

No. 1-10-2715

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION  
FILED: FEBRUARY 14, 2011

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SEDDIE BASTANIPOUR and JOEL BELLOWS, ) APPEAL FROM THE  
 ) ) CIRCUIT COURT OF  
Plaintiffs-Appellees ) ) COOK COUNTY  
 ) )  
v. ) ) No. 08 L 9801  
 ) )  
 ) )  
BENJAMIN WARNER, SIGMUND EISENCHENK, ) )  
and CALDERA PHARMACEUTICALS, INC., ) )  
 ) )  
Defendants. ) )  
 ) )  
(Sigmund Eisenchenk, defendant- ) ) HONORABLE  
appellant.) ) ) CHARLES R. WINKLER,  
 ) ) JUDGE PRESIDING.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**O R D E R**

*Held:* Incomplete record on appeal offered no basis for holding that the circuit court abused its discretion in declining to dissolve an injunction.

Sigmund Eisenchenk, appeals from the circuit court's order granting the motion of the plaintiffs, Seddie Bastanipour and Joel Bellows, to continue the circuit court's prior order enjoining

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Eisenchenk from disposing of certain assets and ordering the plaintiffs not to take any actions to enforce a prior judgment. For the reasons that follow, we affirm the judgment of the circuit court.

In 2008, the plaintiffs filed a complaint alleging that the defendants--Benjamin Warner; Caldera Pharmaceuticals, Inc.; and Eisenchenk--fraudulently induced their investment in a business concern. On February 24, 2009, after Eisenchenk failed to appear, the circuit court entered a default judgment against him and in favor of the plaintiffs on the first count of the plaintiffs' complaint. In order to collect on their judgment, the plaintiffs thereafter took actions against Eisenchenk's assets. On April 21, 2009, the circuit court entered judgments for the plaintiffs on the second and third counts of their complaint against Eisenchenk. The plaintiffs' case continued against the remaining defendants.

In the meantime, Eisenchenk filed a motion to vacate the judgments against him, and, on September 29, 2009, the circuit court granted the motion with respect to the April 21, 2009, judgments. As part of its September 29, 2009, order, the circuit court added the following:

"3. [Eisenchenk] is hereby enjoined from selling, encumbering or otherwise disposing of any real property or shares of stock until further order of court.

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4. [The plaintiffs] are hereby ordered to take no further steps in enforcement of the February 24, 2009, judgments and all pending actions are hereby stayed, until further order of court."

Discovery then proceeded between the plaintiffs and Eisenchenk.

On May 4, 2010, the trial court entered an order vacating its original February 24, 2009, judgment against Eisenchenk; that order made no mention of the September 29 injunctions. On May 18, 2010, Eisenchenk filed a "Response to Plaintiffs' Oral Motion to Maintain Injunction." In his response, Eisenchenk argued that the "[p]laintiffs [sought] to impose an injunction over property over which [the circuit court had] no jurisdiction" and asked that the circuit court vacate the third and fourth paragraphs of the September 29, 2009, order. The record also contains the plaintiffs' reply to Eisenchenk's response.

On August 12, 2010, the circuit court entered a written order stating as follows, in pertinent part:

"This matter coming to be heard on plaintiffs' oral motion to continue paragraphs 3 and 4 of this court's order dated September 29, 2009[,] it is hereby ordered:

1. The motion is granted and such paragraphs 3 and 4 are continued until further order of court. The court finds that the equities of this case justify continuation of the

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injunction.

\* \* \*

The court further finds that equities of the case justify its ruling that Eisenchenk's assets including assets outside the state of Illinois remain frozen pending Eisenchenk's appearance for deposition and further determination by the court of Eisenchenk's intention to satisfy any judgment eventually entered in this case."

Although the written order states that it was entered following a hearing, the only report of proceedings that appears in the record pertains to a February 2010 hearing on Eisenchenk's motion to vacate the judgments against him. On September 10, 2010, Eisenchenk filed a notice of interlocutory appeal, pursuant to Supreme Court Rule 307(a)(1) (eff. February 26, 2010), from the circuit court's August 12 order.

On appeal, the plaintiffs raise the threshold argument that we lack jurisdiction over this case because the August 12 order from which Eisenchenk purports to appeal was not an appealable order. The plaintiffs base this assertion on their representation that there is nothing in the record to indicate that the circuit court was ever asked to modify its September 29, 2009, injunction order. Thus, according to the plaintiffs, the August 12, 2010, order was not an order "granting, modifying, refusing, dissolving, or

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refusing to dissolve or modify an injunction," as is required for appealability under Rule 307(a)(1). The record, however, includes a written motion from Eisenchenk asking that the September 29, 2009, injunctions be dissolved. Thus, the circuit court's August 12 order continuing the injunctions constituted an order refusing to dissolve an injunction, and it was appealable under Rule 307(a)(1). Accordingly, we reject the plaintiffs' argument that we lack jurisdiction over this appeal.

On the merits, Eisenchenk begins his argument by asserting that the trial court had no basis for entering an injunction against him on August 12, 2010. He appears to base this contention on the premise that the circuit court's original injunction order, which stated that it would remain in effect "until further order of court," was dissolved when the court granted his motions to vacate the judgments against him. Thus, Eisenchenk seems to argue that the August 10, 2010, order actually began a new injunction against him. Eisenchenk reaches this interpretation by reasoning that the "further order of the court" mentioned in the original injunction order must have contemplated an order regarding his motions to vacate, because "had the petition to vacate been *denied*, Plaintiffs would have moved to be relieved of any restraint on enforcing the February 2009 judgment," (*i.e.*, the fourth paragraph of the September 29 order). Therefore, he reasons, the circuit court's

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granting his motion to vacate dissolved the original injunction. Eisenchenk's argument highlights the flaw in his premise: if the motion to vacate had been denied, then the plaintiffs still could not have taken steps to enforce the February 2009 judgment until they, in Eisenchenk's words, successfully "moved to be relieved" of the injunction. The August 12, 2010, order challenged on appeal continued a previous injunction and did not impose a new one, and we consider it accordingly.

Pursuant to section 11-108 of the Code of Civil Procedure (735 ILCS 5/11-108 (West 2008)), "[a] motion to dissolve an injunction may be made at any time before or after answer is filed. Upon a motion to dissolve an injunction after answer is filed the court shall decide the motion upon the weight of the evidence." The decision as to whether to dissolve an injunction is committed to the discretion of the trial court. *Rochester Buckhart Action Group v. Young*, 379 Ill. App. 3d 1030, 1034, 887 N.E.2d 49 (2008).

Here, as noted, the record contains no reports of proceedings for any of the hearings upon which the circuit court's decision was predicated. Thus, we know neither what arguments were presented to the circuit court immediately before its ruling, or, more importantly, on what grounds it explained its ruling in open court. It is well-established that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to

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support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). With no meaningful record of the reasons underlying the circuit court's exercise of discretion to deny Eisenchenk's motion to dissolve the injunction against him, we have no basis to conclude that the trial court abused its discretion. We must, therefore, reject Eisenchenk's argument.

Likewise, although Eisenchenk also seems to argue that the circuit court was required as a matter of law to dissolve the injunction because it was improperly entered in the first place, we cannot know without a complete record whether, or how, the circuit court addressed those purported improprieties before entering the order Eisenchenk now appeals. Again, the state of the record requires that we reject Eisenchenk's argument.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.