Reversed and Rendered (No. 14-18-00710-CV); Reversed in part, Affirmed in part, and Rendered (No. 14-18-00753-CV); and Opinion filed June 25, 2020.

In the

Fourteenth Court of Appeals

NO. 14-18-00710-CV
NO. 14-18-00753-CV

SUZANNE SONDRUP RON, Appellant

v.

AVISHAI RON, Appellee

On Appeal from the 125th District Court
Harris County, Texas
Trial Court Cause No. 2017-19071

OPINION

In these interlocutory appeals, appellant Suzanne Sondrup Ron challenges the trial court's August 3, 2018 order granting an anti-suit injunction (appellate case number 14-18-00710-CV) and August 23, 2018 order granting a temporary injunction (appellate case number 14-18-00753-CV) in favor of appellee Avishai (Avi) Ron, Suzanne's ex-husband. *See* Tex. Civ. Prac. & Rem. Code Ann.

§ 51.014(a)(4); *Golden Rule Ins. Co. v. Harper*, 925 S.W.2d 649, 650 (Tex. 1996) (per curiam). In three issues, Suzanne argues that the trial court abused its discretion by (1) issuing the anti-suit injunction and the anti-suit provisions of the temporary injunction, (2) issuing the temporary injunction, and (3) prohibiting Suzanne from filing for bankruptcy protection. We reverse and order the August 3 anti-suit injunction dissolved. We reverse in part the August 23 temporary injunction and order paragraph 33 dissolved, but otherwise affirm.

I. BACKGROUND

Suzanne and Avi are former spouses. While they were married, Avi granted some of his separate property interests in real-estate partnerships to the Suzanne Ron 2012 Family Trust (the Trust). Suzanne was appointed Trustee of the Trust and Gary Stein was appointed Trust Protector; the beneficiaries are Suzanne and Avi's and her three children.

The couple divorced in 2017. Before the family court signed its final divorce decree on April 13, 2017,[1] Suzanne, on March 20, 2017, individually and as Trustee of the Trust, filed the instant suit against Avi and various entities,[2] alleging that Avi was mismanaging the partnerships and damaging the Trust.[3] We refer to this suit as

[1] Avi appealed the final divorce decree. We dismissed his appeal in June 2018 because he did not file a brief. We refer to such suit as the Divorce Suit. Suzanne also filed an appeal in the Divorce Suit (appellate case number 14-18-00706-CV), challenging the family court's post-decree order discharging the receiver and terminating the receivership. That appeal remains pending.

[2] These named defendants are: 6010 Washington L.P.; McCall Street Partners, LP; Killeen Apartments, LLC; Washington Shopping Center, Ltd.; 290 at Telge, L.P.; Six II Partners, Ltd.; 400 Durham, L.P.; Flight Center, Ltd.; Black Forest Holdings, Inc.; ARGP, Inc.; and Blue Star Capital Investments, LLC. Because Suzanne's issues on appeal concern the trial court's actions in connection with Avi's applications for anti-suit injunction and temporary injunction, we do not consider these entities as parties to these appeals. *See Showbiz Multimedia, LLC v. Mountain States Mortg. Ctrs., Inc.*, 303 S.W.3d 769, 771 n.3 (Tex. App.—Houston [1st Dist.] 2009, no pet.) ("An appellee . . . must be someone against whom the appellant raises issues or points of error in the appellant's brief.").

[3] In the "causes of action" section of her petition, Suzanne, individually and as trustee,

the Trust Suit.

In the Trust Suit, Suzanne and Avi entered a Rule 11 agreement in which Suzanne agreed to allow Stein to appoint Murray Fogler as Trustee. Suzanne and Avi participated in mediation before Alan Levin to globally resolve their disputes. On October 17, 2017, Suzanne and Avi entered into a confidential Mediated Settlement Agreement (MSA), signed by Suzanne, Avi, and their respective counsel.

Among other things, the MSA provides for: retirement of the Divorce Suit equalization payment (just over $19 million) for a reduced payment of $8.5 million to be made by Avi to Suzanne; what assets Avi would purchase from the Trust; the formation of and funding details for three separate spin-off trusts for their children; the dissolution of the receivership in the Divorce Suit; and the mutual dismissal and release of lawsuits (including the Trust Suit and the Divorce Suit appeal) and claims.[4] The MSA further provides: "This Agreement shall be governed by the laws of Texas, with exclusive venue in Harris County, Texas, and the parties agree to submit any dispute related to this Agreement to Alan Levin for binding arbitration."

Pursuant to the MSA, Avi paid Suzanne a $1 million advance and over $7 million of the remaining $7.5 million payment for the purchase of various entities. On December 19, 2017, also pursuant to the MSA, Stein removed Fogler as Trustee, re-appointed Suzanne as Trustee, and tendered his resignation.[5]

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alleged claims under the Texas Theft Liability Act and the Texas Fraudulent Transfer Act, and for conversion, breach of fiduciary duties, and breach of partnership agreements and right to distribution. She further requested an accounting and included allegations of vicarious and principal liability, aiding and abetting, and conspiracy.

[4] The MSA also contained provisions governing where Suzanne could live with Suzanne's and Avi's remaining minor child and Avi's visitation rights.

[5] According to Avi, Stein only resigned effective upon Suzanne's and the Trust's complete performance of their obligations under the MSA; they did not fully perform, so Avi contends that Stein's resignation is not yet effective. According to Suzanne, Stein's resignation was unconditional and immediate. On July 25, 2018, Stein purportedly revoked his resignation as Trust

Disputes arose between Susanne and Avi regarding the formation, validity, and effect of the MSA. Arbitration pursuant to the MSA was scheduled for February 2018, which was rescheduled to April 2018. Suzanne thereafter refused to submit to arbitration. On May 2, 2018, Avi filed his claim and demand in arbitration against Suzanne. On June 5, 2018, Avi filed a motion to compel Suzanne to participate in arbitration under the MSA.[6]

On July 13, 2018, Suzanne filed notice in the trial court of her purported resignation as Trustee of the Trust and appointment of Joshua Tillotson of Utah as successor Trustee. Before filing this notice in the Trust Suit, on June 12, 2018, the same day she allegedly resigned as Trustee and appointed Tillotson, Suzanne filed a petition for order appointing Trust Protector in the Third Judicial District Court in Salt Lake County, Utah. This petition requested that Robert Collins be named as Trust Protector. We subsequently refer to this action as the Utah Trust Protector Suit.

In the Trust Suit, on July 26, 2018, Avi filed an amended motion to compel arbitration against Suzanne and the Trust, which he later supplemented to include Tillotson. Avi also filed a counterclaim for breach of the MSA against Suzanne; a third-party petition against Tillotson; an application for an anti-suit injunction; an application for temporary restraining order; and requests for temporary and permanent injunctions. That same day, the trial court signed a temporary restraining order, as well as an order granting Avi's application for anti-suit injunction.[7]

Protector, removed Suzanne as Trustee, and reappointed Fogler.

[6] Avi also filed a motion to compel arbitration in the Divorce Suit. The record reflects that he subsequently withdrew that motion.

[7] The July 26, 2018 order granting anti-suit injunction enjoined Suzanne individually and as Trustee "from proceeding with the suit initiated by Suzanne Ron in the Third Judicial District Court in and for Salt Lake County, State of Utah, or from proceeding with any claims stated therein in any jurisdiction other than [the trial c]ourt or in arbitration."

In the meantime, the Utah district court already had signed an order on July 18, 2018, granting Suzanne's request to appoint Collins as Trust Protector of the Trust in the Utah Trust Protector Suit. On July 19, 2018, Tillotson as Trustee filed in the Third Judicial District Court in Salt Lake County, Utah, a petition for court determination, instruction to Trustee, and other relief. Within this petition, Tillotson expressly sought "a determination that the MSA is not binding on the Trust." We subsequently refer to this action as the Utah MSA Suit.

On August 1, 2018, Avi filed an amended counterclaim and third-party petition. Avi named Collins as another third-party defendant.[8] Avi again applied for an anti-suit injunction and for a temporary restraining order and a temporary and permanent injunction.

On August 3, 2018, the trial court signed an order again granting Avi's application for anti-suit injunction. The trial court stated there was evidence that harm was imminent and the injury was irreparable and without adequate remedy at law because "there is a direct and present threat to this Court's exclusive jurisdiction, as Suzanne, the Trust, and Tillotson have filed suit in a Utah court . . . seeking to avoid the MSA." The trial court further stated: "The Utah suit, if allowed to proceed, will delay, obstruct, or otherwise interfere with the instant suit, including the potential for inconsistent judgments and rulings." The trial court enjoined Suzanne, the Trust, and Tillotson from:

> proceeding with any lawsuits other than the instant suit and the divorce

[8] Avi alleged that Fogler, Tillotson, and the Trust ratified and accepted the benefits of the MSA and that Suzanne, Tillotson, and the Trust breached the MSA by failing to dismiss the Trust Suit and refusing to participate in arbitration. Avi sought to enforce the MSA provision regarding the creation of the spin-off trust for one of the Rons' children for which Avi was to serve as trustee. Avi further alleged counter- and third-party claims of tortious interference with a contract against Collins and Tillotson, and fraud against Suzanne. Avi also alleged that Suzanne, Tillotson, and Collins engaged in a conspiracy.

> proceeding in Family Court because such suits are: (1) threats to the Court's exclusive jurisdiction under the MSA; (2) contravene Texas public policy in favor of honoring forum selection clauses, against forum shopping, and in favor of encouraging and honoring settlement agreements; (3) are vexatious and harassing; and (4) will delay, obstruct, or otherwise interfere with any Judgment rendered by this Court.

That same day, the trial court also signed an order extending the temporary restraining order, as well as an order granting Avi's amended and supplemental motion to compel arbitration.[9] Suzanne appealed the trial court's August 3, 2018

[9] Suzanne as relator filed a petition for writ of mandamus to compel the Honorable Kyle Carter, presiding judge of the 125th District Court of Harris County, to vacate this order. We concluded that "the Family Court has exclusive jurisdiction of two matters that affect the minor child—the residence and visitation of the child—and that the Arbitration Order is void to the extent that it compels arbitration of these matters." *In re Ron*, 582 S.W.3d 486, 488 (Tex. App.—Houston [14th Dist.] 2018) (orig. proceeding). But we further concluded that "the trial court had jurisdiction to compel other matters (that do not affect the child) to arbitration." *Id.* These matters included:

- Suzanne and the Trust's affirmative claims in this suit;
- All claims in the instant suit against Suzanne, the Trust, and Tillotson in this suit;
- Avi's counterclaims for breach of the settlement agreement between Suzanne, the Trust and Avi;
- Avi's claim for breach of the settlement agreement due to Suzanne's and the Trust's failure to convey assets as required by the settlement agreement;
- Avi's claims for fraud and fraudulent inducement of the settlement agreement as set forth in Avi's Claim and Demand in Arbitration;
- All claims by or against Suzanne, the Trust and Avi which are transactionally related to the claims pending before this Court and/or the settlement agreement;
- Claims by or against third party beneficiaries of the settlement agreement which are transactionally related to the claims pending before this Court and/or the settlement agreement; and
- All claims pending in the courts of Utah related to the enforceability of the settlement agreement against the Trust.

Id. at 492–93.

order granting the anti-suit injunction.[10] The trial court set the hearing on Avi's motion for temporary injunction for August 17, 2018.

On August 14, 2018, Suzanne filed a motion asking this court to stay the August 3, 2018 anti-suit injunction and temporary restraining order. On August 16, 2028, we granted Suzanne's motion as to the anti-suit injunction but not as to the temporary restraining order. On August 17, 2018, the parties agreed to extend the temporary restraining order until August 23, 2018 at 5:00 p.m.

On August 23, 2018, the trial court held an evidentiary hearing on Avi's application for temporary injunction. That same day, the trial court signed a temporary injunction applicable to both Suzanne and Avi. The trial court's order enjoined Suzanne and Avi "from initiating or participating in any litigation involving the MSA, including any non-monetary assets of the Trust which are implicated by the MSA." The order further enjoined Suzanne and Avi:

- from conveying, encumbering, alienating, pledging, or otherwise decreasing the value/marketability of the assets conveyed or to be conveyed by the MSA;
- from contacting lenders, business associates or partners of the other and representing that he or she is the owner of any assets conveyed or to be conveyed in the MSA, unless such representation is accompanied by a copy of this injunction and disclosure that such ownership is subject to ongoing litigation; and
- from representing to any third party that she or he is trustee, unless such representation is accompanied by a copy of this injunction and disclosure that such status is subject to ongoing litigation.

[10] Suzanne's notice of appeal included both the July 26, 2018 and the August 3, 2018 anti-suit injunctions. However, Suzanne does not raise any specific arguments in her brief challenging the July 26 anti-suit injunction.

On August 28, 2018, Suzanne filed a motion asking this court to stay the temporary injunction order signed August 23, 2018. We granted her motion in part as to paragraph 33 of the temporary injunction, effectively, the anti-suit portion of the injunction.

Suzanne timely appealed the trial court's August 3, 2018 anti-suit injunction and August 23, 2018 temporary injunction.[11] *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4). She brings three issues: first, the trial court abused its discretion by issuing the anti-suit injunction and the anti-suit provision of the temporary injunction; second, the trial court abused its discretion by issuing the temporary injunction; and third, the trial court abused its discretion to the extent either injunction order prohibits Suzanne from filing for bankruptcy protection.

II. ANALYSIS

A. Anti-suit injunction

1. The August 3, 2018 anti-suit injunction

We first consider the August 3, 2018 anti-suit injunction. Suzanne argues that the trial court abused its discretion because Avi presented no evidence at the August 3, 2018 hearing on the anti-suit injunction. We agree with Suzanne.

"[A] trial court has no discretion to grant injunctive relief . . . without supporting evidence." *Operation Rescue-Nat'l v. Planned Parenthood of Hous. & Se. Tex.*, 975 S.W.2d 546, 560 & n.56 (Tex. 1998). An applicant for injunction must establish its probable right to recovery and a probable injury by competent evidence adduced at a hearing. *Millwrights Local Union No. 2484 v. Rust Eng'g Co.*, 433 S.W.2d 683, 686 (Tex. 1968). A sworn petition is not evidence; nor can the proof

[11] This court granted Suzanne's motion to consolidate in part, permitting her to file a single brief bearing both appeal numbers.

required to support issuance of a temporary injunction be made by affidavit absent agreement of the parties. *Id.* at 686–87.

Avi did not present any sworn witnesses or introduce any exhibits into evidence at the August 3 hearing.[12] Although the trial court found "evidence that harm is imminent" in its August 3 order granting the anti-suit injunction, the record contains no competent evidence adduced at the hearing. We conclude that the trial court abused its discretion in issuing the August 3 anti-suit injunction. *See id.* at 687; *Shamoun & Norman, LLP v. Yarto Int'l Grp., LP*, 398 S.W.3d 272, 284 (Tex. App.—Corpus Christi 2012, pet. dism'd) (citing *Millwrights* and concluding "trial court abused discretion by granting the anti-suit injunction").

We sustain Suzanne's first issue regarding the August 3, 2018 anti-suit injunction.[13] We hold that the trial court erroneously granted the August 3, 2018 anti-suit injunction. Accordingly, we reverse the August 3, 2018 interlocutory order granting an anti-suit injunction and render judgment that the order is dissolved.

2. Paragraph 33 of the August 23, 2018 temporary injunction

We next consider the propriety of the anti-suit portion of the August 23, 2018 injunction. A unique and extraordinary remedy, an anti-suit injunction will issue "only in very special circumstances." *Golden Rule*, 925 S.W.2d at 651 (citing *Christensen v. Integrity Ins. Co.*, 719 S.W.2d 161, 163 (Tex. 1986); *Gannon v. Payne*, 706 S.W.2d 304, 306 (Tex. 1986)). The Supreme Court of Texas has

[12] The record contains no transcript of the August 3, 2018 hearing. In his brief, Avi acknowledges Suzanne's "complaint" that he did not introduce evidence at the August 3 hearing.

In contrast, evidence was adduced at the August 23, 2018 hearing on Avi's application for temporary injunction. Avi testified and was subjected to cross examination. Both parties introduced exhibits admitted into evidence.

[13] Because we conclude that the trial court abused its discretion in issuing the August 3 anti-suit injunction when Avi did not adduce any evidence at the hearing, we do not address Suzanne's other arguments challenging the August 3 injunction. *See* Tex. R. App. P. 47.1.

identified those circumstances as: (1) addressing a threat to a court's jurisdiction; (2) preventing the evasion of important public policy; (3) preventing a multiplicity of suits; and (4) protecting a party from vexatious or harassing litigation. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 512 (Tex. 2010); *Golden Rule*, 925 S.W.2d at 651. An anti-suit injunction is a remedy to be employed "sparingly" and only in the most "compelling" circumstances when "clear equity demands" it and when required to prevent an "irreparable miscarriage of justice." *See Golden Rule*, 925 S.W.2d at 651; *Gannon*, 706 S.W.2d at 307. The party seeking the injunction bears the burden to demonstrate that "a clear equity is present." *Christensen*, 719 S.W.2d at 163.

We review a trial court's anti-suit injunction under an abuse-of-discretion standard. *Gannon*, 706 S.W.2d at 305. A trial court abuses its discretion by acting arbitrarily and unreasonably, without reference to guiding rules or principles, or by misapplying the law to the established facts of the case. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

Suzanne essentially argues the trial court erred in concluding that it had grounds to issue an anti-suit injunction against her under *Golden Rule*. That is, "Suzanne's single lawsuit filing does not support a finding against her of violation of public policy, interference with the Texas court's jurisdiction, risk of a multiplicity of suits, or vexatious and harassing litigation." In response, Avi contends that all four *Golden Rule* categories were met here.

There are no precise guidelines for judging the propriety of an anti-suit injunction; we must carefully examine the circumstances of each situation. *Gannon*, 706 S.W.2d at 307. Doing so here, even in the light most favorable to and drawing all reasonable inferences in favor of the decision, we cannot conclude that the facts underlying this case illustrate the "very special circumstances" and the "clear equity"

required for issuance of paragraph 33 of the August 23 temporary injunction.[14]

Threat to the trial court's jurisdiction. Here, the trial court's temporary injunction invoked all four *Golden Rule* rationales for anti-suit injunctions. We first consider the trial court's conclusion that "[a]n anti-suit injunction is necessary to protect the [trial] Court's jurisdiction."[15]

Suzanne does not challenge the trial court's finding that the Utah MSA Suit "sought a declaratory judgment that the MSA does not bind the Trust" and raised "the issue of whether the MSA was enforceable against the Trust or its trustee." Nor

[14] Before submission, the record was supplemented with an arbitration agreement filed in the Trust Suit. This agreement was signed by Avi, Stein, the Rons' two adult sons, Tillotson, and Collins, and is effective as of December 29, 2018. In pertinent part, Tillotson agreed as Trustee to participate in and be bound by an arbitration before Levin concerning the "Trust's rights and obligations, and [Avi]'s rights and obligations, related to the Mediated Settlement Agreement ('MSA'), whether it is held to be enforceable or unenforceable." Also, Avi and Stein agreed "that Tillotson is trustee of the Trust and that Collins is the Trust protector, and . . . not to challenge those roles at any time in the future." In her reply brief, Suzanne alternatively contends that "the anti suit injunction in the second injunction should be set aside because—even if an anti suit injunction was ever necessary—it became moot after Avi executed an agreement that resolves the Utah disputes." Suzanne asks that we set aside paragraph 33 of the temporary injunction and dismiss her first issue. She primarily relies on *Texas Foundries, Inc. v. International Moulders & Foundry Workers' Union*, 248 S.W.2d 460, 461 (Tex. 1952): "When the appeal is from an order granting a temporary injunction, and that phase of the case becomes moot on appeal, the same rule applies. The proper order is to set aside all orders pertaining to the temporary injunction and dismiss that portion of the case, leaving the main case still pending." We disagree that paragraph 33 has become moot on appeal. That an arbitration agreement was subsequently entered does not mean that paragraph 33 of the August 23 temporary injunction ceased to be operative. Nor does it mean that Suzanne and Avi, as the parties before this court on the interlocutory appeal, no longer have a legally cognizable interest in the validity of this portion of the temporary injunction.

[15] We also disagree with Suzanne that MSA issues "were raised first in Utah." Suzanne individually and as Trustee initiated the Trust Suit in March 2017. The MSA sought to resolve disputes in the Trust Suit. Avi moved to compel arbitration against Suzanne under the MSA in the Trust Suit before either Utah suit was filed. Further, the MSA dispute arose while the trial court had jurisdiction over the Trust Suit; therefore, Avi properly asserted his claims to compel arbitration under the MSA and for enforcement of the MSA in the Trust Suit. *See Mantas v. Fifth Court of Appeals*, 925 S.W.2d 656, 658 (Tex. 1996) (per curiam) ("Where the settlement dispute arises while the trial court has jurisdiction over the underlying action, a claim to enforce the settlement agreement should, if possible, be asserted in that court under the original cause number.").

does Suzanne challenge the trial court's finding that Tillotson's and her goal was "to have the Utah Court rule on the validity and enforceability of the MSA in secret before Avi could defend his position and before the [trial court] could rule on Avi's motion to compel arbitration." However, even if the Utah Trust Protector and Utah MSA Suits previously threatened the trial court's jurisdiction over the MSA issues, such a threat must be "continuing" or "ongoing" at the time of the hearing. *See AVCO Corp. v. Interstate Sw., Ltd.*, 145 S.W.3d 257, 264–65 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

At the time of the August 23, 2018 hearing, the trial court already had granted Avi's amended and supplemental motion to compel, specifically compelling Suzanne, the Trust, and Tillotson to arbitration of "[a]ll claims pending in the courts of Utah related to the enforceability of the MSA against the Trust."[16] On the record at the hearing, counsel for Avi acknowledged that "right now the parties are required to go to arbitration." Avi's counsel also stated on the record that Avi and Tillotson "have reached a Rule 11 agreement," Avi agreed to let Tillotson "proceed as the trustee . . . for the purposes of the arbitration," and Avi did not seek injunctive relief against Tillotson. This Rule 11 standstill agreement, filed on the day of the hearing before the trial court signed the temporary injunction, stated that Tillotson would not proceed with any litigation concerning the MSA, including the Utah MSA Suit. The standstill agreement also stated that Avi would not challenge or dispute Tillotson's right to act as Trustee and Collins's right to act as Trust Protector.

In other words, Suzanne was subject to arbitration regarding MSA issues in the Trust Suit. Avi agreed to abide by the order appointing Collins in the Utah Trust

[16] Suzanne's petition for writ of mandamus concerning the trial court's August 3, 2018 order granting Avi's motion to compel arbitration was pending at the time. *See supra* note 9. There was no evidence that Suzanne would not abide by this court's decision.

Protector Suit filed by Suzanne—the ultimate relief she had requested. Moreover, Tillotson, the party who filed the Utah MSA Suit, agreed not to proceed with that or any other suit. And no evidence indicated that Suzanne would not submit to arbitration as ordered by the trial court[17] or had plans to or had initiated or participated in any other litigation in Utah or elsewhere concerning MSA issues. Accordingly, there was no present threat to the trial court's jurisdiction warranting an anti-suit injunction. *See id.*

Evasion of important public policy. The trial court also concluded that "[a]n anti-suit injunction is necessary to protect the[] public policies" of "(1) the enforceability of arbitration agreements, (2) the enforceability of forum selection clauses, [and] (3) the right of parties to have knowledge of proceedings against them and an opportunity to be heard in those proceedings." We conclude that even if Suzanne previously used out-of-state litigation to evade such policies, as of the time of the hearing, the facts did not demonstrate any continuing plans to evade such policies.

There was no evidence that Suzanne planned to violate the trial court's order compelling the parties to arbitration in the Trust Suit. *See Wyrick v. Bus. Bank of Texas, N.A.*, 577 S.W.3d 336, 359 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (anti-suit injunction not supportable when "facts d[id] not demonstrate the arbitration order's violation"). Moreover, there was no evidence either Utah suit was "continuing." *Cf. Rouse v. Tex. Capital Bank, N.A.*, 394 S.W.3d 1, 8 (Tex. App.—Dallas 2011, no pet.) (facts showed "continuation" of appellant's Oklahoma suit). In the Rule 11 standstill agreement, Avi agreed to abide by the order appointing Collins in the Utah Trust Protector Suit filed by Suzanne; and Tillotson, the party who filed

[17] At the time of the hearing, Suzanne's petition for writ of mandamus regarding the trial court's August 3, 2018 arbitration order was pending. *See supra* note 9.

the Utah MSA Suit, agreed not to proceed with that or any other suit concerning the MSA. Again, there was no evidence that Suzanne planned to or had initiated or participated in any other litigation in Utah or elsewhere concerning MSA issues, ex parte or otherwise. In the standstill agreement, Tillotson agreed to provide Avi with "immediate notice" of any third-party actions brought against him concerning the MSA. Finally, the facts did not show any uncooperative actions by the Utah or any other court. *Cf. id.* ("Yet the Oklahoma court refused to enforce the forum selection clause or stay the Oklahoma proceeding."). Accordingly, there was no ongoing need to protect any important Texas public policy.

Multiplicity of suits. The trial court also concluded that "[a]n anti-suit injunction is necessary to protect Avi from a multiplicity of suits." Avi argues that he "was facing at least two parallel lawsuits—one of which had been filed in a state that had no jurisdiction over Avi—regarding the MSA plus an unknown number of secret future lawsuits that Suzanne or Tillotson might file." But Texas law is clear that "[a] single parallel proceeding in a foreign forum, however, does not constitute a multiplicity nor does it, in itself create a clear equity justifying an anti-suit injunction." *Golden Rule*, 925 S.W.3d at 651 (citing *Christensen*, 719 S.W.2d at 163); *see Gannon*, 706 S.W.2d at 307 ("[I]f the principle of comity is to have any application, a single parallel proceeding filed in a party's home country cannot justify issuing an anti-suit injunction."); *Wyrick*, 577 S.W.3d at 359 ("[A] single parallel proceeding is neither a 'multiplicity of suits' nor a miscarriage of justice and does not in itself create a clear equity justifying the extraordinary relief of an anti-suit injunction."); *AVCO Corp.*, 145 S.W.3d at 266–67 (declining to hold multiplicity of suits supported anti-suit injunction when party faced "essentially . . . just one" other lawsuit in Philadelphia). The *only* other suit involving MSA issues was the Utah MSA Suit filed by Tillotson. Nor did the evidence at the hearing reveal

any basis for the trial court's "expect[ation] that, absent injunction, Suzanne and Tillotson will file more out-of-state lawsuits than just the Trust Protector Suit and MSA Suit." We consider speculation about "an unknown number of secret future lawsuits" insufficient to justify an anti-suit injunction against Suzanne. *See Millwrights*, 433 S.W.2d at 687 (injunctions should not issue on "mere surmise").

Vexatious and harassing litigation. Finally, the trial court concluded that "[a]n anti-suit injunction is necessary to protect Avi from this vexatious and harassing litigation." Generally, Texas cases only have approved injunctive relief to protect a party from vexatious or harassing litigation based on evidence that a multiplicity of suits had been filed. *See Counsel Fin. Servs., L.L.C. v. Leibowitz*, No. 13-10-00200-CV, 2011 WL 2652158, at *13 (Tex. App.—Corpus Christi July 1, 2011, pet. denied) (mem. op.) (citing *Nguyen v. Intertex, Inc.*, 93 S.W.3d 288, 299 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (party filed at least five lawsuits related to same judgment), *overruled, in part, on other grounds by Glassman v. Goodfriend*, 347 S.W.3d 772 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (en banc); *Chandler v. Chandler,* 991 S.W.2d 367, 403 (Tex. App.—El Paso 1999, pet. denied) (party filed "continuous barrage" of ten lawsuits attempting to relitigate matters which had been resolved against him), *disapproved of on other grounds by Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136 (Tex. 2019); *In re Estate of Dilasky*, 972 S.W.2d 763, 767 (Tex. App.—Corpus Christi 1998, no pet.) ("[B]y filing increasingly [at least seven] multiplicitous and duplicitous lawsuits, [party] is attempting to re-litigate matters which have been finally determined or are presently on appeal . . . .")). We cannot agree that Suzanne's filing the Utah Trust Protector Suit, even combined with Tillotson's filing the Utah MSA Suit, constituted a "pattern" of vexatious and harassing litigation sufficient to support anti-suit injunctive relief against Suzanne.

In sum, we find no evidence in the record showing that the anti-suit injunction portion of the August 23, 2018 temporary injunction was appropriate to prevent a multiplicity of lawsuits, to provide protection from vexatious or harassing litigation, or to prevent a threat to the trial court's jurisdiction or the evasion of important public policy. We sustain Suzanne's first issue regarding paragraph 33 of the temporary injunction. We hold that the trial court erroneously granted paragraph 33 of the August 23, 2018 temporary injunction. Accordingly, we reverse in part the August 23, 2018 interlocutory order granting a temporary injunction and render judgment that paragraph 33 of the order is dissolved.

B. Suzanne's other challenges to the August 23, 2018 temporary injunction

Reasonable limitations of evidence. Within her second issue, Suzanne argues that the trial court abused its discretion by not affording her the opportunity to present her defense and rest her case. Avi responds that Suzanne failed to preserve such error for our review, and even if Suzanne preserved this issue, the trial court properly managed its schedule to enforce a pre-set 5:00 p.m. deadline for the hearing.[18]

In order to preserve a complaint for appellate review, a party is generally required to make a timely, specific objection and obtain a ruling from the trial court. *See* Tex. R. App. P. 33.1(a). We agree with Avi that Suzanne did not preserve this issue. At the beginning of the August 23, 2018 temporary-injunction hearing, Avi's counsel reminded the trial court that the existing temporary restraining order "was

[18] "The trial court may impose reasonable limitations on the presentation of evidence at the temporary-injunction hearing." *O.C.T.G., L.L.P. v. Laguna Tubular Prods. Corp.*, No. 14-13-00981-CV, 2014 WL 3512863, at *4 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.) (mem. op.). The trial court also "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." Tex. R. Evid. 611(a).

extended by agreement until I believe 5:00 o'clock [sic] today at the last hearing by agreement of the parties on the record." The trial court responded: "Correct." Suzanne's counsel responded: "Yes." Moreover, six times throughout the hearing, trial court informed the parties that the hearing would need to end by 5:00 p.m. Suzanne's counsel stated he expressly "understood" the trial court's timing. It was certainly reasonable under these circumstances that Suzanne realized the temporary-injunction proceeding needed to be concluded that day. However, counsel for Suzanne did not lodge any objection to the 5:00 p.m. deadline.

Suzanne nevertheless contends that her counsel preserved her objection by the following statement: "I still have significant questions for Mr. Ron and I have another witness I want to call, Judge, Mr. Gary Stein. He's under subpoena." But this statement came only after the trial court stated that the time had come "to let everyone go." Waiting until the known 5:00 p.m. deadline for a hearing to allegedly challenge the trial court's limitation on the time allotted for that hearing comes too late and does not constitute a timely objection. In addition, the trial court gave the parties a 40-minute warning before the end of the hearing. However, despite this warning, although Stein was available and "ready" to take the stand within 15 minutes, Suzanne did not choose to have him brought in to testify.

Suzanne also isolates and seizes upon this statement by the trial court—"And that will be as arbitrary as I can be and I will be reversed"—ostensibly referring to its decision to cut off the hearing at 5:00 p.m. In other words, arguably, she did not need to object to an error that the trial court itself expressly acknowledged. Suzanne, however, entirely fails to acknowledge the context for the trial court's statement. By that time, the trial court had informed the parties, without objection, multiple times that the hearing needed to end at 5:00 p.m. The parties knew that providing the trial court with evidence was "important . . . to get to a resolution today." But while more

than three quarters of the preset time allotted for the hearing had passed, by that point, the parties only had provided "narratives" and "background flavor"; had failed to come to any agreement on admitting exhibits, after a recess, even after the trial court warned them that "we don't have time this afternoon" to take up the admission of (almost 80 exhibits) one by one and strongly encouraged them to "to figure out the exhibits" to save time; and had yet to adduce any testimony. A fair reading of the trial court's statement is that it expressed frustration with the parties' failure to advance the evidence at the hearing rather than that the trial court was in fact choosing to act arbitrarily or unreasonably.

We overrule this portion of Suzanne's second issue.

Admission of Avi's exhibits. Next, Suzanne contends that "[m]uch of the evidence Avi presented at the injunction hearing was inadmissible and the trial court erred in admitting or considering that evidence." Suzanne contends there was no authentication or foundation for any exhibit; Avi's affidavit was not proper injunction evidence; and email communications contained hearsay and sometimes hearsay within hearsay. Suzanne contends that Avi's counsel did not provide testimony to prove up the documents as business records contained in his file. Further, Suzanne argues that even if Avi's counsel had testified, items are not admissible as business records merely because they are sent to an attorney during the case.

To show the trial court abused its discretion in admitting evidence during a temporary-injunction hearing, a complaining party must demonstrate that: (1) the trial court erred in admitting the evidence; (2) the erroneously admitted evidence was controlling on a material issue of the case and was not cumulative; and (3) the error probably caused rendition of an improper judgment in the case. *See Sharma v. Vinmar Int'l, Ltd.*, 231 S.W.3d 405, 422 (Tex. App.—Houston [14th Dist.] 2007, no

pet.); *see* Tex. R. App. P. 44.1(a)(1); *Interstate Northborough P'ship v. State*, 66 S.W.3d 213, 220 (Tex. 2001); *Tex. Dep't of Transp. v. Able*, 35 S.W.3d 608, 617 (Tex. 2000). It is the complaining party's burden to show harm from an erroneous evidentiary ruling. *In re M.S.*, 115 S.W.3d 534, 538 (Tex. 2003); *see also City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753–54 (Tex. 1995) ("A successful challenge to evidentiary rulings usually requires the complaining party to show that the judgment turns on the particular evidence excluded or admitted.").

Many of the challenged exhibits appear to have been intended by Avi to support the *Golden Rule* factors for an anti-suit injunction, which portion of the August 23, 2018 temporary injunction we already have reversed and dissolved. Moreover, even assuming without deciding that the trial court erred in admitting certain evidence, Suzanne fails to mention how any specific admitted exhibit was controlling on any material issue of the temporary injunction. She does not explain whether or how any disputed exhibit was crucial to any key issue or probably resulted in an improper judgment. Because Suzanne focused her evidentiary challenge on showing error and neglected to show the required harm, she has failed to establish that the trial court abused its discretion in admitting the evidence. *See Hall v. Domino's Pizza, Inc.*, 410 S.W.3d 925, 930 (Tex. App.—El Paso 2013, pet. denied) (citing *In re M.S.*, 115 S.W.3d at 538; *Able*, 35 at 617).

Evidence to support probable, imminent, and irreparable injury. The purpose of a temporary injunction is to preserve the status quo of a litigation's subject matter pending trial. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The status quo is defined as the last, actual, peaceable, non-contested status that preceded the pending controversy. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). Whether to grant a temporary injunction is within the trial court's sound discretion. *Butnaru*, 84 S.W.3d at 204. We cannot overrule the trial court's decision unless the trial court

acted unreasonably or in an arbitrary manner, without reference to guiding rules or principles. *Id.* at 211. In the context of a temporary injunction, "[a]n abuse of discretion does not exist where the trial court bases its decisions on conflicting evidence." *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *see Henry v. Cox*, 520 S.W.3d 28, 34 (Tex. 2017) ("No abuse of discretion exists if some evidence reasonably supports the court's ruling."). Further, we do not substitute our judgment for the trial court's judgment, even if we would have reached a different conclusion. *Butnaru*, 84 S.W.3d at 204.

To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. An injury is irreparable when the injured party cannot be adequately compensated in damages or if damages cannot be measured by any certain pecuniary standard. *Id.* Suzanne argues the evidence presented at the hearing did not prove the third element—whether Avi "faces imminent and irreparable harm that could be prevented by the injunction and for which he lacks an adequate remedy at law."

Specifically, Suzanne argues there is no evidence to support the trial court's finding that Suzanne "attempted to harm Avi's credit and business relationship." Suzanne also argues there is no evidence to support the trial court's conclusions that Avi faces imminent and irreparable harm unless the trial court enjoins her from: appointing a new or substitute Trustee except for a good-faith reason upon leave of the trial court; conveying, encumbering, alienating, pledging, or otherwise decreasing the value/marketability of the Trust's nonmonetary assets; and contacting lenders, business associates or partners of Avi and representing that she is the owner

of any assets conveyed or to be conveyed in the MSA.[19]

We disagree. Avi testified that Suzanne was awarded the 4808 Gibson entity in the divorce. The 4808 Gibson entity owns the property at 4808 Gibson. Although Suzanne agreed to sell "4808 Gibson"[20] to Avi in the MSA, she has refused to convey title to Avi despite his being willing, able, and ready to pay her the agreed price. Avi further testified that if he is not permitted to remain in and is forced to leave the 4808 Gibson property, "the office building where we have been officing for many years" and from which he manages "over a hundred different entities," he "absolutely" would be harmed. Avi was aware Suzanne had contacted the bank that holds the loan on the 4808 Gibson building. He testified he has been unable to renew the loan, which is in default, and has suffered harm from a negative credit rating. Avi "depend[s] on his credit rating to conduct his business" and relies on borrowing from banks for his real-estate business ventures. In fact, because he was unable to purchase the 4808 Gibson property and renew the loan on it, the bank is "starting to question all of [his] loans," which has impaired his credit rating and his ability to conduct his business. Avi stated that his banking relationships have suffered as a result. Avi also was supposed to purchase the "Sheldon Forest" entity from the Trust under the MSA. Avi testified that Suzanne and Suzanne's counsel had contacted Avi's co-general partner in the "Sheldon Forest" entity and interfered with Avi's receipt of funds and distributions. Avi further stated that "the damage is mounting every day" and "there is no way to calculate it."

[19] Within this subissue, Suzanne re-argues there is no evidence to support the issuance of the anti-suit injunction. Again, we already have concluded that the trial court erred in its conclusions of law regarding the four *Golden Rule* factors and by issuing paragraph 33 of the August 23, 2018 temporary injunction.

[20] The parties appear to dispute whether the MSA sale concerns the 4808 Gibson entity or building.

We conclude Avi presented evidence supporting a reasonable inference that, if the trial court did not enjoin Suzanne from certain conduct concerning the assets conveyed or to be conveyed in the MSA, his business would be disrupted and suffer during the interim. *See Occidental Chem. Corp. v. ETC NGL Transp., LLC*, 425 S.W.3d 354, 364 (Tex. App.—Houston [1st Dist.] 2011, pet. dism'd) ("Texas courts have recognized that 'business disruptions' may result in irreparable harm for which a temporary injunction is appropriate."); *Liberty Mut. Ins. Co. v. Mustang Tractor & Equip. Co.*, 812 S.W.2d 663, 666 (Tex. App.—Houston [14th Dist.] 1991, no writ) (temporary injunction can issue for "business disruptions"—"lenders could withdraw their support and call in loans" and "being unable to find comparable financing"); *Guardian Sav. & Loan Ass'n v. Williams*, 731 S.W.2d 107, 108 (Tex. App.—Houston [1st Dist.] 1987, no writ) (same when real-estate developer faced foreclosure of unique real estate and "would lose other developments because of the damage to his reputation in the industry and because of his inability to borrow funds"); *Karamchandani v. Ground Tech., Inc.*, 678 S.W.2d 580, 582 (Tex. App.—Houston [14th Dist.] 1984, writ dism'd) (same when there was sufficient "evidence that appellant attempted to interfere with appellee and its clients or that such interference was causing irreparable harm").

Suzanne further contends that Avi has an adequate remedy at law with respect to the 4808 Gibson property under the lis pendens statute. *See* Tex. Prop. Code Ann. § 12.007(a) ("[D]uring the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending."). But Avi's testimony indicated that he faced harm if he were forced to leave the 4808 Gibson building. Despite any notice of lis

pendens, Suzanne or the 4808 Gibson entity still could sell the 4808 Gibson property to a third party which could terminate Avi's lease. *See Liberty Mut. Ins. Co.*, 812 S.W.2d at 666 ("It is not enough for some legal remedy to exist, but the remedy at law must also be as practical, available, and effectual as the remedy at equity."). Moreover, Suzanne does not provide, and we have not located, any authority wherein a trial court was held to have abused its discretion in granting a temporary injunction simply because a party took advantage of filing a notice of lis pendens.

Viewing the evidence in the light most favorable to the trial court's order, we conclude the trial court did not abuse its discretion by finding that Avi met his burden of showing he faced probable, imminent, and irreparable harm in the absence of a temporary injunction.[21]

Terms of the temporary injunction. Although a temporary injunction should be broad enough to safeguard a party's protectable interests pending a trial on the merits, it should not be so broad that it prohibits the restrained party from engaging in lawful activities that are a proper exercise of its rights. *Sharma*, 231 S.W.3d at 429. Suzanne argues that the temporary injunction is not tailored to prevent Avi's alleged harm because it enjoins conduct related to other entities or properties aside from those mentioned in the injunction testimony. Suzanne also complains that the injunction does not order Suzanne to sell the 4808 Gibson property to Avi; prevent default of the, or permit a new, note on the 4808 Gibson property; or prevent Avi's business partners from withholding disbursements.

[21] Suzanne also argues in a footnote within this subissue that there was no evidence to support a finding concerning her conduct regarding certain declarations attached to her petition in the Utah Trust Protector Suit. Her footnote argument contains no appropriate citations to authority. *See* Tex. R. App. P. 38.1(i). In any event, we already have concluded that the trial court abused its discretion in issuing the anti-suit injunctions against Suzanne based on her past conduct in the Utah suits. Resolution of her footnote argument is not necessary to our final disposition of the appeal. *See id.* 47.1.

We reject Suzanne's overbreadth argument.[22] Here, there was evidence of her or her counsel's direct interference with business dealings concerning (at a minimum) two of the assets conveyed or to be conveyed by the MSA and that Avi was being harmed as a result of such interference. At the hearing, Avi presented the evidence as "examples" of Suzanne's harmful behavior concerning MSA assets. Moreover, the temporary injunction is tied specifically to the assets conveyed or to be conveyed by the MSA and does not enjoin any of Suzanne's conduct in connection with any other entities or properties outside the context of the MSA or the Trust Suit.[23] *Cf. Kaufmann v. Morales*, 93 S.W.3d 650, 656 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (temporary injunction was "overly broad because it attempts to freeze assets and legal rights of the Kaufmanns that are unrelated to the claim").

Regarding Suzanne's other arguments, a temporary injunction ordering Suzanne to sell the 4808 Gibson property would not preserve the status quo; instead, it would jump forward to determining the merits of the validity and interpretation of the MSA. The evidence demonstrated the note was already in default; thus, the temporary injunction could not retroactively prevent that issue. And the temporary injunction permits either party to procure a new note, so long as the other party

[22] Suzanne did not raise this objection below. *See Kaufmann v. Morales*, 93 S.W.3d 650, 655 n.2 (Tex. App.—Houston [14th Dist.] 2002, no pet.) ("[A] party does not waive its complaint to an overly broad temporary injunction at the temporary injunction hearing."). *But see Hartwell v. Lone Star, PCA*, 528 S.W.3d 750, 765–66 (Tex. App.—Texarkana 2017, pet. dism'd); *Smith v. Tex. Dep't of Family & Protective Servs.*, No. 03-13-00204-CV, 2015 WL 410487, at *2, 4 (Tex. App.—Austin Jan. 29, 2015, no pet.) (mem. op. on reh'g).

[23] The authorities cited by Suzanne do not support her position. *See Shelton v. Kalbow*, 489 S.W.3d 32, 48 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (concluding permanent injunction was "sufficiently tailored" when evidence showed parties had obstructed and interfered with public roadway); *Karamchandani*, 678 S.W.2d at 582 (concluding temporary injunction was "narrow and precise" when it prohibited party from sending communications to party's clients "which could have caused irreparable harm and would have disturbed the status quo").

provides his or her express written consent. Finally, there is no indication that Avi sought to enjoin any of his (third-party) business partners from their lawful activities, but rather sought to temporarily enjoin Suzanne in order to maintain the status quo in the Trust Suit.

We overrule Suzanne's second issue.

Suzanne's ability to file for bankruptcy protection. Finally, in her third issue, Suzanne argues that the trial court abused its discretion "to the extent either injunction order prohibits Suzanne from filing for bankruptcy protection, since federal and Texas law prohibits a state court from enjoining a party from pursuing a federal remedy in federal court." Suzanne bases her position on Article I, Section 8, Clause 4, of the United States Constitution, which grants power to Congress to enact laws on bankruptcy; title 11 of the United States Code governing "Bankruptcy"; sections 157(a) and 1334 of title 28 of the United State Code governing jurisdiction and procedures in title 11 cases; and case law indicating that Texas courts cannot enjoin litigants from pursuing federal remedies and prosecuting actions in federal court.

The record does not indicate that Suzanne preserved a complaint for appellate review on this bankruptcy issue. *See* Tex. R. App. P. 33.1(a).[24] In any event, we already have reversed and dissolved the August 3, 2018 anti-suit injunction and paragraph 33 (the anti-suit provision) of the August 23, 2018 temporary injunction. Therefore, Suzanne is no longer enjoined from "proceeding with any lawsuits other

[24] *Compare Topletz v. City of Dallas*, No. 05-16-00741-CV, 2017 WL 1281393, at *5 (Tex. App.—Dallas Apr. 6, 2017, no pet.) (mem. op.) (appellant did not preserve prior-restraint constitutional challenge to temporary injunction), *and Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 600 (Tex. App.—Amarillo 1995, no writ) (same), *with Amalgamated Acme Affiliates, Inc. v. Minton*, 33 S.W.3d 387, 392 n.2 (Tex. App.—Austin 2000, no pet.) (appellant preserved free-speech constitutional challenge to temporary injunction).

than the instant suit and the divorce proceeding in Family Court" or from "initiating or participating in any litigation involving the MSA." Suzanne further contends that paragraph 34 of the temporary injunction—which enjoins Avi and her from "conveying, encumbering, alienating, pledging, or otherwise decreasing the value/marketability of the assets conveyed or to be conveyed by the MSA"—should be vacated for the same reason. But this term of the temporary injunction does not expressly enjoin "Suzanne from pursuing federal bankruptcy protection."

We overrule Suzanne's third issue.

III. CONCLUSION

In appellate case number 14-18-00710-CV, we reverse the trial court's August 3, 2018 interlocutory order granting an anti-suit injunction and render judgment that the order is dissolved. In appellate case number 14-18-00753-CV, we reverse in part the trial court's August 23, 2018 interlocutory order granting a temporary injunction and render judgment that paragraph 33 of the order is dissolved, and we affirm the remainder of the temporary injunction as challenged on appeal.

/s/ Charles A. Spain
Justice

Panel consists of Justices Christopher, Spain, and Poissant.