

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PREMIER LANDSCAPE CONTRACTORS, INC.,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CH-1108
)	
DAVID ANIBALLI, AND HINSDALE NURSERIES, INC.,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* We find that this court does have jurisdiction and that the trial court did not abuse its discretion when it denied defendants' motion to dissolve the TRO; affirmed.

¶ 2 The circuit court of Du Page County granted plaintiff, Premier Landscape Contractors, Inc.'s, motion for a temporary restraining order (TRO) against defendants, David Aniballi and Hinsdale Nurseries, Inc., prohibiting Aniballi from working at Hinsdale Nurseries. Defendants appeal, pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010), from the order of the trial court denying defendants' motion to dissolve the TRO. We affirm.

¶ 3

FACTS

¶ 4 On March 26, 2013, plaintiff filed a complaint against defendants for breach of a non-compete agreement and requested that the court issue, *inter alia*, a TRO. On May 8, 2013, the trial court granted plaintiff's motion for a TRO, and it entered an order prohibiting Aniballi from working at Hinsdale Nurseries until further notice of the court. During those proceedings, the trial court found: (1) the non-compete agreement at issue is reasonable on its face; (2) that plaintiff and Hinsdale Nurseries are competitors within the meaning of the non-compete agreement; (3) that plaintiff has a clearly ascertainable right in need of protection; (4) that plaintiff has a reasonable likelihood of success on the merits; and (5) that plaintiff has no adequate remedy at law.

¶ 5 Defendants subsequently filed a motion to dissolve the TRO, which had been entered on May 8, 2013. On May 23, 2013, the trial court denied defendants' motion to dissolve the TRO, finding defendants' arguments were "repetitive of what we have been through on a couple of occasions before" and which "were all taken up in the original argument." On May 28, 2013, pursuant to Rule 307, defendants filed a notice of appeal from the denial of the motion to dissolve the TRO.

¶ 6 ANALYSIS

¶ 7 Preliminarily, we grant defendants' motion, which we have chosen to take with the case, to file a brief in excess of the 15 pages proscribed by Illinois Supreme Court Rule 307(d)(2) (eff. Feb. 26, 2010).

¶ 8 The first issue we must consider is whether this court has jurisdiction under Rule 307 to hear this case. A motion to dissolve a TRO that is denied at the trial court level is appealable under Rule 307(a)(1). The rule provides that:

“(a) Orders Appealable; Time. An appeal may be taken to the Appellate Court from an interlocutory order of court

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

Rule 307(d)(1) provides that the appeal must be perfected “within two days of the entry or denial of the order from which review is being sought.” Ill. S. Ct. R. 307(d)(1) (eff. Feb. 26, 2010).

¶ 9 This court has jurisdiction to hear this case. Defendants’ appeal of the denial of the motion to dissolve the TRO was made timely, as defendants’ appeal was taken within two days from the order which denied defendants’ motion to dissolve the TRO. We note, however, defendants cannot raise in this appeal the alleged impropriety of the TRO. The trial court granted the TRO on May 8, 2013. If defendants took issue with the trial court’s findings at the TRO proceedings, they were required to file an interlocutory appeal pursuant to Supreme Court Rule 307(d)(1) (eff. Feb. 26, 2010) by May 10, 2013, but they failed to do so.

¶ 10 The second issue is whether the trial court abused its discretion in denying defendants’ motion to dissolve the TRO. Defendants incorrectly assert that the standard of review in this case is *de novo*. The issue on appeal, however, is the trial court’s denial of the motion to dissolve the TRO. Consideration of this issue lies within the broad discretion of the trial court. See *Stoller v. Village of Northbrook*, 162 Ill. App. 3d 1001, 1008 (1987); *Ford Motor Credit Company v. Cornfield*, 395 Ill. App. 3d 896, 903 (2009) (trial court’s decision to grant or deny relief requested in interlocutory appeals is generally reviewed under abuse of discretion standard).

¶ 11 We find *Stoller* on point. In *Stoller*, the First District Appellate Court affirmed the denial of the defendant’s motion to dissolve the TRO. As in this case, the defendant in *Stoller* failed to timely appeal the trial court’s entry of a TRO. *Stoller*, 162 Ill. App. 3d at 1004. While the defendant did timely appeal the trial court’s denial of the defendant’s motion to dissolve the TRO, the *Stoller*

court found that the issue on review “is only whether the trial court abused its discretion when it denied the [defendant’s] motion to dissolve the TRO.” *Id.* at 1009. The *Stoller* court affirmed the trial court’s decision in large part because, similar to the present case, the defendant’s arguments were directed to the standards for obtaining a TRO, which were not timely raised. *Id.* at 1009.

¶ 12 A TRO issued with notice and a preliminary injunction issued with notice are essentially one and the same type of relief. *Kable Printing Company v. Mount Morris Bookbinders*, 63 Ill. 2d 514, 524 (1976). Here, because the TRO against defendants was issued with notice and after a hearing, the May 8, 2013, TRO is treated similar to a preliminary/temporary injunction. See *Stoller*, 162 Ill. App. 3d at 1008 (treating the TRO as a preliminary/temporary injunction).

¶ 13 When a party presents a motion to dissolve a temporary injunction, it is only necessary that the party in whose favor the restraining order has been issued show to the trial court, in the statement of his case on the merits, that there is a fair question as to the existence of his rights. *Stoller*, 162 Ill. App. 3d at 1008. If the party in whose favor the restraining order has been issued shows, to the trial court’s satisfaction, that the matter out of which his asserted rights arise should be preserved until a decision on the merits, then the trial court may deny the motion to dissolve the restraining order. *Id.* at 1008-09.

¶ 14 The issue before this court, thus, is only whether the trial court abused its discretion when it denied defendants’ motion to dissolve the TRO. Defendants argue, however, that plaintiff sought relief that could not be properly granted by a TRO. Defendants continue to contend that plaintiff never met the standards for obtaining a TRO. Defendants’ arguments are irrelevant to this appeal. If defendants were appealing from the original granting of the TRO, defendant’s contentions would be on point. However, whether the trial court erroneously issued the TRO on May 8, 2013, is not

before this court. If defendants wished to attack the granting of the TRO it could have filed an interlocutory appeal pursuant to Rule 307(a)(1) within two days of the May 8, 2013, order. The only order at issue here is the May 23, 2013, order that denied defendants' motion to dissolve the TRO.

¶ 15 There is nothing in the record to demonstrate a clear showing of abuse of the trial court's discretion. Plaintiff previously demonstrated that it had a likelihood of succeeding on the merits based on the terms of the non-compete agreement. See *Bradford v. Wynstone Property Owners' Association*, 355 Ill. App. 3d 736, 739 (2005) (party seeking TRO must establish, in part, that it is likely to succeed on the merits). Defendants failed to meet their burden of dissolving the TRO because they only presented the same arguments as they had previously made. Accordingly, based upon the facts of this case, the trial court had sufficient evidence to find that plaintiff (the party in whose favor the TRO was issued) showed that there was a fair question as to the existence of its rights and the matter out of which its asserted rights arose should be preserved until a decision on the merits.

¶ 16 CONCLUSION

¶ 17 For the preceding reasons, the trial court did not abuse its discretion when it denied defendants' motion to dissolve the May 8 TRO and its judgment is affirmed.

¶ 18 Affirmed and remanded for further proceedings.