

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-05-00002-CV**

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**Smith & Carlson, P.C. and Craig Carlson, Appellants**

**v.**

**Ted Smith, Jr., Appellee**

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**FROM THE DISTRICT COURT OF BELL COUNTY, 146TH JUDICIAL DISTRICT  
NO. 207702B, HONORABLE ROBERT DOHONEY, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

The underlying appeal in this cause is from a temporary injunction. Appellee has filed a motion to enforce the temporary injunction and for referral of that motion to the trial court. Appellants oppose that motion and have filed a motion to stay the temporary injunction. It appears that the circumstances giving rise to the temporary injunction may have changed and that the trial court is the appropriate body to enforce and/or modify the temporary injunction. The appellate court, in which an appeal from an interlocutory order is pending, may refer any enforcement proceeding to the trial court with instructions to hear evidence and grant appropriate relief. *See* Tex. R. App. P. 29.4(a); *Jano v. State*, 795 S.W.2d 47, 48 (Tex. App.—Austin 1990, order) (referring case to trial court to hear evidence and grant appropriate relief).

Accordingly, we grant appellee's motion to refer the motion to enforce to the trial court. Appellee should, if necessary, re-file the motion to enforce in the trial court. Appellants may

file a motion to modify the injunction in the trial court if they deem it necessary. We further direct that the district court may proceed to hear evidence in regard to such motions and may grant such relief as may be appropriate. The motion to stay the temporary injunction is overruled. This appeal is abated pending the trial court's action. The parties should apprise this Court of the status of the case by April 8, 2005.

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W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices Puryear and Pemberton

Filed: February 22, 2005