

Two days before his home was to be sold at a foreclosure sale, a homeowner obtained a temporary restraining order (TRO) in federal court that prevented his lender from proceeding with the sale for 14 days or until a preliminary injunction hearing could take place, whichever was sooner. When a preliminary injunction hearing could not be scheduled within the original 14-day period, the court extended the TRO for another 30 days.

The lender appealed the court's order extending the TRO. The homeowner has moved to dismiss the appeal.

Is the appellate court likely to dismiss the appeal?

- A. No, because a TRO is immediately appealable.
- B. No, because the 30-day extension makes the TRO equivalent to a preliminary injunction and therefore appealable.
- C. Yes, because a TRO is not appealable under the interlocutory appeals statute.
- D. Yes, because there is no final judgment from which an appeal may be taken.

Explanation:

Final-judgment rule

Rule Appeal only allowed after final judgment

- If multiple claims/parties, final judgment as to fewer than all claims/parties appropriate if court expressly determines no justifiable reason for delay

Exceptions Interlocutory appeals* concerning:

- Injunction (grant/denial)
- Certification by district court
- Class action certification
- Appointment of receiver
- Admiralty case
- Collateral-order doctrine
- Bankruptcy cases (certain orders)
- Mandamus (petition for writ)
- Patent infringement order (only accounting left)

Mnemonic: In Certain Circumstances, An Appeal Can Be Made Prematurely

*Appeal from trial court ruling that occurs before entry of final judgment.

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The **final-judgment rule** bars federal appellate courts from hearing an appeal until the federal district court has entered a final judgment—ie, a judicial decision that fully resolves the dispute on the merits and leaves nothing for the court to do but enforce the judgment. But the **interlocutory appeals statute** (28 U.S.C. § 1292) provides **exceptions** to this rule that allow an **immediate appeal** in limited circumstances.

One of those circumstances arises when a district court grants or denies a **preliminary injunction**—ie, a court order entered before or during trial that commands or prohibits a specified action while the case is before the court. In contrast, a **temporary restraining order** (TRO)—ie, a court order that commands or prohibits specified action for 14 days or until a preliminary injunction hearing can take place (whichever occurs first)—is *not* immediately appealable under this statute (**Choice A**).

But when a TRO is **extended beyond 14 days** (as seen here), it becomes **equivalent to a preliminary injunction**. As a result, the extended TRO is **immediately appealable** even though there is no final judgment (**Choices C & D**). Therefore, the appellate court is *unlikely* to dismiss the lender's appeal of the order extending the TRO.

Educational objective:

The interlocutory appeals statute allows certain orders to be appealed before the entry of a final judgment—eg, the grant or denial of a preliminary injunction. A temporary restraining order extended beyond 14 days is equivalent to a preliminary injunction and is immediately appealable under this statute.

References

- 28 U.S.C. § 1292 (exceptions to final judgment rule).
- Fed. R. Civ. P. 65 (preliminary injunctions and temporary restraining orders).
- *Sampson v. Murray*, 415 U.S. 61, 86–88 (1974) (holding that a temporary restraining order extended beyond its time limit is the equivalent of a preliminary injunction).

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