

**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).

2016 IL App (4th) 150764-U

NO. 4-15-0764

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 26, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

|                                      |   |                  |
|--------------------------------------|---|------------------|
| DIANA L. WOHLERS,                    | ) | Appeal from      |
| Plaintiff-Appellant,                 | ) | Circuit Court of |
| v.                                   | ) | Vermilion County |
| DAVID KEITH, ANN KEITH, UNKNOWN TEN- | ) | No. 14CH122      |
| ANTS, and NON-RECORD CLAIMANTS,      | ) |                  |
| Defendants-Appellees.                | ) | Honorable        |
|                                      | ) | Mark S. Goodwin, |
|                                      | ) | Judge Presiding. |

JUSTICE STEIGMANN delivered the judgment of the court.  
Justice Appleton concurred in the judgment.  
Justice Turner dissented.

**ORDER**

¶ 1 *Held:* The appellate court reversed the trial court's decision granting defendants' petition for a preliminary injunction.

¶ 2 In August 2014, plaintiff, Diana L. Wohlers, filed a complaint to quiet title against her neighbors, David and Ann Keith, alleging that the Keiths' garage intruded onto Wohlers' property. While the complaint was pending, Wohlers built a fence on her property that abutted the Keiths' garage. In July 2015, the Keiths filed a petition for a preliminary injunction, arguing that the fence prevented David from accessing and mowing his backyard. The petition requested that the trial court order Wohlers to take down the fence and allow David access to his backyard pending resolution of the underlying case. The court granted the Keiths' petition. Wohlers appeals. We reverse.

¶ 3 I. BACKGROUND

¶ 4 The following facts were gleaned from the transcripts and common-law record.

¶ 5 In 2008, David and his wife, Ann, purchased a residence in the Village of Westville (Village) that shared a property line with Wohlers, their neighbor to the east. David claimed that when the Keiths moved in, Wohlers told him that a fence post located in their backyard marked their shared property line.

¶ 6 In 2012, David built a garage on the east side of his property, which came within a few feet of the fence post property line. After building the garage, David used his riding lawnmower to mow the grassy strip between the garage and Wohlers' property. He also used that strip as a path, which allowed him access to his backyard with his lawnmower.

¶ 7 In 2014, the Keiths decided to sell their house and commissioned a survey of their property. The survey results showed that the property line marked by the fence post was not accurate. According to the survey, the true property line was farther west, and the Keiths' garage was intruding onto Wohlers' property. In August 2014, Wohlers filed a complaint to quiet title against the Keiths. The Keiths filed an answer and counterclaim in September 2014 and, in April 2015, an amended counterclaim.

¶ 8 In June 2015, David noticed Wohlers mowing the part of the Keiths' backyard that the survey showed belonged to Wohlers. David asked Wohlers to stop mowing there, but she refused. In July 2015, Wohlers constructed a chain-link fence that ran across her property and abutted David's garage. A sign on the fence read, "Private Property."

¶ 9 In July 2015, the Keiths filed a petition for a preliminary injunction, asking the trial court to order that Wohlers remove the fence. The Keiths alleged that Wohlers' fence prevented David from accessing his backyard with his lawnmower.

¶ 10 Later that month, the trial court held a hearing on the Keiths' petition. David testi-

fied that he had mowed and maintained all of his lawn until Wohlers began mowing part of his backyard. He stated that Wohlers' fence prevented him from accessing his backyard with his riding lawnmower. Prior to construction of the fence, David would drive his lawnmower around the east side of his garage to the backyard. Now that route was blocked by Wohlers' fence. David could not access it from another route on his property because his house, yard barn, and landscaping boulders prevented access from other areas of his property. As a result, David had received permission to access his backyard through a neighbor's yard, which allowed David to continue mowing his yard. David testified that the Village had not issued him any tickets for not mowing his grass.

¶ 11 On cross-examination, Wohlers introduced pictures showing that David's garage had both front and rear hanging doors and questioned whether David could drive his lawnmower through his garage to access his backyard. David stated he had not tried because he did not want to access the area directly behind the garage because that land was at issue in Wohlers' complaint.

¶ 12 Wohlers testified that she constructed the fence to keep David off her property and prevent him from mowing on the side of his garage because it resulted in grass clippings hitting her house. Wohlers acknowledged that she was continuing to mow the area directly behind David's garage.

¶ 13 The trial court found that, by erecting the fence, Wohlers had engaged in "self help" that was creating "instability in the neighborhood." The court granted the Keiths' petition for a preliminary injunction and ordered Wohlers to remove the fence within 10 feet of the garage. In September 2015, the court entered a written order memorializing its judgment and ordering the Keiths to maintain the area of their backyard behind their garage pending resolution of

the underlying action to quiet title.

¶ 14 This appeal followed, pursuant to Illinois Supreme Court Rule 307(a) (eff. Feb. 26, 2010) (allowing an interlocutory appeal from an order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction").

¶ 15 II. ANALYSIS

¶ 16 Wohlers argues that the trial court abused its discretion by granting the Keiths' motion for a preliminary injunction. Because we conclude that the Keiths failed to show that they would suffer irreparable injury absent a preliminary injunction, we agree and reverse the trial court's judgment.

¶ 17 A. Deficiencies in the Keiths' Appellate Brief

¶ 18 We begin by noting the deficiencies in the Keiths' brief, as pointed out by Wohlers in her appellant's brief. Illinois Supreme Court Rules 341(h)(7) and 341(i) (eff. Feb. 6, 2013) require that the brief of the appellee include citation to the pages of the record relied on in its argument section. The Keiths' brief contains no citations to the record, making it difficult for this court to determine whether the factual statements made by the Keiths are accurate. The rules of appellate procedure concerning briefs are rules and not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7, 969 N.E.2d 930. Arguments that do not satisfy Rule 341 may be disregarded. *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040, 918 N.E.2d 1276, 1280 (2009). In our discretion, we will consider the arguments made in the Keiths' brief despite its failure to comply with Rule 341.

¶ 19 B. Applicable Law and Standard of Review

¶ 20 To obtain a preliminary injunction, the moving party 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." *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378, 943 N.E.2d 725, 729 (2010) (quoting *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62, 866 N.E.2d 85, 91 (2006)).

¶ 21 "A preliminary injunction preserves the status quo until the merits of the case are decided." *Clinton Landfill*, 406 Ill. App. 3d at 378, 943 N.E.2d at 729. A preliminary injunction should issue only if the harm to the petitioner in the absence of such relief likely outweighs the harm to the respondent if the relief is granted. *Enbridge Pipelines (Illinois), LLC v. Troyer*, 2015 IL App (4th) 150334, ¶ 26, 38 N.E.3d 1282. "The remedy is an extraordinary one and should be granted only in situations of extreme emergency or where serious harm would result if the preliminary injunction was not issued." *Clinton Landfill*, 406 Ill. App. 3d at 378, 943 N.E.2d at 729.

¶ 22 "On appeal, we examine only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights." *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177, 781 N.E.2d 223, 230 (2002), *superseded by statute on other grounds as stated in Dunlap v. Village of Schaumburg*, 394 Ill. App. 3d 629, 639, 915 N.E.2d 890, 899 (2009). A court reviews a trial court's grant or denial of a preliminary injunction for an abuse of discretion. *Clinton Landfill*, 406 Ill. App. 3d at 378, 943 N.E.2d at 729.

¶ 23 C. Whether the Trial Court Abused Its Discretion in This Case

¶ 24 The trial court did not specifically find whether the Keiths had established the four factors required for an injunction. We conclude that the court's granting of the preliminary injunction was an abuse of discretion because the Keiths did not establish that they would suffer irreparable injury absent an injunction.

¶ 25 1. *Wohlers Changed the Status Quo by Building the Fence*

¶ 26 As we stated earlier, "[a] preliminary injunction preserves the status quo until the merits of the case are decided." *Clinton Landfill*, 406 Ill. App. 3d at 378, 943 N.E.2d at 729.

The status quo is "the last, uncontested, peaceable status preceding the controversy." *Travelport, LP v. American Airlines, Inc.*, 2011 IL App (1st) 111761, ¶ 27, 958 N.E.2d 1075. In this case the status quo was as follows: David was mowing the strip of land to the east of his garage and using that strip to access his backyard with his lawnmower. Wohlers disrupted that status quo by building the fence. To decide whether an injunction was appropriate to reestablish the status quo, we must determine whether the Keiths established the four preliminary-injunction factors.

¶ 27 2. *The Keiths Did Not Establish an Irreparable Injury*

¶ 28 Irreparable injury does not mean an injury that cannot be remedied by monetary damages. Instead, it means an injury of a continuing nature. *Hadley v. Department of Corrections*, 362 Ill. App. 3d 680, 688, 840 N.E.2d 748, 756 (2005). In addition, "[t]he injury need not be very great." *Id.* However, the necessary showing "is not satisfied by proof of a speculative possibility of injury and [injunctive] relief will not be granted to allay unfounded fears or misapprehensions." (Internal quotation marks omitted.) *Smith v. Department of Natural Resources*, 2015 IL App (5th) 140583, ¶ 27, 35 N.E.3d 1281 (quoting *Smith Oil Corp. v. Viking Chemical Co.*, 127 Ill. App. 3d 423, 431, 468 N.E.2d 797, 803 (1984)).

¶ 29 In this case, the injury alleged by the Keiths was entirely speculative. The Keiths argued that the fence impeded David from mowing his lawn as normal and might cause him to be fined by the Village. However, David testified that he was able to mow his lawn by accessing it through another neighbor's yard. In addition, he also testified that the Village had yet to fine him. In short, the Keiths' claimed injuries have not yet come to fruition. Because the Keiths'

claims of injury are merely speculative, they do not constitute irreparable harm. As a result, despite Wohlers' having altered the status quo by erecting the fence, the evidence did not support imposing a preliminary injunction.

¶ 30 We conclude that the trial court abused its discretion by granting the Keiths' motion for a preliminary injunction. We express no opinion as to the merits of the underlying action.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we reverse the trial court's judgment.

¶ 33 Reversed.

¶ 34 JUSTICE TURNER, dissenting.

¶ 35 I respectfully dissent. Plaintiff filed her complaint to quiet title in August 2014. Plaintiff then altered the status quo by erecting a fence in July 2015. The trial court's order granting the injunction merely restored the status quo that existed prior to and at the time the complaint to quiet title was filed. Given these circumstances, I believe the majority errs in concluding the trial court abused its discretion.