

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).

2011 IL App (3d) 110288-U

Order filed November 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

MARY HUBERT LIMITED)	Appeal from the Circuit Court
PARTNERSHIP,)	of the 21st Judicial Circuit,
)	Iroquois County, Illinois
Plaintiff-Appellee,)	
)	Appeal No. 3-11-0288
v.)	Circuit No. 11-CH-37
)	
ROBIN HASSELBRING and KENTON)	
HASSELBRING,)	
)	Honorable James B. Kinzer,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Plaintiff failed to establish that it had no adequate remedy at law or that it would suffer irreparable harm in the absence of a preliminary injunction. The trial court's grant of a preliminary injunction is reversed.
- ¶ 2 Defendants, Robin and Kenton Hasselbring, appeal the trial court's grant of a preliminary

injunction preventing them from farming property under a disputed lease with plaintiff, Mary Hubert Limited Partnership. The only issue in this interlocutory appeal is whether the trial court properly entered a preliminary injunction prohibiting defendants from farming the property in question after the end of the 2010 crop year. Plaintiff failed to show that it lacked an adequate remedy at law, that irreparable harm would occur without the preliminary injunction, or that it was proper to use a preliminary injunction to determine possession of the property at issue in this case. We reverse the trial court's grant of a preliminary injunction.

¶ 3

FACTS

¶ 4 The following information is taken from the pleadings in this case. Mary Hubert is a designated general partner of Mary Hubert Limited Partnership. She has been a resident of the Miller Health Care Center since 2004. Dr. Philip G. Hays has been Hubert's primary physician since 2005. It is his opinion that Hubert is not mentally competent to make any decision concerning her welfare or finances, and this condition has existed for several years. Due to her inability to make decisions concerning her health and finances, on July 22, 1998, she granted her niece, Theresa L. Magruder, power of attorney in all matters concerning her property and finances.

¶ 5 During the 2010 crop year, defendants farmed land owned by plaintiff, apparently under a lease originally signed in 1986. At some point, plaintiff hired Wirth Ag Services, Inc., to manage the land in question. Wirth notified defendants that the 1986 lease would terminate at the end of the 2010 crop year, and that no discussions about lease arrangements for the coming

year would be made until they provided written acceptance of the lease termination.

¶ 6 Unbeknown to plaintiff, defendants met with Hubert in December 2010 and obtained her signature on a written five-year lease, allowing them to continue farming the land in question. The lease also granted defendants a right to purchase the property upon Hubert's death. Early in 2011, Wirth entered into a farming agreement with a third party who began preparations to begin farming the land at issue. On March 23, 2011, plaintiff learned of the lease signed by Hubert when defendants tendered the lease and checks in compliance with that lease.

¶ 7 Plaintiff believes the lease is invalid since Hubert was not competent to manage her finances on the date it was signed. It filed a two-count complaint seeking a declaratory judgment that the lease was invalid, and the issuance of preliminary and permanent injunctions prohibiting defendants from attempting to farm the land under the disputed lease during the 2011 and subsequent crop years. Defendants moved to dismiss the complaint. The trial court denied the motion to dismiss the complaint and entered a preliminary injunction as requested. Defendants timely filed this interlocutory appeal, asking this court to reverse the trial court's grant of a preliminary injunction.

¶ 8 ANALYSIS

¶ 9 Defendants argue that it was improper to grant the preliminary injunction for four reasons: (1) the preliminary injunction altered the status quo; (2) the preliminary injunction was used to determine possession or title to real estate; (3) the plaintiff had an adequate remedy at law; and (4) the plaintiff failed to establish that irreparable harm would occur without the

injunction.

¶ 10 A party seeking a preliminary injunction must show: “(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case.” *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). The party seeking the preliminary injunction must “raise a fair question as to each element required to obtain the injunction.” *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010). A preliminary injunction “is an extraordinary [remedy] and should be granted only in situations of extreme emergency or where serious harm would result if the preliminary injunction was not issued.” *Id.*

¶ 11 Generally a trial court’s decision to grant or deny a preliminary injunction is reviewed for an abuse of discretion. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d at 378 (2010). However, if the trial court does not make any factual findings and rules on a question of law, the review is *de novo*. *Id.* Defendant relies on *Clinton* in arguing that our review should be *de novo* since the trial court made no findings of fact. What *Clinton* requires for *de novo* review is that the trial court made no findings of fact, and that it ruled on a question of law. The *Clinton* court relied on the Illinois Supreme Court case of *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63 (2006). In *Mohanty*, the issue was whether a preliminary injunction should issue to prevent a party from violating restrictive covenants in an employment contract. *Id.* at 62. The court recognized that whether or not the covenant was enforceable was a question of law, which they reviewed *de novo*. *Id.* at 63. *Mohanty* simply does not stand for the

proposition that when a trial court makes no findings of fact, its decision regarding the issuance of a preliminary injunction is reviewed *de novo*.

¶ 12 We review the trial court's grant of the preliminary injunction for an abuse of discretion. An abuse of discretion occurs when we find no evidence in the record supporting the trial court's ruling. See *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 674 (2005); *Billerbeck v. Caterpillar Tractor Co.*, 292 Ill. App. 3d 350, 358 (1997). It is also an abuse of discretion when the trial court ignores recognized principles of law. *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 595 (1991).

¶ 13 I. Adequate Remedy at Law

¶ 14 Defendants argue that a preliminary injunction should not have issued since plaintiff has an adequate remedy at law: a forcible entry and detainer action. Plaintiff responds that a forcible entry and detainer action is not an adequate remedy and that it is proper to seek declaratory and injunctive relief in connection with farm leases. A large portion of its brief argues that the defendants are really appealing the denial of their motion to dismiss. The only issue before this court is whether or not the trial court correctly granted the preliminary injunction. Defendants have raised no other issue and could not appeal the trial court's denial of their motion to dismiss; "denials of motions to dismiss are not reviewable." *Stein v. Krislov*, 405 Ill. App. 3d 538, 542 (2010).

¶ 15 Plaintiff argues that a forcible entry and detainer action is not adequate since it would not allow the court to address the defendants' option, in the disputed lease, to purchase the property.

Plaintiff cites to *Sawyer v. Young*, 198 Ill. App. 3d 1047 (1990), to support this claim. *Sawyer* states that the only issues to be determined in a forcible entry and detainer action are those germane to the issue of possession. *Id.* at 1053. It also states that questions regarding the enforceability of a document granting possession are germane to the issue of possession. See *Id.* at 1054. Plaintiff does not explain, and we do not see how, the validity of the disputed lease would not properly be addressed in a forcible entry and detainer action. Therefore, plaintiff has an adequate remedy at law. Furthermore, plaintiff's argument that its need to litigate the option to purchase in the lease supports the use of a preliminary injunction is misguided. The fact that defendants may, at some future time, assert an option under the lease does not support injunctive relief now.

¶ 16 Plaintiff makes much of the fact that a declaratory judgment action may properly be used to determine the validity of the lease. There is no doubt that plaintiff may use a declaratory judgment action to determine the validity of the lease. The current action in the trial court will do that exact thing. However, the fact that declaratory relief may be sought in connection with a farm lease is not a response to defendants' argument that plaintiff has an adequate remedy at law. There is no question that plaintiff's declaratory judgment action can proceed, but the mere fact that a declaratory judgment action can proceed has no bearing on whether plaintiff has an adequate remedy at law, or whether it will suffer irreparable harm, and therefore whether the preliminary injunction was proper.

¶ 17 Plaintiff failed to present any evidence that it had no adequate remedy at law.

¶ 18

II. Irreparable Injury

¶ 19 Defendants argue that it was improper for the trial court to grant a preliminary injunction since the plaintiff failed to show that irreparable harm would occur if a preliminary injunction did not issue. Plaintiff states, without supporting evidence or citation to authority, that it would suffer irreparable harm without a preliminary injunction since it could not be made whole through a forcible entry and detainer action.

¶ 20 “[I]rreparable harm, ‘occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards.’ *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 947 (2001).” *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190 (2010).

Plaintiff alleges that it has entered into a contract with a third party to farm the property. It has not alleged that if the third party is not allowed to farm the property, monetary damages cannot be ascertained. In the absence of any showing that the damages plaintiff may incur cannot be measured by pecuniary standards, a preliminary injunction should not issue. Additionally, section 9-201 of the Code of Civil Procedure allows a property owner to obtain “a fair and reasonable satisfaction for the use and occupation” of their land when the land is “held and occupied by any person without any special agreement for rent[,]” as would be the case if the disputed lease in this case is found to be void. 735 ILCS 5/9-201 (West 2010).

¶ 21

III. Determining Possession or Title

¶ 22 As a general rule, a preliminary injunction should not be used to change the possession of

real property. *Scholz v. Barbee*, 344 Ill. App. 630, 636 (1951). There are exceptions to the general rule, for example, “where it is clear from the allegations in the bill that the defendant's possession is but an interruption of the prior possession of the complainant, *to which the latter is entitled[,]*” a preliminary injunction is proper. (Emphasis in original.) *Pullem v. Evanston Young Men’s Christian Ass’n*, 124 Ill. App. 3d 264, 268 (1984). Plaintiff failed to present any case law indicating that there is an exception that applies in this case. It cites to *Klesath v. Barber*, 4 Ill. App. 3d 86 (1972), in support of the proposition that injunctive relief is appropriate in this case. The only issue before the *Klesath* court was the trial court’s grant of summary judgment. *Id.* at 285. It did not address the issue of the preliminary injunction granted by the trial court.

¶ 23 Plaintiff also cites to *Kabureck v. Stookey*, 1 Ill. App. 2d 181 (1954). *Kabureck*, did hold that a trial court properly granted a preliminary injunction in a dispute over a farm lease. *Id.* at 185. However, *Kabureck* based its decision on the fact that irreparable harm would occur if the injunction was not granted, and that the injunction was properly granted to maintain the status quo. *Id.* *Kabureck* does not provide an exception to the general rule applicable to plaintiff.

¶ 24 CONCLUSION

¶ 25 The preliminary injunction should not have been granted where the plaintiff had an adequate remedy at law, failed to show it would suffer irreparable harm, and no exception existed to the general rule, that preliminary injunctions should not be used to determine possession of real property.

¶ 26 For the foregoing reasons, the judgment of the circuit court of Iroquois County is reversed.

¶ 27 Reversed.