

NOTICE
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2016 IL App (5th) 160285-U

NO. 5-16-0285

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

DANIEL QUARTZ and KENDRA QUARTZ,	)	Appeal from the
	)	Circuit Court of
Petitioners-Appellees,	)	St. Clair County.
)	
v.	)	No. 16-CH-429
)	
SABRE INVESTMENTS, LLC,	)	Trial Judge for Temporary
	)	Restraining Order:
Respondent-Appellant.	)	Honorable Heinz M. Rudolf.
)	
	)	Trial Judge for Motion for
	)	Dissolution of Order:
	)	Honorable Robert P. LeChien.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Schwarm and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Court did not abuse its discretion in extending a temporary restraining order that was initially entered without notice where the order extending the initial order was entered after notice to the opposing party and a hearing and where evidence of the opposing party's attorney's past conduct demonstrated a likelihood that she would attempt to evict the plaintiffs from a home they built on a disputed piece of property if not enjoined from doing so, therefore resulting in irreparable harm to the plaintiffs.

¶ 2 The dispute underlying this appeal involves a tax deed issued to the respondent, Sabre Investments, LLC (Sabre), for a property that was purchased by the petitioners,

Daniel and Kendra Quartz, six weeks before Sabre filed an action seeking a tax deed. The Quartzes filed a petition for relief from judgment (735 ILCS 5/2-1401 (West 2014)), arguing that the judgment directing issuance of a tax deed was void because they were not given notice. In a separate proceeding, the Quartzes requested a temporary restraining order (TRO) and a preliminary injunction enjoining Sabre from attempting to remove them from the property. The court granted the TRO *ex parte*. Sabre then filed a motion to dissolve the TRO. After a hearing, the court denied Sabre's motion and extended the TRO. Sabre appeals pursuant to Illinois Supreme Court Rule 307(d) (eff. Jan. 1, 2016), arguing that (1) the court abused its discretion in entering the order because the Quartzes did not show a risk of imminent harm; (2) the court erred and exceeded its jurisdiction by making factual findings in the underlying tax deed litigation; (3) the court erred in extending the TRO for an indefinite period; and (4) the court erred in refusing to rule on Sabre's requests for damages and a protective order. We affirm the court's order. However, we remand with directions to set a date for a preliminary injunction hearing which will limit the duration of the TRO.

¶ 3 On June 15, 2012, the Daniel and Kendra Quartz purchased the property at issue in this appeal. At that time, the property consisted of land with no buildings. They recorded their warranty deed to the property four days later. Unbeknownst to the Quartzes, the property had been subject to a tax sale in 2010 due to unpaid property taxes from 2008. A title search did not reveal this sale. On July 27, 2012, six weeks after the Quartzes purchased the land, Sabre filed a petition for a tax deed. Sabre attempted to provide notice to prior owners of the property, but was unable to locate them. There is no

dispute that Sabre failed to provide any notice to the Quartzes, and there is no indication in the record that it attempted to do so. There is also no indication that Sabre attempted to provide notice to D & F Contracting, Inc., the entity that paid the 2011 property taxes and conveyed the property to the Quartzes. On December 7, 2012, the court entered an order directing the issuance of a tax deed. The tax deed was issued to Sabre on January 23, 2013, and Sabre recorded it later that day.

¶ 4 In September 2014, the Quartzes began constructing a home on the property. Both parties assert that they did not know of each other's claims to the property until after this time. On January 25, 2015, Sabre sent a cease and desist letter to the Quartzes demanding that they halt construction on the property.

¶ 5 On February 13, 2015, the Quartzes filed a petition for relief from judgment, and on May 1, they filed a first amended petition for relief from judgment. They alleged that they received no notice of Sabre's petition for a tax deed. They argued that, as a result, the tax deed issued to Sabre was void because they did not receive notice. They further alleged that their occupancy of the premises should have been obvious once they began building their home in September 2014. They argued that by waiting until January 25, 2015, to send a cease and desist letter, Sabre fraudulently concealed from them the existence of the ground for relief. On June 2, 2015, Sabre filed a motion to dismiss the Quartzes' petition. One basis for that motion was the fact that the petition was not filed within two years of the judgment ordering the issuance of the tax deed. See 735 ILCS 5/2-1401(c) (West 2014). The motion was subsequently denied.

¶ 6 On June 19, 2015, one of Sabre's attorneys, Mindy Salyer, sent a letter to counsel for the Quartzes. In it, she indicated that a "recent field inspection" by Sabre revealed that construction was occurring on the property. Salyer stated, "I am left with no choice but to file the appropriate legal actions against your client which will include an emergency preliminary injunction." On June 22, 2015, email exchanges took place between Salyer and two of the Quartzes' attorneys, Matt Young and Blake Hill. Salyer expressed anger that over the weekend the Quartz family moved into a house they built on the property. In an email to Young, Salyer wrote, "We already have an order for possession. I think it takes the Sheriff three to four days to get to the property and believe you me, the Sheriff will put each and every item out on the street." She then sent an email to Hill with a copy to Young. In it, she wrote, "My client's order for possession will be turned into the Sheriff. Your clients will get kicked out." Young replied, telling Salyer that she did not have an order for possession. He went on to state that because of Salyer's threats, the Quartzes informed him that they were "packing their belongings and two small children and leaving the premises." Young further stated, "This should not be construed as a waiver of any and all rights and defenses they have in this matter."

¶ 7 According to the Quartzes, they moved out of the residence in June 2015 with their two young children, and moved in with Daniel Quartz's parents. Meanwhile, they continued to make payments on their mortgage, construction loan, and homeowners' insurance policy for the property. In January 2016, the Quartzes moved back into the home on the disputed property.

¶ 8 On June 28, 2016, the Quartzes filed a "verified complaint for a TRO and preliminary injunction" and an "emergency motion for a TRO and preliminary injunction without notice." In both pleadings, they alleged that Sabre "has indicated a desire to enforce the contested tax deed *** and have them forcefully removed from their home." In both pleadings, they further alleged that "it is believed" that Sabre "will commence with attempts at throwing them out of their house," and that this will result in substantial harm to the Quartzes because it would leave them with no place to live. In the emergency motion for TRO without notice, they further alleged that the relief sought was necessary and should be granted without notice to Sabre "because if notice is provided ***, based on defendant's prior indications of having plaintiffs forcefully removed from the home, it is believed defendant will commence with attempts at throwing them out of their house based on a tax deed of contested validity."

¶ 9 The court held a hearing on the petition that day. Counsel for the Quartzes explained the reason for requesting the TRO without notice to Sabre as follows: "Sabre Investment's attorney has already made it clear through various correspondence to our office that she intends on getting the sheriff out and basically throwing this family in the street." The court then discussed each of the elements necessary for it to issue the TRO. In addressing the requirement of imminent irreparable harm, the requirement that is at issue in this appeal, the court stated as follows:

"In terms of irreparable harm or damages, you gentlemen are aware this requires a finding from me that the harm is real. It's not speculative. It's

imminent. And this prong can be satisfied by showing that the harm is of a continuing nature.

I think that you—you satisfied this element, as well, based on your argument and based upon my review of the verified pleadings and the attachments."

The court went on to find that the Quartzes established all the elements necessary for the emergency TRO without notice. It therefore indicated that it would grant the requested relief and entered a written order to that effect. The written order provided that it was to remain in effect until July 8, 2016, or until the court held a hearing on a preliminary injunction, whichever came first. The court also set a preliminary injunction hearing date for July 8.

¶ 10 On June 30, counsel for Sabre entered their appearance and filed a motion to dissolve the TRO and for damages (see 735 ILCS 5/11-110 (West 2014)). Sabre argued, as it does in this appeal, that "the status quo, by agreement, was that the Plaintiffs were not residing at the subject property." Sabre further argued that because the Quartzes' request for a TRO was therefore based on "a false status quo," the order should be dissolved and Sabre should be entitled to damages. Counsel noticed a hearing on this motion for July 7.

¶ 11 On July 1, Sabre filed a motion to dissolve the TRO and for damages and a protective order. In support of its request for a protective order, Sabre alleged that counsel for the Quartzes "knowingly directed contact upon Sabre in lieu of any one of Sabre's attorneys." The motion did not specify what type of contact occurred. At the subsequent hearing on the motion, the Quartzes' attorney informed the court that the only

direct contact between any of their attorneys and Sabre employees resulted from Sabre's counsel's insistence that Sabre be given direct service of notice of the TRO petition. This assertion appears to be supported by the allegations and supporting documentation in Sabre's own motion. Sabre alleged in the motion that its counsel received notice of the TRO approximately 1½ hours after it was issued. Sabre further alleged that the following day, one of its attorneys inquired as to whether Sabre had received notice. Attached to the motion is a copy of an email sent by attorney Mindy Salyer on June 30 in which she demands that Sabre be served with notice directly.

¶ 12 In spite of the pending hearing settings for July 7 and 8, Sabre noticed a hearing on its motion for July 5. At that hearing, the Quartzes' attorney, Jarrod Beasley, discussed and quoted from the email exchange between Mindy Salyer and attorneys for the Quartzes in June 2015. He then explained that the Quartzes obtained an occupancy permit and moved back into the house in January 2016. The court asked why there was urgency to request a TRO at the present time. In response, Beasley explained that "Sabre is about to get notice that the Quartzes are living at their home," and based on the previous emails from Salyer, they were afraid that Sabre would follow through on its threats of eviction. Sabre's attorney, Amanda Moressi, attributed this to the fact that interrogatory responses were due in the pending section 2-1401 litigation. She explained that honest answers to interrogatories would reveal that the Quartzes were living in the home.

¶ 13 The court noted that the tone of Salyer's email was inappropriately threatening and that the email contained misstatements of the law. Moressi then presented Sabre's

arguments in support of dissolving the TRO. She began by arguing that there can be no imminent harm to the Quartzes "because the status quo pursuant to an agreement in June of 2015 was that the Quartzes would not be residing in the property." The court asked if this agreement that it was being asked to enforce was in writing. Moressi responded that Sabre was not asking the court "to enforce any sort of agreement." Rather, she stated, it was asking "for the status quo to be established as it was."

¶ 14 The court again asked Beasley to address the urgency in seeking a TRO now. The court specifically asked whether there were any developments subsequent to the June 2015 emails that led to the fear that Sabre might now follow through on its threats without following the requirements of due process. Beasley acknowledged that there were no recent threats, but he described a pattern of abusive and threatening communications from Salyer and argued that it was reasonable for the Quartzes to believe that she intended to follow through with her threats.

¶ 15 The court agreed with this argument, explaining, "On the basis of that email, I don't think a reasonable person can assume that the sender will abide by the rules of due process in seeking possession of this home." The court also addressed Moressi's repeated arguments concerning the "status quo" as "established" by the Quartzes' attorney, Matt Young. The court stated that Young's email simply explained his clients' circumstances at that time and did not "establish the status quo" absent an agreement to that effect.

¶ 16 The court addressed Sabre's request for damages, explaining that damages are appropriate only upon a finding that there was not even an arguable basis for issuing the TRO (see *Hirschauer v. Chicago Sun-Times*, 192 Ill. App. 3d 193, 200 (1989))

(explaining that damages are available if a TRO is dissolved only if a court finds that the TRO was wrongfully entered, and that dissolution of the TRO "does not by itself establish that the TRO was wrongfully entered")). The court stated that the question of damages was reserved, noting that Sabre could request damages "when and if" the court agreed that the TRO was improper.

¶ 17 The court then ruled on the request to dissolve the TRO. The court announced that it would issue a new restraining order, which would remain in effect until a hearing could be held on the Quartzes' request for a preliminary injunction. The court continued the hearing that was scheduled for July 8, noting that this would allow the parties to conduct limited discovery for the preliminary injunction hearing. The court asked the parties to prepare proposed written orders and to tell the court how many days they needed to conduct discovery. Moressi argued that even with notice to Sabre, the maximum period the TRO may run is 20 days, and this 20-day period should begin to run from June 28, when the initial TRO was entered. The court told her that it was not entering another TRO. Rather, the court stated, it was entering "a restraining order to be dissolved by the court" after the hearing on the preliminary injunction.

¶ 18 The court entered a handwritten order extending the TRO, striking the July 8 hearing setting, and directing both parties to submit proposed written orders. The Quartzes submitted a proposed order which provided that it would remain in effect until a preliminary injunction hearing was held and which included a blank space for the court to fill in a date for that hearing. Sabre did not submit a proposed order. On July 7, 2016,

Sabre filed a petition for review with this court pursuant to Illinois Supreme Court Rule 307(d) (eff. Jan. 1, 2016).

¶ 19 The purpose of a TRO is to preserve the status quo until the court can hold a hearing to determine whether a preliminary injunction is warranted. *Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 416 (1987). A TRO is a "drastic remedy" which should be granted only under "exceptional circumstances and for a brief duration." *American Federation of State, County & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (2002). Before entering a TRO, a court must find that the party requesting the order (1) has a right to be protected; (2) will suffer irreparable harm if the TRO is not granted; (3) has no adequate remedy at law; and (4) can demonstrate a likelihood of success on the merits. *Id.* at 966-67. To demonstrate a likelihood of success on the merits, a party need only raise a fair question about the right to the relief sought. *C.D. Peters Construction Co. v. Tri-City Regional Port District*, 281 Ill. App. 3d 41, 47 (1996). To be entitled to a TRO without notice, a party must allege specific facts showing that the party will suffer immediate and irreparable harm if the TRO is not entered before there is time to provide notice to the opposing party and hold a hearing. *Hirschauer*, 192 Ill. App. 3d at 201 (quoting Ill. Rev. Stat. 1987, ch. 110, ¶ 11-101 (now at 735 ILCS 5/11-101 (West 2014))). On appeal, we will reverse a court's decision concerning whether to grant, deny, extend, or dissolve a TRO only if we find that the trial court abused its discretion. *Abdulhafedh*, 161 Ill. App. 3d at 416.

¶ 20 Sabre first argues that the court abused its discretion in entering the original TRO and in denying its motion to dissolve because the requirements for issuing a TRO have

not been met. Most of Sabre's argument focuses on its contention that the Quartzes have not shown that they will suffer irreparable harm if the TRO is not granted. In addition, Sabre asserts that the Quartzes do not have a protectable right because they do not own the property. We may dispose of this second contention quickly. Sabre provides no argument in support of this conclusory single-sentence assertion. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (providing that arguments not supported by arguments and citations to authority are forfeited). Moreover, whether the tax deed acquired by Sabre is valid—and, therefore, whether it thwarts the Quartzes' ownership interest—is precisely the issue to be resolved in the underlying litigation. They have a protectable right in continuing to live in the home they built on the property unless and until the underlying suit is resolved in Sabre's favor. We turn our attention to Sabre's arguments concerning the element of imminent and irreparable harm.

¶ 21 Sabre contends that the Quartzes cannot show that they will suffer irreparable harm for two reasons. First, it contends, the allegation of irreparable harm is speculative because it is based on the Quartzes' "information and belief" that Sabre will move to evict them from the property. Second, Sabre asserts that the "status quo" was "established" by their counsel's June 2015 email informing Sabre's counsel that his clients would be moving out of the home. Sabre argues that there can be no harm because the "status quo" established by this email exchange consists of a state of affairs in which the Quartzes do not reside on the property. We find neither argument persuasive.

¶ 22 Sabre argues that the Quartzes' allegation that "it is believed" that Sabre would attempt to have them evicted is too speculative to support a finding of imminent harm.

Sabre further contends that neither pleading contained any factual allegations concerning the need to enter the order before notice could be provided to Sabre. We believe these arguments understate the specificity of the allegations that were before the court when it entered the TRO without notice on June 28. It is true, as Sabre contends, that both the verified complaint and the emergency motion for a TRO without notice contain allegations that "it is believed that defendant will commence with attempts at throwing them out." However, as we discussed previously, both pleadings also allege that Sabre has previously "indicated a desire to *** have them forcefully removed," and the emergency motion additionally alleges that a TRO should be entered without notice because of "prior indications" by Sabre's counsel that she intended to have them "forcefully removed." Moreover, as we also discussed earlier, at a hearing on that motion, the Quartzes' attorney indicated that Sabre's attorney had demonstrated this intent through a series of correspondence. Thus, the court had before it facts that were sufficiently specific to indicate that it was likely that Sabre was likely to act immediately to evict the Quartzes based on a pattern of prior conduct.

¶ 23 The email exchange provides further support for the court's conclusion. As we discussed earlier, the court was concerned that Salyer misstated the law in her emails. Sabre, however, alleges that the email exchange between Salyer and two of the Quartzes' attorneys was not presented to the court until the July 5 hearing on Sabre's motion to dissolve the TRO. We note that copies of the relevant emails appear in the record just behind the Quartzes' emergency motion for a TRO without notice. It is not clear on the record before us whether or not these copies were attached to the motion as an exhibit.

Nevertheless, we will conclude that the July 5 order extending the initial TRO was proper. This renders moot the question of whether the allegations before the court were sufficient to support its ruling when it granted the initial TRO on June 28.

¶ 24 Sabre's final argument related to the sufficiency of the Quartzes' allegation that they would likely be evicted from the home without the TRO is that they did not provide evidence of any more recent threats. We are again not persuaded. As discussed earlier, the evidence of Mindy Salyer's emails showed that she issued threats to the Quartzes in the past in which she inaccurately stated both the facts and the law. Further, the evidence showed that these threats were effective enough to cause the Quartzes to leave their home. In addition, Sabre's counsel indicated multiple times during the July 5 hearing that Sabre's position was that the Quartzes would only be permitted to live in the home if they paid rent to Sabre. Further, the court was aware that more recently, Salyer demanded that the Quartzes' counsel serve notice of these proceedings directly on Sabre and then requested a protective order based on counsel's contact with Sabre employees in complying with her demand. It was not unreasonable for the court to find that she was likely to engage in a similar pattern of behavior.

¶ 25 Sabre also argues that the Quartzes cannot show the possibility of any harm because Matt Young's email informing Mindy Salyer that they were moving off of the property in June 2015 "established the status quo." This argument is not persuasive. Young explicitly stated in his email that the family's move should not be construed as a waiver of any rights they had in the matter. Moreover, accepting Sabre's argument would force this court to ignore the circumstances that actually exist. Specifically, we are asked

to ignore the fact that the Quartzes currently reside in the home they built on the disputed property. It is also worth noting that the Quartzes have asserted alternative claims for unjust enrichment and a constructive trust. Denying them access to the house would interfere with their ability to preserve its condition and could possibly undermine those claims. We conclude that Young's email informing Salyer that the Quartzes were moving away from the property in June 2015 did not defeat their claim that they would suffer irreparable if forced to leave the home again in 2016.

¶ 26 Sabre's next argument is that the court erred and exceeded its jurisdiction by making factual findings in the underlying litigation. Sabre points to two statements by the court. First, Sabre complains that the court stated that it was "incumbent upon the Respondent to prove notice." Second, Sabre complains that the court referred to the house the Quartzes built on the property as "their house." We do not believe either of these statements may properly be characterized as a finding in the underlying litigation. As stated previously, one of the elements the court must find in order to grant a TRO is a likelihood of success on the merits. See *American Federation of State, County & Municipal Employees*, 332 Ill. App. 3d at 967. The court's statement concerning the requirement of notice simply addresses this element. Further, we do not believe that the court's reference to the home the Quartzes built on the property as "their house" constitutes a "finding" at all.

¶ 27 Sabre next argues that the court erroneously extended the order without limiting its duration. We note that the court did not call its July 5 order an extension of the TRO. As stated previously, the court indicated that it was instead entering a "restraining order to be

dissolved by the court" at an unspecified time. In substance, however, this order served as an extension of the previously entered TRO. Therefore, we will treat it as such. We turn now to the substance of Sabre's contention.

¶ 28 Because a TRO is a drastic emergency measure, it may only remain in effect for a brief duration. *Abdulhafedh*, 161 Ill. App. 3d at 416. A TRO without notice may not be granted for a period of more than 10 days. However, a TRO without notice may be extended for an additional period of 10 days before the end of the initial 10-day period for cause shown. 735 ILCS 5/11-101 (West 2014). Although these 10-day limits are not applicable when a TRO is entered *with* notice (*Abdulhafedh*, 161 Ill. App. 3d at 416), the duration of such an order must still be brief, and the duration must be specified (see *id.* at 417). Where, as here, the initial TRO is entered without notice, but the extension is entered with notice, the 10-day limit does not apply to the order extending the TRO. *Id.* at 416-17. However, as we have just explained, the extension must be for a brief, specified duration. *Id.* at 417.

¶ 29 In this case, the court extended the TRO without either specifying the order's duration or setting a new date for the preliminary injunction hearing. "To allow a TRO of unlimited duration is to have a preliminary injunction without allowing the defendant a fair opportunity to show why an injunction should not be issued." *Id.* We recognize that the court asked the parties to determine how much time they would need to prepare for a preliminary injunction hearing. We also recognize that the court asked the parties to submit proposed written orders. It appears that the court contemplated that the hearing would take place within a short period so that its order would in fact remain in effect for a

brief period. Nevertheless, the order it entered did not specify a maximum duration, and there is no indication in the record before us that the court has set a new date for the preliminary injunction hearing. As such, the order does not comport with the requirement that it be issued for only a brief and specified duration. We therefore remand this matter to the trial court and direct the court to either specify a date on which the order will terminate or set a preliminary hearing date if it has not done so already.

¶ 30 Finally, Sabre argues that the court erred in refusing to address its additional claims for damages and a protective order. Because the court has not yet ruled on either of these requests, there is nothing for this court to review. In addition, we note that the request for a protective order remains pending in the trial court. We also note that the trial court expressly reserved ruling on Sabre's request for damages.

¶ 31 For the foregoing reasons, we affirm the court's July 5 order extending the June 28 TRO. We remand this cause to the trial court with directions to limit the duration of the order or set a preliminary injunction hearing date if it has not already done so.

¶ 32 Order affirmed; cause remanded with directions.