

FIRST DIVISION
OCTOBER 14, 2014

No. 1-13-2910

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MERDELIN JOHNSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
GENERAL BOARD OF PENSION AND HEALTH BENEFITS)	
OF THE UNITED METHODIST CHURCH, a Not-for-Profit)	
Company; AVAYA, INC., a New Jersey Corporation;)	
NICE SYSTEMS, INC., a New Jersey Corporation; BARBARA)	No. 10 L 62043
BIOGEGRAIN; TOM CALANDRIELLO; HELEN)	
EXARHAKOS; KIMBERLY EVANS-VANTREASE;)	
SARAH HIRSEN; ALEXANDRA JUNG; GERTRUDE)	
LIVERNOIS; SHARON MAGGI; DEBBIE REID;)	
MICHELLE BUSH; LARRY LOEPKE; MARLENE IGEL;)	Honorable
and MARK BUSBIA, as Individuals,)	Roger G. Fein and
)	Jeffrey Warnick,
Defendants-Appellees.)	Judges Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order granting a motion to bar plaintiff from contacting defendants and instead directing her to communicate through defense counsel did not constitute an injunction; therefore, plaintiff could not bring an interlocutory appeal of that order under Illinois Supreme Court Rule 307(a)(1).

¶ 2 Plaintiff Merdelin Johnson brings this *pro se* interlocutory appeal from the circuit court's entry of an order directing her not to contact defendants, who are the General Board of Pension and Health Benefits of the United Methodist Church (the General Board) and several current and former employees (referred to collectively as defendants). In August 2013, the circuit court entered an order barring Johnson from communicating with members of the General Board and ordering her to instead direct all contact to the General Board's counsel. In this appeal, Johnson contends the circuit court's order constituted a preliminary injunction and that the court erred in entering it. We dismiss this appeal for lack of jurisdiction.

¶ 3 Johnson was employed by the General Board as a customer service representative from June 1999 to March 2004. Her job involved fielding telephone calls from employees about their pension and health benefits. Starting in September or October 1999, those calls were systematically recorded for quality control and training purposes. In 2000, Johnson signed a contract allowing the recording of customer calls; however, Johnson maintains that personal calls she made on a separate phone line also were recorded and that she discussed her medical issues in those calls. After Johnson's employment was terminated in 2004, she continued to call her former co-workers and speak to them on the recorded customer phone lines.

¶ 4 In 2010, Johnson filed a *pro se* complaint against the General Board, along with Avaya Inc., and Nice Systems Inc., who installed the recording systems, and approximately 12 current and former employees. The complaint alleged that defendants unlawfully monitored, intercepted, recorded, stored and disseminated her personal conversations without her knowledge or consent between 1999 and 2010. Johnson filed several amended complaints thereafter, and her final complaint, a second amended complaint filed on June 24, 2011, included counts of

breach of contract, negligence, negligent infliction of emotional distress, invasion of privacy, fraudulent misrepresentation, and violations of state and federal eavesdropping acts.

¶ 5 In July 2011, the circuit court granted a motion to bar Johnson from telephoning the General Board during working hours. Pursuant to the court's written order, Johnson could call employees on that person's cell phone or on a non-recorded phone at the General Board. Johnson also could call the General Board's counsel who would contact her on a non-recorded phone line. The order did not prevent plaintiff from contacting employees on their own cell phones or in person.

¶ 6 Johnson had previously filed an interlocutory appeal of the July 2011 order, as she has in the instant case. On September 4, 2012, this court dismissed that appeal for lack of jurisdiction, finding the July 2011 order was not an order granting an injunction and thus was not final and not appealable, pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). The court noted the circuit court's order was a ministerial or administrative order that was not subject to an interlocutory appeal because it did not affect the parties' relationship apart from the litigation.

Johnson v. General Board of Pension and Health Benefits of the United Methodist Church, 2012 IL App (1st) 112421-U.

¶ 7 According to the record, in June 2013, Johnson attempted to contact Bishop Paul Leeland, who is identified in the record as the chairperson of the Board of Directors of the General Board, and spoke with Bishop Leeland's assistant about the litigation. On June 21, 2013, Chad Moeller, counsel for the General Board, informed Johnson in writing that she should not contact the bishops and should instead communicate with him.

¶ 8 On July 1, 2013, the General Board filed a motion to bar Johnson from contacting or attempting to contact members of the General Board or their staff. The motion set out the events of June 2013 and asserted that Johnson "has continued to try to contact the members of the Board of Directors for purposes of harassing and intimidating the organization." The motion stated that on June 25, 2013, Johnson called the office of Bishop Robert Schnase, leaving a message with the bishop's assistant, stating, *inter alia*, that the General Board has secretly recorded employees' phone calls.

¶ 9 On August 12, 2013, the General Board filed an Emergency Motion for an Expedited Ruling on the motion to bar Johnson from contacting the General Board or its staff members. The following day, the circuit court granted the General Board's motion to bar Johnson from contacting members of the Board or its staff, representatives or agents. Johnson was given notice of the August 13 hearing date but did not appear in court that day. The record does not include a transcript of the hearing.

¶ 10 The August 13 court order stated, in pertinent part, that Johnson was:

"hereby enjoined and barred from any sort of communication, whether personal, electronic, written or telephonic, with any members of defendant's Board of Directors or any of their respective staff members, representatives or agent. If plaintiff must contact the General Board for any reason, she must go through defendant's counsel of record in his case. Plaintiff will be subject to sanctions if she violates this order."

¶ 11 On September 11, 2013, Johnson filed a motion for reconsideration of the August 13 order, asserting, *inter alia*, that the circuit court lacked jurisdiction to limit her contact with the

Board of Directors. Johnson asserted the General Board had not met the requirements for injunctive relief. On the same day, Johnson filed a notice of appeal from the August 13 order.¹

¶ 12 On appeal, Johnson contends the circuit court's order barring her contact with members of the General Board and their representatives constituted a preliminary injunction and that this court has jurisdiction to consider an interlocutory appeal from that order pursuant to Rule 307(a)(1). She further contends the court's order constituted an injunction that infringed on her right to free speech. Defendants respond that this court lacks jurisdiction to consider this appeal because the August 13 order was not an appealable order, for largely the same reasons that this court dismissed Johnson's previous interlocutory appeal in September 2012.

¶ 13 Illinois Supreme Court Rule 307(a)(1) allows an interlocutory appeal of an order "granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). An interlocutory, preliminary or temporary injunction is granted before a trial on the merits of a case for the purpose of preventing a threatened wrong, or any further perpetration of injury, in order to preserve the status quo with the least injury to the parties concerned. *Lake in the Hills Aviation Group, Inc. v. Village of Lake in the Hills*, 298 Ill. App. 3d 175, 182 (1998).

¶ 14 An injunction is a judicial process by which a party is required to do or refrain from doing a particular thing. *Stein v. Krislov*, 405 Ill. App. 3d 538, 541 (2010). When determining whether a court's action constitutes an appealable injunctive order, the substance of the action is

¹On September 18, 2013, the circuit court held it did not need to rule on Johnson's motion for reconsideration in light of her interlocutory appeal from the August 13 order. Two other actions involving these parties are currently pending in this court, one of which is a cross-appeal by defendants (Nos. 1-14-1793 and 1-14-2668).

relevant, as opposed to the language of the order or its form. *In re Marriage of Molloy*, 407 Ill. App. 3d 987, 992 (2011), citing *In re A Minor*, 127 Ill. 2d 247, 260 (1989). "Not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing." *Molloy*, 407 Ill. App. 3d at 992, quoting *A Minor*, 127 Ill. 2d at 261-62.

¶ 15 Court orders that are ministerial or administrative cannot be the subject of an interlocutory appeal. *A Minor*, 127 Ill. 2d at 262. An order is ministerial or administrative if it regulates only procedural details of the litigation before the court. *Id.*; cf. *Cummings v. Beaton and Associates, Inc.*, 192 Ill. App. 3d 792, 796-97 (1989) (a "gag" order that restrained parties and their attorneys from making extrajudicial comments about a pending civil matter was subject to interlocutory review as a restraint on speech that went beyond the litigation before the court and was not "necessary to protect the judicial process"). When an order "impinges upon or restrains a party's rights external to the litigation," it is immediately appealable as of right. *Fidelity Financial Services, Inc. v. Hicks*, 267 Ill. App. 3d 887, 891 (1994).

¶ 16 In contrast, a ministerial or administrative order does not affect the relationship of the parties in their everyday activity apart from the litigation, thus distinguishing such an order from traditional forms of injunctive relief. *A Minor*, 127 Ill. 2d at 260. Indeed, that classification was applied in Johnson's appeal from the July 2011 order barring her from communicating with the General Board's office during working hours. This court held the July 2011 order was ministerial or administrative, and therefore not appealable, because it "did not seek to entirely prevent plaintiff from calling the Board, rather, it sought to limit her contact with the Board, except in certain circumstances." *Johnson*, 2012 IL App (1st) 112421-U, ¶ 8.

¶ 17 Johnson argues the court's August 13 order is distinguishable from the previous order because the current order prohibited *any* contact of *any* type with members of the General Board or its Board of Directors. We find that the current order did not constitute an injunctive order because, as with the July 2011 order, the current order regulated the procedural details of the lawsuit. See *A Minor*, 127 Ill. 2d at 262. The court ordered that if Johnson, who has been acting as her own attorney throughout these proceedings, needed to contact the General Board for any reason, she must do so through its counsel. Johnson should not be permitted to have contact with opposing parties any more than an attorney representing her would be allowed to speak directly with the opposing parties. Thus, the court's order directing that Johnson direct her communications to opposing counsel, not to the General Board and its staff, representatives or agents reflects the court's inherent ability to control the proceedings before it. See *Almgren v. Rush-Presbyterian-St-Luke's Medical Center*, 162 Ill. 2d 205, 210-11 (1994) (such orders are subject to review but are not immediately appealable because they are reviewable on appeal from the final judgment).

¶ 18 In conclusion, because the court's order barring Johnson from communicating with the Board did not constitute an injunction, Supreme Court Rule 307(a)(1) does not allow our review of that order in an interlocutory appeal.

¶ 19 Accordingly, this appeal is dismissed for lack of jurisdiction.

¶ 20 Appeal dismissed.