Opinion issued August 31, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00373-CV

JAYLON LINDSEY, KEVIN MURRELL, WENDELL BAKER, AND THE REAL PROPERTY KNOWN AS PROPERTY ID 9685, Appellants

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 506th District Court
Waller County, Texas
Trial Court Case No. 20-02-25981

MEMORANDUM OPINION

The State of Texas sued appellants, Jaylon Lindsey, Kevin Murrell, Wendell Baker, and The Real Property Known as Property Id 9685 (collectively, "appellants"), seeking to enjoin and abate a common nuisance under Chapter 125 of

the Civil Practice and Remedies Code.[1] In this interlocutory appeal, appellants challenge the trial court's orders (1) denying dissolution of a temporary restraining order and (2) granting temporary injunctive relief on various grounds.

We lack jurisdiction to consider appellants' first issue, but we affirm the trial court's order granting the temporary injunctive relief.

Background

On February 3, 2020, the State sued the individual appellants—Lindsey, Murrell, and Baker—seeking temporary and permanent injunctive relief to abate a common nuisance on their real property located near Prairie View A&M University in Waller County, Texas. The State also named appellants' real property—The Real Property Known as Property ID 9685 (the "Property")—and four contiguous tracts of land as *in rem* defendants, alleging that "for the past several years," these properties have been "the go-to location" for large, unpermitted "pasture parties" attended by thousands of students and alumni from "colleges and universities across Texas and neighboring states," who pay for admission. According to the State, the pasture parties pose health and safety risks because of criminal activity occurring there or nearby, including "various firearms offenses, assault, robbery, criminal trespass, and murder." The State further alleged that appellants have not taken

[1] *See* TEX. CIV. PRAC. & REM. CODE §§ 125.001–.047.

reasonable steps to abate the criminal activity occurring in connection with the pasture parties.

The day after the State filed its petition, the trial court granted an ex parte temporary restraining order preventing appellants from organizing a pasture party later in the same week, on February 8. The ex parte order restrained appellants from (1) "advertising, promoting, publicizing, otherwise advancing, or financially benefitting from any events in Waller County that are open to the public or to fifty or more people"; and (2) "leasing, otherwise allowing, or financially benefitting from [the real property] being used for events open to the public or fifty or more people" for a period of 14 days.

The trial court extended the term of the temporary restraining order once on the State's motion and a second time on the parties' agreement, pending a hearing on the State's application for a temporary injunction that would prohibit the same conduct until a trial. On March 18, the day the temporary restraining order was set to expire, the trial court extended it for a third time due to the imminent threat of the COVID-19 pandemic. Noting the Disaster Proclamation issued by Texas Governor Greg Abbott, the Texas Supreme Court's First Emergency Order Regarding the COVID-19 State of Disaster,[2] and its own emergency orders, the trial court:

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[2] The Governor of the State of Texas declared a state of disaster in all of the State's 254 counties in response to the imminent threat of the COVID-19 pandemic on March 13, 2020. The Texas Supreme Court issued several emergency orders

- passed the scheduled hearing on the State's application for a temporary injunction;

- instructed that the State's application would be considered on submission on April 13, rather than at an in-person hearing, and that the parties should submit "any testimonial affidavits and legal briefs" before then; and

- extended the term of the temporary restraining order through 5:00 p.m. on April 13 or until its ruling on the State's application.

Before the April 13 submission of the State's application for a temporary injunction, appellants filed a combined motion to dissolve the temporary restraining order and opposition to further injunctive relief. Appellants argued that the State was not entitled to injunctive relief in any form because its petition was unverified, making it fatally defective. Appellants also argued that the State was unlikely to

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regarding the conduct of court proceedings during the emergency. The first emergency order was in effect at the time the trial court extended the temporary restraining order. It provided in part:

> 2. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant's consent:
>
> . . .
>
> b. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means[.]

First Emergency Order Regarding the COVID-19 State of Disaster, 596 S.W.3d 265 (Tex. 2020).

prevail on the merits because the pasture parties were infrequent and did not involve habitual criminal activity, and appellants had taken reasonable steps to ensure the overall safety of such events.

In support of their motion and opposition, appellants submitted the affidavits of Murrell and Baker. Murrell stated that he resides on the Property and is familiar with the events held there and on the contiguous tracts in the last three years. By his estimation, "events only occur on the [Property] about 10 times per year," with the Property sitting "vacant and unused" most of the time. He acknowledged his involvement with two types of events occurring on the Property: (1) pasture parties for college students and (2) camps for trail riders traveling on horseback to the annual Houston Livestock Show and Rodeo. As for the pasture parties that are the subject of the State's common nuisance claim, Murrell stated they are "organized for fun," promoted on social media, and often involved dancing and music. He denied that people attend these parties to commit crime and that party organizers do not take safety seriously. According to Murrell, he and event organizers followed the recommendations of the Waller County Sherriff's Office in hosting past events, which included recommendations for sanitation, traffic and crowd control, fire safety, and the presence of law enforcement and other security officers. Murrell acknowledged that "other individuals have used the real property addresses to

promote their events," but he claimed not to be involved with any events promoted as a "rave" or offering "unlimited liquor" to attendees.

Baker's affidavit indicated that he also was "familiar with events held over the last three years" on the Property, including the pasture parties for college students. He stated that although he had never organized or promoted any of the pasture parties, he observed that "party organizers took safety precautions and made reasonable attempts to prevent any type of criminal offense from occurring." He also observed "security and law enforcement monitoring these events." Baker, like Murrell, denied that he witnessed or tolerated any habitual criminal conduct by pasture party attendees.

On April 13, the date of submission, the State filed its initial brief in support of granting a temporary injunction but did not attach any evidence.[3] The State filed an amended brief with eight exhibits the next day. The exhibits included maps and records of title for the Property at issue as well as certain business records of the Waller County Sheriff's Office. The business records included, among other things,

[3] The appendix of the State's appellate brief contains an affidavit from counsel stating that she was unable to file the State's exhibits on April 13 due to technical difficulties in the transition to remote work during the COVID-19 pandemic. The appendix also contains business records from the Waller County District Attorney's Office purporting to transmit copies of the exhibits to the trial court and counsel for appellants via e-mail. Because neither the affidavit nor the business records attached as appendices are part of the appellate record, we do not consider them. *See Garcia v. Sasson*, 516 S.W.3d 585, 591 (Tex. App.—Houston [1st Dist.] 2017, no pet.) ("[D]ocuments attached as appendices to briefs do not constitute part of the record of the case and cannot be considered by this Court on appeal.").

copies of flyers advertising pasture parties at the Property between April 2013 and February 2020, some of which list Murrell's cell phone number or social media handle for "presales" or "more info"; records of calls to law enforcement on or around the same dates and on or near the Property; and "after action reports" prepared by the Waller County Sheriff's Office detailing its law enforcement efforts in connection with some of the pasture parties. The call notes include various reports of traffic hazards, loud music, fights, individuals in possession of marijuana, and "shots fired."

After considering the parties' pleadings, briefing, and evidence, the trial court signed orders denying dissolution of the temporary restraining order and granting a temporary injunction on April 15. The temporary injunction provides that it is effective until rendition of a final judgment on the State's common nuisance claim. It recites the trial court's finding that "despite the long history and pattern of criminal nuisance activities" by pasture party attendees, appellants have tolerated and "failed to make reasonable attempts to abate the nuisance activity because [appellants] continue to allow the pasture parties to be hosted on the [P]roperty and do so with a severe lack of security and other safety requirements." Based on this finding, the trial court concluded that the State was likely to succeed on the merits of its claim and had no other adequate remedy at law for abating the alleged harm. The trial court enjoined appellants from engaging in the same conduct prohibited by the temporary

restraining order—(1) "advertising, promoting, publicizing, otherwise advancing, or financially benefitting from any events in Waller County that are open to the public or to [50] or more people"; and (2) "leasing, otherwise allowing, or financially benefitting from [the Property] being used for events open to the public or to [50] or more people"—until the rendition of a final judgment.

Two days after the trial court granted the temporary injunction, appellants requested findings of fact and conclusions of law, urging the trial court to find that there was insufficient evidence to support the temporary injunction because the State failed to file original or certified copies of the papers and judgments of any arrests or convictions on the property, and to conclude that the State's unverified petition did not comply with the rules for obtaining injunctive relief. Despite this request, the trial court did not issue any findings or conclusions.[4]

Jurisdiction

In their first issue, appellants argue that the trial court erred by denying their motion to dissolve the temporary restraining order because the State's petition was not verified or supported by an affidavit and, thus, did not comply with Texas Rules of Civil Procedure 680 and 682. *See* TEX. R. CIV. P. 680, 682. This issue raises more than one jurisdictional concern, including (1) whether the interlocutory order

[4] The record does not show that appellants filed a notice of past due findings and conclusions.

denying dissolution of the temporary restraining order is appealable and, (2) if there is appellate jurisdiction, whether the expiration of the temporary restraining order renders the issue moot. Consequently, as a preliminary matter, we determine our jurisdiction to consider appellants' first issue challenging the temporary restraining order. *See M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004) (appellate courts have duty to assess their own jurisdiction *sua sponte*).

A. Appellate jurisdiction

The trial court's order denying dissolution of the temporary restraining order is an interlocutory order, not a final judgment. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93 (Tex. 2001) (judgment is final "only if either it actually disposes of all claims and parties then before the court . . . or it states with unmistakable clarity that it is a final judgment as to all claims and all parties"). "Appellate courts have jurisdiction to consider immediate appeals of interlocutory orders only if a statute explicitly provides such appellate jurisdiction." *Stary v. DeBord*, 967 S.W.2d 352, 352–53 (Tex. 1998); *see, e.g.*, TEX. CIV. PRAC. & REM. CODE § 51.014(a) (allowing appeal of interlocutory order in 15 instances, not including granting or denial of temporary restraining order or motion to dissolve temporary restraining order). No statutory provision exists permitting an appeal from a temporary restraining order. Accordingly, the granting or denial of a temporary restraining order is generally not appealable. *In re Tex. Nat. Res. Conservation*

Comm'n, 85 S.W.3d 201, 205 (Tex. 2002) (orig. proceeding). When a party attempts to appeal a non-appealable interlocutory order, appellate courts have no jurisdiction except to declare the interlocutory nature of the order and dismiss the appeal. *See* TEX. R. APP. P. 42.3(a); *Yancey v. Jacob Stern & Sons, Inc.*, 564 S.W.2d 487, 488 (Tex. App.—Houston [1st Dist.] 1978, no writ).

On the other hand, a temporary injunction is an appealable interlocutory order. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). And "where the force and effect of a temporary restraining order is indistinguishable from that of a temporary injunction, the order is appealable." *Plant Process Equip., Inc. v. Harris*, 579 S.W.2d 53, 54 (Tex. App.—Houston [14th Dist.] 1979, no writ). The "controlling factor" is "whether the relief granted does more than preserve the status quo" during the limited time span of a temporary restraining order. *Id.*; *see Sanchez v. Saghian*, No. 01-07-00951-CV, 2009 WL 3248266, at *3 (Tex. App.—Houston [1st Dist.] Oct. 8, 2009, no pet.) (mem. op.) ("An order that does more than protect the status quo for the allowable period under Rule 680 is functionally an appealable temporary injunction.").

Here, the trial court's temporary restraining order went beyond protecting the status quo by not just preventing the use of the property as a common nuisance but also restraining appellants from "advertising, promoting, publicizing, otherwise advancing, or financially benefitting from *any* events in Waller County that are open

to the public or to [50] or more people." (Emphasis added.) This was the same relief requested in the temporary injunction. As a result of the emergency orders issued to address the conduct of the courts during the COVID-19 pandemic, the terms of the temporary restraining order were extended beyond what is ordinarily allowable, with the temporary restraining order being effective for nearly one month beyond the parties' agreement and more than 70 days in total. *See* TEX. R. CIV. P. 680 (instructing temporary restraining order shall not exceed 14 days but may be extended for good cause shown or by agreement one time, unless further extensions are unopposed). The order denying dissolution of the temporary injunction thus is functionally a temporary injunction and falls within the scope of our appellate jurisdiction in this interlocutory appeal. *See Plant Process Equip.*, 579 S.W.2d at 54.

B. Mootness

Still, we lack jurisdiction to consider appellants' first issue challenging the temporary restraining order for a different reason—mootness. Courts are limited by the mootness doctrine to deciding cases in which an actual controversy exists. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018); *see Heckman v. Williamson Cty.*, 369 S.W.3d 137, 166–67 (Tex. 2012) ("[C]ourts have an obligation to take into account intervening events that may render a lawsuit moot."). The trial court extended the temporary restraining order "through 5:00 p.m. on April 13, 2020" or until its ruling on the State's application for a temporary injunction. Thus, although

the trial court signed an order denying dissolution of the temporary restraining order, the temporary restraining order expired by its own terms when the trial court signed the temporary injunction. Because the temporary restraining order is no longer in effect, the issue of whether it should be dissolved is moot. *See In re Hong Kong Dajiang Innovation Tech. Co.*, No. 03-14-00053-CV, 2014 WL 641482, at *1 (Tex. App.—Austin Feb. 13, 2014, orig. proceeding) (mem. op.) (holding issue whether temporary restraining order should be dissolved was moot upon party's concession that order expired by its own terms).

Accordingly, because we lack jurisdiction to consider appellants' first issue, we do not reach it.

Temporary Injunction

In their second issue, appellants raise several arguments about why the trial court erred by granting the State temporary injunctive relief. Specifically, they argue the temporary injunction is an abuse of the trial court's discretion because (1) the State failed to timely serve the business records and the business records affidavits submitted with its brief in support of the temporary injunction; (2) the State presented no evidence; and (3) the State had another adequate remedy at law.

A. Applicable law and standard of review

Suits to enjoin and abate a common nuisance are addressed in Chapter 125 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE

§§ 125.001–.047. A common nuisance exists if a person maintains a place to which persons habitually go for certain illegal purposes, knowingly tolerates the activity, and fails to make reasonable attempts to abate the activity. *Id.* § 125.0015(a). Some of the illegal purposes enumerated in the statute are: (1) delivery or possession of a controlled substance in violation of Chapter 481 of the Health and Safety Code, and (2) disorderly conduct as described by Section 42.01 of the Penal Code. *Id.* § 125.0015(a)(4), (24). If the trial court determines that the party seeking to enjoin the nuisance is likely to succeed on the merits of its suit, Section 125.045 authorizes the court to impose reasonable requirements to prevent use of the property as a nuisance pending a trial. *Id.* § 125.045(a)(1).

The decision to grant or deny a temporary injunction lies in the trial court's discretion, and the trial court's ruling is subject to reversal only for an abuse of that discretion. *INEOS Grp. Ltd. v. Chevron Phillips Chem. Co.*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.). A trial court abuses its discretion by granting or denying a temporary injunction when it misapplies the law to the established facts. *Id.* Any factual issues decided by the trial court in reaching the decision under review are not reviewed under legal and factual sufficiency standards, but the facts determined by the trial court must have some support in the evidence. *Haddock v. Quinn*, 287 S.W.3d 158, 169 n.2 (Tex. App.—Fort Worth 2009, pet. denied). If some evidence supports the trial court's decision, no abuse of discretion

has been shown. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex. 2002). We review the evidence submitted to the trial court in the light most favorable to its ruling, drawing all legitimate inferences from the evidence, and deferring to the trial court's resolution of conflicting evidence. *INEOS Grp.*, 312 S.W.3d at 848. An abuse of discretion does not exist if the trial court bases its decision on conflicting evidence. *See id.*

Our review is limited to determining whether the trial court abused its discretion; we do not reach the merits of the underlying case. *See Davis v. Huey*, 571 S.W.2d 859, 861–62 (Tex. 1978); *INEOS Grp.*, 312 S.W.3d at 848. When, as here, no findings of fact or conclusions of law are filed, the trial court's order must be upheld on any legal theory supported by the record. *See, e.g.*, *Intercontinental Terminals Co. v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 898 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

B. Unpreserved complaints related to timeliness of business records

Appellants first argue that the trial court abused its discretion by granting temporary injunctive relief because the State did not comply with the 14-day service requirement for self-authenticating business records. *See* TEX. R. EVID. 902(10)(A) (proponent of business records accompanied by affidavit "must serve the record and the accompanying affidavit on each other party to the case at least 14 days before trial"). According to appellants, the failure of timely service is not only an

evidentiary error but also a due process violation because they were denied the opportunity to object to the State's evidence. *See id.*; *see also* U.S. CONST. amend. XIV, § 1; TEX. CONST. art. 1, § 19.

To preserve a complaint for appellate review, a party must timely present to the trial court an objection or motion stating the specific grounds for the desired ruling, if the specific grounds are not apparent from the context. *See* TEX. R. APP. P. 33.1(a); *see also* TEX. R. EVID. 103(a) (requiring timely and specific objection to preserve claim of error in admission or exclusion of evidence). "An objection is timely urged when asserted at either the earliest opportunity or when the potential error becomes apparent." *First Nat'l Collection Bureau, Inc. v. Walker*, 348 S.W.3d 329, 337 (Tex. App.—Dallas 2011, pet. denied); *see Tryco Enters., Inc. v. Robinson*, 390 S.W.3d 497, 505 (Tex. App.—Houston [1st Dist.] 2012, pet. dism'd) (stating, in context of TEX. R. APP. P. 33.1 and TEX. R. EVID. 103, that "the party must have made a timely, specific objection at the earliest possible opportunity"). The objection should be made "at a point in the proceedings which gives the trial court the opportunity to cure any alleged error." *Crews v. Dkasi Corp.*, 469 S.W.3d 194, 201 (Tex. App.—Dallas 2015, pet. denied). "[E]ven constitutional issues, such as due process claims, must be properly raised in the trial court or they are waived on appeal." *Taylor v. Bridges*, No. 14-13-00669-CV, 2014 WL 4202507, at *2 (Tex. App.—Houston [14th Dist.] Aug. 26, 2014, no pet.) (mem. op.).

Here, appellants did not object at any time in the trial court that the untimely service of the State's business records and affidavits violated the Rules of Evidence and due process. While the State did not timely file its evidence before the date and time set by the trial court for submission of the temporary injunction application, the record does not show that appellants had no opportunity to object to the untimeliness or its effect. The district clerk's file-stamp shows that the State filed its amended brief in support of the temporary injunction and exhibits, including the business records and affidavits about which appellants complain, at 2:59 p.m. on April 14, 2020. The trial court did not grant the temporary injunction until the next day. A handwritten note on the temporary injunction order reflects that the order was signed by the trial court at 9:52 a.m. on April 15 and then file-stamped at 11:10 a.m. the same day.

Appellants have offered no explanation for why they did not, or reasonably could not, object to the untimeliness of the State's exhibits in the time between their filing and the trial court's ruling or, if there was not enough time before the trial court ruled, why they did not object when the alleged error first became apparent after the temporary injunction was granted. That is, appellants did not take any pre-or post-ruling opportunity to make an objection informing the trial court of their complaints that the State had violated evidentiary rules and failed to give adequate notice of the evidence against them. *Cf. El-Rayes v. Lee*, No. 05-19-00881-CV, 2020

WL 7767939, at *4 (Tex. App.—Dallas Dec. 30, 2020, no pet.) (mem. op.) (noting unless party can show legitimate reason for not timely objecting, error is waived); *Lake v. Premier Transp.*, 246 S.W.3d 167, 174 (Tex. App.—Tyler 2007, no pet.) (holding error was not preserved where party, though it had no opportunity to object to conflicting jury findings before jury was discharged, had several later opportunities to raise the issue but failed to do so). Appellants took the opportunity to make other evidentiary and procedural objections when they requested findings of fact and conclusions of law two days after the trial court granted the temporary injunction, but they did not take the opportunity then or at any other time to complain about the untimeliness of the State's business records and accompanying affidavits before filing this interlocutory appeal. On this record, we conclude appellants have not preserved their evidentiary or due process complaints for appellate review. *See* TEX. R. APP. P. 33.1; TEX. R. EVID. 103.

C. Trial court's discretion to resolve conflicting evidence in determining likelihood of success on merits

Appellants next argue that the trial court abused its discretion by granting temporary injunctive relief because the State failed to present any supporting evidence. Specifically, appellants assert the State's business records affidavits simply authenticated the attached documents as the files of the Waller County Sheriff's Office and thus were not evidence of the "truth of any alleged criminal activity to support the temporary injunction." Because the State had no other

evidence, appellants argue the trial court was compelled to accept their evidence supporting the denial of temporary injunctive relief.

In support of their contention that the State's business records could not be considered for the truth of the matters asserted therein, appellants cite the Dallas Court of Appeals' decision in *In re MetroPCS Communications, Inc.*, 391 S.W.3d 329 (Tex. App.—Dallas 2013, orig. proceeding). That mandamus proceeding arose from a temporary restraining order obtained by a shareholder in a derivative action that alleged breaches of fiduciary duty in connection with a proposed "business combination" deal. *See id.* at 331. In considering whether the temporary restraining order complied with Rule of Civil Procedure 682's mandate that "[n]o writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief," the Dallas Court remarked that an affidavit stating that a copy of the business combination agreement was "true and correct" served, at most, to authenticate the agreement. *Id.* at 337–38.

But the Dallas Court's statement in *MetroPCS Communications* does not support appellants' contention that the business records affidavits submitted by the State here served only the same limited, authentication purpose. The State's business records affidavits stated more than that the attached documents were true and correct copies of the records of the Waller County Sheriff's Office. Rather, they followed

the template in Rule 902(10)(B) for a sufficient business records affidavit, averring that (1) the affiant is the custodian of records for the Waller County Sheriff's Office and familiar with the manner in which the records are created and maintained by virtue of his duties; (2) the attachments are the original records or exact duplicates of the original records; (3) the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth; (4) the records were made by, or from information transmitted by, persons with knowledge of the matters set forth; (5) the records were kept in the course of regularly conducted business activity; and (6) it is the regular practice of the business activity to make the records. *See* TEX. R. EVID. 902(10)(B). Aside from their unpreserved complaint about the timeliness of the business records and accompanying affidavits, appellants have not argued that the records do not otherwise comply with the business records exception to the hearsay rule. *See* TEX. R. EVID. 803(6) (records of regularly conducted activity are not excluded by the rule against hearsay).

Appellants are mistaken as to the effect of the business records exception. Rule of Evidence 802 provides that hearsay, an out-of-court statement offered for the truth of the matter asserted, is not admissible into evidence, *unless* otherwise permitted by the rules of evidence or a statute. *See* TEX. R. EVID. 801(d), 802. The business records exception in Rule of Evidence 803(6) provides that the records of regularly conducted activity are admissible as an exception to the rule against

hearsay. *See* TEX. R. EVID. 803(6). "By authorizing admission of business records as a hearsay exception, the Rule intends such records to be admissible for the truth of the matter asserted." *Overall v. S.W. Bell Yellow Pages, Inc.*, 869 S.W.2d 629, 633 (Tex. App.—Houston [14th Dist.] 1994, no writ); *see Federated Fin. Servs., Inc. v. Nixon*, No. 09-95-078-CV, 1996 WL 667827, at *2 (Tex. App.—Beaumont 1996, writ denied) (not designated for publication) ("It is axiomatic that if a trial judge allows a document into evidence under Rule 803(6) as an exception to the hearsay rule, the document comes in to prove the truth of the matter asserted."). Because the trial court considered the business records here under a hearsay exception, the records were admissible for the truth of the matter asserted. *See Federated Fin. Servs.*, 1996 WL 667827, at *2; *Overall*, 869 S.W.2d at 633.

Appellants have not argued that the business records, if considered for the truth of the matter asserted, are not at least some evidence the State is likely to succeed on the merits of its common nuisance claim. Rather, appellants argue only that the trial court was compelled to accept their evidence contradicting the State's common nuisance allegations because it was the "only evidence." But the business records submitted by the State document criminal activity (including possession of illegal substances, discharge of firearms, and other disorderly conduct) occurring over the course of more than three years in connection with multiple pasture parties hosted on the Property. The summary of calls to law enforcement includes calls at

locations matching the address of the Property and dates correlating with those on advertised event flyers, including flyers listing Murrell's cell phone number or social media handle in connection with promotion and sales for the events. And the observations recorded by the Waller County Sheriff's Office in "after action reports" note a lack of safety and security at these events. Although appellants presented affidavit testimony from Murrell and Baker describing party attendees as motivated to have fun, denying that habitual crime was occurring on the property, and claiming that reasonable safety precautions had been taken, this was conflicting evidence. The trial court was not required to credit appellants' evidence over the State's evidence. We defer to the trial court's resolution of the conflicting evidence and will not find that the trial court abused its discretion based on that resolution. *See Davis*, 571 S.W.2d at 861–62; *INEOS Grp.*, 312 S.W.3d at 848.

D. No adequate remedy at law under the Mass Gatherings Act

Finally, appellants argue that the trial court abused its discretion by granting temporary injunctive relief because the State had an adequate remedy at law under the Mass Gatherings Act, a statute which prohibits a person from promoting a mass

gathering without a permit.[5] *See* TEX. HEALTH & SAFETY CODE § 751.003. Appellants cite the statute's criminalization of violations of the permitting process and urge that the "actual problem may be [lack of] enforcement of this existing statute." *See id.* § 751.011 (promotion of unpermitted mass gatherings is misdemeanor offense "punishable by a fine of not more than $1,000, confinement in the county jail for not more than 90 days, or both"). We disagree.

The State's request for temporary injunctive relief derived from Chapter 125, not the general principles of equity that may guide awards of injunctive relief. *See* TEX. CIV. PRAC. & REM. CODE § 125.002. When, as here, an applicant relies on a statutory source for injunctive relief, the statute's express language supplants the common-law elements for injunctive relief, such as imminent harm, irreparable injury, and lack of an adequate remedy at law. *See Furr v. Hall*, 553 S.W.2d 666, 672 (Tex. App.—Amarillo 1977, writ ref'd n.r.e.) (concluding statutory right to injunctive relief relieved party from proving common law element of inadequate legal remedy); *Republic Ins. Co. v. O'Donnell Motor Co.*, 289 S.W. 1064, 1066

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[5] A "mass gathering" is a gathering (1) that is held outside the limits of a municipality; (2) that attracts or is expected to attract more than 2,500 persons (or more than 500 persons if 51 percent or more of those persons may reasonably be expected to be under 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering); and (3) at which persons will remain for five or more continuous hours (or for any amount of time between the hours of 10:00 p.m. and 4:00 a.m.). TEX. HEALTH & SAFETY CODE § 751.002(1).

(Tex. App.—Dallas 1926, no writ) ("The general rule at equity is that before injunctive relief can be obtained, it must appear that there does not exist an adequate remedy at law. This limitation, however, has no application where the right to relief is predicated on a statutory ground other than on the general principles of equity."); *see also Butnaru*, 84 S.W.3d at 210 (recognizing case law holding requirements for establishing right to common-law injunctive relief differ from those where injunctive relief is authorized by statute). Chapter 125 does not state any requirement that the State show the lack of an adequate remedy at law. *See* TEX. CIV. PRAC. & REM. CODE §§ 125.001–.047.

But even if that showing were required, some evidence supports a finding that the Mass Gatherings Act was not an adequate remedy. Viewed in the light most favorable to the trial court's ruling, the State presented some evidence that the permitting requirement had not avoided the Property's use as a common nuisance in the past. The business records of the Waller County Sheriff's Office establish that a district judge granted a permit for a pasture party on September 6, 2019, with certain conditions for sanitation, safety, and security. A flyer advertising this event listed Murrell's cell phone number in connection with "presales," raising at least an inference of his involvement in promoting the event. But, as outlined in the "after action report" prepared by the Waller County Sheriff's Office, law enforcement could not confirm that the permit conditions had been satisfied. In addition, despite

the event being permitted, the report reflects that some of the activities alleged by the State to be a common nuisance still occurred in connection with the event, including an incident in which persons were "observed carrying handguns and threatening other groups with violence" after leaving the event and an arrest for possession of marijuana. *See id.* § 125.0015(a)(4), (24).

The business records also show that Murrell hosted another event at a different location in Waller County on February 8, 2020, despite the temporary restraining order having issued and without seeking a mass gathering permit. Murrell advised a representative of the Waller County Sheriff's Office by phone that "he was holding his party regardless of the temporary restraining order enjoining the party." Law enforcement officers were informed by persons leaving the February 8 party that there was a "man with a gun inside," and gunshots were heard. Law enforcement also observed the odor of marijuana from inside the event. This is evidence that Murrell refused to comply with a court order and that the lack of a mass gathering permit was not considered, by him at least, to be a barrier to hosting the pasture parties the State alleges are a common nuisance. In sum, viewed in the appropriate light, this evidence is some evidence to support a finding that the permitting requirement under the Mass Gatherings Act was not an adequate remedy at law, to the extent that finding was required. The record thus does not show an abuse of the trial court's discretion in this regard. *See Butnaru*, 84 S.W.3d at 211.

Because we have denied each of appellants' reasons for setting aside the temporary injunction, we overrule appellant's second issue.

Conclusion

For the reasons stated above, we do not reach the issue of whether the trial court erred by denying dissolution of the temporary restraining order, as we lack jurisdiction to do so. However, we affirm the trial court's order granting the State temporary injunctive relief.

Amparo Guerra
Justice

Panel consists of Justices Kelly, Guerra, and Farris.