

Rule 680 of the Texas Rules of Civil Procedure limits a temporary restraining order's effectiveness to an initial fourteen day period and permits an additional fourteen day extension upon good cause shown. TEX. R. CIV. P. 680. Rule 680 places strict time constraints on a temporary restraining order's life, because a temporary restraining order's purpose is to restrain a party's action only until a full evidentiary hearing on the request for a temporary injunction occurs. *See Del Valle I.S.D. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992).

In reviewing complaints about orders that restrain a party's action, Texas courts have repeatedly recognized that the order's nature and characteristics, rather than its title, control whether it is a nonappealable temporary restraining order or an appealable temporary injunction. *See Global Natural Res. v. Bear, Stearns & Co.*, 642 S.W.2d 852, 854 (Tex. App.–Dallas 1982, no writ); *Plant Process Equip., Inc. v. Harris*, 579 S.W.2d 53, 54 (Tex. Civ. App.–Houston [14th Dist.] 1979, no writ); *Ellis v. Vanderslice*, 486 S.W.2d 155, 159 (Tex. Civ. App.–Dallas 1972, no writ). Indeed, this Court recently reiterated its rejection of the notion that “‘matters of form control the nature of the order itself — it is the character and function of an order that determine its classification.’” *Qwest Communications Corp. v. AT&T*, 24 S.W.3d 334, 336 (Tex. 2000) (quoting *Del Valle*, 845 S.W.2d at 809). Consequently, in reviewing a complaint against an order denominated as a “temporary restraining order,” Texas courts have held that, if the order has a similar force and effect as a temporary injunction, it is an appealable order. *See Global Natural Res.*, 642 S.W.2d at 854; *Plant Process Equip.*, 579 S.W.2d at 54; *Ellis*, 486 S.W.2d at 159.

II. ANALYSIS

The Court recognizes that we have consistently held that whether an order is an appealable temporary injunction depends upon the order's characteristics and function and not its title. *See* ___ S.W.3d at ___ (citing *Qwest*, 24 S.W.3d at 336; *Del Valle*, 845 S.W.2d at 809); *see also Terrell v. Alpha Petroleum Co.*, 54 S.W.2d 821 (Tex. Civ. App.–Beaumont 1932), *aff'd*, *Alpha Petroleum Co. v. Terrell*, 59 S.W.2d 364 (Tex. 1933). Then, the Court acknowledges the types of cases in which Texas courts have determined whether they have interlocutory appellate authority to review an order purporting to be a temporary restraining order.

First, there are the cases holding that an order which supposedly grants a temporary restraining order, but either lasts indefinitely or sets an expiration date longer than what Rule 680 permits, is an appealable temporary injunction. *See, e.g., Richardson v. Martin*, 127 S.W.2d 247 (Tex. Civ. App.–Waco 1939, writ ref'd); *Prewitt v. Smith*, 528 S.W.2d 893 (Tex. Civ. App.–Austin 1975, no writ). Second, there are the cases holding that an order granting a “temporary restraining order” but having the effect of a temporary injunction— either by doing more than maintaining the status quo or issuing relief that the trial court may grant only after hearing and notice — is an appealable temporary injunction. *See, e.g., Global Natural Res.*, 642 S.W.2d at 854; *Plant Process Equip.*, 579 S.W.2d at 54; *Ellis*, 486 S.W.2d at 159.

Notably missing from the Court's writing is any discussion of cases in which courts have exercised mandamus jurisdiction to review a complaint about a temporary restraining order. And, the Court identifies only one case issued after Rule 680 incorporated a time limitation for temporary restraining orders which

holds that a temporary restraining order extended beyond the rule's time limits was not appealable. *Laredo Junior College Dist. v. Zaffirini*, 590 S.W.2d 535, 536 (Tex. Civ. App.—San Antonio 1979, writ ref'd n.r.e.).

In *Zaffarini*, the court of appeals dismissed for lack of jurisdiction the interlocutory appeal challenging the “temporary restraining order,” because it concluded that the trial court extended the temporary restraining order beyond the rule's time period solely to preserve the status quo until the trial court could complete the temporary injunction hearing. *Zaffarini*, 590 S.W.2d at 536. No cases since have relied on *Zaffarini* to deny interlocutory appellate review of an order that purports to be a temporary restraining order but functions more like a temporary injunction. Consequently, all I can conclude from our jurisprudence is that, even before the temporary restraining order rule incorporated time limits, courts have focused upon the order's nature to determine if it is appealable. And, if the order does something more than what a temporary restraining order is supposed to do — such as change the status quo, have an effect beyond the temporary injunction hearing, grant the same relief as that requested for the temporary injunction, or extend beyond the rule's time limits — then it is an appealable temporary injunction.

The Court asserts that the district court's initial temporary restraining order has the characteristics and function of a temporary restraining order, because it did not alter the status quo, set a hearing for the temporary injunction hearing, and set a time for its own dissolution. But the Court asserts, “[t]he question remains whether the improper extension order converted the temporary restraining order into an appealable temporary injunction.” ___ S.W.3d at ___. The answer, under our jurisprudence and the record, is yes. Once the trial court extended the temporary restraining order contrary to Rule 680, the temporary

restraining order did something more than what it was supposed to do. The City of Uncertain's trial court petition shows that the relief sought and granted in the extended temporary restraining order is exactly the same relief the City of Uncertain requests for the temporary injunction. Specifically, the extended temporary restraining order prevents the TNRCC's amendments to the City of Marshall's water rights from becoming effective until the trial court conducts the temporary injunction hearing. The City of Uncertain's request for a temporary injunction likewise seeks an order preventing the TNRCC's amendments from becoming effective. Furthermore, the extended temporary restraining order enjoined the TNRCC's amendments from becoming immediately effective until the TNRCC heard the City of Uncertain's motion to overrule those amendments. The record shows that the TNRCC was to hear the motion to overrule before the date of the temporary injunction hearing. Though we do not know how the TNRCC ruled, if it granted the City of Uncertain's motion to overrule, then the relief in the improperly extended temporary restraining order also had an effect beyond the temporary injunction hearing's date. This is because the City of Uncertain would have obtained all the relief it desired before an evidentiary hearing on the temporary injunction took place. Accordingly, once the trial court extended the temporary restraining order's effect beyond the Rule 680's time limits, this converted the order to an appealable temporary injunction under our law. See *Global Natural Res.*, 642 S.W.2d at 854; *Plant Process Equip.*, 579 S.W.2d at 54; *Ellis*, 486 S.W.2d at 159.

The Court contends an appeal is inadequate because of the need for an expeditious decision. It bases this determination on problems the Court speculates may happen when pursuing an accelerated appeal. See ___ S.W.3d at ___ (citing various appellate rules). Certainly, the appellate rules about

accelerated and interlocutory appeals do not operate to have effects contrary to their intended purpose — that is, for courts of appeals to hear and decide the case quickly. Moreover, as the Court recognizes, courts of appeals have authority to enter “temporary orders necessary to preserve the parties’ rights until disposition” of the interlocutory appeal. TEX. R. APP. P. 29.3. This may include stay orders and orders shortening the briefing schedule. *See also* TEX. R. APP. P. 2 (“[A]n appellate court may — to expedite a decision or for other good case — suspend a rule’s operation in a particular case and order a different procedure.”). Further, in an accelerated appeal, the trial court can forward the pertinent papers, or the court of appeals can consider sworn and uncontroverted copies. TEX. R. APP. P. 28.3. Contrary to the Court’s suggestion, I believe this means the appellant may submit sworn copies of the pertinent papers, and then the other party has the burden to controvert or add to this information, if necessary. *See, e.g., Atchison v. Weingarten Realty Mgmt. Co.*, 916 S.W.2d 74, 76 (Tex. App.–Houston [1st Dist.] 1996, no writ) (recognizing, in a case in which appellant submitted sworn copies of various documents, that only appellants in accelerated appeals may rely on such documents).

Finally, the cases the Court relies upon to suggest the interlocutory appeal process is too slow are inapplicable. In *Reagan*, nothing suggests the process mooted the interlocutory appeal; rather, the parties’ own conduct did so. *See Reagan Nat. Adver. v. Vanderhoof Family Trust*, ___ S.W.3d ___ (Tex. App.–Austin 2002, no pet. h.). Further, in *Salazar*, the court of appeals dismissed an election contest on accelerated appeal as moot, specifically pointing out that the court acted diligently but the appellant moved for an extension of time to file the record. *Salazar v. Gonzales*, 931 S.W.2d 59, 60 (Tex. App.–Corpus Christi 1996, no writ). Notably, neither *Reagan* nor *Salazar* indicate that the parties urged the courts of

appeals to issue orders to move the appeal along faster, as the courts could have done under the appellate rules discussed above.

In sum, the hurdles the Court identifies are not as insurmountable as the Court contends. Indeed, the numerous cases involving interlocutory appeals challenging orders purporting to be temporary restraining orders, along with the dearth of mandamus cases doing the same, demonstrate that the accelerated appellate system works. The Court criticizes this dissent for not citing cases in which courts have considered or rejected mandamus under these circumstances. ___ S.W.3d at ___ n.2. How random. This dissent's entire thrust is that our jurisprudence shows that courts of appeals have resolved the issue in this case on interlocutory appeal and not by mandamus. In any event, until today, no authority existed to cite, as the Court nonsensically asserts I should.

III. CONCLUSION

A temporary restraining order's purpose is to restrain a party's action only until a full evidentiary hearing occurs. *See Del Valle*, 845 S.W.2d at 809. And Rule 680 expressly confines a temporary restraining order's duration. TEX. R. CIV. P. 680. Our jurisprudence demonstrates that an adequate appellate remedy exists for parties challenging orders that purport to be temporary restraining orders but do something more than the limited purpose they serve. However, the Court's decision to grant mandamus in this case without meaningfully distinguishing this case from those granting appellate relief has confused an area of law that was otherwise clear. In the future, when parties seek review of a "temporary restraining order" that functions like a temporary injunction— whether it is because the order changes the status quo,

has an effect beyond the temporary injunction hearing, grants the same relief as requested for the temporary injunction, or lasts longer than Rule 680 allows — they will not only file mandamus petitions but also an interlocutory appeal.

The Court should have denied mandamus relief because an adequate appellate remedy exists. Because the Court unnecessarily confuses our law on how parties may seek review of a “temporary restraining order” that effectively functions like a temporary injunction, I dissent.

James A. Baker, Justice

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