SIXTH DIVISION
January 23, 2015

No. 1-14-1858

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KENNETH R. FIEDLER, Individually and for the Right and Benefit of FIEDLER & NATHANSON, LTD.,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	
v.	)	No. 13 CH 11781
STEPHANIE NATHANSON,	)	Honorable Rodolfo Garcia,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER.

¶ 1 *Held*: In this Rule 307(a)(1) appeal, we dismissed plaintiff's appeal from an injunctive order entered on May 6, 2014, for lack of appellate jurisdiction; we dismissed plaintiff's appeal from an injunctive order entered on May 27, 2014, as moot; we affirmed a second injunctive order entered on May 27, 2014, where there was no evidence that the order constituted an abuse of discretion; and we affirmed a third injunctive order entered on May 27, 2014, where plaintiff failed to present a sufficient record for review.

¶ 2 Plaintiff, Kenneth R. Fiedler, appeals orders granting injunctive relief in favor of defendant, Stephanie Nathanson, and denying a reciprocal request for injunctive relief in favor of plaintiff, in relation to the dissolution of their two-person law firm.

¶ 3 The two-person law firm of Fiedler & Nathanson, Ltd. (F&N) was owned and operated by plaintiff and defendant. On January 7, 2013, plaintiff informed defendant he was resigning

and/or withdrawing from F&N and relocating to Colorado as of May 1, 2013. Defendant then formed her own law practice, Law Offices of Stephanie K. Nathanson. On April 30, 2013, F&N's lease expired. On May 1, 2013, defendant executed a new lease agreement in the name of her new firm and required plaintiff to vacate the former F&N office.

¶ 4 On May 2, 2013, plaintiff filed a verified complaint for injunctive and equitable relief, claiming he had attempted to enter F&N's former offices the day before, but that his key card no longer allowed him access to the building. He ultimately gained entry to the offices through another tenant, and discovered that his clients' files and personal items had been removed. At that point, plaintiff realized that defendant "was attempting to deny him access to [F&N's] corporate assets as well as his personal assets." Plaintiff left the building immediately.

¶ 5 In count I of his complaint, plaintiff sought a temporary restraining order enjoining defendant from depriving him of access to the "complete use of corporate assets of the law firm of [F&N]" and to his personal assets located within F&N. Count II alleged breach of fiduciary duty and loyalty against defendant, and again sought a temporary restraining order as well as damages. Count III sought a constructive trust upon defendant and an order that she return all corporate assets of F&N.

¶ 6 The trial court did not rule on plaintiff's motion, as defendant subsequently gave plaintiff access to F&N's old office space to remove his personal belongings, and to access corporate records, client files and other materials. The parties also entered into negotiations with regard to the dissolution of F&N and the windup of its affairs.

¶ 7 On May 10, 2013, the parties submitted to mediation with Chicago personal injury attorney Bruce Pfaff. Pfaff ultimately helped the parties agree on a division of attorneys fees for each pending F&N matter, with a percentage of the fee going to plaintiff and the remainder

going to defendant. Pfaff emailed the parties on May 10, 2013, transmitting an Excel spreadsheet listing "the agreed upon fees" and asking them both to memorialize their verbal agreement by signing the spreadsheet next to their initials. Both plaintiff and defendant signed the spreadsheet.

¶ 8 On July 10, 2013, the parties participated in a settlement conference to resolve issues relating to payment of F&N's creditors. Following the settlement conference, the parties signed a Memorandum of Understanding (MOU) with respect to these issues. The MOU includes terms governing: the repayment of firm debt, firm credit cards, shareholder loans and case costs; the division of attorneys fees on pending cases; the representation of former F&N clients; the dispersal of settlement funds; the provision of quarterly accountings regarding the status of pending cases; and the shutting down of F&N's website. The MOU states that the "parties shall negotiate, draft and execute a mutually acceptable settlement agreement and release" and that the trial court will "retain jurisdiction over this matter to enforce the terms of this memorandum of understanding and any forthcoming settlement agreement and release."

¶ 9 Thereafter, plaintiff drafted a settlement agreement and sent it to defendant for comments. Defendant did not respond to plaintiff's draft settlement agreement.

¶ 10 Plaintiff then filed a motion to enforce the MOU. Defendant filed a response arguing that the MOU was unenforceable because it did not constitute a final settlement agreement. Defendant also argued that the MOU was unenforceable because plaintiff made "significant misrepresentations" to defendant and to the mediator regarding the status of the cases he was handling and the amount of work he actually performed in order to obtain a more favorable fee splitting arrangement in the ongoing dissolution negotiations.

¶ 11 On November 12, 2013, prior to ruling on the motion to enforce the MOU, the trial court entered a mandatory injunction requiring plaintiff to deposit all proceeds from his pending F&N matters into the firm's Interest on Lawyers Trust Account (IOLTA). The court also enjoined plaintiff from making disbursements from that account absent a court order.

¶ 12 Plaintiff filed a motion to set a ruling date on his motion to enforce the MOU or, in the alternative, to enter an order for a reciprocal injunction against defendant requiring her to deposit all proceeds from her pending F&N matters into the IOLTA account and preventing her from withdrawing any funds from the IOLTA account without a court order. Meanwhile, defendant filed a motion to authorize payments of approximately $130,000.00 from the IOLTA account for the payment of vendors who performed services on F&N cases prior to its dissolution.

¶ 13 On February 26, 2014, the trial court denied plaintiff's motion to enforce the MOU and continued plaintiff's motion for a reciprocal injunction against defendant to March 5, 2014, "pending submission of an agreed order." Should no agreed order be reached, the court required each of the parties to submit proposed orders to the trial court with respect to: (1) plaintiff's motion for a reciprocal injunction; and (2) defendant's request to allow payment from the IOLTA account to vendors for costs incurred on F&N cases prior to dissolution. Plaintiff subsequently refused to agree to the submission of any proposed order allowing for interim payments to F&N vendors; instead, plaintiff submitted to the trial court his draft of an order for a reciprocal injunction against defendant.

¶ 14 On March 5, 2014, the trial court entered and continued plaintiff's motion for a reciprocal injunction to March 21, 2014. The cause was subsequently continued to May 6, 2014.

¶ 15 On May 6, 2014, the court heard argument on plaintiff's motion for a reciprocal injunction that would require defendant to deposit all proceeds from her pending F&N matters

into the IOLTA account and would prevent her from withdrawing those funds without a court order. Instead of granting plaintiff's motion, the trial court entered an order on May 6, 2014, requiring defendant to submit three proposed orders to plaintiff and the court by May 9, 2014, listing: (1) the vendor costs incurred prior to May 13, 2013, to be paid out of the IOLTA account; (2) all pending F&N cases for which any settlement funds shall be deposited into the IOLTA account; and (3) all F&N cases of which defendant was to receive 20% of any settlement funds to use for her current firm's overhead.

¶ 16 On May 8, 2014, plaintiff filed a "motion to reconsider" the May 6 order. In his motion to reconsider, plaintiff noted that on May 6 he had presented a proposed order for a reciprocal injunction against defendant. Plaintiff noted that the court had "refused to enter the [reciprocal] order" and had instead entered an order that was "incorrect in several respects." First, plaintiff contended that with respect to vendor costs, the court's May 8 order erroneously ordered payment without requiring any evidence of when the costs were incurred and whether F&N is responsible for payment. Second, plaintiff contended the May 8 order erroneously required defendant to only put settlement funds from "pending" F&N cases into the IOLTA account, and that she should be required to put settlement funds from certain cases that were no longer pending. Third, plaintiff contended no law or evidence supported the May 8 order requiring plaintiff to pay defendant's overhead expenses for her new firm.

¶ 17 On May 27, 2014, the trial court denied plaintiff's motion to reconsider and entered three proposed interim orders drafted by defendant. The first order authorized defendant to write checks out of the IOLTA account totaling $127,417.00 to pay certain listed costs and vendors. The second order required defendant to deposit attorneys fees from her F&N cases to the IOLTA account. The third order affirmatively allowed defendant to disburse 20% of attorneys fees

previously deposited in the IOLTA account to her new firm as "an advance for overhead to be credited against her ultimate share of attorney's fees from these cases."

¶ 18 The trial court further ordered that "[n]o further distributions shall be made from the [F&N] IOLTA account, by either party, except as otherwise ordered by this court."

¶ 19 On June 13, 2014, plaintiff filed a notice of interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) from the February 26, 2014, May 6, 2014, and May 27, 2014, orders. On June 26, 2014, defendant filed a motion to dismiss the appeal. On August 15, 2014, this court entered an order granting defendant's motion to dismiss the appeal from the February 26 order, finding it was not timely filed and that the February 26 order was not sufficiently related to the May 27 order to be considered on appeal. This court directed the parties to further brief the issue of the appealability of the orders dated May 6, 2014, and May 27, 2014.

¶ 20 I. Plaintiff's Appeal from the May 6, 2014, Order

¶ 21 Plaintiff appeals the trial court's order denying his motion for an injunction reciprocal to the injunction imposed on him on November 12, 2013, which would have required defendant to deposit all proceeds from her pending F&N matters into the IOLTA account and would have prohibited defendant from withdrawing those funds without a court order. Defendant contends we lack appellate jurisdiction to review the denial of plaintiff's motion for a reciprocal injunction, as that order was entered on May 6, 2014, and plaintiff's Rule 307(a)(1) appeal was not timely filed within 30 days thereof. Plaintiff responds that the trial court did not deny his motion for a reciprocal injunction until May 27, 2014, and that his notice of appeal filed on June 13, 2014, was timely and preserved the issue for review.

¶ 22 Our review of the record indicates that the trial court denied plaintiff's motion for a reciprocal injunction on May 6, 2014. We base this finding on the following facts: (1) the May 6 order directed defendant to draft other proposed orders relating to the winding up of F&N which did not include the reciprocal injunction sought by plaintiff; (2) on May 8, plaintiff filed a motion to reconsider which noted that he had presented a proposed order for a reciprocal injunction on May 6 which the trial court had refused to enter; and (3) at the May 27 hearing on plaintiff's motion to reconsider, the trial court specifically stated that plaintiff's proposed order for a reciprocal injunction had "already been addressed and that's been denied." Further, the record on appeal does not contain the transcript from the May 6 hearing on plaintiff's proposed order for a reciprocal injunction. Any doubts arising from the incompleteness of the record are resolved against plaintiff as the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 23 As plaintiff failed to file his notice of appeal within 30 days of the May 6 denial of his motion for a reciprocal injunction, we lack jurisdiction to address the denial of this motion. See Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010) (providing that the appeal must be perfected within 30 days from the entry of the interlocutory order). Accordingly, we dismiss plaintiff's appeal from the May 6 denial of his motion for a reciprocal injunction against defendant.

¶ 24 II. Plaintiff's Appeal from the May 27, 2014, Orders

¶ 25 The three orders entered on May 27, 2014, are injunctive as they command or prevent certain actions with regard to the deposit and disbursement of monies into and out of the IOLTA account (see the definition of injunction in Black's Law Dictionary 788 (7th ed. 1999), and *In re a Minor*, 127 Ill. 2d 247, 261 (1989)). Thus, the three May 27 orders fall within the confines of Rule 307(a)(1), which allows for an interlocutory appeal from orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff.

Feb. 26, 2010). Plaintiff's notice of appeal was timely filed within 30 days of the May 27, 2014 orders. Accordingly, we have jurisdiction to consider plaintiff's appeal therefrom.

¶ 26 The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Clinton Landfall, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010).

¶ 27 The first order appealed from authorized defendant to write checks out of the IOLTA account totaling $127,417.00 to pay certain listed costs and vendors. Defendant contends that the evidence of the amounts owed to the vendors was "uncontested" and that, in the absence of any objections by plaintiff, we should affirm.

¶ 28 The record shows that on May 6, 2014, after denying plaintiff's motion for a reciprocal injunction, the trial court directed defendant to submit a list of the vendor costs incurred prior to May 13, 2013, to be paid out of the IOLTA account. Defendant submitted the list to plaintiff and the court. At the hearing on May 27, 2014, plaintiff objected to certain vendor costs on the list, specifically to: the $10,000 listed as owed to Central Massachusetts Otolaryngology; the $13,000 owed to Dr. McGregor; and the $3700 owed to Peoria Surgical. Plaintiff stated that "if you don't hear evidence and you're allowing all this money to be going out, we could be making payments on things we shouldn't be making payments on." Defendant responded that the list of vendor costs was accurate and that "nothing nefarious" was happening. The trial court found it "extremely unlikely that anyone is going to be paid that doesn't deserve to be paid" and that "in any event, it will all get sorted out down the line."

¶ 29 Plaintiff argues that in the absence of an evidentiary hearing to resolve the factual dispute about the appropriate vendor costs, the trial court abused its discretion by simply taking defendant's word as to the validity of all the costs and in entering the preliminary injunction

authorizing the payment of $127,417.00 to the vendors from the IOLTA account. See *In re Estate of Ramlose,* 344 Ill. App. 3d 564, 573-74 (2003) (preliminary injunction entered without an evidentiary hearing and unsupported by any evidence of record constituted an abuse of discretion). Accordingly, plaintiff asks us to reverse the injunctive order authorizing the $127,417 payment to the F&N vendors out of the IOLTA account, and to remand for an evidentiary hearing regarding the appropriate payment to be made.

¶ 30 However, we cannot reverse this injunctive order because defendant has already made the disbursements to the vendors and, thus, it is impossible for us to grant the relief requested. Therefore, the appeal from this order is moot. See *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006) ("An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party.").

¶ 31 We note, though, that plaintiff is not prejudiced by this injunctive order because, as stated by the trial court, the authorization of the payment to the vendors does not "put either party in a worse position than they were [in] and it takes into account down the line when the matter gets finally resolved, that anything that has transpired under [the order] will be duly accounted for in the course of a trial or evidentiary hearing." In other words, any distributions made by defendant at this preliminary stage of the proceedings will be considered by the court in reaching a final determination of the amounts the parties will ultimately receive when a final accounting is completed and all F&N funds are disbursed between plaintiff and defendant.

¶ 32 The second order appealed from required defendant to deposit attorney fees from her F&N cases to the IOLTA account. Plaintiff's only argument on appeal with respect to this order is that it was akin to placing F&N into a receivership, and that the requirements for a

receivership have not been met here. We disagree. A receiver is "an indifferent person between the parties, appointed by the court, and on behalf of all parties, and not of the complainant or one defendant only, to receive the thing or property in litigation." *Compton v. Paul K. Harding Realty Co.*, 6 Ill. App. 3d 488, 498 (1972). No receiver was appointed here; accordingly, plaintiff's argument fails. We affirm this order.

¶ 33 The third order appealed from allows defendant to disburse 20% of attorney fees previously deposited in the IOLTA account to her new firm as "an advance for overhead to be credited against her ultimate share of attorney's fees from these cases." Plaintiff argues that no evidence had been presented supporting an award of 20% of the IOLTA funds as an advance for the overhead of defendant's new firm. Defendant responds that such an award was allowable as reimbursement for the *pro rata* share of her office overhead being used to litigate former F&N cases and to wind up the firm's affairs.

¶ 34 Section 807(b) of the Uniform Partnership Act provides:

> "Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts." 805 ILCS 206/807(b) (West 2012).

¶ 35 "Among the liabilities of the partnership *** is the overhead attributable to the winding up of partnership business." *Ellerby v. Spiezer*, 138 Ill. App. 3d 77, 83 (1985). In settling accounts among the partners, "each partner is entitled to be reimbursed for the reasonable and necessary overhead expenses attributable to winding up the partnership's business." *Id.*

¶ 36 It is undisputed by either party that defendant is winding up F&N's affairs; she is litigating its cases on the firm's behalf while trying to resolve all of F&N's debts to its vendors.

Plaintiff acknowledges that at the May 6 hearing on his motion for a reciprocal injunction (of which we have no transcript), the trial court heard argument on the issue of defendant's entitlement to the reasonable and necessary overhead expenses attributable to winding up F&N's business. Based on the argument at that hearing, the trial court entered an order on May 6 requiring defendant to submit a proposed order listing all F&N cases of which defendant was to receive 20% of any settlement funds to use for her current firm's overhead. On May 27, the trial court entered defendant's proposed order (hereinafter referred to as the May 27 disbursal order).

¶ 37 On these facts, the May 6 hearing appears to have provided the basis for the court's finding that defendant was entitled to 20% of the IOLTA funds to cover her new firm's overhead while winding up F&N's affairs, which finding the court ultimately entered on May 27 when it authorized the disbursal of those funds to defendant. As discussed, though, the transcript of the May 6 hearing is absent from the appellate record. As the appellant, plaintiff bears the burden of presenting a sufficiently complete record of the proceedings in the trial court to support his claim of error, and in the absence of such a record, we presume the order entered by the trial court conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d at 391-92. Any doubts arising from the incompleteness of the record are resolved against plaintiff as the appellant. *Id*. at 392. Accordingly, as the basis for the May 27 disbursal order was addressed at the May 6 hearing, of which we have no transcript, we presume the May 27 disbursal order had a sufficient factual basis and conformed with the law. *Id*.

¶ 38 Further, the trial court specifically stated in the May 27 disbursal order that it was merely "an advance for overhead to be credited against [defendant's] ultimate share of attorney's fees." Thus, plaintiff is not prejudiced by the entry of the disbursal order, as he will ultimately recover those disbursal payments when the final division of attorneys fees is made.

¶ 39 III. Plaintiff's Request for Reconsideration of Our August 15, 2014, Dismissal Order

¶ 40 Plaintiff asks us to reconsider our order dismissing his appeal from the February 26, 2014, order for lack of jurisdiction. Plaintiff has provided no basis or reason for reconsidering our dismissal order. Accordingly, plaintiff's request is denied.

¶ 41 For the foregoing reasons, we dismiss plaintiff's appeal from the May 6, 2014, order for lack of appellate jurisdiction; we dismiss as moot plaintiff's appeal from the May 27, 2014, order authorizing defendant to write checks out of the IOLTA account for the payment of certain listed costs and vendors; we affirm the May 27, 2014, order requiring defendant to deposit attorneys fees from her F&N cases in to the IOLTA account; and we affirm the May 27, 2014, disbursal order. We deny plaintiff's request to reconsider our August 15, 2014, dismissal order.

¶ 42 Dismissed in part; and affirmed in part.