recover; probable, imminent, and irreparable harm; and no adequate remedy at law
- Texas Civil Practice And Remedies Code Section 65.011
- Must follow correct procedure – sworn application, correct allegations, bond, specific order, service, etc.

Temporary Restraining Order



Temporary Restraining Order

- Section 51.014(a)(4) of the Civil Practice And Remedies Code does not provide for interlocutory appeal of a temporary restraining order, and it is therefore not appealable.
- But is it really a TRO?
- Whether an order is a non-appealable temporary restraining order or an appealable temporary injunction depends on the order's characteristics and function, not its title.

Permanent Injunction



Permanent Injunction

- A party can appeal a permanent injunction if such relief is in an otherwise final judgment that resolves all parties and all claims.
- However, parties have no right to an interlocutory appeal of a permanent injunction that is not otherwise in a final judgment.
- Once again, is it really a permanent injunction or a temporary injunction?

Temporary Injunction



Temporary Injunction

- Section 51.014(a)(4) provides that an appeal from an interlocutory order granting or refusing a temporary injunction or granting or overruling a motion to dissolve a temporary injunction is permitted.
- Some Texas courts have allowed interlocutory review of an amended order making a substantive modification to a temporary injunction.

Findings of Fact



Findings of Fact

- A party challenging a trial court's order on a temporary injunction should request findings of fact and conclusions of law.
- As the appeal will be an interlocutory appeal, Texas Rule of Appellate Procedure 28.1 provides that a trial court may file findings of fact and conclusions of law within thirty days after an interlocutory order is signed.
- Therefore, whether a court issues findings and conclusions after a temporary injunction is discretionary.

Findings of Fact

- Some courts hold that in the context of interlocutory orders, where no findings are made, a court should presume that the trial court made all findings necessary to support the order and use traditional legal and factual sufficiency standards to evaluate the findings.
- Other courts hold that findings and conclusions may be “helpful” in determining if the trial court exercised its discretion in a reasonable and principled fashion, but do not carry the same weight on appeal as findings made under Rule 296 and are not binding when a court of appeals reviews a trial court’s exercise of discretion.

Findings of Fact

- A party may make a request for additional findings.
- Where a trial court's injunctive order adequately states the specific reasons for its issuance, the party opposing it cannot complain about additional findings if it did not request them.
- A trial court is not prohibited from reviewing the record after entering an order and then amending, vacating, or otherwise altering the first order while the trial court still enjoys plenary power.
- A reviewing court should resolve any conflicts between additional findings and original findings in favor of the additional findings.

Findings of Fact

- In the context of a temporary injunction, under Rule 683, the trial court must make certain minimal findings in the order.
- At least one court has held that separately filed findings of fact and conclusions of law do not satisfy the mandatory requirement of Rule 683.
- So, even if a finding as to irreparable harm is included in separate findings, that will not suffice to support an injunction order that does not have any such a finding.

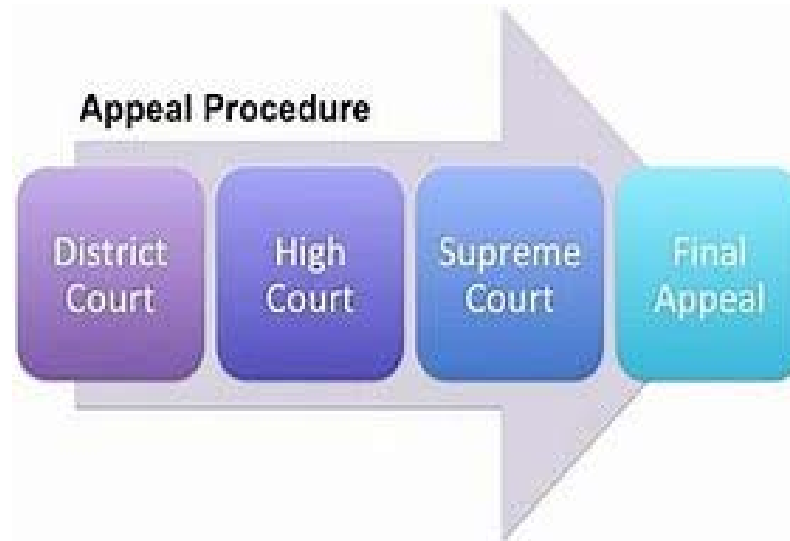
Limits on Temporary Injunction Appeals



Limits On Temporary Injunction Appeal

- Because an appeal of an order granting a temporary injunction is an appeal from an interlocutory order, the merits of the applicant's case are not presented for appellate review.
- Courts of appeals cannot consider other subsidiary rulings in conjunction with a temporary injunction appeal.
- Must challenge each ground that could support injunctive relief or face waiver.

Procedure



Procedure

- An appeal of a temporary injunction is an accelerated appeal.
- So, an appellant has twenty days to file notice of appeal and post-order motions will not extend the deadline.
- Although rarely done, an appellate court may hear an accelerated appeal on the original papers forwarded by the trial court or on sworn and uncontroverted copies of those papers.
- Further, the court of appeals may consider the appeal without appellate briefing.

Procedure

- Appellant's brief is due twenty days after the record.
- Appellee's brief is due to twenty days after the appellant's brief.
- Appellant's reply brief is due twenty days after the appellee's brief.
- The court of appeals has discretion to extend these deadlines, or in the interests of justice, can also shorten the time for filing briefs and for submission of the case.
- Court can hear oral argument.
- Disposition of the appeal is accelerated and is required to be given priority over other appeals.

Further Trial Court Action



Further Trial Court Action

- Appeal does not suspend the injunction order.
- Appeal does not stay trial, and the trial court can issue other orders.
- Appellant can seek a stay of the injunction order from the trial court or court of appeals.
- If the appellate court does stay an injunction, a trial court's further order is void.
- If a trial court renders a final order while an appeal is pending, the appeal becomes moot and should be dismissed.

Supersedeas



Supersedeas

- TRAP 29.2 states that the trial court may permit an order granting interlocutory relief to be superseded in accordance with Rule 24.
- If the trial court refuses supersedeas, the appellant may move the appellate court to review that decision for abuse of discretion.
- When an appeal from an interlocutory order is perfected, an appellate court may make any temporary order necessary to preserve the parties' rights until disposition of the appeal "and may require appropriate security."
- But the appellate court may not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas or another order made under Rule 24.
- So, a motion to stay and an appellant's request for supersedeas should be tied together.

Supersedeas

- TRAP 24.2(a)(3) provides that when the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post.
- The security must adequately protect the judgment creditor against loss or damage that the appeal might cause.
- But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that relief was improper.

Supersedeas

- Rule 24.4 authorizes appellate courts to engage in supersedeas review, specifically to review (1) the sufficiency or excessiveness of the amount of security, (2) the sureties on a bond, (3) the type of security, (4) the determination whether to permit suspension of enforcement, and (5) the trial court's exercise of discretion in ordering the amount and type of security.

Standard of Review

What's the
**STANDARD OF
REVIEW**
Got To Do With It?

Standard of Review

- Whether to grant or deny a temporary injunction is within the trial court's sound discretion.
- A party challenging the trial court's ruling must establish that the trial court reasonably could have reached but one decision regarding factual issues.
- An abuse of discretion does not exist where the trial court based its discretion on conflicting evidence.
- However, a reviewing court will apply a de novo standard of review for pure questions of law.

Supreme Court Review



Supreme Court Review

- Effective September 1, 2017, the Texas Legislature's HB 1761 substantially modified the Texas Supreme Court's jurisdiction over final and interlocutory orders.
- This statutory change impacts temporary injunction orders executed on or after September 1, 2017.
- This bill provides that Texas Government Code Section 22.001 is amended to state that the Texas Supreme Court has jurisdiction via one basis: any judgment or order that the Court determines raises an issue of law that is important to the jurisprudence of Texas.

Impact Of Appeal

- If affirmed, injunction becomes appellate court's injunction as well.
- Law of the case?
- Res judicata or collateral estoppel?
- Stare Decisis?
- Risk vs. Reward



Mandamus

- Temporary injunctions are subject to mandamus where there is not sufficient time to appeal a temporary injunction before the complained of act occurs.
- Courts of appeals have granted mandamus relief for TROs.



Conclusion

- An appeal of an injunction order has many different issues that arise.
- The author hopes that the paper and presentation is an assistance.

