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NO. 4-14-1093

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June 29, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DAVID FINKE, Plaintiff-Appellee, v. THE DEPARTMENT OF CENTRAL MANAGEMENT SERVICES and THE STATE OF ILLINOIS, Defendants-Appellants.	)	Appeal from Circuit Court of Sangamon County No. 14MR1256 Honorable John P. Schmidt, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting a preliminary injunction where plaintiff failed to present a *prima facie* case warranting injunctive relief.

¶ 2 In this interlocutory appeal, defendants, the Department of Central Management Services (CMS) and the State of Illinois, assert that the trial court erred in granting a preliminary injunction requiring CMS to reinstate plaintiff David Finke's pay to the level it was before CMS determined he was receiving a higher salary than allowed pursuant to a collective bargaining agreement. Specifically, defendants argue that plaintiff failed to demonstrate the requirements for an injunction were satisfied. We reverse.

¶ 3 I. BACKGROUND

¶ 4 The following facts are gleaned from allegations contained in plaintiff's verified pleading in this case. In May 2013, CMS posted a job vacancy for a maintenance worker on its

job board, indicating a monthly salary of $5,823. Plaintiff, who at the time was employed by the State of Illinois in a different department, applied for, and was hired to fill, the vacant position. He commenced working for CMS on November 16, 2013, as a maintenance worker, at the salary rate indicated on the job posting. As a CMS maintenance worker, plaintiff was a member of an employee bargaining unit that was represented by Teamsters Local No. 722.

¶ 5 On July 14, 2014, CMS informed plaintiff and Teamsters Local No. 722 that a mistake had been made regarding plaintiff's salary. Specifically, CMS stated that plaintiff's salary had mistakenly been set to one higher than the salary rate allowed by the collective bargaining agreement between CMS and Teamsters Local No. 722. To remedy the alleged mistake, CMS reduced plaintiff's salary by approximately $1,400 per month, an almost 24% decrease. Additionally, CMS unsuccessfully sought reimbursement from plaintiff for the overpayments due to the alleged error.

¶ 6 On October 21, 2014, plaintiff filed a "Verified Petition for Mandamus for Temporary Restraining Order [TRO], Preliminary and Permanent Injunctive Relief" in the Sangamon County circuit court. The petition alleged that "[p]laintiff relied—to his and his family's detriment—on the promised and confirmed wage rate [of $5,823 per month]—confirmed both orally and in writing—and [p]laintiff was affirmatively induced by CMS to resign from his position with the Illinois Department of Natural Resources and commence a new employment career with CMS," which was referred to as a "promotion" in CMS personnel documents. According to plaintiff, the salary of $5,823 per month "was promised to him throughout the entire CMS hiring process," and he received the promised salary throughout the first six months of his employment with CMS. Plaintiff further alleged that the unilateral reduction of his salary caused irreparable harm and "will continue to have a negative economic

impact on both [p]laintiff and his family, so as to make it impossible for [p]laintiff to pay his monthly debts by means of his substantially reduced wage rate/salary," and that he has no adequate remedy at law. Additionally, plaintiff alleged that CMS conceded—by virtue of its failure to provide him with documentation to demonstrate compliance—that it failed to adhere to the requirements of section 310.90(e) of the Illinois Administrative Code (80 Ill. Adm. Code 310.90(e) (West 2010)) in unilaterally reducing his salary.

¶ 7 On November 5, 2014, plaintiff served defendants with seven "Notice[s] to Appear" pursuant to Illinois Supreme Court Rule 237(b) (eff. July 1, 2005), seeking the appearance of seven individuals at an evidentiary hearing scheduled for November 20, 2014. On November 12, 2014, defendants filed a "Motion to Quash Plaintiff's Rule 237(b) Notices to Appear and Objection to the Evidentiary Hearing," and the court scheduled the matter for a hearing on November 14, 2014. In their motion, defendants asserted, in relevant part, that they had not yet filed an answer, and thus, "[a]llowing [p]laintiff to hold an evidentiary hearing or present any evidence before an answer has been filed would constitute error." Following a November 14, 2014, hearing, the trial court reserved ruling on defendants' motion to quash notices to appear pending the filing of additional pleadings. On November 17, 2014, plaintiff filed a motion for substitution of judge as a matter of right (735 ILCS 5/2-1001(a)(2)(i) (West 2014)), which was allowed.

¶ 8 On November 19, 2014, plaintiff provided defendants with notice of a new hearing scheduled for November 25, 2014, in which he "[sought] a ruling on his " 'Verified Petition for Mandamus [f]or [TRO], Preliminary and Permanent Injunctive Relief' or [the opportunity to] present arguments in favor of or against any motion pending at that time in this [d]ocket."

¶ 9 On November 20, 2014, defendants filed an unverified response to plaintiff's motion, which they titled, "Response to Plaintiff's Motion for a [TRO]." In their response, defendants asserted that (1) plaintiff cannot show a likelihood of success on the merits because (a) the underlying claim is barred by sovereign immunity; (b) the collective bargaining agreement supersedes contrary provisions of the "Pay Code" and "Pay Plan"; and (c) the underlying claim is barred by article 8, section 2(b) of the Illinois Constitution of 1970 (Ill. Const. 1970, Art. 8, § 2(b)) and section 21 of the Illinois Public Labor Relations Act (5 ILCS 315/21 (West 2014)); (2) plaintiff has not shown a clearly ascertained right in need of protection; (3) plaintiff has not shown he has no adequate remedy at law; and (4) the balance of hardships favors denial of the TRO.

¶ 10 On November 24, 2014, plaintiff filed a "Reply to Defendant's [*sic*] Response." Plaintiff asserted that (1) the cause of action was not barred by the doctrine of sovereign immunity, claiming the "officer suit" exception applied; (2) the cause of action was "*not* governed by nor premised upon the contractual provisions of any collective bargaining agreement," but was "premised solely upon a prayer for equitable relief"; (3) he "has the equitable right to make more money than the Collective Bargaining Agreement provides" where "[d]efendants *promised* him more money than set forth within the parties' collective bargaining agreement" and he relied on that promise to his detriment; (4) the allegations in his verified petition and the exhibits attached thereto sufficiently alleged irreparable harm where "he and his family will suffer 'catastrophic economic consequences' because of his loss of wages," and that he is dependent upon the wage he was promised "for making [his] house payment, car payments and weekly food bills"; (5) he has no adequate remedy at law where the consequences of not being able to pay his bills are irreparable and would include "loss of house, loss of

transportations [*sic*], the inability to pay for sustenance, foreclosure, damage to credit, loss of employment opportunity after changing jobs, etc."; and (6) asserted all of defendants' arguments regarding the balance of hardships were fallacious. (Emphases in original.)

¶ 11 On November 25, 2014, a hearing on plaintiff's "Verified Petition for Mandamus for [TRO], Preliminary and Permanent Injunctive Relief" was held in front of a different judge. No evidence, only argument by the attorneys, was presented at the hearing. At the hearing, plaintiff asserted that he detrimentally relied on the promised wage and asked "that the Court reinstate the original salary until such time as there is an appropriate determination by an arbitrator." (We note that while the parties refer to a separate arbitration proceeding, apparently involving plaintiff's wage reduction and the collective bargaining agreement, the record contains no details of such a proceeding.) According to plaintiff, due to the decrease in his salary, he now makes less money than he did at his prior place of employment. Plaintiff maintained that no "mistake" was made regarding the promised wage, but that "the upper echelon people at CMS" erroneously classified him as an "in hire person" who, pursuant to the collective bargaining agreement, was entitled to only 75% of the posted wage. Plaintiff further asserted that even if there was a mistake, CMS failed to adhere to the requirements of section 310.90(e) of the Illinois Administrative Code (80 Ill. Adm. Code 310.90(e) (West 2010)) by not considering the factors listed therein when it decided to "gut" his wages. According to plaintiff, had CMS considered the necessary factors, it would not have reduced his salary. Plaintiff further asserted that no adequate remedy at law existed because future money damages would be inadequate to compensate him if he lost his house and damaged his credit as the result of the reduction to his salary.

¶ 12 Defendants argued at the hearing—as they did in their response to plaintiff's motion—that plaintiff failed to demonstrate a likelihood of succeeding on the merits because (1) the claim was barred by sovereign immunity; (2) plaintiff's "mere assertion" that CMS "exceeded their authority under the administrative code *** does not meet the standards for the officers suits that we didn't comply with the administrative code"; (3) "the collective bargaining agreement *** supersedes any contrary paid plan provisions"; and (4) the claim was barred by the Illinois Constitution and Illinois Public Labor Relations Act. Defendants further asserted that plaintiff failed to show that (1) he had an ascertainable right to the higher salary; (2) he would suffer irreparable harm; (3) he lacked an adequate remedy at law; and (4) the balance of hardships fell in his favor where "allowing plaintiff to get an order requiring CMS to violate this bargaining agreement would significantly erode the power the legislature has given to these unions" and would require CMS to treat plaintiff differently than other members of the collective bargaining agreement.

¶ 13 Following argument, the trial court took the matter under advisement. Subsequently, the court granted plaintiff's motion for a preliminary injunction, finding that "plaintiff's pleadings make a *prima faci*[*e*] case for the issuance of a preliminary injunction. A balance of the hardships clearly falls in favor of the plaintiff." The court ordered defendants "to return the plaintiff's pay to the level i[t] was before the defendant claimed there was a mistake in the amount," but it ordered no back pay. The court further noted, "[t]his preliminary injunction is effective until further order of this Court or this matter is resolved via arbitration."

¶ 14 This interlocutory appeal followed. On December 30, 2014, plaintiff filed a motion to strike and/or dismiss this interlocutory appeal and for sanctions, which this court denied.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendants assert the circuit court erred by issuing a preliminary injunction because plaintiff failed to demonstrate the requirements for a preliminary injunction were satisfied.

¶ 17 A. Jurisdiction

¶ 18 Before considering the merits of defendants' appeal, we first address plaintiff's contention that this court lacks jurisdiction to entertain this interlocutory appeal. Specifically, plaintiff asserts this interlocutory appeal is untimely because the order issued by the circuit court was a TRO, the appellate rights of which are governed by Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010), which provides, in relevant part, that a notice of interlocutory appeal must be filed within two days of the entry of the TRO. According to plaintiff, "it is [d]efendants' tack that render the [c]ircuit [c]ourt's ruling into a TRO" because defendants "*insisted* that the [c]ircuit [c]ourt conduct a non-evidentiary hearing as to whether [p]laintiff should be granted injunctive relief *** premised *solely* upon the sufficiency of the Plaintiff's Verified Complaint for a [TRO]." (Emphases in original.) Defendants, on the other hand, assert that the order issued by the circuit court was a preliminary injunction, the appellate rights of which are governed by Illinois Supreme Court Rule 307(a) (eff. Feb. 26, 2010), which provides, in relevant part, that a notice of interlocutory appeal must be filed within 30 days of the court granting a preliminary injunction. Defendants note that this court—having denied plaintiff's December 30, 2014, motion to strike and/or dismiss this interlocutory appeal—has already considered and rejected plaintiff's argument.

¶ 19 In *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill. App. 3d 353, 355, 453 N.E.2d 740, 741-42 (1983), the First District noted the distinct differences between a TRO and a preliminary injunction as follows:

> "The [TRO] is an emergency remedy issued to maintain the status quo until a hearing can be held on an application for a preliminary injunction. [Citation.] Whether a [TRO] is with or without notice, it is issued upon a *summary* showing of the necessity of the order to prevent immediate and irreparable harm. [Citation.] In contrast, the function of a preliminary injunction is to maintain the status quo until the case is disposed of on the merits. [Citation.] An evidentiary hearing on an application for a preliminary injunction is normally required where a verified answer has been filed denying material allegations in the complaint. [Citation.]"
> (Emphasis in original.)

¶ 20 Based on our review of the record, we find that the trial court issued a preliminary injunction rather than a TRO. At the beginning of the hearing, the court announced, "[w]e are here on the plaintiff's motion for a preliminary injunction" and indicated that it had read the original complaint, defendants' response, and plaintiff's reply. In concluding his argument, plaintiff stated, "I would indicate that the Court is correct that this is really a preliminary injunction, rather than [a TRO]. I would hope that that would continue until such time as we can have an evidentiary hearing, but I would indicate to the Court that we're prepared to present the evidence that I've already affirmatively indicated is available." Likewise, in concluding their argument, defendants noted, "for those reasons, Your Honor, and on the absolute merits of the

preliminary injunction, plaintiff has failed to show that it should be granted and we ask that it be denied." Further, the court's order specifically stated as follows:

> "Court finds the plaintiff's pleadings make a *prima faci*[*e*] case for the issuance of a preliminary injunction. A balance of the hardships clearly falls in favor of the plaintiff. Wherefore, [a] preliminary injunction is entered. *** This preliminary injunction is effective until further order of the Court or this matter is resolved via arbitration."

¶ 21 Although plaintiff asserts defendants' insistence that the trial court conduct a non-evidentiary hearing to determine whether injunctive relief should be granted "premised *solely* upon the sufficiency of the Plaintiff's Verified Complaint for a [TRO]," (emphasis in original) rendered the court's ruling a TRO, we note that defendants did not file an answer to plaintiff's complaint, and thus, the trial court was not required to conduct an evidentiary hearing prior to ruling on plaintiff's motion for a preliminary injunction. See *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65-B, Graphic Arts International Union,* 27 Ill. App. 3d 500, 504, 327 N.E.2d 46, 49 (1975). As the order appealed from is a preliminary injunction, Rule 307(a) controls. Here, defendants filed their notice of interlocutory appeal within 30 days of the trial court's order. Accordingly, this court has jurisdiction to consider the merits of defendants' appeal.

¶ 22 B. Standard of Review

¶ 23 The parties disagree regarding the appropriate standard of review to be employed here. Defendants assert a *de novo* standard of review is appropriate where "the court was not presented with any evidence on the matter and based its decision on the allegations in the

complaint and the arguments of the parties." Plaintiff asserts an abuse of discretion standard is appropriate where the court "certainly *** considered the factual basis of [p]laintiff's request for emergency injunctive relief, inasmuch as such uncontested facts were set forth within the [p]laintiff's Verified Complaint."

¶ 24 Generally, a trial court's grant or denial of a preliminary injunction is reviewed for an abuse of discretion. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378, 943 N.E.2d 725, 729 (2010). " 'A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view.' " *Id*. (quoting *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634, 841 N.E.2d 1065, 1082 (2006)). However, where a court makes no factual findings and rules only upon a question of law, our review is *de novo*. *Id*., 943 N.E.2d at 730. Thus, we review questions of law *de novo* and factual determinations for an abuse of discretion. *Id*. at 378-79, 943 N.E.2d at 730.

¶ 25 C. Preliminary Injunction

¶ 26 As mentioned above, the purpose of a preliminary injunction is to preserve the status quo until the merits of the case are decided. *Id*. at 378, 943 N.E.2d at 729. "The remedy is an extraordinary one and should be granted only in situations of extreme emergency or where serious harm would result if the preliminary injunction was not issued." *Id*.

¶ 27 A party seeking a preliminary injunction must demonstrate "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62, 866 N.E.2d 85, 91 (2006). The party seeking the preliminary injunction must raise a " 'fair question' " that each of these elements is satisfied.

World Painting Co., v. Costigan, 2012 IL App (4th) 110869, ¶ 11, 967 N.E.2d 485. On review, we examine " 'only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question as to the existence of the rights claimed.' " *Five Mile Capital Westin North Shore SPE, LLC v. Berkadia Commercial Mortgage, LLC*, 2012 IL App (1st) 122812, ¶ 16, 983 N.E.2d 95 (quoting *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356, 366, 748 N.E.2d 153, 159 (2001).

¶ 28 Further, "[a] complaint for a preliminary injunction must plead facts that clearly establish that party's right to injunctive relief." *In re Marriage of Slomka & Lenehan-Slomka*, 397 Ill. App. 3d 137, 144, 922 N.E.2d 36, 41 (2009). "[A]llegations of mere opinion, conclusion, or belief are not sufficient to show a need for injunctive relief." *Id*., 922 N.E.2d at 42. The trial court must balance the equities between the parties and may deny a preliminary injunction where the balance of hardships favors the nonmoving party. *Clinton Landfill*, 406 Ill. App. 3d at 378, 943 N.E.2d at 729.

¶ 29 D. Trial Court Erred in Granting the Preliminary Injunction

¶ 30 Defendants claim, *inter alia*, that the trial court erred by granting plaintiff's motion for a preliminary injunction where plaintiff failed to raise a fair question that he (1) lacks an adequate remedy at law or (2) suffered irreparable harm as a result of defendants' actions in reducing his salary. We agree.

¶ 31 Defendants first assert plaintiff failed to demonstrate he lacks an adequate remedy at law. According to defendants, plaintiff has an adequate remedy at law because money damages would compensate him for any injury he might suffer.

¶ 32 "It is a well-established rule that, if a party's injury can be adequately compensated through money damages, then it has an adequate remedy at law and does not need

the extraordinary remedy of injunctive relief." *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207, 230-31, 890 N.E.2d 1086, 1106 (2008). "[T]he fact that the ultimate relief may be a money judgment does not deprive a court of equity of the power to grant a preliminary injunction" (*A-Tech Computer Services, Inc. v. Soo Hoo*, 254 Ill. App. 3d 392, 401, 627 N.E.2d 21, 27 (1993)) where "the injury cannot be measured by pecuniary standards." *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 947, 751 N.E.2d 1250, 1256 (2001). However, "where damages caused by the alteration of the status quo pending a final decision on the merits can be compensated adequately by monetary damages calculable with a reasonable degree of certainty," preliminary injunctions are not warranted. *Id.* In other words, to show that no adequate remedy at law exists, a plaintiff must demonstrate that money damages would not adequately compensate him for the injury he has sustained. *Behl v. Duffin*, 406 Ill. App. 3d 1084, 1093, 952 N.E.2d 1, 9 (2010) (quoting *People ex rel. Madigan v. Excavating & Lowboy Services, Inc.*, 388 Ill. App. 3d 544, 565-66, 902 N.E.2d 1218, 1229 (2009)).

¶ 33 Although it appears plaintiff is able to pursue an action for money damages relative to the reduction in his wages, he contends that such a remedy is inadequate to compensate him for the injuries he will suffer. Specifically, in his petition, plaintiff alleged that CMS's decision to reduce his

> "wage rate/salary has and will continue to cause [him] to suffer irreparable injury, as [he] relied, to his detriment and was expected to do so by CMS, on the representations by CMS of the wage rate/salary promised to him, and the significant unilateral reduction in salary has and will continue to have a negative economic impact on both [him] and his family, so as to make it impossible for [him]

to pay his monthly debts by means of his substantially reduced wage rate/salary."

¶ 34 The First District considered an analogous argument in *Lumbermen's Mutual*. In that case, the defendant/counterplaintiff (Sykes) was forced to vacate her house due to the growth of mold which made it uninhabitable, resulting in her incurring additional living expenses. *Lumbermen's Mutual*, 384 Ill. App. 3d at 209, 890 N.E.2d at 1089. The circuit court issued a "preliminary mandatory injunction" requiring the plaintiff/counterdefendant (the insurer) to pay Sykes' additional living expenses. *Id*. at 209, 890 N.E.2d at 1090. The insurer appealed, asserting, in relevant part, that Sykes failed to show she had no adequate remedy at law where monetary damages would adequately compensate her for the alleged injury. *Id*. at 230, 890 N.E.2d at 1106. Sykes responded that, "in her particular case, after-the-fact monetary damages granted at the conclusion of the lawsuit [would] not adequately compensate the wrong that ha[d] been done to her, because she is 'financially destitute' at present and lacks sufficient funds to obtain housing in the absence of immediate injunctive relief." *Id*. at 231, 890 N.E.2d at 1107. The appellate court disagreed, however, concluding that Sykes failed to cite any authority "in support of the proposition that financial hardship of a party seeking a preliminary injunction may transform a request for pure monetary damages into a situation in which the granting of injunctive relief is appropriate." *Id*.

¶ 35 In this case, plaintiff is essentially arguing—as Sykes did in *Lumbermen's Mutual*—that any money damages awarded to him after the fact will be inadequate to compensate him in light of the "negative economic impact" he will suffer as the result of his decreased salary. Like Sykes, plaintiff fails to cite any authority—and our research has not revealed any authority—supporting the proposition that the collateral consequences he *might*

suffer due to the decrease in his salary transforms his request for monetary damages, *i.e.*, the difference in the promised salary versus the decreased salary—into a situation where a preliminary injunction is appropriate. Although we are sympathetic to plaintiff's situation, based on the facts of this case, ultimately, his remedy is a claim for money damages. Therefore, we cannot find that he has raised a fair question that he lacks an adequate remedy at law.

¶ 36 We note that even if we overlooked the fact plaintiff did not lack an adequate remedy at law, he has failed to raise a fair question of irreparable harm. In his petition, plaintiff alleges his decreased salary "has and will continue to have a negative economic impact on both [himself] and his family, so as to make it impossible for [him] to pay his monthly debts." According to plaintiff, this "affirmative statement that it is 'impossible' for him to pay monthly debts with his [m]aintenance wages slashed, overnight, by one-fourth, is a statement of fact—a statement of fact *properly* accepted as true by the [c]ircuit [c]ourt." (Emphasis in original.) However, plaintiff does not allege any facts in support of his statement that he is unable to pay his monthly debts due to the decrease in his salary. This conclusory statement, standing alone, is not enough to warrant the extraordinary remedy of injunctive relief. See *Slomka*, 397 Ill. App. 3d at 144, 922 N.E.2d at 42 ("allegations of mere opinion, conclusion, or belief are not sufficient to show a need for injunctive relief").

¶ 37 Based on the above, we find that plaintiff failed to present a *prima facie* case warranting injunctive relief, and we therefore reverse the trial court's grant of injunctive relief. As a result of our holding, we need not address defendants' remaining arguments.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we reverse the trial court's grant of injunctive relief.

¶ 40 Reversed.