

**DISMISS; and Opinion Filed May 25, 2018.**



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

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**No. 05-18-00028-CV**

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**ESTEBAN TORRES, Appellant  
V.  
WALTER P. BROOKINS, Appellee**

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**On Appeal from the County Court at Law No. 1  
Dallas County, Texas  
Trial Court Cause No. CC-17-05892-A**

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**MEMORANDUM OPINION**

Before Justices Francis, Fillmore, and Whitehill  
Opinion by Justice Fillmore

This is an accelerated interlocutory appeal from a temporary injunction. Because the parties have delayed the trial on the merits of the underlying case in an effort to obtain an advisory opinion from this Court, we dismiss the appeal.

**Background**

Esteban Torres filed a forcible detainer action in justice court against Walter P. Brookins. The justice of the peace found that Torres was entitled to possession of the property and ordered Brookins to pay \$1,800 per month rent into the registry of the court during the pendency of any appeal. After Brookins failed to timely deposit the first rent payment, the justice court issued a writ of possession which authorized the sheriff to evict Brookins from the property.

Brookins filed this case in county court against Torres and the justice of the peace, seeking to enjoin the enforcement of the writ of possession on the ground he had been denied his right to appeal the judgment of the justice court. On December 20, 2017, the trial court signed a temporary injunction enjoining Torres and the justice of the peace from seeking to enforce any execution on any existing writ of possession and enjoined Torres from “seeking any new or future eviction proceeding. . . until such time as a hearing is had in the County Court at Law regarding [Brookins’s] appeal of the denial of his Statement of Inability to Afford Payment of Court Costs or an Appeal Bond related to JP Cause No. 17-02221-E.” The temporary injunction order set the case for trial on the merits on January 25, 2018.

Torres filed this interlocutory appeal on January 9, 2018. In his appellate brief, Torres contends, in one issue, that the trial court abused its discretion by issuing the temporary injunction. Torres specifically argues Brookins offered no evidence to support a conclusion that he had a substantial likelihood of success on the merits and, if Brookins contends the justice of the peace erred, he had an adequate remedy by way of appeal to the county court. Torres did not request oral argument, and Brookins did not file an appellate brief.

After submission, this Court requested a supplemental record from the county clerk to determine the status of the underlying case. According to the supplemental record, on January 23, 2018, Torres filed a Motion to Stay Trial Pending Appeal. In the motion, Torres stated that a “stay of the trial-court proceedings is necessary because the resolution of the appeal from the Court’s grant of the temporary injunction may materially advance the ultimate termination of the litigation[.]” Torres provided a proposed order staying the case during this appeal. On January 26, 2018, Torres sent a letter to the trial court’s clerk stating that, during a hearing on January 23rd, “the Court and parties agreed that since this matter is currently on appeal, all proceedings are stayed.” Torres attached another copy of the proposed order staying proceedings in the trial court

pending appeal and requested that it be presented to the trial court for signature. Although the record does not reflect the trial court signed the proposed order, it has not re-set the case for trial.

### **Discussion**

To obtain a temporary injunction, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The only issue before the trial court in a temporary injunction hearing is whether the applicant may preserve the status quo pending trial on the merits. *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981); *Arch Resorts, L.L.C. v. City of McKinney*, No. 05-15-01108-CV, 2016 WL 3196767, at \*1 (Tex. App.—Dallas May 26, 2016, no pet.) (mem. op.). Therefore, the merits of the underlying case are not presented for appellate review in an interlocutory appeal from an order granting or denying a temporary injunction. *Brooks v. Expo Chem. Co.*, 576 S.W.2d 369, 370 (Tex. 1979); *DK8, LLC v. HBT JV, LLC*, No. 05-16-00320-CV, 2016 WL 6094308, at \*1 (Tex. App.—Dallas Oct. 19, 2016, no pet.) (mem. op.). Rather, the only question in the appeal is whether the trial court’s ruling was an abuse of discretion. *Iranian Muslim Org.*, 615 S.W.2d at 208; *DK8, LLC*, 2016 WL 6094308, at \*1.

“A party may not use an appeal of a temporary injunction ruling to get an advance ruling on the merits.” *DK8, LLC*, 2016 WL 6094308, at \*2; *see also Iranian Muslim Org.*, 615 S.W.2d at 208. This Court has considered and disapproved of this tactic many times. *See DK8, LLC*, 2016 WL 6094308, at \*2 (citing *Reeder v. Intercontinental Plastics Mfg. Co., Inc.*, 581 S.W.2d 497, 499 (Tex. App.—Dallas 1979, no writ); *Hiss v. Great N. Am. Cos., Inc.*, 871 S.W.2d 218, 220 (Tex. App.—Dallas 1993, no writ); *Brar v. Sedey*, 307 S.W.3d 916, 920 (Tex. App.—Dallas 2010, no pet.); *Senter Invs., L.L.C. v. Veerjee*, 358 S.W.3d 841, 846 (Tex. App.—Dallas 2012, no pet.)). This practice not only delays the ultimate resolution of the merits of the parties’ dispute, but wastes

judicial resources. *DK8, LLC*, 2016 WL 6094308, at \*2; *see also Arch Resorts, L.L.C.*, 2016 WL 3196767, at \*1 (noting appeal of temporary injunction ruling should not be cause for delay of trial); *Barnett v. Manuel Griego, Jr., D.O., P.A.*, 337 S.W.3d 384, 387 (Tex. App.—Dallas 2011, no pet.); *see also* TEX. R. CIV. P. 683 (“The appeal of a temporary injunction shall constitute no cause for delay of the trial.”). Regardless of the outcome of this appeal, the trial court will be required to resolve the case on the merits and render a final judgment which may be the subject of a second appeal. *DK8, LLC*, 2016 WL 6094308, at \*2; *Dallas/Fort Worth Int’l Airport Bd. v. Ass’n of Taxicab Operators, USA*, 335 S.W.3d 361, 365 (Tex. App.—Dallas 2010, no pet.).

“The fastest way to cure the hardship of an unfavorable preliminary order is to try the case on the merits.” *Hiss*, 871 S.W.2d at 219; *see also DK8, LLC*, 2016 WL 6094308, at \*2; *Arch Resorts, L.L.C.*, 2016 WL 3196767, at \*1. Therefore, the trial court 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.” *Arch Resorts, L.L.C.*, 2016 WL 3196767, at \*1. In this case, Torres specifically requested a stay of the proceedings in the trial court in an effort to obtain an advisory opinion from this Court, and both Brookins and the trial court agreed to delay the trial. Judicial economy dictates that we not reward this behavior. *See DK8, LLC*, 2016 WL 6094308, at \*2. Accordingly, we decline to address Torres’s arguments and dismiss this appeal. *See id.*; *Hiss*, 871 S.W.2d at 220.

/Robert M. Fillmore/  
ROBERT M. FILLMORE  
JUSTICE

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

**JUDGMENT**

ESTEBAN TORRES, Appellant

No. 05-18-00028-CV      V.

WALTER P. BROOKINS, Appellee

On Appeal from the County Court at Law  
No. 1, Dallas County, Texas,

Trial Court Cause No. CC-17-05892-A.

Opinion delivered by Justice Fillmore,  
Justices Francis and Whitehill participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that the parties bear their own costs of appeal

Judgment entered this 25th day of May, 2018.