2013 IL App (2d) 121415-U
No. 2-12-1415
Order filed September 20, 2013
Modified upon denial of rehearing April 23, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SAINT MARK'S EPISCOPAL CHURCH,	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CH-23
	)	
PAULINE BOYLE,	)	Honorable
	)	Luis A. Berrones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred by granting permanent injunctive relief to plaintiff where the trial court held that plaintiff had not proven the essential element of damages on its underlying tort claim, because an injunction is a remedy and not a cause of action in itself.

¶ 2 Following a bench trial on plaintiff, Saint Mark's Episcopal Church's, complaint alleging tortious interference with prospective economic advantage and seeking money damages and injunctive relief, the circuit court of Lake County held that plaintiff had not proved sufficiently the element of damages. The trial court denied plaintiff monetary relief but nevertheless granted

plaintiff injunctive relief, requiring defendant, Pauline Boyle, to remove a sign she had erected on her property. Defendant appeals, arguing that the trial court erred in granting permanent injunctive relief where plaintiff was unsuccessful on the merits of the tortious interference claim. We agree and reverse.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff sued defendant, alleging tortious interference with a prospective economic advantage and requested both damages and injunctive relief. Plaintiff was attempting to sell its property that lay between its and defendant's property. During the time plaintiff was trying to sell its property, defendant erected a sign facing plaintiff's property that read, "buyer beware." At least one potential buyer was influenced to abandon her purchase of plaintiff's property. In an agreed order, the trial court granted defendant's preliminary injunction requiring defendant to remove her sign.

¶ 5 After a bench trial, the trial court held "that there was an interference with the prospective business relationship of [plaintiff's]; however, [plaintiff] has not proven damages." The court therefore entered judgment in favor of defendant. The court then proceeded to orally issue a permanent injunction against defendant "ordering her to cease and desist from erecting any signs on the property with respect to the–directed to the sale of the property that is owned by [plaintiff]." The court also issued a written order stating, pertinently, "[p]laintiff's claim for permanent injunctive relief is granted so that [d]efendant is prohibited from erecting the Buyer Beware sign on her property." Defendant timely appeals; plaintiff did not appeal the adverse judgment on the tortious interference claim.

¶ 6 II. ANALYSIS

¶ 7 Defendant argues that the trial court erred in granting a permanent injunction as a remedy for plaintiff's underlying tort claim. Before taking up this issue on appeal, we must first address the discrepancy between the written order and the oral pronouncement.

¶ 8 It is beyond peradventure that, when a trial court's oral pronouncement is inconsistent with its written order, the oral pronouncement controls. *E.g.*, *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009). Defendant acknowledges the discrepancy in the trial judge's oral and written pronouncements, but makes no argument as to which is controlling. Plaintiff, on the other hand, tells us that the written order is controlling and directs us to *other* jurisdictions which "have clearly pointed out what may be obvious to this court." Keeping in mind that the minimally competent search of Illinois authority immediately reveals the controlling rule (*e.g.*, *id.*; *In re Tr. O.*, 362 Ill. App. 3d 860, 868 (2005) ("[i]f there is a conflict between a trial court's written and oral orders, the oral order controls")), we believe that plaintiff's counsel has recklessly misled[1] the court concerning the proper controlling authority. Our initial concern was that counsel's conduct was intentional, and we based this conclusion on counsel's citation to foreign authority (the Tennessee Court of Appeals and the United States Sixth Circuit Court of Appeals) and the fact that counsel did not attempt to couch his argument in terms suggesting that the law in these jurisdictions should replace current Illinois

[1]Counsel also presented extensive argument in plaintiff's petition for rehearing on the issue of whether his conduct in providing an erroneous view of the authority was or was not intentional. Counsel's arguments, effectively acknowledging that counsel engaged in an insufficient search of authority and knew that his search was insufficient, further served to convince us that his conduct was not intentional, and we have modified this portion of our order to reflect this conclusion.

authority, and giving reasons therefor. In light of this, we entered a rule to show cause why counsel should not be sanctioned for this supposed misrepresentation in his written argument. At the hearing on the rule to show cause, counsel was unable to offer a satisfactory explanation for his conduct, but he acknowledged the severity of the misconduct and promised that he would take pains to make sure he never repeated it.[2] Having ultimately accepted counsel's arguments concerning his lack of intent, his representations of remorse, and his resolve never to repeat the conduct, we order no further sanction.

¶ 9 We return to the issue at hand: the appropriateness of the trial court's order of an injunction. Typically, we would review the order under an abuse-of-discretion standard. *Sparks v. Gray*, 334 Ill. App. 3d 390, 395 (2002). However, because the questions before us are purely legal, we review *de novo* the merits of the permanent injunction. *Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 582 (1996). Regardless, the outcome is the same under either standard of review.

¶ 10 Here, the trial court held in favor of defendant on the tortious interference claim, yet nevertheless granted relief, in the form of a permanent injunction, to plaintiff. However, an injunction is only a remedy for an underlying cause of action and is not a cause of action in itself. See *Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 46 ("[a] permanent injunction * * * is not a separate cause of action[,] * * * it is an equitable remedy"). Just as a temporary injunction may not be granted where a cause of action is insufficiently pleaded (see *e.g.*, *Ware v. D.R.G., Inc.*, 17 Ill. App. 3d 758, 763-64 (1974) (rejecting plaintiff's argument that she need not state a cause of action to be entitled to a

[2]Counsel's arguments in his petition for rehearing were sufficient to convince us that his conduct was not intentional.

temporary injunction)), a permanent injunction cannot be granted where the underlying cause of action is ultimately unsuccessful at trial. Rather, the issuance of a permanent injunction is contingent on the plaintiff prevailing at trial on the merits of its claim. *Cicero*, 2012 IL App (1st) 112164, ¶ 46 (citing *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 431 (2004)).

¶ 11 Here, plaintiff's cause of action was the tort of intentional interference with a prospective economic advantage. The elements of this tort are: (1) the existence of a valid business relationship or expectancy; (2) the defendant's knowledge of the plaintiff's relationship or expectancy; (3) the defendant's purposeful interference that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship or termination of the relationship; and (4) damages to the plaintiff resulting from such interference. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 380 (2004). The trial court determined that plaintiff failed to prove the essential element of damages, and thus, held in favor of defendant.

¶ 12 As plaintiff was unsuccessful on the merits of its underlying tort claim, it did not meet the requirements for the issuance of a permanent injunction. See *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 743-44 (2009) (quoting *Hasco, Inc. v. Roche*, 299 Ill. App. 3d 118, 126 (1998)) (" '(1) a clear and ascertainable right in need of protection; (2) irreparable harm if injunctive relief is not granted; (3) no adequate remedy at law; and (4) success on the merits' "); see also, *People ex rel. Fahner v. Steel Container Corp.*, 102 Ill. App. 3d 369, 374 (1981) ("[t]he merits which are viewed are those of the underlying cause of action, and not the merits of the preliminary injunction motion"). Because we hold that the trial court erred in granting the plaintiff injunctive relief when plaintiff was unsuccessful in its cause of action, we need not address defendant's arguments concerning the injunction as a prior restraint on speech or, alternatively, as overly broad.

¶ 13 Plaintiff submitted a petition for rehearing, raising the substantive arguments that plaintiff was blindsided by the disposition's *ratio decidendi*, and presenting argument against that rationale. As to the issue of blindsiding counsel, we did direct the parties to be prepared to argue on the issue of whether injunctive relief is available where the party is unsuccessful on its underlying claim. Thus, counsel was on notice of that issue. Further, counsel could have requested the opportunity to submit additional briefing on the topic we identified, but did not. In any event, counsel has taken advantage of the rules governing petitions for rehearing, and has submitted a petition for rehearing on the topic, which is an allowable use for such a petition.

¶ 14 We have decided to rule on the merits of the petition rather than allow the parties an opportunity to brief the issue in supplemental briefing. Plaintiff presented its best substantive arguments in support of its position in its petition for rehearing, and, if ordered to provide supplemental briefing, it would either repeat those arguments in a supplemental submission or stand on its petition for rehearing for the substantive argument. This would unduly burden the parties. We now turn to plaintiff's specific contentions.

¶ 15 Plaintiff argues that defendant did not address the issue of whether injunctive relief was available when the underlying substantive claim was not proved, thereby waiving this topic as a basis for this court's decision. Regardless of whether defendant waived her own argument on the issue, defendant's actions do not bind this court: waiver is a limitation on the parties and not on the court, and we may ignore waiver when the interests of justice require. *U.S. Bank National Ass'n v. Rose*, 2014 IL App (3d) 130356, ¶ 24. Thus, while we acknowledge plaintiff's contention, we do not accept it in this case.

¶ 16 Substantively, plaintiff first argues that it is not required to allege multiple causes of action under separate counts. This argument, while correct (meaning that plaintiff has found at

least one case to support the contention, namely, *Matchett v. Rose*, 36 Ill. App. 3d 638 (1976)), is nevertheless nonresponsive to the dispositive issue here, whether injunctive (or any) relief may be granted even though the underlying cause of action failed. Plaintiff alleged a viable cause of action for tortious interference with a business expectancy. At trial, that claim was defeated, because the trial court concluded plaintiff had not proved damages, stating, "The Court finds that there was an interference with the prospective business relations of St. Mark's; however, St. Mark's has not proven any damages and, therefore, **judgment is entered in favor of the defendant Ms. Boyle with respect to the tortious interference claim**." (Emphasis added.) The trial court's pronouncement, then, squarely places into issue the question of whether relief may lie, including injunctive relief, when the underlying claim has failed. How a claim must be pleaded is wholly nonresponsive to this issue. Accordingly, we need not further respond to plaintiff's first contention.

¶ 17 Next, plaintiff argues that a tortious interference claim "may be the predicate for an injunction." Again, this argument is nonresponsive to the issue of whether injunctive relief lies where the underlying claim has failed. That said, we further note that our disposition actually presupposes the propriety of injunctive relief predicated on a tortious-interference claim. As this contention skirts the actual issue raised by the case, we again need not further consider it.

¶ 18 Next, plaintiff cites some 11 sources for the proposition that injunctive relief may be awarded as and for damages, and that only nominal damages need be proved. Once again, plaintiff's contention is nonresponsive to the actual issue, and once again, we need not deal with it any further.

¶ 19 Next, plaintiff tries to suggest that the trial court found that the damages element of the tort of tortious interference was satisfied. Plaintiff argues that the trial court determined it had

"sustained unquantified damage," pointing to the court's statements: "This sign was really a basis of intimidation with respect to the church of St. Mark's"; "It [the sign] was only meant to intimidate whatever potential buyers there were"; "The sign did cause irreparable injury"; and "[there exists an] inadequate remedy at law because a measure of damages would not be easily ascertained and that a continuing injury would occur if the sign was not removed, having the testimony of Ms. Wall to establish that in fact it does affect potential purchasers". Plaintiff does not provide an actual context for the statements for the purposes of its argument (and we think fully quoting the pertinent passages and highlighting the key phrases is probably a much better means of presenting this information); however, that is only a minor quibble. We agree that the quoted statements seem to indicate that the trial court may have harbored ambiguous sentiments concerning plaintiff's proof of the existence of damages. However, the trial court was abundantly clear when it stated, "The Court finds that there was an interference with the prospective business relationship of St. Mark's; however, St. Mark's has not proven any damages and, therefore, judgment is entered in favor of the defendant Ms. Boyle with respect to the tortious interference claim." The trial court flatly held that judgment was entered for defendant on the tortious interference claim. Plaintiff's contentions do not address the effect of this clear pronouncement (perhaps because plaintiff's contentions only raise convenient straw men instead of exploring the actual issue identified of whether relief, including injunctive relief may be granted where the underlying claim has failed), and because of that lack, plaintiff's contention necessarily fails.

¶ 20 The issue, as we see it, is set up by the trial court's holding that judgment was entered in favor of defendant on the tortious interference claim. That issue is can injunctive relief lie where the plaintiff fails on the underlying claim. The answer is no. In *Belden Corp. v. InterNorth Inc.*,

90 Ill. App. 3d 547, 553-54 (1980), the court held that, because the tortious interference claim had not been proved, injunctive relief had been improvidently granted. So too in this case. The trial court held that tortious interference had not been proved, and it entered judgment on that claim in favor of defendant. Nevertheless, the trial court went on to grant plaintiff an injunction. *Belden*, however, demonstrates that, where the underlying claim, here tortious interference, fails, injunctive relief should not be granted. *Id.*; see also *Wagner*, 391 Ill. App. 3d at 743-44 (success on the merits is an essential element necessary to allow the grant of the remedy of injunctive relief); and *People ex rel. Fahner*, 102 Ill. App. 3d at 374 (success on the merits refers to success on the underlying claim). Here, despite complaining that it was blindsided by this issue (and notwithstanding the opportunity at oral argument to address the issue), plaintiff's contentions do not actually grapple with the issue; rather, at best, plaintiff's contentions address the quantum of injury necessary to trigger the grant of the remedy of injunctive relief, which necessarily presupposes that it succeeded on its tortious interference claim. However, because the trial court entered judgment in favor of defendant on the tortious interference claim (another item with which plaintiff does not grapple), all of plaintiff's substantive arguments in its petition for rehearing rest on untenable ground. Accordingly, we reject them and maintain our holding that the trial court erred and improvidently granted plaintiff injunctive relief.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, the portion of the judgment of the circuit court of Lake County granting injunctive relief is reversed.

¶ 23 Reversed in part.