

DENY; and Opinion Filed June 8, 2017.



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

No. 05-17-00556-CV

IN RE WANDA LEE DAHLHEIMER, Relator

**Original Proceeding from the 469th Judicial District Court
Collin County, Texas
Trial Court Cause No. 469-51274-2015**

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Schenck
Opinion by Justice Fillmore

This original proceeding arises from divorce proceedings that resulted in a divorce decree and the appointment of a receiver and a successor receiver to sell the marital home and distribute the proceeds. Relator has appealed the decree and the order appointing the successor receiver. The consolidated appeal is docketed as cause number 05-16-00196-CV. In this original proceeding, relator asks this Court to grant a writ of injunction that will prohibit the successor receiver from taking actions to sell the home, to stay the order appointing the successor receiver, and to order real parties in interest to release insurance proceeds to pay for home repairs.

The courts of appeals have limited injunctive powers. “Each court of appeals ... may issue ... all ... writs necessary to enforce the jurisdiction of the court.” TEX. GOV'T CODE ANN. § 22.221(a) (West 2004). A court of appeals “has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to

prevent an unlawful interference with the enforcement of its judgments and decrees.” *Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ). Unlike in the trial court, where a temporary injunction will lie to preserve the status quo pending trial, an injunction will not lie in the courts of appeals merely to preserve the status quo pending appeal or to prevent damage to an appellant. *EMW Mfg. Co. v. Lemons*, 724 S.W.2d 425, 426 (Tex. App.—Fort Worth 1987, orig. proceeding); *Pace v. McEwen*, 604 S.W.2d 231, 233 (Tex. Civ. App.—San Antonio 1980, no writ). The power to grant a temporary writ of injunction to prevent damages which would otherwise flow to a litigant who has an appeal pending rests exclusively with the district judge. *Madison v. Martinez*, 42 S.W.2d 84, 86 (Tex. Civ. App.—Dallas 1931, writ ref’d). Similarly, the trial court has the authority and continuing jurisdiction to suspend enforcement of a judgment pending appeal. TEX. R. APP. P. 24.3; *see also Thompson v. Coleman*, No. 01-01-00114-CV, 2002 WL 1340314, at *7 (Tex. App.—Houston [1st Dist.] June 20, 2002, pet. ref’d) (not designated for publication) (holding that attempts to suspend enforcement of judgment pending appeal are within the trial court’s authority under Rule 24.3 of the Texas Rules of Appellate Procedure).

Based on the record before us, we conclude relator has not shown she is entitled to the relief requested. An injunction is not necessary to protect the Court’s jurisdiction over the appeal because any actions taken by the receiver will not prevent the Court from determining the merits of the appeal. Further, the only potential harm relator seeks to prevent through an injunction is the possibility that she will incur money damages and investment losses. The trial court, not this Court, has the authority to grant a temporary writ of injunction to prevent such damages. *See, e.g. Madison*, 42 S.W.2d at 86. Accordingly, we deny relator’s May 25, 2017 “verified emergency petition for temporary injunction or restraining order pending appeal.” *See* TEX. R.

APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Robert M. Fillmore/

ROBERT M. FILLMORE
JUSTICE

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