

NOTICE
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2013 IL App (4th) 130290-U

NO. 4-13-0290

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 29, 2013
Carla Bender
4th District Appellate
Court, IL

KALEV LEETARU,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
THE BOARD OF TRUSTEES OF THE UNIVERSITY)	No. 13CH70
OF ILLINOIS, a Public Corporation, and HOWARD R.)	
GUENTHER, Associate Vice Chancellor for Research,)	
University of Illinois at Urbana-Champaign, in His)	Honorable
Official Capacity only,)	Michael Q. Jones,
Defendants-Appellees.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying plaintiff's petition for a temporary restraining order.

¶ 2 On April 12, 2013, the trial court denied plaintiff Kalev Leetaru's petition for a temporary restraining order (TRO) against the defendants, the Board of Trustees of the University of Illinois (Board) and Howard R. Guenther, associate vice chancellor for research for the University of Illinois at Urbana-Champaign (University). On April 15, 2013, plaintiff filed a petition for interlocutory appeal with this court seeking a reversal of the trial court's ruling. We deny plaintiff's petition as the trial court did not abuse its discretion in denying plaintiff's petition for a TRO.

¶ 3 I. BACKGROUND

¶ 4 On February 22, 2013, plaintiff filed a complaint against defendants, seeking a preliminary injunction and a permanent injunction to stop an investigation into plaintiff's alleged research misconduct in his capacity as an employee and graduate student at the University. In his complaint, plaintiff claimed the trial court had jurisdiction over his claim because he was only seeking prospective injunctive relief to enjoin defendants from taking further action in excess of their delegated authority in connection with the investigation. According to plaintiff's complaint, his case did not fall under the State Lawsuit Immunity Act (745 ILCS 5/1 to 1.5 (West 2010)) or the Court of Claims Act (705 ILCS 505/1 to 29 (West 2010)). Further, defendant alleged the trial court had jurisdiction pursuant to section 1 of the University of Illinois Act (110 ILCS 305/1 (West 2010)) because his complaint did not "sound in tort."

¶ 5 In January 2011, plaintiff was given a terminal one-year academic employee appointment by Peter Nardulli, the Director of the Cline Center for Democracy (Cline Center). On November 17, 2011, Nardulli placed plaintiff on administrative leave. Plaintiff was charged with failing to disclose the location of data and the unauthorized use of data Nardulli claimed belonged to the Cline Center. In short, plaintiff was accused of removing and hiding vast amounts of digital information from computer servers for the Cline Center.

¶ 6 Ruth Watkins, the dean of the college of liberal arts and sciences, forbade plaintiff from access to his office and all of the personal and professional documents and objects located in his office, including personal computers, computer hard drives, universal serial bus drives (USB drives), multiple compact discs of read-only memory (CD-ROMs), and paper folders when he was placed on administrative leave. On December 6, 2011, plaintiff received a letter from Dean Watkins, detailing the written allegations from the Cline Center. On February 8, 2012,

Howard Guenther, associate vice chancellor for research, sent notice to plaintiff his office had received a formal complaint of research misconduct by plaintiff. On February 17, 2012, Sharon Reynolds, associate director of academic human resources, informed Dean Watkins she found plaintiff had committed the allegations of misconduct in connection with his employment at the Cline Center. At that time, plaintiff was no longer employed at the University.

¶ 7 Through his attorney, plaintiff wrote a letter to Guenther denying the charges. Plaintiff's attorney argued the allegations of research misconduct pertained to plaintiff's duties as an employee of the Cline Center and not to his doctoral studies. The letter also requested the dismissal of the charges and the return of plaintiff's property.

¶ 8 On February 17, 2012, Guenther sent another letter to plaintiff informing him the sequestration guidelines set out in the University's policy and procedures on integrity in research and publication had been activated. The letter also informed plaintiff of the suspension of his access to the Institute for Computing in Humanities, Arts, and Social Sciences (I-CHASS) project at the National Center for Supercomputing Applications at the University and the National Institute for Computational Sciences and the Extreme Science and Engineering Discovery Environment.

¶ 9 On February 24, 2012, Nardulli provided a letter to Guenther, specifying the charges in more detail. According to the letter, plaintiff was positioning his "GlobalNet" project to be a direct competitor with the Cline Center's "SPEED" project. Plaintiff alleged he was not notified of this letter until after the Inquiry Panel made its decision almost nine months later on November 13, 2012.

¶ 10 On September 14, 2012, Guenther informed plaintiff a formal inquiry was being

initiated to further examine the alleged research misconduct. On September 22, 2012, plaintiff, through his attorney, responded to the notice. Plaintiff's attorney "question[ed] the University's continued jurisdiction to process the Inquiry, demand[ed] that Guenther rescind the Notice, and, if the University continued its Inquiry, object[ed] to a member on the team, and request[ed] that a graduate student be added to the [Inquiry] team in accordance with Graduate School By-laws." Plaintiff alleged University officials proceeded to a formal Inquiry more than seven months after the time allowed by the University's policy and procedures on integrity in research and publication. Plaintiff contended the University's delay in dealing with the allegations of misconduct against plaintiff violated the policy and procedures on integrity in research and publication. Plaintiff alleged no one from the University consulted with him concerning any request for an extension of time to decide whether to proceed to an Inquiry or to grant a variance from the University's policy and procedures on integrity in research and publication.

¶ 11 Plaintiff also alleged the formal inquiry process into the misconduct allegations was flawed. The Inquiry Team met on November 6, 2012. On November 13, 2012, Guenther issued the Inquiry Team Report to Peter Schiffer, vice chancellor for research. The Inquiry Team Report stated a reasonable basis existed for concluding the allegations of the complaint against plaintiff fell within the definition of research misconduct and were within the jurisdiction of the University's policy and procedures on integrity in research and publication. The Inquiry Team Report also stated the Inquiry Team concluded several allegations in the complaint warranted a full investigation. On December 3, 2012, Vice Chancellor Schiffer determined sufficient evidence existed to warrant an Investigation into the allegations of misconduct.

¶ 12 According to plaintiff's complaint for injunctive relief, defendants exceeded their

delegated authority, acted arbitrarily and capriciously, and abused their discretion, resulting in gross injustice to plaintiff and the denial of his due process rights. According to plaintiff's complaint, defendants failed to timely determine whether to proceed with an Inquiry, failed to consult with him regarding any variance to the required time limit to proceed with the Inquiry, attempted to exclude a graduate student from the Inquiry Team, instructed the Inquiry Team not to communicate with or contact plaintiff, did not allow the Inquiry Team to draft the Inquiry Report, failed to sequester and preserve evidence that would permit plaintiff to defend himself against the allegations of misconduct, and failed to timely notify plaintiff whether an Investigation would go forward. Plaintiff also noted the allegations concerned his former employment with the University and had no bearing on his status as a graduate student.

¶ 13 According to plaintiff, court action was needed because the University had repeatedly acted beyond its delegated authority and violated his due-process rights. Plaintiff alleged absent an injunction he "will suffer irreparable harm in the loss of his ability to continue his doctoral studies, write and defend his dissertation, and be awarded a Ph.D., the loss of additional research grants beyond those already lost, the loss of his reputation and stature in the community in his field to such extent that [he] could not be fully compensated by money damages."

¶ 14 On March 27, 2013, defendants filed a motion to dismiss, arguing the Court of Claims has exclusive jurisdiction over plaintiff's claims "because Plaintiff seeks to control a State officer's conduct in governmental matters with respect to which he has been granted discretionary authority and a judgment for Plaintiff could operate to control the actions of the State."

¶ 15 On March 27, 2013, plaintiff filed a petition for a TRO. The petition restated the

allegations in his complaint. Plaintiff alleged a TRO was needed to maintain the status quo and keep the University from proceeding with an investigation until the trial court could determine the merits of the dispute.

¶ 16 On April 12, 2013, the trial court heard arguments on plaintiff's petition for a TRO. After hearing arguments from the parties, the court denied plaintiff's petition. This court was not provided with a transcript of that hearing nor a written order from the trial court. However, the court's docket entry states: "Finding by the Court that the Plaintiff has not established a likelihood of success on the merits required for temporary restraining order." The court scheduled a hearing on defendants' motion to dismiss for May 6, 2013.

¶ 17 On April 15, 2013, plaintiff filed his petition for interlocutory appeal with this court. Defendants filed their response to plaintiff's petition on April 23, 2013.

¶ 18 II. ANALYSIS

¶ 19 A TRO is a drastic remedy and may only be issued in exceptional circumstances for a limited duration. *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (2010). Our supreme court has held a party must show a likelihood of ultimate success on the merits of his case to be granted a TRO. *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65-B*, 63 Ill. 2d 514, 524, 349 N.E.2d 36, 40 (1976). In addition to this requirement, which was relied on by the trial court in the case *sub judice* to deny plaintiff's petition, a party seeking a temporary restraining order must also demonstrate he (1) possesses a protectible right, (2) will suffer irreparable harm without the protection of an injunction, and (3) has no adequate remedy at law. *Bartlow*, 399 Ill. App. 3d at 567, 927 N.E.2d at 95. However, our supreme court has also stated:

"A TRO should not be refused or dissolved merely because the court may not be absolutely certain the plaintiff has the right he claims. [Citation.] The plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits." *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 541-42, 447 N.E.2d 288, 291 (1983).

Generally, an appellate court will not reverse a trial court's denial of a TRO unless the trial court abused its discretion. *Bartlow*, 399 Ill. App. 3d at 567, 927 N.E.2d at 95.

¶ 20 Plaintiff argues the trial court denied his petition for a TRO because the court found it lacked subject-matter jurisdiction. However, the docket entry simply reflects plaintiff had not established a likelihood of success on the merits. The docket entry made no indication the court believed it lacked subject-matter jurisdiction. In fact, the court scheduled a hearing for May 6, 2013, to hear arguments on defendants' motion to dismiss plaintiff's complaint based on a lack of subject-matter jurisdiction.

¶ 21 As for the trial court's finding plaintiff had not established a likelihood of success on the merits of his complaint, we must first look at the relief plaintiff requested. In his complaint, plaintiff seeks a ruling from the court barring defendants from further pursuing their investigation in this matter. According to plaintiff, he is entitled to this relief because defendants have violated his due-process rights in the manner they have handled the situation thus far.

Without making any ruling with regard to the ultimate merits of plaintiff's claim, we cannot say the court abused its discretion in finding plaintiff did not establish a likelihood of success in this case. Based on the record before this court, we cannot say plaintiff has raised a fair question about the existence of his legal right to essentially quash an ongoing investigation even if all of his allegations are deemed true. That being said, we make no rulings on the merits of plaintiff's complaint or the propriety of the defendants' actions. Our decision is based solely on the information available to this court at this time.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we deny plaintiff's petition for an interlocutory appeal as the trial court did not abuse its discretion in denying his petition for a TRO.

¶ 24 Petition denied.