

No. 1-12-0011

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHANDRA KHURANA, M.D. and PERFECT)	Appeal from the
MANAGED CARE, LLC,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellants,)	
)	
v.)	
)	
HARMONY HEALTH PLAN OF ILLINOIS, INC.,)	No. 11CH23809
)	
Defendant-Appellee.)	
)	
(Jessica Leal,)	The Honorable
)	Rita M. Novak,
Defendant.))	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court was within its discretion in granting defendant's motion to strike plaintiffs' motion for a preliminary injunction without an evidentiary hearing because no irreparable harm existed that warranted granting plaintiffs' request for preliminary injunctive relief. Affirmed.

¶ 2 This interlocutory appeal arises from the trial court's order granting defendant Harmony

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Health Plan of Illinois, Inc.'s motion to strike the motion for a preliminary injunction filed by plaintiffs, Chandra Khurana, M.D. and Perfect Managed Care, LLC. On appeal, plaintiffs assert the trial court erred in granting defendant's motion and striking plaintiffs' motion without an evidentiary hearing because there was no legal impediment to plaintiffs' request for injunctive relief. Specifically, plaintiffs assert the mere passage of time is not a legal impediment. We affirm.

¶ 3

BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. Central to the parties' dispute in the trial court were the contractual agreements between plaintiffs and defendant. On January 1, 2000, plaintiffs and defendant entered into a multi-specialty agreement ("the 2000 Agreement"), by which plaintiffs became designated medical providers of medical services to Medicaid patients who were members of defendant's Health Maintenance Organization (HMO). In 2008, plaintiffs and defendant also entered into a physician provider agreement ("the 2008 Agreement"), by which plaintiffs became designated providers of medical services to Medicare patients who were members of defendant's HMO. Pursuant to Article IV(I) of the 2000 Agreement and Article 5.2(a) of the 2008 Agreement, defendant was required to provide at least a 90-day notice prior to termination of either agreement, with the proviso that defendant could immediately terminate either agreement upon certain wrongful acts by plaintiffs.

¶ 5 On March 18, 2011, Jessica Leal, a former employee of plaintiffs, informed defendant of plaintiffs' allegedly illegal conduct, which resulted in an internal investigation and reporting to state and federal authorities. On June 29, 2011, defendant immediately terminated the 2000 and 2008 Agreements based on defendant's belief that plaintiffs' acts provided it with cause.

¶ 6 On July 6, 2011, plaintiffs filed the underlying complaint against defendant and Leal

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personally, alleging breach of contract, tortious interference and conversion. Plaintiffs simultaneously filed a joint motion for a temporary restraining order and a preliminary injunction. In the motion, plaintiffs contended they were entitled to a 90-day notice of termination from defendant and that they would be irreparably harmed if defendant was not prohibited from terminating the agreements other than pursuant to the 90-day termination provision. In addition, plaintiffs requested that defendant be prohibited from communicating with plaintiffs' patients and physicians about the dispute, except in accordance with the 90-day termination provisions. The record indicates that notices were sent to plaintiffs' patients informing them they were being transferred to new medical providers. Furthermore, plaintiffs requested that defendant be ordered to retain all records and electronically stored information relating to the termination of its contracts with plaintiffs and the subject matter of this dispute. In response, defendant argued that plaintiffs' motion was both tardy and moot, because it had already transferred 98% of its enrollees to different providers. Moreover, defendant argued that it properly terminated the agreements, there was no immediate, irreparable harm and suggested that plaintiffs' demand for damages was a remedy at law.

¶ 7 On July, 11, 2011, the trial court denied the request for a TRO and scheduled a hearing to be held on plaintiffs' request for a preliminary injunction in late August, 2011. The trial court did grant plaintiffs' request for expedited discovery by ordering that all discovery be complete by August 24, 2011. Despite these well-laid judicial plans, Dr. Khurana's illness and subsequent delays prevented the expedited discovery and ultimately resulted in the trial court's vacating the scheduled hearing on the preliminary injunction.

¶ 8 On September 29, 2011, defendant filed a motion to strike plaintiffs' motion for a preliminary injunction, alleging that plaintiffs' motion was now moot and there was no

irreparable harm. In response, plaintiffs argued that their request for injunctive relief was not moot, because they had not been given a 90-day termination period. Following a hearing on December 16, 2011, the trial court heard arguments on the motion to strike, and substantively concluded that there had been "material changes" since the matter began in July and there was "no benefit whatsoever to proceed on a preliminary injunction hearing rather than putting the efforts toward resolving the matter finally." On December 22, 2011, the trial court granted defendant's motion to strike and plaintiffs subsequently filed their notice of interlocutory appeal, pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

¶ 9

ANALYSIS

¶ 10 On appeal, plaintiffs assert the trial court abused its discretion in granting defendant's motion to strike without an evidentiary hearing because there was no legal impediment to plaintiffs' request for injunctive relief. Specifically, plaintiffs assert that the mere passage of time is not a legal impediment and thus, does not justify striking a motion for a preliminary injunction. In general, the trial court has broad discretion to grant or deny preliminary injunctive relief and we limit our review to whether the trial court abused its discretion. *Travelport, LP v. American Airlines, Inc.*, 2011 IL App (1st) 111761, ¶ 33. The purpose of a preliminary injunction is to maintain the status quo until the case is disposed of on the merits. *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 231 Ill. App. 3d 619, 625 (1992). A party seeking preliminary injunctive relief must establish that: (1) it has an ascertainable right in need of protection; (2) it will suffer immediate and irreparable harm if injunctive relief is denied; (3) there is no adequate remedy at law; and (4) it is likely to succeed on the merits of the case. *Szabo Food Service, Inc. v. County of Cook*, 160 Ill. App. 3d 845, 847-48 (1987). If a trial court finds the pleadings and facts are inadequate to establish a protectable interest and irreparable harm,

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then the court is within its discretion to deny a motion for a preliminary injunction without a hearing. *Id.* at 851.

¶ 11 Plaintiffs contend that the determinative factor in deciding whether it is proper to strike a motion for a preliminary injunction is whether, as a matter of law, there is a legal impediment to the request for injunctive relief. Plaintiffs cite no case explicitly stating that the existence of a "legal impediment" is determinative to the trial court's decision to strike a motion for a preliminary injunction without an evidentiary hearing and our research does not otherwise reveal case law stating as such. We find the requisite elements in *Szabo* better frame our inquiry. In addition, contrary to plaintiffs' suggestion the decision in *McDonagh S.C. v. Moss*, 207 Ill. App. 3d 62 (1990), does not set forth that principle. In *McDonagh*, the reviewing court concluded the trial court erred on striking the motion based on the merits of the motion, not for striking the motion without an evidentiary hearing. *Id.* at 66. In contrast to *McDonagh*, however, here, for reasons to be explained, the trial court properly found plaintiffs' motion lacked merit. To the extent a legal impediment exists due to the court's inability to effectively give plaintiffs relief and plaintiffs' failure to satisfy the requisite elements for obtaining a preliminary injunction, the trial court properly struck plaintiffs' motion without an evidentiary hearing.

¶ 12 Here, the trial court heard the preliminary injunctive request and, based on the pleadings and circumstances of the case, found that a preliminary injunction unwarranted. Specifically, the court held a hearing on defendant's motion to strike, considered the parties' arguments and exercised sound discretion in reaching this determination. Plaintiffs are correct that at the TRO hearing on July 12, 2011, the trial court found irreparable harm existed, because the termination put at issue Dr. Khurana's reputation in the community. When the trial court ultimately struck plaintiffs' motion for a preliminary injunction on December 22, 2011, circumstances had

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materially changed to the point that the trial court could no longer effectively grant plaintiffs relief, even if it were factually and legally appropriate to do so. Contrary to plaintiffs' assertion, when read in its entirety, the record shows the trial court granted defendant's motion for more than administrative considerations.

¶ 13 Although plaintiffs correctly argue that the passage of time does not, in and of itself, justify denying a preliminary injunction the elapsed time here played a critical role in the court's inability to prevent irreparable harm or, more properly put here, to undo the damage done. It is a basic tenet of justiciability that reviewing courts will not decide moot issues. *In re J.T.*, 221 Ill. 2d 338, 349 (2006). An appeal is considered moot when "the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *Id.* at 349-50. Under the agreements at issue, plaintiffs are effectively given a 90-day notice to offer a smooth transition to their patients and physicians and, potentially, salvage reputation. As stated, it appears that the majority of plaintiffs' patients were notified long ago and transferred to independent physician associations or physicians. Given the current landscape, plaintiffs' patients may very well be reluctant to return to plaintiffs' care. In addition, practically speaking, the trial court could not restore plaintiffs' reputation at this late date. In fact, plaintiffs' attorney admits plaintiffs' "business has been destroyed."

¶ 14 Given plaintiffs' own assertions, it goes without saying that no irreparable harm can be prevented by reinstating the 90-day termination notice at this late date because it is impossible for the reviewing court to grant plaintiffs effectual relief. *Cf. Home Savings and Loan Ass'n of Joliet v. Samuel T. Isaac and Associates, Inc.*, 99 Ill. App. 3d 795, 801-02 (1981) (the appellate court did not find the passage of time was at issue, because it could still provide plaintiffs with

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the equitable relief sought, specifically the court could enjoin the defendant from selling the note and mortgage at issue to a private investor at a loss); *People ex rel. Bolton v. Progressive General Insurance Co.*, 84 Ill. App. 2d 109, 115-17 (1967) (similar); *Cf. also McDonagh*, 207 Ill. App. 3d 62 (the appellate court failed to expressly consider the passage of time, but concluded it was still possible to give plaintiffs relief).

¶ 15 Moreover, if plaintiffs' contention that they are entitled to this relief at any time were accurate, we fail to see the irreparable harm from the trial court declining to grant relief immediately. The trial court exercised its discretion and determined it made more sense to reach a final determination on the merits. The trial court's ruling that maintained current status quo strikes us as eminently more reasonable than to grant a preliminary injunction and go back in time, which would surely have been a feckless venture.

¶ 16 Plaintiffs should not be permitted to pursue their request for emergency relief in the form of a preliminary injunction when circumstances have substantively changed due to delay. To the extent plaintiffs' argue that they were not at fault for the delay in this case, we note that the trial court agreed. Nonetheless, that did not require the trial court to disregard the natural consequences that flowed from the delay in these proceedings, *i.e.*, the inability to effectively grant plaintiffs' relief in the form of protecting their interests. As explained, the majority of patients and physicians are aware of the dispute and damage to plaintiffs' reputation has already befallen. There is no irreparable harm that can be prevented by the granting of a preliminary injunction. The harm has already been done, notwithstanding that it remains to be seen whether such harm was wrongfully caused by defendant.

¶ 17 Finally, to the extent plaintiffs argue they did not falsify records and are not thus responsible for Leal's criminal acts, those arguments do not pertain to the order appealed from

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and are not properly before us for review, particularly as they relate to the merits of the underlying complaint rather than plaintiffs' request for injunctive relief. *See Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 231 Ill. App. 3d 619, 625 (1992) (a reviewing court may consider substantive issues only to the extent necessary to determine whether the trial court acted in accordance with its authority). Accordingly, the trial court did not abuse its discretion.

¶ 18 For the foregoing reasons, we affirm the order of the trial court.

¶ 19 Affirmed.