

**Petition for Writ of Mandamus Conditionally Granted and Memorandum Opinion  
filed January 28, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-10-00049-CV**  
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**IN RE VITOL, INC. AND MIGUEL ANGEL LOYA, Relators**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS**

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**MEMORANDUM OPINION**

In this original proceeding, relators Vitol, Inc. and Miguel Angel Loya seek a writ of mandamus ordering the respondent, the Honorable Judy Warne, to vacate her order of January 15, 2010, granting a temporary injunction. Relators have also filed an Emergency Motion for Temporary Relief and Stay. Real Party in Interest, Leticia B. Loya, filed a response. We conditionally grant the writ and deny the motion as moot.

The underlying suit is a divorce proceeding between Miguel Angel Loya and Leticia B. Loya. Leticia B. Loya requested a temporary injunction against Miguel Angel Loya. A hearing was conducted on January 4, 2010, and on January 15, 2010, the trial court signed an order granting the temporary injunction that is the subject of this original proceeding.

## ADEQUATE REMEDY BY APPEAL

Mandamus relief is available if the trial court abuses its discretion when there is no other adequate remedy by law. *See Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992). Under section 6.507 of the Texas Family Code, Miguel Angel Loya has no adequate remedy by appeal. Section 6.507 provides “[a]n order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal.” Tex. Fam. Code Ann. § 6.507 (Vernon’s 2006). As this court recently noted, “Texas courts of appeals have held that the specific Family Code provision limiting temporary order appeals controls over the general statute in the Civil Practice and Remedies Code permitting interlocutory appeals from temporary injunctions.” *Mason v. Mason*, 256 S.W.3d 716, 718 (Tex. App. — Houston [14th Dist.] 2008, no writ) (citing *Marley v. Marley*, No. 01-05-00992-CV, 2006 WL 3094325, at \*2 (Tex. App. — Houston [1st dist.] 2006, pet. denied) (mem. op) (holding section 51.014(4) of the Civil Practice and Remedies Code permitting appeals from temporary injunctions did not control over prohibition in section 6.502 of interlocutory appeals from temporary orders in divorce proceedings); *Cook v. Cook*, 886 S.W.2d 838, 839 (Tex. App. — Waco 1994, no writ) (rejecting argument that section 51.014(4) allowed an interlocutory appeal from temporary orders issued under Family Code section 3.58, the identical former version of section 6.502)). Because section 6.507 of the Family Code applies specifically to divorce proceedings, it prevails over Tex. Civ. Prac. & Rem. Code § 51.014 and the order at issue is not subject to interlocutory appeal. *Id.*; Tex. Cv. Prac & Rem. Code Ann. §51.014(a)(4) (Vernon’s 2008). *See also Gentry v. Gentry*, No. 11-02-00092-CV, 2002 WL 32344575, \*1 (Tex. App. — Eastland, no writ). Accordingly, we find Miguel Angel Loya does not have an adequate remedy by appeal.

## ABUSE OF DISCRETION

Relators first claim the trial court abused its discretion in entering a temporary injunction because it failed to conduct a proper hearing. The record reflects that after Migual Angel Loya testified he did not know how many shares he owns, the trial court granted the injunction and refused to allow presentation of any further evidence. In *In re Alsenz*, 152 S.W.3d 617 (Tex. App. — Houston [1st Dist.] 2004, orig. proceeding), the court of appeals noted Tex. Fam. Code § 6.502(a) specifically requires notice and a hearing. *Id.* at 621 (citing *Post v. Garza*, 867 S.W.2d 88 (Tex. App. — Corpus Christi 1993, orig. proceeding)). In *Post*, 867 S.W.2d at 88, the trial court entered temporary orders requiring payment of attorney’s fees following a hearing. At the hearing, however, the trial court refused to allow relator to cross-examine the attorney or present any evidence. *Id.* at 89. Citing former section 3.58(c) of the Family Code, the court noted the statute required notice and a hearing. *Id.* at 90. “This requirement of a hearing implies that the opposing spouse will be afforded the normal right to participate in an adversarial hearing, rather than merely the right to be present as a spectator at an *ex parte* hearing.” *Id.* The court found the trial court’s refusal to allow relator to participate through cross-examination and the presentation of his own evidence constituted a clear abuse of discretion and conditionally granted the writ. *Id.*

In *Elliott v. Lewis*, 792 S.W.2d 853 (Tex. App. — Dallas 1990, no writ), the trial court granted a temporary injunction and entered an order for specific performance. The court of appeals found the trial court abused its discretion by terminating the hearing without allowing Elliott to cross-examine the first and only witness or present any evidence. *Id.* at 855. The court cited Tex. R. Civ. P. 681 for the proposition that its requirement of notice prior to issuance of a temporary injunction implied an adequate opportunity to be heard. *Id.* “The opportunity to be heard and present evidence must amount to more than the mere right to cross-examine the other party’s witnesses.” *Id.* “[T]he trial court may impose reasonable limitations upon the parties’ presentation of

evidence in a temporary injunction hearing; however, a party may not be deprived of the right to offer any evidence.” *Id.* If the trial court’s limitation is arbitrary in its nature, it will be considered an abuse of discretion on the part of the trial judge. *Id.*

The trial court’s refusal to allow Miguel Angel Loya to present any evidence deprived him of an adequate opportunity to be heard and thus constituted an abuse of discretion. Having already found Miguel Angel Loya has no adequate remedy by appeal, he is entitled to relief. It is therefore unnecessary to address whether non-party Vitol, Inc., is properly before this court as a relator.

We briefly address the scope of the injunction. We are confident that any order entered after Miguel Angel Loya is given an adequate opportunity to be heard will be more narrowly tailored.

In particular, while Leticia Loya contends in her response that the injunction allows Miguel Angel Loya to conduct day to day operations of Vitol, Inc., the order entered would seem to prevent that, in violation of Tex. Fam. Code § 6.501(b)(2)(c) (Vernon 2006). As to any proposed restructuring of Vitol, Inc., a narrowly drafted order could allow Miguel Angel Loya, as CEO of Vitol, Inc., to restructure the business as long as the current shares owned by various entities and parties were exchanged for shares of equal or greater value and did not damage the value of the marital estate. “Preserving the property” of the parties under the Family Code should not tie the hands of a third party corporation making legitimate business decisions.

We therefore conditionally grant the petition for a writ of mandamus and direct the trial court to vacate its January 15, 2010 order. The writ will issue only if the trial court fails to act in accordance with this opinion.

PER CURIAM

Panel consists of Chief Justice Hedges, Justices Anderson and Christopher.