

**DISMISSED and Opinion Filed May 26, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-15-01108-CV**

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**ARCH RESORTS, L.L.C., Appellant  
V.  
THE CITY OF MCKINNEY, TEXAS, Appellee**

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**On Appeal from the 219th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 219-01855-2015**

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**MEMORANDUM OPINION**

Before Justices Bridges, Lang, and O'Neill<sup>1</sup>  
Opinion by Justice Lang

In this interlocutory appeal, Arch Resorts, L.L.C., (Arch) appeals the trial court's order denying Arch's application for a temporary injunction. In a cross-appeal, the City of McKinney (McKinney) appeals the trial court's order denying McKinney's application for a temporary injunction.

The sole issue before the trial court in a temporary injunction hearing is whether the applicant may preserve the status quo pending the trial on the merits. *See Double Diamond-Delaware, Inc. v. Walkinshaw*, No. 05-12-01140-CV, 2013 WL 3327523, at \*2 (Tex. App.—Dallas Jun. 27, 2013, no pet.) (mem. op.); *Dallas/Fort Worth Intl. Airport Bd. v. Ass'n of Taxicab Operators, USA*, 335 S.W.3d 361, 364 (Tex. App.—Dallas 2010, no pet.); *Hiss v. Great*

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<sup>1</sup> The Hon. Michael J. O'Neill, Justice, Assigned

*N. Am. Co., Inc.*, 871 S.W.2d 218, 219 (Tex. App.—Dallas 1993, no writ). An appellate court limits its review of the grant or denial of a temporary injunction to whether the trial court abused its discretion in rendering the interlocutory order. See *Double Diamond*, 2013 WL 3327523, at \*2; *Hiss*, 871 S.W.2d at 219. The appeal of a temporary injunction should not be cause for trial delay. See *Double Diamond*, 2013 WL 3327523, at \*2; *Dallas/Fort Worth Intl.*, 335 S.W.3d at 366; *Hiss*, 871 S.W.2d at 219. Trial courts should proceed expeditiously from the grant or denial of temporary injunctive relief to full consideration of the merits to reduce the need for interlocutory appeals. See *Double Diamond*, 2013 WL 3327523, at \*2; *Dallas/Fort Worth Intl.*, 335 S.W.3d at 367; *Hiss*, 871 S.W.2d at 219. The fastest way to cure the hardship of an unfavorable preliminary order is to try the case on the merits. See *Double Diamond*, 2013 WL 3327523, at \*2; *Hiss*, 871 S.W.2d at 219.

On August 24, 2015, in separate orders, the trial court denied Arch's and McKinney's applications seeking temporary injunctions. On September 14, 2015, Arch filed its notice of appeal in this case and on September 24, 2015, McKinney filed its notice of cross-appeal. The appeal was set for oral argument and submission on May 11, 2016.

The issues and cross-issues on appeal include assertions the trial court abused its discretion in denying the respective requests of the parties for temporary injunctions. However, the parties' focus is to have this Court make significant determinations respecting the statutory power of Texas cities to regulate certain activities within a city's "extraterritorial jurisdiction."<sup>2</sup>

During oral argument, this Court separately questioned counsel for each party as to the status of the underlying lawsuit, the date the case was set for trial, and the reason for any delay in

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<sup>2</sup> In Arch's statement on oral argument in its brief on appeal, it states, "[Arch] requests oral argument . . . because the legal issues involved are important to developers, builders and municipalities in the State of Texas." Similarly, in McKinney's statement on oral argument, it states, "[O]ral argument will aid the [C]ourt's decisional process given the complexity and the importance of the issues presented, which include whether McKinney has the power to require building permits, inspections and approvals for development of property located within [McKinney's] extraterritorial jurisdiction []. This issue has broad reaching implications for municipalities, developers and landowners."

the trial setting. *See Hiss*, 871 S.W.2d at 220. Counsel for each party responded that the case was set for trial in September 2016 and they had delayed the trial date for the express purpose of awaiting this Court's opinion and determination of this interlocutory appeal or a decision of a case pending before the Texas Supreme Court that may impact the legal issues in this case. *See Hiss*, 871 S.W.2d at 220. In addition, counsel for McKinney represented that if this Court had not issued its opinion a month before the current trial setting, he would probably seek a continuance for that same purpose. When questioned by the Court, counsel for each party stated the relief requested at the temporary injunction stage is essentially the relief they seek when they try the case on the merits. *See Dallas/Fort Worth Intl.*, 335 S.W.3d at 364; *Hiss*, 871 S.W.2d at 219 (party may not use temporary injunction to get advance ruling on merits).

Based on the record and the representations of the parties at oral submission, it appears that the parties brought this appeal to obtain a ruling on the merits, not a determination of whether the trial court abused its discretion. The function of a court of appeals in a case like this is to determine only whether the trial court abused its discretion in granting or denying the temporary injunction. *See Hiss*, 871 S.W.2d at 220. This Court does not issue advisory opinions. *See Double Diamond*, 2013 WL 3327523, at \*2; *Dallas/Fort Worth Intl.*, 335 S.W.3d at 367; *Hiss*, 871 S.W.2d at 219. Any resolution of the issues on the merits must await appeal from a final judgment in the underlying suit. *See Hiss*, 871 S.W.2d at 220.

The appeal and cross-appeal are dismissed.

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/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ARCH RESORTS, LLC, Appellant

No. 05-15-01108-CV      V.

THE CITY OF MCKINNEY, TEXAS,  
Appellee

On Appeal from the 219th Judicial District  
Court, Collin County, Texas

Trial Court Cause No. 219-01855-2015.

Opinion delivered by Justice Lang. Justices  
Bridges and O'Neill participating.

In accordance with this Court's opinion of this date, the appeal and cross-appeal are **DISMISSED**.

It is **ORDERED** that each party bear its own costs of this appeal and cross-appeal.

Judgment entered this 26th day of May, 2016.