

AFFIRMED and Opinion Filed January 27, 2025



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

No. 05-24-00653-CV

**THE EXPO GROUP, LLC, Appellant
V.
TOBY PURDY, Appellee**

**On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-09654**

MEMORANDUM OPINION

Before Justices Smith, Garcia, and Rodriguez¹
Opinion by Justice Smith

In this accelerated appeal, appellant The Expo Group, LLC (TEG) challenges the trial court's denial of its motion to modify a temporary injunction, dissolution of the temporary injunction, and order requiring TEG to pay appellee Toby Purdy \$37,499.99 in lost wages. TEG asks this Court to reverse the dissolution order and remand this case to the trial court with instructions to reinstate the temporary injunction with a modest bond requirement. For the reasons discussed below, we affirm the trial court's dissolution order.

¹ The Hon. Yvonne Rodriguez, Senior Justice, Assigned

Procedural and Factual Background

Purdy is a former employee of TEG. He served as TEG's Chief Sales Officer from August 2017 through July 2023. In connection with his employment, Purdy and TEG entered into an Executive Severance Agreement, which governed the terms and conditions of any severance payments and benefits Purdy could be entitled to upon termination without cause. The Severance Agreement also included provisions concerning the protection of TEG's confidential information, a non-compete provision, and a non-solicitation provision. According to Purdy, he excelled at TEG, "bringing the company's sales revenues and profits to some of the highest in company's 30 year-history." In 2021, TEG began replacing certain long-term incentive plans with new plans, thus changing the terms and conditions of contractually-promised benefits. However, certain retirement stock appreciation rights Purdy received did not appear to be governed by any plan, and he did not receive a new governing plan until 2023. The 2023 long-term incentive plan purportedly reduced the benefits owed to participants.

Through counsel, Purdy sought clarification of his rights and benefits under the new plan and expressed his concerns with the changes. Dissatisfied with TEG's answers, or lack thereof, Purdy filed a lawsuit in federal court seeking, among other things, a declaration of his rights under the various benefit plans. TEG then terminated Purdy for cause, claiming he materially breached the Severance Agreement by disclosing confidential information in the federal lawsuit.

After Purdy received notice of his termination, he brought the underlying suit against TEG, alleging TEG breached the Severance Agreement and seeking a declaratory judgment that the Severance Agreement's restrictive covenants (the non-compete and non-solicitation provisions) were unenforceable as a matter of law. Purdy also sought a temporary injunction requiring TEG to place, in the registry of the court, the amount of money he would be entitled to under the Severance Agreement if he was found to be terminated without cause. Purdy sought such relief because he believed his ability to collect the amount due under the Severance Agreement would be in jeopardy if TEG was sold to a third-party, which Purdy alleged was imminent. Purdy also filed a motion for expedited discovery concerning his request for injunctive relief.

TEG filed a motion to stay the state court litigation while the case was being pursued by Purdy in federal court. Subject to its motion to stay, TEG filed a general denial. Purdy dismissed his federal suit, and in lieu of expedited discovery regarding Purdy's request for injunctive relief in state court, TEG placed \$623,950.80 in the registry of the court.

In 2024, TEG learned that Purdy had obtained a sales position with The Trade Group, one of its competitors. Purdy began working for The Trade Group on January 3, 2024. TEG believed Purdy again violated the Severance Agreement and filed a counterclaim against him. TEG alleged that Purdy breached the non-compete provision by taking the sales position with The Trade Group and that Purdy breached

the non-disclosure provision by disclosing TEG's confidential information in his federal court filings and by being in a position at The Trade Group to use and disclose such information. TEG also sought, and subsequently obtained, a temporary restraining order and temporary injunction enjoining Purdy from engaging or participating in any business or activity that was directly or indirectly in competition with TEG, including being employed by The Trade Group, and from utilizing any of TEG's confidential information. The temporary orders also required Purdy to return any property belonging to TEG that was within his possession, custody, or control. TEG did not seek a bond in its request for a temporary restraining order and temporary injunction. Instead, TEG asserted, "The parties agreed in the Severance Agreement that a bond is unnecessary in circumstances such as this, thus TEG contends that no bond should be necessary."² TEG drafted the proposed temporary orders, which the trial court adopted with limited changes. Purdy did not object to the language concerning a bond in either order, which was similar in nature. The temporary injunction, which is at issue here, provided:

It is further ORDERED that, pursuant to the terms of the Severance Agreement, and the fact that TEG has already placed significant funds in the registry of the Court, which the Court finds will adequately protect the interests of Purdy pending a full trial on the

² The Severance Agreement provided the following in relevant part:

[Purdy] agrees that, in the event of a breach or threatened breach by [Purdy] of the provisions . . . , [TEG] may seek, in addition to any other rights or remedies, including money damages for specific performance, an injunction or restraining order, without the need to post any bond or other security, prohibiting [Purdy] from doing or continuing to do any acts constituting such breach or threatened breach.

merits, no additional bond shall be necessary prior to the issuance of this Temporary Injunction.

Because the temporary orders barred Purdy from working for The Trade Group, Purdy was suspended and then laid off. Purdy filed a notice of accelerated appeal from the temporary injunction. In his docketing statement, he gave the following brief description of the issue to be raised on appeal:

Whether Injunction Order is void for not complying with TRCP 683 and 684 and embodies an abuse of discretion. The Order is reviewed overall for abuse of discretion. But issuance of a void order is an abuse of discretion per se, and questions of law and application of law to facts are reviewed de novo.

In response, TEG filed an Emergency Motion to Modify the Order Granting Temporary Injunction in the trial court, requesting the court to remedy any arguable procedural defect by modifying the temporary injunction to include a specific bond amount rather than ordering the money previously placed in the registry of the court to be sufficient to protect Purdy's interests. TEG recommended the court require a bond of no more than \$5,000, in light of the amount it already placed in the registry of the court. Purdy responded that the proposed amount failed to adequately protect him "from the damages he may incur should the court of appeals find this court improperly granted the injunction." He contended the trial court should not amend the injunction order but should instead dissolve it because, due to the bond defect, the temporary injunction was void at its inception. Purdy further argued he should be compensated for his lost wages after he was enjoined from working for The Trade

Group. If, however, the trial court did amend the injunction order, Purdy requested the bond amount be set at \$260,000.

Following a hearing, the trial court denied TEG's motion to modify and dissolved the temporary injunction, finding the order was void for failing to set a bond amount. The trial court further ordered TEG to pay Purdy the amount of his lost wages from March 14, 2024, the date of the temporary restraining order, which also failed to set a bond amount, to May 17, 2024, the date of the dissolution order. The trial court calculated the amount of lost wages as \$37,499.99 based on Purdy's bi-weekly salary of \$8,333.33. Purdy filed a motion to dismiss his accelerated appeal as moot, which this Court granted, and TEG filed notice of this accelerated appeal from the trial court's dissolution order.

On appeal, TEG presents three issues: (1) whether the trial court abused its discretion in denying TEG's motion to modify the temporary injunction to correct a procedural defect; (2) whether the trial court abused its discretion in dissolving the temporary restraining order and temporary injunction when no change in circumstances or law justified dissolution; and (3) whether the trial court abused its discretion in imposing a monetary award to Purdy.

Interlocutory Jurisdiction

The first question we must answer in this interlocutory appeal is whether we have jurisdiction to decide each of TEG's issues. We conclude we do not have jurisdiction over the trial court's denial of TEG's motion to modify or the trial

court's monetary award to Purdy, which are addressed in TEG's first and third issues. We do however have jurisdiction over the trial court's dissolution order, which is addressed in TEG's second issue.

Generally, an appeal may be taken only from a final judgment. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *see also Qwest Commc'ns Corp. v. AT&T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000) (per curiam) ("An appellate court lacks jurisdiction to review an interlocutory order unless a statute specifically authorizes an exception to the general rule, which is that appeals may only be taken from final judgments."). However, there are some exceptions, most notably those permitted under section 51.014 of the Texas Civil Practice and Remedies Code, which the legislature has expanded over the years. *Indus. Specialists, LLC v. Blanchard Refin. Co. LLC*, 652 S.W.3d 11, 14 (Tex. 2022). Section 51.014 sets out the interlocutory orders from which a person may appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a). As relevant here, subsection (a)(4) authorizes an appeal from an interlocutory order that "grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction." TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). Therefore, section 51.014(a)(4) provides this Court with jurisdiction over the trial court's order dissolving the temporary injunction at issue here.

TEG argues we also have jurisdiction over the trial court's denial of TEG's motion to modify and the trial court's award of monetary damages to Purdy because

the issues are inextricably intertwined and were all decided in the dissolution order. TEG explains that Purdy's request to dissolve the temporary injunction was made in his response to TEG's motion to modify and, thus, the trial court denied TEG's motion to modify and granted Purdy's request to dissolve the temporary injunction at the same time. TEG cites to several cases in which our sister courts concluded they had jurisdiction over an order modifying a temporary injunction. *See Danbill Partners, L.P. v. Sandoval*, 621 S.W.3d 738, 751 (Tex. App.—El Paso 2020, no pet.); *Ahmed v. Shimi Ventures, L.P.*, 99 S.W.3d 682, 688–89 (Tex. App.—Houston [1st Dist.] 2003, no pet.); *Currie v. Int'l Telecharge, Inc.*, 722 S.W.2d 471, 472–73 (Tex. App.—Dallas 1986, no writ). But modifying a temporary injunction is akin to granting a temporary injunction—it creates a new or amended temporary injunction from which a party may appeal, *see Ahmed*, 99 S.W.3d at 689; refusing to modify does not.

Similarly, TEG argues we have jurisdiction to decide its challenge to the trial court's monetary award to Purdy because the award is contained within the dissolution order and, thus, the character and substance of the entire order falls within the Court's jurisdiction under section 51.014(a)(4). Again, we disagree. The character and substance of the monetary award is based, as TEG itself argues in its third issue, on a wrongfully obtained injunction, which is separate from the trial court's decision to grant or dissolve a temporary injunction and requires the moving party to allege and prove completely different elements. In fact, TEG asserts there

are only two paths under Texas law to recover damages for a wrongfully obtained injunction: (1) a cause of action upon an injunction bond and (2) a claim for malicious prosecution, neither of which, TEG contends, Purdy alleged or proved. Section 51.014 does not grant us jurisdiction over interlocutory orders awarding damages on a cause of action upon an injunction bond or a claim for malicious prosecution. Therefore, whether Purdy properly sought damages for a wrongfully obtained injunction or whether the trial court abused its discretion in awarding Purdy lost profits is not properly before us in this interlocutory appeal. Accordingly, we dismiss TEG's first and third issues.

Temporary Injunctions

The purpose of a temporary injunction is to “preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (op. on reh’g). Texas Rules of Civil Procedure 683 and 684 set out the form and procedural requirements for temporary restraining orders and temporary injunctions. Rule 683 requires the trial court to state the specific reasons for issuing the injunction, the acts to be restrained, and to whom the injunction applies. TEX. R. CIV. P. 683. The rule also requires the trial court to set a date for trial. *Id.* Rule 684 requires the trial court to “fix the amount of security to be given by the applicant,” i.e. set a bond. TEX. R. CIV. P. 684. “These procedural requirements are mandatory, and an order granting a temporary injunction that does

not meet them is subject to being declared void and dissolved.” *Qwest Commc’ns*, 24 S.W.3d at 337.

When the appeal is to a dissolution order, such as here, “we do not consider the propriety of the trial court’s decision granting the initial injunctive relief.” *Kassim v. Carlisle Ints., Inc.*, 308 S.W.3d 537, 540 (Tex. App.—Dallas 2010, no pet.). Instead, we presume it was correctly granted and narrowly decide whether the trial court abused its discretion in dissolving the injunction. *Id.*; *Murphy v. McDaniel*, 20 S.W.3d 873, 877 (Tex. App.—Dallas 2000, no pet.). A trial court abuses its discretion when it acts in an unreasonable or arbitrary manner or without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

Dissolution of Temporary Injunction

TEG argues in its second issue that the trial court did not have the authority to dissolve the temporary injunction because Purdy did not show a change in circumstances or law that required dissolution. *See, e.g., Kassim*, 308 S.W.3d at 540 (“a trial court generally has no duty to dissolve an injunction unless fundamental error has occurred or conditions have changed”); *Murphy*, 20 S.W.3d at 877 (“When, as in this case, changed circumstances are the basis of a motion to dissolve, the moving party must show some substantial change has occurred since the proper issuance of the temporary injunction such that the order should be dissolved.”). There is no dispute that Purdy did not allege or prove that the circumstances

changed.³ However, Purdy argues the temporary injunction order was void because it did not set a bond or comply with the rules' specificity requirements and was impermissibly broad. Therefore, Purdy contends, the trial court did not abuse its discretion in dissolving the temporary injunction; “[t]o the contrary, it would have abused its discretion if it had *not* dissolved that void order.” We agree the temporary injunction order was void for failing to comply with the bond requirement.

Rule 684 provides:

In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.

TEX. R. CIV. P. 684. The Supreme Court of Texas has explained that rule 684, along with rule 683, is mandatory and “an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved.” *Qwest Commc’ns*, 24 S.W.3d at 337.

³ “Changed circumstances are conditions that altered the status quo existing after the injunction was granted or that made the injunction unnecessary or improper.” *In re Guardianship of Stokley*, No. 05-10-01660-CV, 2011 WL 4600428, at *3 (Tex. App.—Dallas Oct. 6, 2011, no pet.) (mem. op.). “Changed circumstances may include an agreement of the parties, newly revealed facts, or a change in the law that make the temporary injunction unnecessary or improper.” *Id.* (quoting *Murphy*, 20 S.W.3d at 878).

Following supreme court precedent, this Court has consistently explained that temporary restraining orders or temporary injunctions that fail to meet the requirement of rules 683 and 684 are void and must be dissolved. *See, e.g., In re St. Mark's Sch. of Tex.*, No. 05-23-00369-CV, 2023 WL 3220937, at *5 (Tex. App.—Dallas May 3, 2023, orig. proceeding) (mem. op.) (explaining that a temporary restraining order “that fails to set bond is void and unenforceable”); *Lodispoto v. Ruvolo*, No. 05-12-01580-CV, 2013 WL 3155000, at *1 (Tex. App.—Dallas June 19, 2013, no pet.) (mem. op.) (concluding temporary injunction order was void because it did not set the case for trial or provide for a bond); *Hamilton Guar. Cap., LLC v. Orphan House Prods., LLC*, No. 05-11-01401-CV, 2012 WL 2359881, at *1 (Tex. App.—Dallas June 21, 2012, no pet.) (mem. op.) (noting there was no legal authority cited or found for the proposition that a temporary injunction that does not meet the mandatory requirements of rules 683 and 684 could be amended on appeal to meet the requirements and concluding that such order “is void and must be dissolved”). This Court, relying in part on *Qwest Commc 'ns*, has also explained that a trial court abuses its discretion by issuing a temporary injunction order that does not comply with the requirements of rule 683 and that an appellate court can declare a temporary injunction void even when the issue is not raised by the parties in either the trial or appellate court. *Indep. Cap. Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792, 795 & n.1 (Tex. App.—Dallas 2008, no pet.). In short, the mandatory requirements of rules 683 and 684 cannot be waived by consent, agreement, or any other actions

of the trial court or the parties. *Clark v. Hastings Equity Partners, LLC*, 651 S.W.3d 359, 370 n.8, 373 (Tex. App.—Houston [1st Dist.] 2022, no pet.) (parties cannot waive mandatory requirements of rule 683 by consent or by failing to raise the issue); *Indep. Cap. Mgmt.*, 261 S.W.3d at 795 & n.1 (parties cannot waive rule 683 requirements by agreeing to the form or substance of the order or by failing to raise the issue); *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, orig. proceeding) (party did not waive her rights to attack void injunction on appeal because “a party who agrees to a void order has agreed to nothing”).

TEG counters that cash deposited in the court’s registry may constitute a proper bond under rule 684 and, thus, its prior \$623,950.80 deposited in the court’s registry was sufficient to protect Purdy. While we do not disagree with this general premise, we disagree that cash already deposited into the court’s registry for a different purpose can be used to also cover the bond required by rule 684. For example, in *Seib v. American Savings & Loan Association of Brazoria County*, this Court was asked to decide whether appellees’ deposit of \$5,000 with the district clerk in lieu of the \$5,000 bond the trial court ordered appellees to post to effectuate the temporary restraining order, and which remained in effect as the temporary injunction bond, complied with the requirements of rule 684. No. 05-89-01231-CV, 1991 WL 218642, at *5 (Tex. App.—Dallas Oct. 25, 1991, no writ) (not designated for publication). We concluded that appellees’ deposit was sufficient because rule 14c allows a party to file a cash deposit in lieu of any surety bond and is conditioned

in the same manner as a bond under rule 684. *Id.* at *5–6; *see also* TEX. R. CIV. P. 14c (“Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash . . . in the amount fixed for the surety bond, conditioned in the same manner as would be a surety bond for the protection of other parties.”); TEX. R. CIV. P. 684 (providing bond shall be “conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part”). However, in *Ex parte Leshner*, the Supreme Court of Texas explained:

It is immaterial that a third party, the title company, was holding in escrow an amount of money equal to the sum claimed by [relator]. The intent of this Court in promulgating Rule 684 was to require a bond *payable to a party against whom a temporary restraining order or injunction is issued* before the order may lawfully issue. Without such bond the order is void.

651 S.W.2d 734, 736 (Tex. 1983) (orig. proceeding). The difference between the two cases is critical. In *Seib*, the trial court fixed an amount to be posted to effectuate the temporary injunction, *see* 1991 WL 218642, at *5; in *Leshner*, as in this case, the trial court did not. *See* 651 S.W.2d at 735–36. We conclude the trial court did not abuse its discretion in dissolving the temporary injunction for failing to set a specific bond amount. We overrule TEG’s second issue.

Conclusion

Having dismissed TEG's first and third issues for want of jurisdiction and overruled TEG's second issue, we affirm the portion of the trial court's May 17, 2024 order dissolving the temporary injunction. We do not reach the portions of the trial court's May 17, 2024 order denying TEG's motion to modify the temporary injunction or awarding Purdy \$37,499.99 in lost wages.

/Craig Smith/

CRAIG SMITH
JUSTICE

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

JUDGMENT

THE EXPO GROUP, LLC,
Appellant

No. 05-24-00653-CV V.

TOBY PURDY, Appellee

On Appeal from the 101st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-23-09654.
Opinion delivered by Justice Smith.
Justices Garcia and Rodriguez
participating.

In accordance with this Court's opinion of this date, the trial court's May 17, 2024 dissolution order is **AFFIRMED**.

It is **ORDERED** that appellee TOBY PURDY recover his costs of this appeal from appellant THE EXPO GROUP, LLC.

Judgment entered this 27th day of January 2025.