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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARIO YU, M.D.,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 19-CH-783
)	
ADVENTIST MIDWEST HEALTH,)	
d/b/a AMITA Health Adventist)	
Medical Center Hinsdale, and d/b/a)	
Adventist Hospital Hinsdale, an Illinois)	
Not-For-Profit Corporation.)	Honorable
)	Bonnie M. Wheaton
Defendant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly denied plaintiff physician's request for a temporary restraining order to compel hospital to reinstate his medical staff privileges after they had expired.

¶ 2 This appeal comes to us from the denial of a temporary restraining order (TRO) requiring a hospital to reinstate clinical privileges for one of its physicians. At this juncture, we take all well-pled allegations as true and here the facts are largely undisputed. *Capstone Financial Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 10.

¶ 3 Dr. Mario Yu has been a licensed obstetrician and gynecologist (OBGYN) for the past 38 years at his offices in Oak Brook, Illinois. For the past 30 years, Yu has had staff, clinical, and admission privileges at AMITA Health Adventist Medical Center Hinsdale (“Hinsdale”). Under the Hospital Licensing Act, a private hospital like Hinsdale must adopt bylaws governing medical staff privileges (210 ILCS 85/10.4(b)). Hinsdale’s bylaws provide that all reappointments “shall be for a maximum of two years” and that all forms for reapplication must be submitted at least 90 days prior to the appointment’s expiration date. The bylaws also provide that the failure to complete any additional requirements or training ordered by the Board “shall constitute voluntary withdrawal of the reapplication * * *.”

¶ 4 Yu applied to be reappointed in 2018. In a letter dated December 27, 2018, Yu was notified by the Interim Chief Medical Officer that the hospital’s board had approved Yu’s reappointment for six months, until June 30, 2019, with the stipulation that Yu had to complete “mandatory Postpartum Hemorrhage, Shoulder Dystocia, and hypertension simulations” as well as “GNOSIS training.” An affidavit from Yu states that he completed the GNOSIS training in May 2019, “which included a module on Shoulder Dystocia,” but he says nothing about having completed the three simulations.

¶ 5 In a letter dated June 19, 2019, Hinsdale’s current Chief Medical Officer, Dr. Bela Nand, notified Yu that his clinical privileges would expire on June 30, 2019, and stated that Yu was ineligible for reappointment due to his failure to complete the three mandatory simulations. Nand further noted that, pursuant to the bylaws, the expiration of Yu’s medical staff privileges did not constitute an “adverse action” or entitle Yu to hearing.

¶ 6 Yu’s privileges at Hinsdale terminated on June 30, 2019, and on July 8, 2019, he filed a complaint for declaratory and injunctive relief “preventing Hinsdale Hospital from enforcing

[its] decision not to reappoint [him].” In his affidavit, Yu stated that Hinsdale is the only hospital at which he had clinical privileges, and claims that the loss of his staff privileges may harm his patients, some of whom are near term, as well as harm his practice and professional standing. He also claims that he is not aware of any other physician at Hinsdale Hospital who was required to complete the three simulations. He claims he has been the victim of age discrimination. In addition, Yu points to a section of the bylaws requiring the hospital to provide him with reappointment forms five months before the expiration of his appointment, and asserts that he was not provided with those forms. Thus, according to Yu, his “non-reappointment” was contrary to the hospital’s bylaws and therefore contrary to the Hospital Licensing Act. Attached to Yu’s complaint was a copy of the hospital’s bylaws and credentialing policies.

¶ 7 Attached to the hospital’s response was an affidavit from Nand, which indicates that, to the best of Nand’s knowledge, all of the other OBGYNs on staff have completed the mandatory training. Nand’s affidavit also includes exhibits showing several dates on which the hospital offered the simulations in 2017 and 2018. Nand disputes Yu’s characterization that he was the victim of age discrimination or that the hospital’s actions were contrary to the bylaws

¶ 8 The trial court held a hearing on July 10, 2019, after which it denied Yu’s request for a TRO. The court determined that, for the limited purpose of evaluating the TRO, Yu was unlikely to succeed on the merits because he “failed to timely complete the requirements that were a condition of the extension of his privileges [for] the six-month period” and had failed to submit a completed application within 90 days of the expiration of his practice privileges, as required by the bylaws. The court ordered expedited discovery and scheduled a hearing on Yu’s request for a preliminary injunction for August 12, 2019. Yu made a motion to “stay enforcement” of the court’s decision, which the trial court denied.

¶ 9 Yu now appeals to us challenging the denial of the stay and the denial of the TRO. We affirm. Although Yu’s appellate filings variously refer to Illinois Supreme Court Rule 305, which applies to stays, and Rule 307(d), which applies to TRO appeals, we can treat Yu’s appeal as presenting a single issue under Rule 307(d) because there was no judgment to stay enforcement of. Though Yu claims he is requesting a “stay of enforcement of the non-reappointment of [his] medical staff privileges” the label is inapt. Yu’s clinical privileges were terminated at Hinsdale on June 30, 2019, and the trial court denied his request for a TRO on July 10, 2019, *i.e.*, *after* his clinical privileges had expired. There is, simply put, no action or judgment to stay here. Yu’s application does not seek to “ ‘preserve the status quo’ ”; rather, what Yu is plainly seeking, regardless of phrasing, is a court order *compelling* the hospital to reappoint him. So, to the extent Yu has renewed his request for a stay, it is denied, which brings us to the merits.

¶ 10 A trial court’s decision to grant or deny injunctive relief is discretionary and its determination will not be disturbed absent an abuse of discretion. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62-63 (2006). The only question before the court of review is whether there was a sufficient showing to sustain the order of the trial court. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk and Western Ry. Co.*, 195 Ill. 2d 356, 366 (2001).

¶ 11 As the party seeking the injunction, Yu must demonstrate each of the following: (1) that he has a clearly ascertained right in need of protection, (2) irreparable harm in the absence of an injunction, (3) that he has no adequate remedy at law, and (4) that he has a likelihood of success on the merits of the case. *Id.* Like the trial court, at this juncture, we determine that Yu is unlikely to succeed on the merits.

¶ 12 As a rule, courts exercise only a limited form of review in cases involving medical staffing decisions. *Garibaldi v. Applebaum*, 194 Ill. 2d 438, 451 (2000); *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 507 (1989); *Barrows v. Northwestern Memorial Hospital*, 123 Ill. 2d 49, 59 (1988). This “judicial reluctance” is based on public policy and it “reflects the unwillingness of courts to substitute their judgment for the professional judgment of hospital officials with superior qualifications to consider and decide such issues.” *Adkins*, 129 Ill. 2d at 507. Accordingly, in cases where medical staff privileges have been reduced or suspended, “the hospital’s action is subject to limited judicial review to determine whether the decision made was in compliance with the hospital’s bylaws.” *Id.*; see also *Goldberg v. Rush University Medical Center*, 371 Ill. App. 3d 597, 603 (2007); *Lo v. Provena Covenant Medical Center*, 342 Ill. App. 3d 975, 981 (2003); *Jain v. Northwest Community Hospital*, 67 Ill. App. 3d 420, 424-25 (1978).

¶ 13 Here, on the limited record before us, it may be more appropriate to say that there is no real action on the part of Hinsdale Hospital for us to review. Again, Yu’s medical staff privileges were terminated after they had expired. In addition, there is no indication that Yu timely sought review of his six-month conditional reappointment from December 2018. Thus, it is arguably inappropriate for us to review Yu’s “non-reappointment” in June. See *Adkins*, 129 Ill. 2d at 506 (noting that the internal staffing decisions of a private hospital are not generally subject to judicial review).

¶ 14 However, Hinsdale Hospital does not make this argument, thereby forfeiting it. *Cf.* Ill. S. Ct. R. 341(h)(7). Instead, the hospital asserts that it followed its bylaws, especially in light of the fact that Yu does not dispute that he failed to complete the stipulations of his six-month reappointment. We agree with the hospital. There is no question that the bylaws clothe the

hospital's board with the authority to condition staff privileges on any number of tasks, including the completion of additional training. There is also no question that, again, Yu has essentially conceded that he failed to complete the training that was required of him. In support of the hospital's position, we note that federal and state regulations place ultimate responsibility for the quality of medical care squarely on the governing board's shoulders (see 42 C.F.R. § 482.12(a)(5); 77 Ill. Adm.Code § 250.210(f)) and that hospitals have an independent duty— independent of any relationship between physician and patient—to supervise patient care in its facilities (*Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 19 (1997); *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 518 (1993); *Lo*, 342 Ill. App. 3d at 984).

¶ 15 Our determination is not affected by Yu's claim that the hospital failed to provide him with a reappointment form five months prior to the June 2019 expiration of his privileges in contravention of the bylaws. Even if true, as the hospital notes, our supreme court has held that a hospital's minor deviations from the bylaws do not warrant judicial intervention into its staffing decisions. See *Adkins*, 129 Ill. 2d at 515-16. It would be a different matter of course if Yu had completed the required tasks but was somehow prevented from seeking reappointment because he lacked the proper form. But that does not appear to be the case here. By Yu's own admission, he did not complete the simulations. Similarly, even if one accepts the position, based on Yu's belief, that no other OBGYN was required to complete the simulations—a circumstance we find highly unlikely—it would have no bearing on *his* failure to complete the training the Board specifically assigned to him by June 30th.

¶ 16 We hasten to add that nothing we have said should be construed as an opinion on the ultimate merits of this litigation. Rather, we merely hold today that, on the limited record before us, Yu has failed to meet the high bar to justify the extraordinary relief of a TRO against a

private hospital's staffing decision. We therefore affirm the judgment of the Circuit Court of DuPage County denying Yu a TRO.

¶ 17 Affirmed.