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4-13-0993, 4-13-1026, 4-13-1027, 4-13-1028 cons.

FILED
July 29, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

BRUCE RUSHTON,)
Plaintiff-Appellee,)
v. (No. 4-13-0993))
THE CITY OF SPRINGFIELD,)
Defendant-Appellant,)
and)
THE JOINT LABOR MANAGEMENT HEALTH)
COMMITTEE,)
Defendant.)

Appeal from
Circuit Court of
Sangamon County
No. 12MR29

BRUCE RUSHTON,)
Plaintiff-Appellee,)
v. (No. 4-13-1026))
THE JOINT LABOR MANAGEMENT HEALTH)
COMMITTEE, CITY OF SPRINGFIELD; POLICE)
BENEVOLENT AND PROTECTIVE)
ASSOCIATION UNIT NO. 5; and THE AMERICAN)
FEDERATION OF STATE, COUNTY, AND MU-)
NICIPAL EMPLOYEES, COUNCIL 31, LOCAL 337,)
LOCAL 3738, and LOCAL 3417,)
Defendants,)
and)
THE INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 193,)
Intervenors-Appellant.)

BRUCE RUSHTON,)
Plaintiff-Appellee,)
v. (No. 4-13-1027))
THE JOINT LABOR MANAGEMENT HEALTH)
COMMITTEE, CITY OF SPRINGFIELD; POLICE)
BENEVOLENT AND PROTECTIVE)
ASSOCIATION UNIT NO. 5; and THE INTERNA-)
TIONAL BROTHERHOOD OF ELECTRICAL)
WORKERS, LOCAL 193,)
Defendants,)
and)

hearing, the court orally granted the City's motion to dissolve the preliminary injunction and for involuntary dismissal pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)) because the City had completely disbanded the Original Committee since the preliminary injunction was issued. However, the court did not memorialize its ruling in a docket entry or other writing.

¶ 3 Nothing further happened in the case until January 2013, when plaintiff filed a petition for rule to show cause, alleging that the City—through the activities of the newly formed Joint Labor Management Health *Care* Committee (New Committee)—violated the trial court's February 2012 preliminary injunction. The court and parties (having apparently forgotten that the court dissolved the injunction and dismissed the action in May 2012) thereafter proceeded through the contempt proceedings as if the February 2012 preliminary injunction was still in place. In August 2013, as part of the contempt proceedings, the court ordered the City to audio-record the New Committee's meetings.

¶ 4 The City—joined by labor-union intervenors—appeals, arguing that the trial court lacked subject-matter jurisdiction to order the New Committee to audio-record its meetings. Because we agree, we vacate the court's judgment and remand with directions to dismiss plaintiff's petition for rule to show cause.

¶ 5 I. BACKGROUND

¶ 6 A. The Original Committee

¶ 7 In 2002, the City adopted Ordinance 582-11-02, which created the Original Committee to "deal[] with the problem of maintaining quality health care while controlling escalating costs." The 12-member Original Committee was composed of 6 labor-union representatives, 2 city council members, 3 nonunion employees, and a retired employee.

void.

¶ 13 D. Plaintiff's Petition for Attorney Fees

¶ 14 In April 2012, plaintiff filed a petition for attorney fees pursuant to section 3 of the OMA, alleging that "[o]n April 5, 2012, the City announced that it was abandoning the Committee structure at issue in this litigation, and was putting in place a different structure." Plaintiff argued that he was entitled to attorney fees under section 3 of the OMA (5 ILCS 120/3(d) (West 2012)) because he "substantially prevailed in this proceeding against Defendants and intervenors."

¶ 15 E. The City's Motion To Dissolve the Preliminary Injunction
and for Involuntary Dismissal

¶ 16 On May 16, 2012, the City filed a "motion to dissolve the preliminary injunction and motion for involuntary dismissal," asserting that the Original Committee had "ceased to exist." As an exhibit to the motion, the City attached the agreement between it and several labor unions that created the New Committee. Unlike the Original Committee, the New Committee consisted only of City and labor-union representatives, and its resolutions required ratification by the Springfield City Council before becoming effective. According to the City, the purpose of these changes was to make the New Committee subject to the Illinois Public Labor Relations Act (IPLRA) (5 ILCS 315/1 to 28 (West 2012)) and, therefore, exempt from the OMA.

¶ 17 F. The May 2012 Hearing

¶ 18 On May 17, 2012, the trial court held a hearing on (1) the City's motion to dissolve the preliminary injunction and for involuntary dismissal, and (2) plaintiff's petition for attorney fees. At the beginning of that hearing, the following exchange took place between the court and plaintiff's attorney, Donald Craven:

"THE COURT: *** This matter comes on for hearing on

the Petition for Attorney Fees and Costs. I note that the City has filed a motion, which I don't think came as any surprise to anyone, Motion to Dissolve the Preliminary Injunction and Motion for Involuntary Dismissal. There's also response from the Defendant City and from Intervenor [PBPA], responses to the Petition for fees.

* * *

Let's take up the Motion to Dissolve the Preliminary Injunction and for Involuntary Dismissal. Seems like it's pretty self-explanatory, so [plaintiff], do you have any response to that motion?

MR. CRAVEN: Well, perhaps an inquiry. The motion indicates that the committee as formerly constructed has been disbanded, so I take it at this point, there is no committee.

THE COURT: That's how I took it.

MR. CRAVEN: So, if that committee structure has been abandoned, I have *no mas* [(no more)] except for the Petition for Attorney Fees.

THE COURT: All right.

MR. CRAVEN: But I don't want—just so the parties are clear, my consent to the Motion to Dissolve the Preliminary Injunction as to [the Original Committee] does not reflect *** any position at all with respect to a committee that may or may not

succeed [the Original Committee].

THE COURT: Insofar as their right to meet in—

MR. CRAVEN: Right.

THE COURT: —in closed session and—well—

MR. CRAVEN: Right.

THE COURT: *** I understand you're not forfeiting any right to object to *** any closed meetings they may have in the future based on the facts, so I think we all understand that, so the Motion to Dissolve the Preliminary Injunction and Motion for Involuntary Dismissal will be allowed at this time, and then we'll turn to the Petition for Fees[.]"

The trial court did not memorialize its oral ruling in a docket entry or other writing, nor did it indicate that a written order would be forthcoming, or instruct any party to prepare a written order for the court's signature. The court's docket entry for May 17, 2012, simply read, as follows: "Nancy Horath was the court reporter for the hearing held this date."

¶ 19 After orally granting the City's motion, the trial court immediately proceeded to a hearing on plaintiff's petition for attorney fees. At the conclusion of the hearing, the court stated that it would take the matter of attorney fees under advisement and issue a ruling by the end of the following week. (The record indicates the court did not rule on plaintiff's petition for attorney fees until July 12, 2013.)

¶ 20 G. Plaintiff's First Petition for Rule To Show Cause

¶ 21 In January 2013, plaintiff filed a petition for rule to show cause, alleging the City—through the activities of the New Committee—violated the trial court's February 2012 pre-

liminary injunction. The City and Union Intervenors responded to plaintiff's petition on its merits, without raising the issue that the court had orally dissolved the injunction and dismissed the action in May 2012.

¶ 22 On July 12, 2013, the trial court denied plaintiff's petition for rule to show cause, finding as follow:

"[T]his Court declines to find that the actions of the Defendants are contumacious. Defendant City clearly attempted to address the concerns of this Court as set forth in the underlying proceedings by reconstituting the Committee in a form which it believed was in compliance with the OMA. Whether that attempt was successful, [in essence], whether the new ordinance complies with the OMA, is not the issue before this Court."

That same day, the court ordered the City to pay plaintiff \$12,000 in attorney fees, which was the issue, as earlier noted, that the court had taken under advisement on May 17, 2012.

¶ 23 H. Plaintiff's Second Petition for
Rule To Show Cause

¶ 24 On July 15, 2013, plaintiff filed a second petition for rule to show cause, alleging that the New Committee's recent activities had violated the OMA and, in turn, the trial court's February 2012 preliminary injunction. In his petition, plaintiff asked the court to grant the following pertinent relief:

"(a) [I]ssue an Order for Rule to Show Cause to determine what, if any, cause Defendants have for failing to abide by the Order entered by this Court;

(b) [H]old Defendants in contempt of court for failing to

abide by the Order's clear terms that the Committee must comply with the OMA;

* * *

(e) [G]rant any further relief this Court deems fair."

¶ 25 On July 26, 2013, plaintiff filed a notice of hearing, informing the City and Intervenors that a case-management conference had been scheduled for August 7, 2013. (The trial court's docket contains no entry for August 7, 2013, nor does the record contain any transcript of the case-management conference scheduled for that date.)

¶ 26 I. The Trial Court's August 2013 Order To Audio Record New Committee Meetings

¶ 27 On August 8, 2013, the trial court entered the following written order:

"This Court having reviewed the Plaintiff's [Second] Petition for Rule to Show Cause and having *** reviewed the parties' arguments, now orders as follows:

1. The City shall provide a list of all current members of the Joint Labor Management Health Committee to Plaintiff by 8:30 a.m. on August 20, 2013.

2. The City shall create an audio recording of all meetings of the Joint Labor Management Health Committee until further order of this Court.

3. The City shall file a responsive pleading to Plaintiff's Second Petition for Rule to Show Cause (filed July 15, 2013) and its supplement (filed August 1, 2013) by August 20, 2013."

¶ 28

J. The City's Motion To Reconsider
the August 2013 Order

¶ 29

On August 14, 2013, the City filed a "motion to reconsider order and to dissolve injunction to create audio recordings." The City asserted in its motion that the trial court "[o]n its own initiative" ordered the City to create audio recordings, and that order "was not sought in any pleading or motion currently before the Court; nor was the issue noticed for hearing." The City argued that the New Committee was not subject to OMA, but instead was subject to the IPLRA because its activities were limited to collective bargaining. Because the New Committee was subject to the IPLRA, the City argued, audio recording its meetings would constitute an unfair labor practice.

¶ 30

K. The City's Response to Plaintiff's Second
Petition for Rule To Show Cause

¶ 31

On August 19, 2013, the City filed a response to plaintiff's second petition for rule to show cause in which it incorrectly asserted that the trial court had yet to rule on the City's May 2012 motion to dissolve the preliminary injunction and for involuntary dismissal. The City stated that the court took all matters under advisement at the conclusion of the May 2012 hearing. The City further contended that the bases for the May 2012 motion to dissolve the preliminary injunction and for involuntary dismissal "are part and parcel the same" as the City's response to plaintiff's first and second petitions for rule to show cause. Specifically, the City stated its "position [was] that it has fully complied with [the] Court's Order of February 15, 2012; the Committee which was the subject of that Order no longer exists and therefore cannot violate the [order]." The City asked the court to first rule on its May 2012 motion to dissolve the preliminary injunction and for involuntary dismissal before ruling on plaintiff's second petition for rule to show cause.

¶ 32 L. The City's Motion for Involuntary Dismissal for
Lack of Subject-Matter Jurisdiction

¶ 33 In September 2013, after transcripts of the May 2012 hearing became available, which showed that the trial court had orally dissolved the February 2012 preliminary injunction and dismissed the action, the City filed a motion for involuntary dismissal of plaintiff's second petition for lack of subject-matter jurisdiction pursuant to section 2-619(a)(1) of the Code. 735 ILCS 5/2-619(a)(1) (West 2012).

¶ 34 M. The Trial Court's Denial of the City's
Motion To Reconsider

¶ 35 On October 9, 2013, the trial court entered a written order, denying the City's motion to reconsider the court's August 2013 order requiring the New Committee to create audio recordings of its meetings. In its order, the court noted that (1) its decision to require the New Committee to create audio recordings was consistent with prior rulings of the Illinois Labor Relations Board and (2) if the court decided to review the audio recordings *in camera*, the court would not disseminate any records of discussions or negotiations that strictly related to collective bargaining.

¶ 36 N. The Trial Court's Denial of the City's
Motion for Involuntary Dismissal

¶ 37 On October 17, 2013, the trial court entered a written order denying the City's September 2013 motion for involuntary dismissal. The court's order stated, in pertinent part, as follows:

"1. On May 16, 2012, this Court granted the City's Motion for Involuntary Dismissal. Plaintiff consented to such dismissal, but reserved the right to take further action with regard to actions by the successor committee to the [Original Committee], a

nominal defendant herein.

2. On January 11, 2013, Plaintiff filed his Petition for Rule to Show Cause, invoking this Court's contempt powers and, by implication, its continuing subject[-]matter jurisdiction over this cause. Responses thereto were filed by the City and Intervenor [PBPA] without challenging that jurisdiction.

3. On July 12, 2013, following hearing, this Court entered its Order denying Plaintiff's Rule to Show Cause.

4. On August 14, 2013, the City filed its Motion to Reconsider this Court's August 8, 2013, Order to preserve audio recordings of the meetings of the [New Committee], which motion was thereafter denied. Again, no challenge to the Court's jurisdiction was interposed.

6. The City's Motion to Dismiss for lack of subject[-]matter jurisdiction (adopted by Intervenor) was filed on September 7, 2013. If allowed, it would result in all the above pleadings, hearings, and orders being rendered a nullity. The only practical effect thereof would be to delay the decision regarding the merits of the claims and defenses herein, while new stacks of paperwork are generated and further legal resources unnecessarily brought to bear. The parties, Intervenor, and the public have an interest in this matter being disposed of in a timely manner.

7. In short, the parties and Intervenors, by their actions set forth above, have re-vested this Court with subject[-]matter jurisdiction and have waived any objection to that jurisdiction."

¶ 38 The court accompanied the above written order with a written finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 39 These appeals—by the City (No. 4-13-0993), IBEW (No. 4-13-1026), AFSCE (No. 4-13-1027), and PBPA (No. 4-13-1028)—followed, and we granted motions to consolidate.

¶ 40 II. ANALYSIS

¶ 41 The City argues that the trial court lacked subject-matter jurisdiction to order the New Committee to audio record its meetings. Specifically, the City contends that because the court dissolved the preliminary injunction and dismissed the action in May 2012, the court had no jurisdictional basis to enter orders on plaintiff's second petition for rule to show cause. We agree.

¶ 42 The errors in this case stem from the fact that the trial court dissolved the preliminary injunction and dismissed the action in May 2012 by oral pronouncement, without memorializing its ruling in a docket entry or other written order. That omission resulted in a collective forgetfulness that led the court and the parties into thinking that the case was still alive—and that the preliminary injunction was still in place—when plaintiff filed his January 2013 petition for rule to show cause. From that point on, the parties engaged in contempt proceedings that were based upon a nonexistent order.

¶ 43 Plaintiff disagrees with the above description of the trial court proceedings. He argues that the trial court did not *really* grant the City's motion for involuntary dismissal in May 2012, but instead, dissolved the preliminary injunction and dismissed the action *only as to the*

Original Committee, leaving the preliminary injunction and the complaint in place against the City. However, the record rebuts this contention in several ways.

¶ 44 First, although plaintiff named both the City and the Original Committee as defendants in his January 2012 complaint, he clearly viewed the City and the Original Committee as one and the same for purposes of this litigation. Plaintiff did not attempt to serve the Original Committee with a copy of his complaint or his motion for a temporary restraining order and preliminary injunction. Instead, plaintiff directed service of his pleadings only to the corporation counsel for the City. Further, the trial court's docket entry for a January 25, 2012, hearing on plaintiff's motion for a temporary restraining order and a preliminary injunction provides, in pertinent part, as follows:

"Attorney [for the City] informs the Court that the members of the [Original Committee] had not been served with papers regarding this hearing. Attorney [for plaintiff] requests to proceed on [Temporary Restraining Order] without notice to [the Original Committee]."

Plaintiff cannot now argue that the Original Committee and the City were two separate defendants such that the court's dissolution of the preliminary injunction and dismissal of the action—*on the City's motion*—applied only to the Original Committee, and not to the City itself.

¶ 45 Second, the trial court's February 2012 order, granting plaintiff's motion for a temporary restraining order and preliminary injunction, provided, in pertinent part, as follows:

"Prior to the second hearing [on plaintiff's motion for a temporary restraining order and preliminary injunction], the City provided [plaintiff] with a list of the current members of the [Orig-

inal] Committee, and those members were notified of such hearing. No formal service was made upon those members, and the Committee has not filed responsive pleadings or otherwise appeared formally. This Court does not view this fact as an impediment to ruling on [plaintiff's] motion, as the Committee's position would be aligned with, if not identical to, the City and [Union] Intervenors' positions.

* * *

[T]he [Original] Committee, as noted, has not formally appeared, although it could be argued that it has received notice of the Motion for Temporary Restraining Order and Preliminary Injunction. To avoid any unnecessary procedural issues, *the following orders are issued as a Temporary Restraining Order as to the [Original] Committee and a Preliminary Injunction as to the City.*" (Emphasis added.)

Accordingly, because the preliminary injunction applied only to the City, the City's May 2012 "motion to dissolve the preliminary injunction and motion for involuntary dismissal" could have only applied to the City—not to the Original Committee.

¶ 46 Third, as the trial court acknowledged in its October 17, 2013, order, the Original Committee was merely a nominal party. As such, the court recognized the City and the Union Intervenors as the real parties of interest to the lawsuit. Indeed, the Original Committee never formally appeared, and the City's positions were understood throughout the litigation as one and the same as the Original Committee's positions.

¶ 47 Fourth, the City asserted in its motion that the City's complete abandonment of the Original Committee was an affirmative matter that justified dissolution of the preliminary injunction and dismissal of the action. Thus, the City's motion proceeded from the premise that the City was the only defendant remaining in the case and, therefore, the only defendant that could benefit from dissolution of the preliminary injunction and dismissal of the action.

¶ 48 Finally, the trial court's own October 17, 2013, order demonstrated that the court understood its May 2012 order as a complete dismissal of the action as to all parties. Specifically, the court's discussion of the revestment doctrine shows that the court intended the action to be dismissed as to all parties in May 2012, and that the City's subsequent actions revested the court with jurisdiction. Regardless of whether the court's revestment analysis was correct, the fact that the court engaged in the analysis shows that the court's intent in May 2012 was to dismiss the action as to all parties. Had the court *not* intended to dismiss the action as to the City in May 2012—as plaintiff now argues on appeal—the court would have simply said so in its October order, without engaging in the revestment analysis.

¶ 49 Plaintiff further claims that if the trial court actually intended its May 2012 ruling to constitute a dismissal of the action as to all parties, it surely would have memorialized such a substantive ruling in a docket entry or other written order. However, whereas plaintiff suggests that the absence of a written order demonstrates the court's true intent, we conclude that the absence of a written order explains why the case proceeded in the strange manner that it did. In our view, the record demonstrates that because no written evidence of the court's May 2012 dismissal of the action existed when plaintiff filed his first petition for rule to show cause in January 2013, the court and the parties simply forgot that the case had been dismissed. The City agrees with this conclusion. Although plaintiff may be correct that such an important ruling should

have been included at least in a docket entry, that is precisely why the court and the parties were unwittingly misled into thinking that the case was still alive. Nothing in the docket sheet or court file suggested otherwise.

¶ 50 Because the trial court dissolved the preliminary injunction and dismissed the action in May 2012, it lacked jurisdiction to enter its August 8, 2013, order that required the New Committee to audio record its meetings. At the time the court entered that order, the case was over, and the only pleading pending before the court was plaintiff's second petition for rule to show cause. However, because no enforceable court order was in place at the time, that second petition for rule to show cause was a nullity, and it provided no basis for the court's exercise of jurisdiction.

¶ 51 This court has explained the purpose of a petition for rule to show cause, as follows:

"A petition for a rule to show cause is the method for notifying the court that a court order may have been violated, and the petitioner requests a hearing on the issue. *** [T]he petition for a rule to show cause initiates the contempt proceedings, but it does not establish that a violation of a court order has in fact occurred. The rule to show cause, issued by the court, is not a finding a violation of a court order has occurred, but part of the process of notifying the alleged contemnor of the charges, and time and place of the hearing. At the hearing, the burden is on the petitioner to show a violation of a court order has occurred." *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 508, 608 N.E.2d 1339, 1345 (1993).

Thus, by filing his petition for rule to show cause, plaintiff attempted to initiate contempt proceedings.

¶ 52 It is beyond dispute that an extant court order is a necessary prerequisite to a petition for rule to show cause. If no such court order exists, the petition for rule to show cause—and the contempt proceedings that follow—are legal nullities. In this case, no court order was in place when plaintiff filed his petitions for rule to show cause because the trial court had dissolved its February 2012 preliminary injunction and dismissed the action nearly eight months earlier. Accordingly, the contempt proceedings at issue in this case were a nullity, and any order entered pursuant to those contempt proceedings was a nullity, as well.

¶ 53 Because the contempt proceedings were a nullity, and because the complaint had been dismissed, no pending pleading provided the court with subject-matter jurisdiction to enter its August 8, 2013, order. As the appellate court explained in *In re Custody of Ayala*, 344 Ill. App. 3d 574, 584, 800 N.E.2d 524, 535 (2003), a trial court's subject-matter jurisdiction extends only to matters raised in the pleadings before it:

"The [trial] court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleadings which function to frame the issues for the trial court and circumscribe the relief the court is empowered to order. [Citation.] A party cannot be granted relief in the absence of corresponding pleadings; if a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. [Citation.] 'Orders entered in the absence of a justiciable question properly presented to the court by the parties

are void since they result from court action exceeding its jurisdiction.' " *Id.* (quoting *Ligon v. Williams*, 264 Ill. App. 3d 701, 707, 637 N.E.2d 633, 638 (1994)).

¶ 54 In this case, the only pleading pending before the trial court when it entered its August 8, 2013, order was plaintiff's second petition for rule to show cause, which was a nullity. Accordingly, the court essentially entered its August 8, 2013, order *sua sponte*, in the absence of any corresponding pleading. As a result, the court exceeded its subject-matter jurisdiction, which at that time was limited to granting a postjudgment motion concerning its July 12, 2013, order granting plaintiff's petition for attorney fees. See 735 ILCS 5/2-1203(a) (West 2012) ("In all cases tried without a jury, any party may, within 30 days after the entry of the judgment *** file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.").

¶ 55 We note that in its October 17, 2013, order, the trial court framed the issue as whether the City's participation in the litigation revested the court with jurisdiction. The revestment doctrine is an exception to the usual rule that a trial court loses jurisdiction over an action after 30 days following the entry of a final judgment. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. The supreme court recently stated the requirements for application of the revestment doctrine, as follows:

"[F]or the revestment doctrine to apply, *both* parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment. If any

one of those requirements remains unmet, the doctrine does not
revest the court with jurisdiction." (Emphases in original.) *Bailey*,
2014 IL 115459, ¶ 25, 4 N.E.3d 474.

¶ 56 Contrary to the trial court's analysis, the revestment doctrine is inapplicable in this case. The court's lack of jurisdiction to enter its August 8, 2013, order was not due *merely* to the passage of time. Instead, because the court dismissed the action in its entirety in May 2012, the court had before it no proper pleading that presented a justiciable question. The revestment doctrine is a narrow exception (*People v. Kaeding*, 98 Ill. 2d 237, 240, 456 N.E.2d 11, 14 (1983)) that applies when *the passage of time* has divested the court of its jurisdiction. It is *not* an exception to the more fundamental jurisdictional requirement that a justiciable question be before the court—a requirement that was not met in this case. Accordingly, the court's revestment analysis was misplaced.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we vacate the trial court's August 8, 2013, order and remand with directions to dismiss plaintiff's second petition for rule to show cause. In so doing, we express no opinion on the merits of plaintiff's underlying position that the New Committee has violated the OMA.

¶ 59 Vacated; cause remanded with directions.