

**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).

2016 IL App (4th) 160863-U

NO. 4-16-0863

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 8, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

PATRICK B. MURPHY, M.D.,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
ADVOCATE HEALTH AND HOSPITALS	)	No. 16CH240
CORPORATION, d/b/a ADVOCATE BROMENN	)	
MEDICAL CENTER,	)	Honorable
Defendant-Appellee.	)	Rebecca Simmons Foley,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court reversed, concluding that the trial court abused its discretion by denying plaintiff's motion for a temporary restraining order.
- ¶ 2 In September 2016, defendant, Advocate Health and Hospitals Corporation, d/b/a Advocate BroMenn Medical Center (BroMenn), recommended that its governing council terminate the medical staff privileges of plaintiff, Patrick B. Murphy, M.D. In October 2016, Murphy sent a letter addressed to BroMenn's president and medical staff president, requesting a meeting to discuss the bases BroMenn used to substantiate its termination recommendation, which Murphy believed violated BroMenn's medical staff bylaws. BroMenn later denied Murphy's meeting request and thereafter, scheduled a December 2016 intraprofessional conference during which a hearing officer and a panel of medical professionals would decide the propriety of BroMenn's termination recommendation.

¶ 3 In November 2016, Murphy filed a motion for a temporary restraining order (TRO), seeking to enjoin BroMenn from proceeding with the December 2016 intraprofessional conference. Following a hearing conducted later that month, the trial court denied Murphy's TRO motion.

¶ 4 In this interlocutory appeal brought pursuant to Supreme Court Rule 307(d) (eff. Nov. 1, 2016), Murphy seeks reversal of the trial court's denial of his TRO motion. We reverse.

¶ 5 I. BACKGROUND

¶ 6 A. Events Preceding the Controversy at Issue;  
This Court's Case No. 4-16-0513

¶ 7 On May 20, 2016, Dr. James Nevin Jr., BroMenn's vice president for medical management, told Murphy, a board certified physician in cardiovascular disease, nuclear cardiology, and interventional cardiology, that his medical staff privileges—which authorized Murphy to practice medicine at BroMenn—had been summarily suspended. Nevin's decision originated from a meeting conducted earlier that day during which he and three other physicians discussed the medical care Murphy provided to patient E.W. from May 11 to 14, 2016, when E.W. died of cardiogenic shock. Three days later, the president of BroMenn's medical staff, Dr. Mark J. Hanson, notified Murphy by letter that BroMenn had summarily suspended Murphy's medical staff privileges, effective May 20, 2016. Shortly thereafter, however, BroMenn reinstated Murphy's medical staff privileges based on Murphy's agreement to refrain from using those credentials during BroMenn's further inquiry into the matter.

¶ 8 In June 2016—following Murphy's allegation that BroMenn failed to comply with various provisions of its medical staff bylaws when summarily suspending his privileges—BroMenn reinstated Murphy's summary suspension. In response to Murphy's request, BroMenn initiated an intraprofessional conference comprised of a hearing officer and a panel of five medi-

cal professionals to consider evidence concerning the propriety of BroMenn's summary-suspension decision. After deliberating, the panel recommended that BroMenn's governing council maintain the summary suspension of Murphy's medical staff privileges. BroMenn's governing council later accepted the committee's recommendation.

¶ 9 Thereafter, Murphy filed a motion requesting an emergency TRO and preliminary injunction against BroMenn. In his prayer for relief, Murphy sought, in pertinent part, to prohibit BroMenn from enforcing or reporting the summary suspension of Murphy's medical staff privileges. Following a July 2016, hearing, the trial court denied Murphy's motion for declaratory and injunctive relief.

¶ 10 Murphy filed an interlocutory appeal of the trial court's judgment, which this court has docketed as case No. 4-16-0513. In July 2016, this court granted Murphy's motion for an immediate stay, enjoining BroMenn from reporting the summary suspension of Murphy's medical staff privileges until further order of this court. (We take judicial notice that oral argument in case No. 4-16-0513 is scheduled for January 10, 2017.)

¶ 11 B. The Controversy at Issue

¶ 12 On September 16, 2016, BroMenn sent a letter to Murphy, informing him that earlier that day, BroMenn's medical executive committee voted to recommend that its governing council *terminate* Murphy's medical staff privileges. The committee based its recommendation on findings from the followings medical cases it reviewed: (1) a physician's external peer review of 19 cardiac catheterization interventions Murphy performed from January 11, 2016, to May 20, 2016, in which six cases were identified "with concerns" and an additional five cases were identified as raising "significant concerns"; (2) a physician's random sampling of 9 "ECHO" cases Murphy performed from November 25, 2015, to May 10, 2016, in which the physician noted a

pattern of inadequate documentation or reports that were not consistent with the associated images; and (3) a review of medical care Murphy provided to E.W., which resulted in the May 20, 2016 summary suspension of Murphy's medical staff privileges.

¶ 13 In October 2016, Murphy sent BroMenn a letter, objecting to the committee's termination recommendation because (1) the committee based its termination recommendation, in part, on allegations underlying the May 2016 summary suspension of his clinical privileges, which is currently on appeal to this court and (2) given the May 2016 summary suspension of his medical staff privileges, Murphy no longer possessed credentials that could be subject to further adverse actions. Seeking to preserve his rights under BroMenn's medical staff bylaws, Murphy requested an intraprofessional conference but requested further a postponement of that conference until this court enters a decision in case No. 4-16-0513.

¶ 14 In October 2016, Murphy sent a letter addressed to BroMenn's president and medical staff president, requesting a meeting to discuss the bases BroMenn used to substantiate its termination recommendation, which Murphy believed violated BroMenn's medical staff bylaws. BroMenn later denied Murphy's meeting request and thereafter, scheduled a December 2016 intraprofessional conference during which a hearing officer and a panel of medical professionals would decide the propriety of BroMenn's termination recommendation.

¶ 15 In November 2016, Murphy filed a TRO motion in which he sought to enjoin "BroMenn through its governing council, or any of its agents, employees or affiliates," from proceeding with the December 2016 intraprofessional conference because of his pending appeal in case No. 4-16-0513, which concerned the summary suspension of his medical staff privileges. Following a hearing conducted later that month, the trial court denied Murphy's TRO motion. Specifically, the court found that (1) BroMenn "acted within the bylaws" and (2) Murphy failed

to show a likelihood of success on the merits of his claims against BroMenn.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Murphy appeals, essentially arguing that the trial court abused its discretion by denying his TRO motion. We agree.

¶ 19 "A [TRO] is a drastic remedy which may issue only in exceptional circumstances and for a brief duration." *American Federation of State, County, & Municipal Employee, Council 31 v. Ryan*, 332 Ill. App. 3d 965, 966, 773 N.E.2d 1196, 1198 (2002). A TRO preserves the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction. *Id.* "To be entitled to temporary injunctive relief, plaintiffs must demonstrate that they (1) possess a protectable right, (2) will suffer irreparable harm without the protection of an injunction, (3) have no adequate remedy at law, and (4) are likely to be successful on the merits of their action." *Bartlow v. Shannon*, 399 Ill. App 3d 560, 567, 927 N.E.2d 88, 95 (2010).

¶ 20 "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 case is decided on the merits.'" *Id.* (quoting *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 542, 399, 447 N.E.2d 288, 291 (1983)). "Generally, we will affirm the trial court's denial of a temporary restraining order unless the trial court abused its discretion." *Bartlow*, 399 Ill. App 3d at 567, 927 N.E.2d at 95.

¶ 21 We first note BroMenn's failure to file a responding memorandum as required by Rule 307(d)(2) (eff. Nov. 1, 2016). However, we find that the record and issues presented are simple enough that we can decide the appeal. See *First Capital Mortgage Corp. v. Talandis*

*Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976) (despite the absence of an appellee's brief, a court of review should decide the merits of an appeal when the record is simple and the errors raised can easily be decided).

¶ 22 As previously noted, BroMenn substantiated its termination recommendation of Murphy's medical staff privileges on (1) case reviews that occurred before May 20, 2016, when BroMenn summarily suspended Murphy's medical staff privileges and (2) E.W.'s case, which is the subject of this court's review in case No. 4-16-0513 concerning whether BroMenn complied with its medical staff bylaws when summarily suspending Murphy's privileges. As Murphy argued to the trial court during the November 2016 hearing on his TRO motion, the numerous cases BroMenn relied upon that were not used to substantiate the May 2016 summary suspension of his medical staff privileges were not subject to peer review. Indeed, the record is silent as to what, if any, corrective or consequential action BroMenn employed when the "significant concerns" arose. Yet, BroMenn erroneously argued to the court that the termination recommendation was "legally and medically" required because "in the event the appellate court reverses the summary suspension, \*\*\* there would be nothing to prevent \*\*\* Murphy from going in the next day and performing procedures in the [catheterization laboratory] at \*\*\* BroMenn." We reject any notion that our review is that broad. See *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 506-07, 544 N.E.2d 733, 738 (1989) ("[W]hen the decision involves a revocation, suspension[,] or reduction of existing staff privileges[,] \*\*\* the hospital's action is subject to a limited judicial review to determine whether the decision made was in compliance with the hospital's bylaws.").

¶ 23 In this case, we conclude that an abuse of discretion occurred because the practical effect of denying Murphy's request to preserve the status quo would be to essentially render

meaningless his appeal of BroMenn's summary suspension in case No. 4-16-0513. Having considered the totality of the circumstances surrounding BroMenn's termination recommendation and in light of the parties' appeal in case No. 4-16-0513, we reverse the trial court's November 2016 denial of Murphy's request for a temporary restraining order. Accordingly, any action in furtherance of BroMenn's September 2016 recommendation to the governing board to terminate Murphy's medical staff privileges is hereby stayed until further order of this court.

¶ 24 For the reasons stated, we reverse the trial court's judgment.

¶ 25 Reversed.