



Rules of Civil Procedure Corner

Rule 1.610(d): Motion to Dissolve Temporary Injunction

By Matt Triggs and Jonathan Galler

An *ex parte* temporary injunction has been entered against your client. Obviously, you did not receive notice of the motion or the hearing. But now that you know all about it, can you head into the trial court and complain that you didn't know anything about it?

The answer is no, and the Third District Court of Appeal recently reminded us why.¹ In *Harambam Congregation v. Simcha Connection, Inc.*, the plaintiff obtained an *ex parte* temporary injunction to regain control of its corporation from the defendant.² The defendant moved to dissolve the temporary injunction because the plaintiff's motion did not include a certification stating what efforts had been made to notify the defendant and the reasons why notice should not be required.

The trial court granted the motion to dissolve, but the Third District reversed on the basis of a Florida Supreme Court case, *State v. Beeler*, which held that the issue of lack of notice is not a basis for a motion to dissolve an *ex parte* temporary injunction.³

Rule 1.610(a) provides, in part, as follows:

(1) A temporary injunction may be granted without written or oral notice to the adverse party only if: (A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

Citing the *Beeler* decision, the Third District held that a party against whom an *ex parte* temporary injunction has been issued faces a choice: the party may take an immediate appeal and argue, among other things, improper lack of notice; or the party may file a motion with the trial court to dissolve the temporary injunction pursuant to rule 1.610(d).⁴

Rule 1.610(d) provides that "[a] party against whom a temporary injunction has been granted may move to dissolve or modify it at any time. If a party moves to dissolve or modify, the motion shall be heard within 5 days after the movant applies for a hearing on the motion."

What the text of rule 1.610(d) does not reveal, however, is that when a party challenges a temporary injunction by way of a motion to dissolve, the issue of "notice becomes irrelevant because the defendant is present, and the burden would be on the plaintiff to show that the complaint and supporting affidavits are sufficient to support the injunction."⁵

In other words, "once the opposing party has received the benefit of notice and an opportunity to be heard at a hearing on the motion to dissolve, any issue regarding prior notice is moot."⁶ Because the plaintiff has the burden to support the temporary injunction, even upon the defendant's motion to dissolve, the prior lack of notice to the defendant is no longer a factor, given the new hearing. Thus, if the defendant wishes to attack the lack of notice, the defendant must take an immediate appeal from the order granting the temporary injunction

⁵*Id.* at 1115 (citing *Beeler*, 530 So. 2d at 934).

⁶*Id.* at 1115.



instead of filing a motion to dissolve the injunction.

The Third District also held that the attorney certification required by rule 1.610(a)(1)(B) is a "notice" issue rather than an independent, technical requirement of the rule. The certification requirement is intended to prevent the issuance of an *ex parte* injunction unless an immediate threat of irreparable harm exists. For that reason, an attorney's failure to provide such a certification is another "issue regarding prior notice" that is mooted by the filing of a motion to dissolve.⁷

Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation.

¹Well, to be fair, the answer is yes, you can complain about almost anything. What the Third District actually concluded is that you likely will not prevail.

²*Harambam Congregation v. Simcha Connection, Inc.*, 84 So. 3d 1113, 1114 (Fla. 3d DCA 2012).

³*State v. Beeler*, 530 So. 2d 932, 934 (Fla. 1988).

⁴*Harambam*, 84 So. 3d at 115.