

Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-0878-I

UNIVERSITY OF KENTUCKY

MOVANT

v.

ON MOTION FOR INTERLOCUTORY RELIEF
ARISING FROM FAYETTE CIRCUIT COURT
ACTION NO. 26-CI-02711

HONGBIN ZHANG

RESPONDENT

ORDER GRANTING MOTION FOR INTERLOCUTORY RELIEF

* * * * *

BEFORE: COMBS, McNEILL, AND MOYNAHAN, JUDGES.

On July 16, 2026, Movant University of Kentucky (the University) filed a motion for interlocutory relief pursuant to Kentucky Rule of Appellate Procedure (RAP) 20(B). The University seeks relief from the circuit court's June 30, 2026, Temporary Injunction (Temporary Injunction), enjoining it from terminating the employment of Respondent Dr. Hongbin Zhang (Dr. Zhang).

BACKGROUND

Dr. Zhang is a biostatistics professor. On June 16, 2026, he filed a “Complaint and Demand for Open Records Act Injunctive Relief” (Complaint), consisting of a single count: an alleged Open Records Act (ORA) violation. He also filed a motion for a temporary injunction under Kentucky Revised Statute 61.882(1). *See generally* Kentucky Revised Statutes (KRS) 61.870 *et seq.*

Dr. Zhang alleges the University improperly reassigned him from a tenure track to a terminal academic appointment ending on June 30, 2026. On March 31, 2026, Dr. Zhang received a notification from the Dean of his department that the redesignation decision was final. Thereafter, he instituted an appeal under the University’s internal administrative appeals framework. During that process, Dr. Zhang made multiple requests to the University for records and information regarding the redesignation decision.

On April 1, 2026, Dr. Zhang submitted a request for records which was referred to the University’s Open Records Office. The University responded to Dr. Zhang on April 14, 2026. Dr. Zhang alleges this response was incomplete and improperly redacted to obfuscate information he was entitled to receive.

On April 16, 2026, Dr. Zhang submitted a request specifically citing the Kentucky ORA. In this open records request, Dr. Zhang requested:

Any report, recommendation, memorandum, or written communication produced by or submitted to the Provost

Appointment and Tenure Advisory Committee (PAPTAC)^[1] regarding my appeal, including the report referenced in Dr. Thomas's February 10, 2026 memorandum.

The University objected on the grounds that the request was unreasonably burdensome. The documents the University ultimately provided were a heavily redacted PAPTAC report, which did not identify the exemptions purportedly allowing the redactions. Instead, the University acknowledged that Dr. Zhang was a current employee, but claimed the report was an exempt record under KRS 61.878(l), (i) and (j), among other defenses.

Dr. Zhang submitted a third open records request on May 5, 2026, which specifically sought an Equal Opportunity Office closing letter dated December 22, 2025. On May 22, 2026, the University produced redacted documents in response to the request, but the responsive documents failed to specify which documents corresponded to which request; whether any records were fully withheld; and whether the University was alleging that it had failed to locate responsive records.

Dr. Zhang asserts, and the circuit court agreed, that he is entitled to continued University employment notwithstanding the University's efforts to

¹ Provost Appointment, Promotion, and Tenure Advisory Committee. This is a faculty governance committee that reviews and advises the Provost on faculty personnel cases.

terminate him. His argument in support presents an amalgam of KRS 61.882(1), which allows the circuit court to enter an injunction in an ORA action, and KRS 61.878(3), a provision stating that public agency employees generally maintain the right to inspect their own personnel files notwithstanding the statutory exemptions that may be available to the employer under the ORA.²

The Court having reviewed the record, and being otherwise sufficiently advised; IT IS ORDERED that the motion for interlocutory relief shall be, and hereby is, GRANTED. The Temporary Injunction is hereby DISSOLVED.

ANALYSIS

RAP 20(B) allows a party adversely affected by a circuit court's entry of a temporary injunction to petition this Court for relief no later than 20 days from date of the order. Following a hearing on June 24, 2026, the circuit court entered a Temporary Injunction as follows:

² KRS 61.878(3) provides:

No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him or her. The records shall include but not be limited to work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

The Court . . . concludes that [Dr. Zhang] will suffer immediate and irreparable injury absent injunctive relief. The impending termination of [Dr. Zhang's] faculty appointment presents harm that cannot be adequately remedied through later production of records. Once [Dr. Zhang's] appointment terminates, the practical ability to utilize requested records in connection with University review procedures, internal appeals, reconsideration proceedings, appellate avenues for relief, faculty governance processes, and related employment remedies will be substantially impaired or entirely lost.

The denial of meaningful access to records necessary to evaluate and challenge adverse employment action constitutes irreparable harm where the deprivation threatens to extinguish procedural and substantive rights before judicial review can occur.

. . .

Defendant University of Kentucky, together with its officers, agents, employees, administrators, departments, colleges, committees, and all persons acting in concert with it, is ENJOINED from implementing, finalizing, enforcing, relying upon, or otherwise giving effect to Plaintiff's terminal reappointment, appointment expiration, separation from employment, or any related adverse employment action pending further Order of this Court. Defendant is further ENJOINED from terminating Plaintiff's employment, salary, benefits, faculty status, faculty privileges, research activities, grant administration responsibilities, teaching assignments, access credentials, or other incidents of employment pending further Order of the Court.

After careful review, we hold the circuit court abused its discretion in granting the Temporary Injunction.

In Kentucky, a temporary injunction is reviewed according to three criteria:

First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the actual overall merits of the case are not to be addressed in CR 65.04 motions.

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky. 1978). “Because the injunction is an extraordinary remedy, sufficiency of the evidence below must be evaluated in light of both substantive and equitable principles.” *Id.* at 697. “[A]n appellate court may not disturb a trial court’s decision on a temporary injunction unless the trial court’s decision is a clear abuse of discretion.” *Commonwealth, ex rel.*

Conway v. Thompson, 300 S.W.3d 152, 162 (Ky. 2009), *as corrected* (Jan. 4, 2010) (citation omitted). And, “[t]he test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The University asserts that, even if Dr. Zhang were to succeed on the merits of the litigation, he would be entitled to the production of records, but that prevailing on the merits of an *Open Records Act claim* would not entitle him to *continued employment* by the public agency employer under the statutory scheme. We agree.

The only claim Dr. Zhang pleaded in his initial Complaint was a single count -- statutory violation of the ORA. Counsel for Dr. Zhang acknowledged during the June 24, 2026, hearing that he had not yet pled an employment law claim. After the hearing, Dr. Zhang moved to file an amended complaint in a motion to be heard at motion hour on July 10, 2026. The circuit court granted the motion for leave to amend by order issued on July 13, 2026. At the time of the Temporary Injunction hearing, however, Dr. Zhang did not have an employment claim pending before the circuit court.

To show irreparable injury, a party must “allege possible abrogation of a concrete personal right” and “a clear showing that these rights will be immediately impaired.” *Maupin*, 575 S.W.2d at 698. *Price v. Paintsville Tourism Commission*, is instructive. 261 S.W.3d 482, 483 (Ky. 2008). There, the plaintiff requested that the circuit court require the city to restore her position as an employee pending disposition of her complaint on the grounds that she could not be removed without pre-termination notice and a hearing before the city’s

personnel authority. *Id.* The high Court made clear that “where the damage alleged is the loss of income, the disruption of one’s work, the damage to reputation, or any of the other usual consequences of the loss of employment, reinstatement and/or back pay at the conclusion of proceedings is an adequate remedy rendering pretrial injunctive relief unnecessary and improper.” *Price*, 261 S.W.3d at 485.

Dr. Zhang, in this case, attempted to frame his irreparable injury as the University’s violation of his *right* to appeal an adverse employment action under the agency’s internal administrative guidelines and his *right* to utilize documents produced by the University under the ORA to support his employment claims against it. Dr. Zhang has not cited, nor has this Court independently located, authority stating that Subsection (3) of KRS 61.878 entitles an employee to perpetual employment by means of a temporary injunction, pending disposition of an administrative appeal process, so long as he has previously made an open records request to his employer.

Specific to injunctive relief in an ORA matter, KRS 61.882(1) provides:

The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, *by injunction or other appropriate order on application of any person.*

(Emphasis added.) The legislative purpose of the “injunction” remedy set forth KRS 61.882(1) was elucidated in subsequent case law. In *Beckham v. Board of Education*, 873 S.W.2d 575 (Ky. 1994), the Courier-Journal requested certain personnel records of school board employees. The employees commenced litigation, seeking an injunction against the board’s publicly releasing their employment files. Subsequently, the board “was enjoined from releasing the documents pending appellate review of the merits.” *Id.* at 576. In determining that the employees had standing to contest the release of the documents, our Supreme Court, guided by the principles of statutory construction, held:

[W]e discern a certain harmony in the Act in its extensive remedy provisions for denial of access *and the limited remedy to contest disclosure*. It would appear that the General Assembly sought to promote disclosure by devising easy means toward that end, *but left the door ajar for those who seek to prevent disclosure by granting them a litigation remedy [injunctive relief] to enforce the exclusions*.

Id. at 578 (emphasis added). See also *Lawson v. Office of Atty. Gen.*, 415 S.W.3d 59, 67 (Ky. 2013) (holding that asphalt contractor who sought injunction against disclosure of records under the ORA pursuant to statutory privacy exemption “alleged an imminent violation of his statutory right to personal privacy within the trial court’s power to enjoin”). Thus, the “injunction” the circuit court is empowered to enter under KRS 61.882(1) is an injunction against disclosure of the

disputed records to preserve the status quo. The Temporary Injunction granted here is not within the clear statutory parameters.

Relatedly, our Supreme Court has held that a final judgment “must have at least some discernible relationship to the controversies in issue or be consonant with what is specifically pleaded and proved.” *Nagle v. Wakefield’s Adm’r*, 263 S.W.2d 127, 130 (Ky. 1953). It follows that a party may only obtain interim injunctive relief that is consistent with the claims pled. *See, e.g., Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760, 761 (Ky. 1958) (emphasis added) (“The injunction is an extraordinary remedy and will not be granted except upon a clear showing of an *existing* equitable right.”). The Temporary Injunction here does not substantially relate to the claims that were before the circuit court at the time of its entry and appears to exceed the scope of injunctive relief available under KRS 61.882(1). Dr. Zhang’s claims related to employment were not pled until after the fact and could not supply a basis, retroactively, for the June 30, 2026, Temporary Injunction.

Finally, on the date of the hearing, the evidence in the record was insufficient to support the request for a temporary injunction: the complaint was not verified, no affidavit was tendered to the circuit court, and no testimony was presented in support of Dr. Zhang’s motion. Dr. Zhang was scheduled to attend the hearing remotely, but his attorney informed the circuit court at the start of the

hearing that Dr. Zhang was traveling and they would need to proceed in his absence. Thereafter, counsel for Dr. Zhang proffered the grounds for the injunction but called no witnesses. “Arguments of counsel are not evidence.” *Schulkers v. Lape*, 730 S.W.3d 903, 919 (Ky. 2026). “[E]videntiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction.” *Beshear v. Goodwood Brewing Co., LLC*, 635 S.W.3d 788, 797 (Ky. 2021). Although this is a flexible standard, sensitive to the nuances of each case,

CR 65.04 . . . requires the trial court to set forth findings of fact and conclusions of law which constitute the grounds of its action. It seems elementary that in order to make full and accurate findings of fact, a trial court must have some actual evidence before it.

Id. at 795 (internal quotation marks and citations omitted). Dr. Zhang’s affidavit, filed only after the temporary injunction hearing at which opposing counsel was present, did not operate to supply the evidence that was lacking at the time of the hearing, and counsel’s arguments could not suffice as proof.^{3 4}

³ Dr. Zhang filed a one-page affidavit on June 25, 2026, the date after the injunction hearing, in which he averred that “each of the factual assertions and bases set forth in the previously-filed Emergency Motion for Injunctive Relief, and the originating Complaint, are true and accurate to the best of Declarant’s knowledge and belief.”

⁴ The University attached to its RAP 20(B) motion the May 9, 2025, contract between it and Dr. Zhang. Dr. Zhang asserts that this document was not included in the circuit court record and the University’s reliance on it here is improper. He further faults the University for not attaching other necessary documents to its RAP 20(B) motion. The Court would note that Dr. Zhang could be accused of similar conduct by pleading the employment claims after entry of the Temporary

CONCLUSION

The well-settled purpose of a proper temporary injunction is “to hold the status quo until the merits of an action can be decided.” *Id.* at 798 (internal quotation marks omitted). The June 30, 2026, Temporary Injunction awarded Dr. Zhang relief that he could not have obtained *on the merits* based on his claims as then pled. Accordingly, Dr. Zhang failed to demonstrate the irreparable injury necessary to warrant temporary injunctive relief because he did not show “possible abrogation of a concrete personal right.” *Maupin*, 575 S.W.2d at 698. We further note that the public interest favors the parties’ right to contract, *General Elec. Co. v. American Buyers Co-op., Inc.*, 316 S.W.2d 354, 361 (Ky. 1958), even where the parties must resort to litigation of Dr. Zhang’s (amended) complaint to determine their respective rights. The law also favors the enforcement of statutes according to their terms. Finally, the Temporary Injunction here, far from maintaining the status quo, exceeded its proper limits. It extended the boundary of the terminal appointment and required the University to reinstate Dr. Zhang so that he could utilize KRS 61.878(3) against the University in an administrative appeals process

Injunction and by submitting his affidavit only after the circuit court’s hearing his motion. Nonetheless, it is unnecessary for this Court to consider the May 9, 2025, contract as the parties do not dispute that Dr. Zhang was the subject of a tenure-track appointment which was changed to a terminal position.

and in litigating employment law claims that had not yet been pled. In this manner, the circuit court erred.

WHEREFORE, for the foregoing reasons, the University's motion for interlocutory relief under RAP 20(B) is GRANTED. The June 30, 2026, Temporary Injunction is hereby DISSOLVED. This Order shall not be reconsidered. RAP 20(E).

ENTERED:09/18/2026



HON. SARA WALTER COMBS
JUDGE, COURT OF APPEALS