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# Interlocutory Appeals Update

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Civil Practice and Remedies Code Section 51.014(a)(4) gives the enjoined party a right to an interlocutory appeal:

> (a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:
>
> . . . .
>
> (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65[.]

Tex. Civ. Prac. & Rem. Code § 51.014(a)(4) (emphases added).

## Applicant for TI Must Prove a Probable Right to the Relief Sought

The applicant for a temporary injunction "must plead and prove three specific elements":

(1) "a cause of action against the defendant"

(2) "a probable right to the relief sought" (also called a "likelihood of success on the merits")

(3) "a probable, imminent, and irreparable injury in the interim."

*In re Newton*, 146 S.W.3d 648, 652 (Tex. 2004) (emphasis added); *accord Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 686 (Tex. 1990); *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968).



## The Issue

In interlocutory appeals challenging temporary injunctions, a growing number of Texas appellate courts are refusing to review whether the movant established element #2: a "probable right to the relief sought."

## Exemplary Cases

*Dallas/Fort Worth International Airport Board v. Association of Taxicab Operators:*

- Association of taxi operators sued DFW Airport Board to invalidate policy that incentivized taxis to use environmentally friendly engines.
- Trial court entered TI, and Board appealed under CPRC § 51.014.
- The Court holds:
  - "[T]he Airport Board attacks only the 'probable right to recover' element necessary to support the entry of a temporary injunction."
  - "Without addressing the merits of the Airport Board's issues on appeal, we dismiss this appeal."

335 S.W.3d 361, 364–65, 367(Tex. App.—Dallas 2010, no pet.).



## Exemplary Cases

Many cases refuse to consider whether the applicant for temporary injunction carried the burden to show a "probable right to the relief sought":

- *DK8, LLC v. HBT JV, LLC*, No. 05-16-00320-CV, 2016 WL 6094308, at *2 (Tex. App.—Dallas Oct. 19, 2016, no pet.)
- *Arch Resorts, L.L.C. v. City of McKinney*, No. 05-15-01108-CV, 2016 WL 3196767, at *2 (Tex. App.—Dallas May 26, 2016, no pet.)
- *Morgan Sec. Consulting, LLC v. Kaufman County*, 397 S.W.3d 248, 250 (Tex. App.—Dallas 2013, no pet.)
- *Senter Investments, L.L.C. v. Veerjee*, 358 S.W.3d 841, 842 (Tex. App.—Dallas 2012, no pet.)
- *Barnett v. Manuel Griego, Jr., D.O., P.A.*, 337 S.W.3d 384, 385–86 (Tex. App.—Dallas 2011, no pet.)
- *Brar v. Sedey*, 307 S.W.3d 916, 920 (Tex. App.—Dallas 2010, no pet.)
- *Hiss v. Great N. Am. Co.*, 871 S.W.2d 218, 219 (Tex. App.—Dallas 1993, no writ)

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