

2017 IL App (2d) 170172-U  
No. 2-17-0172  
Order filed May 12, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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MATTHEW SMITH and CHARLES SMITH,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 16-CH-1691
	)	
EDWARD D. JONES AND COMPANY, LP,	)	
	)	
Defendant	)	Honorable
	)	Paul M. Fullerton,
(Upendo Village, NFP, Defendant-Appellant).	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly granted an injunction in favor of plaintiffs. Plaintiffs sufficiently demonstrated that there was no adequate remedy at law and the injunction was not an improper attachment.
- ¶ 2 In this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2016), defendant, Upendo Village, NFP, appeals the judgment of the circuit court of Du Page County granting a preliminary injunction in favor of plaintiffs, Matthew and Charles Smith. The

controversy in this case concerns funds held by defendant, Edward D. Jones and Company,<sup>1</sup> which, upon the death of the account holder, Kathleen Smith (plaintiffs' mother), were to be distributed to the beneficiary, Upendo Village. The trial court enjoined the distribution until further order of court. Defendant appeals, arguing that plaintiffs did not make a sufficient showing to obtain the injunctive relief. Specifically, defendant argues that plaintiffs have an adequate remedy at law which should have precluded the trial court's grant of injunctive relief. Alternatively, defendant contends that the trial court improperly attached the funds held by Edward Jones. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 We summarize the pertinent facts appearing in the record. Kathleen Smith was a lawyer who was licensed to practice law in Illinois beginning in 1981. In 2007, she was reported as not authorized to practice law. In July 2008, Kathleen was hospitalized as a result of mental illness, namely, bipolar disorder. She was released from the hospitalization and was prescribed medications and outpatient therapy to treat her mental disorder. However, Kathleen did not take her prescribed medication and did not attend therapy.

¶ 5 On August 14, 2008, Kathleen opened an individual retirement account with Edward Jones. When she opened the account, she named plaintiffs as the equal beneficiaries of the Edward Jones account. Plaintiffs alleged, on information and belief, that she funded the account via a rollover of a different individual retirement account on which plaintiffs were named equal beneficiaries in the event of Kathleen's death.

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<sup>1</sup> Edward Jones is not a party to this appeal.

¶ 6 Shortly after opening the Edward Jones account, Kathleen’s mental condition underwent a rapid deterioration. In August 2008, Kathleen was placed in Monarch Landing, a senior residence and continuing care facility located in Naperville, Illinois. Kathleen’s stay there was rocky, due to her erratic and aggressive behavior. Monarch Landing’s staff determined that Kathleen was a danger to herself, to other residents, and to the staff. Accordingly, Monarch Landing requested that Kathleen be removed from the facility. Kathleen’s family suggested that they would have Kathleen seek further medical care to alleviate her condition, and Monarch Landing agreed to allow Kathleen to stay there.

¶ 7 Upendo Village maintains that, on October 11, 2008, Kathleen donated money to it. The copy of the check appearing in the record, however, notes that Kathleen made the check out for the sum of \$165, and the memo line of the check indicated that it was for “crafts.” Thus, the record shows that Kathleen made out a check to Upendo Village, but the check controverts the conclusion that it was a donation; rather, it appears it was to fund the purchase of undescribed “crafts” in the amount of \$165.<sup>2</sup>

¶ 8 At Thanksgiving 2008, Kathleen’s family gathered to celebrate the holiday. During the meal, Kathleen acted erratically and angry. Plaintiffs alleged that, without provocation, Kathleen

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<sup>2</sup> In its reply, Upendo Village pulls back from its claim that Kathleen donated to it the money represented by the \$165 check. Instead, Upendo Village now asserts that the fact it was trying to convey was simply that Kathleen was aware of its ministries. In so doing, it appears that Upendo Village abandons its claim of a prior donative relationship between it and Kathleen in favor of the position that Kathleen simply “was aware” of Upendo Village.

disrupted the family gathering.

¶ 9 Kathleen's mental condition continued to deteriorate. On December 1, 2008, Kathleen was voluntarily hospitalized again. This time, she was diagnosed with paranoia, severe anger and irritability, and she was placed on the hospital's suicide protocol. Before Christmas, Kathleen left the hospital and terminated her inpatient treatment program there. This was done against the advice of her doctors.

¶ 10 The family again gathered, this time to celebrate Christmas. Once again, Kathleen acted erratically and angry, and she disrupted the family's Christmas celebration. Kathleen lashed out, without provocation, against her siblings and children.

¶ 11 In March 2009, Kathleen attempted to send money to unknown persons in Nigeria, pursuant to some sort of email scam. One of Kathleen's brothers interrupted Kathleen's attempt to complete a wire transfer thereby preventing any financial loss to Kathleen.

¶ 12 In August 2009, Kathleen's stay at Monarch Landing continued to be troubled. Monarch Landing once again reported erratic behavior and threatened to remove Kathleen. She was allowed to stay at Monarch Landing only by promising that she would attend counseling. After this, Kathleen began to attend counseling sessions. During an outpatient therapy session, Kathleen's doctor had her involuntarily committed to a hospital to receive care and treatment. As before, Kathleen left the hospital against her physicians' recommendations.<sup>3</sup> When Kathleen

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<sup>3</sup> The record does not resolve the apparent inconsistency between Kathleen's "involuntary" commitment and her apparent voluntary termination of the treatment program against medical advice.

left the hospital, Monarch Landing finally demanded that Kathleen vacate her residence. In September 2009, this was accomplished, and the family relocated Kathleen to a condominium located in Aurora, Illinois.

¶ 13 On October 25 or 26, 2009, Kathleen visited the Edward Jones office managing her individual retirement account. On that date, Kathleen completed a change-of-beneficiary form. Upendo Village asserts that the “beneficiary form was signed under penalty of perjury at the Edward Jones offices.” Kathleen removed plaintiffs altogether as beneficiaries, and she named Upendo Village as the sole beneficiary of the account in the event of her death. Kathleen did not inform plaintiffs about the beneficiary change. Plaintiffs assert that, at the time Kathleen made the change in beneficiary to the Edward Jones account, she was still experiencing untreated mental illness and she was unable to understand the consequences and implications of her actions.

¶ 14 In July 2010, Kathleen voluntarily filed a guardianship petition seeking to appoint her brother as guardian of her person and her estate. Kathleen alleged that she lacked the mental capacity either to manage her finances or to recognize her best interests. In August 2010, somewhat incongruously, Kathleen filed an affidavit in support of her guardianship petition. In the affidavit, Kathleen averred that she was disabled, lacked proper mental capacity, and, therefore, she lacked the ability to ascertain her best interests or to manage her estate and her financial affairs. On August 17, 2010, the court entered an order appointing her brother as the guardian of Kathleen’s person and estate.

¶ 15 On April 4, 2015, Kathleen died. Plaintiffs are Kathleen’s children and sole surviving

heirs. The Edward Jones account constituted the most valuable asset Kathleen owned at the time of her death.

¶ 16 On November 16, 2016, plaintiffs filed a two-count complaint seeking to invalidate the October 2009 beneficiary change and revert to the previous beneficiaries resulting in restoring plaintiffs as equal beneficiaries of the Edward Jones account; plaintiffs also sought an injunction to preclude Edward Jones from distributing the account to Upendo Village or any party other than plaintiffs. Also on November 16, 2016, plaintiffs filed a motion seeking either a temporary restraining order or a preliminary injunction. On November 21, 2016, Upendo Village filed a motion to dismiss, contending that the Dead Man's Act (735 ILCS 5/8-201 (West 2014)) prevented plaintiffs from testifying about Kathleen's mental competency, and contending that plaintiffs failed to allege irreparable harm to support their request for injunctive relief.

¶ 17 On March 6, 2017, Upendo Village's motion to dismiss came on for hearing. Following the parties' argument, the trial court denied the motion to dismiss and granted a preliminary injunction in favor of plaintiffs precluding Edward Jones from distributing the funds until further order of the court. The court initially disposed of Upendo Village's motion to dismiss based on the Dead Man's Act, holding that, because there were factual arguments in favor and against the application of the Dead Man's Act, whether plaintiffs could "prove their cause with or without the testimony of either Matt or Charles Smith [was] irrelevant as of right now. [Plaintiffs] have alleged sufficient facts to state that [Kathleen] was not competent at the time and that she changed the beneficiaries on [the Edward Jones] account."

¶ 18 The trial court then considered the issue of injunctive relief:

“And then that brings me to the TRO. You both cited the factors the Court is to look at, the clearly ascertainable right, irreparable injury, no adequate remedy at law, likelihood of success on the merits, and the Court can also balance the harms between the parties.

The money is with Edward Jones. Edward Jones is kind of standing there basically saying, judge, just tell us who to give it to.

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I understand that. And really, what [Upendo Village] focused on is the likelihood of success on the merits—I’m sorry, the no adequate remedy at law factor, and in looking at that case law, it says for a legal remedy to be sufficiently adequate to deprive a court sitting in equity of its power to grant injunctive relief, the remedy must be clear, complete and as practical and efficient to the ends of justice and its prompt administration as the injunctive relief sought.

The reason I cite to that is because I think they’re—the facts of this case on the declaratory and the request for a TRO are intertwined. I’m going to grant the TRO, because I think the facts as of this point, because we’re only in the pleading stage, plaintiff [*sic*] has pled sufficient facts.

If she was not—if she lacked the mental capacity, they would have a case, and then—but that’s up to the plaintiff [*sic*] to prove. I’m not turning over the funds as of right now. I agree with [plaintiffs’ counsel], if the funds are turned over, they’re gone, they may never be able to get them back.

It really comes down to this Court deciding who's getting these funds. If she lacked—or if she did not lack the mental capacity, if she was of sound mind, the funds clearly go to Upendo [Village], and they'll receive the funds, they'll receive the interest and whatever generated from the funds.

So at this point I'm denying the motion to dismiss pursuant to 615—actually, I'm denying the entire motion to dismiss, and I will grant at this point a TRO that the funds be held.

Your request for a bond, I thought about it, I'll agree with [plaintiffs' counsel] on this one that the funds are—they're being held, they're not going anywhere, there's no need to post a bond.

So the funds will be held by Edward Jones until further order of court. What I anticipate coming at some point is probably a motion for summary judgment, but that's down the road.”

¶ 19 Plaintiffs asked the trial court to clarify its ruling, whether it was granting a temporary restraining order or whether it would grant injunctive relief in light of the fact that Upendo Village had notice and the opportunity to respond to plaintiffs' motion. The trial court agreed, and it changed its grant of plaintiffs' motion to a grant of a preliminary injunction.

¶ 20 The trial court also issued a written order stating: “Plaintiffs' motion for Temporary Restraining Order or Preliminary or Preliminary [*sic*] Injunction is granted and the Court issues a Preliminary Injunction without bond for Defendant Edward Jones to hold the account in issue until further order of the Court.”



¶ 21 Upendo Village timely appeals.

¶ 22 II. ANALYSIS

¶ 23 Upendo Village argues on appeal that the trial court erred in granting plaintiffs a preliminary injunction because plaintiffs have an adequate remedy at law which should have precluded injunctive relief. Upendo Village also argues that the preliminary injunction constituted an improper attachment serving only to secure the Edward Jones account in order to satisfy the debt plaintiffs hope to prove. We consider each contention in turn.

¶ 24 A. Preliminary Injunction

¶ 25 As a preliminary matter, we note that plaintiffs urge that we dismiss Upendo Village's appeal due to numerous and egregious misstatements of the factual record. Plaintiffs identify Kathleen's purported \$165 gift to Upendo Village that is controverted by the check itself bearing the notation that it was for "crafts." Plaintiffs also dispute the change-in-beneficiary form. According to plaintiffs, Upendo Village has represented that the form "was signed under penalty of perjury." According to plaintiffs, the form's oath refers only to the tax identification number, not to the form as a whole, and Upendo Village has misrepresented that fact, attempting to bootstrap some amount of reliability to the beneficiary designation because it was signed on oath.<sup>4</sup>

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<sup>4</sup> In its reply, Upendo Village argues that it highlighted the fact that the change-in-beneficiary form was signed under oath to show that Kathleen understood it was an important document, not to suggest that her statements were made under oath and therefore reliable, which is another retrenchment from its apparent position in the original brief on appeal.

¶ 26 The appellant is obligated to provide a fair and accurate statement of facts without inserting argument or comment. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 13, 2006). Where a party fails to comply with the rules, the statement of facts may be stricken; if the noncompliance is egregious enough, the appeal may be dismissed. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. Plaintiffs point to two instances of purported misrepresentation of the record by Upendo Village. While even a single instance of misrepresentation is one too many, the record in this appeal is short, clear, and readily understood. To the extent that Upendo Village's factual assertions are unsupported in the record, we will disregard them. We do not believe that any factual misrepresentations here interfere with our review of the issues presented. Accordingly, the harsh sanction of dismissal of the appeal or even striking the statement of facts is unwarranted. *Id.*

¶ 27 Turning to the merits, Upendo Village argues that plaintiffs have an adequate remedy at law precluding their ability to obtain a preliminary injunction. A preliminary injunction is a provisional remedy granted in order to preserve the status quo pending a hearing on the merits of the case. *People ex rel. White v. Travnick*, 346 Ill. App. 3d 1053, 1060 (2004). In order to establish entitlement to preliminary injunctive relief, the party seeking the injunction must demonstrate: (1) that it possesses a clear right or interest needing protection; (2) it has no adequate remedy at law; (3) irreparable harm will result without the preliminary injunction; and (4) there is a reasonable likelihood of success on the merits. *Id.*

¶ 28 A party seeking a preliminary injunction faces a lower burden of proof than that required to prevail on the ultimate issue; the plaintiff need only prove a *prima facie* case that there is a fair

question regarding the existence of the right claimed, that the circumstances lead to a reasonable belief that the plaintiff probably will be entitled to the relief sought, and that the matters should be kept in the status quo until the case can be decided on the merits. *Id.* Generally, the trial court is vested with discretion to determine whether to grant a preliminary injunction, and we will not disturb that judgment absent an abuse of discretion. *Id.* An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.* However, to the extent that the trial court considered issues purely of law, we review those issues *de novo*. *Id.*

¶ 29 Upendo Village challenges the elements of irreparable harm and adequate remedy at law. Upendo Village ties the two concepts together, contending that irreparable harm will occur where money damages are inadequate to compensate the injury and the injury cannot be measured by pecuniary standards. We agree that this is not an incorrect statement of law. In *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 942 (2001), the plaintiff sued the defendants for breach of contract and breach of fiduciary duty arising from the alleged sale of real property in violation of the terms of a contract between the plaintiff and the defendants. The plaintiff then moved for a preliminary injunction seeking to prevent the defendant from selling any more of the partnership's real property in order to prevent the depletion of the partnership's assets and to preserve sufficient funds in the partnership with which to satisfy any future money judgment in favor of the plaintiff. *Id.* at 942-43. The trial court granted the preliminary injunction, holding that the plaintiff had demonstrated an inadequate remedy at law because the unsold real estate was the partnership's only asset which, if the defendants were not enjoined from selling it, left the plaintiff facing the possibility of an uncollectible judgment. *Id.* at 945.

¶ 30 This court reversed the trial court's grant of an injunction. *Id.* at 948. We first noted that irreparable harm occurs only where the remedy at law is inadequate. *Id.* at 947. Considering the facts, this court noted that the plaintiff alleged only lost profits and monetary loss due to diverting assets from the partnership. *Id.* That the assets involved were real property did not alter the fact that the plaintiff was seeking only money damages, because the plaintiff's rights were based on the relationship established by the partnership and not on the underlying real property assets. *Id.* at 948. This court held that the plaintiff had an adequate remedy at law, so the grant of a preliminary injunction was an abuse of discretion. *Id.*

¶ 31 Upendo Village contends that, like in *Franz*, plaintiffs here have an adequate remedy at law. According to Upendo Village, because the Edward Jones account is simply cash, and because cash is fungible, plaintiffs can recover the value of the fund from Upendo Village should that be necessary. We disagree.

¶ 32 Here, plaintiffs have alleged that Kathleen was incompetent to execute the change of beneficiary form. Therefore, plaintiffs allege that Upendo Village has no actual entitlement to the Edward Jones account, while, pursuant to the original beneficiary form, plaintiffs are entitled to the account. Plaintiffs allege that, if the account is distributed to Upendo Village as a result of the improperly executed change in beneficiary form, then the account will be gone. Thus, if the account is distributed, plaintiffs will have to sue either Upendo Village or Edward Jones or both, but their opportunity to establish the superiority of their rights will be lost. The object of the suit in this case, then, is the Edward Jones account itself, and the underlying action is not one for money damages, but it is to declare the rights of the parties to the Edward Jones account. Once

the rights are established, then the account may be distributed to the party who has established a superior right to the account. In other words, if the account disappears because it is distributed, then there is nothing left to proceed on. We therefore hold that, at this stage in the proceedings, plaintiffs have sufficiently alleged no adequate remedy at law.

¶ 33 Upendo Village argues that cash is fungible, so the proceeds of the account cannot be unique enough to support injunctive relief. We disagree. While money may be the root of the legal action in this case, the action here seeks a declaration of rights in the Edward Jones account, not money damages. If the account ceases to exist, then the issue of rights in the account is mooted. Instead, plaintiffs might have to sue Edward Jones for improperly distributing the account, Upendo Village for improperly receiving the proceeds, or might have to sue both Edward Jones and Upendo Village. This would be a different form of action than that already instituted, and would add another layer of legal action to what is already at issue. We believe that this serves to demonstrate that, while money may be involved here, it is actually incidental to the action already filed by plaintiffs.

¶ 34 *Franz*, relied upon by Upendo Village, is distinguishable. In that case, the court realized that, while the partnership held real property assets, the action was about the plaintiff's claim of breach of contract and lost profits under the contract. *Franz*, 322 Ill. App. 3d at 947. This case presents an inverted situation: the asset here holds money, but the dispute is over the asset, namely the right to the asset. Thus, it is not money damages, but the rights to the Edward Jones account that are at issue. Because, unlike *Franz*, this case does not involve simple money damages, injunctive relief is appropriate.

¶ 35 Upendo Village argues that the Dead Man’s Act would preclude plaintiffs’ ability to prove up their case. Upendo Village reasons that, if plaintiffs cannot prove their case, then they do not have a likelihood of success on the merits. Even if the individual plaintiffs cannot offer testimony regarding Kathleen’s mental state at the time she executed the change-of-beneficiary form, there are allegations that, days before the form was executed, Kathleen had been committed to a hospital, she left the hospital against medical advice, and it was unclear whether she was taking her prescribed medication. This leads to a reasonable inference that Kathleen was experiencing untreated mental health issues that could have compromised her competence to execute a change of beneficiary regarding the Edward Jones account. At this stage of the proceedings, this is sufficient to demonstrate a reasonable likelihood of success on the merits. *White*, 346 Ill. App. 3d at 1060.

¶ 36 Upendo Village argues that plaintiffs “effectively concede they have an adequate remedy at law by seeking the monetary relief they asked for in Count I of their Complaint.” In count I of their complaint, plaintiffs seek: (1) a declaration that the October 26, 2009, account beneficiary change was invalid; (2) declare that plaintiffs are the beneficiaries of the Edward Jones account pursuant to the August 14, 2008, beneficiary designation; and (3) order Edward Jones to distribute the account to plaintiffs. While it may be a fine point, plaintiffs do not seek money damages; rather, they seek to be named beneficiaries of the Edward Jones account and that the Edward Jones account then be distributed. The fact that the Edward Jones account contains money does not transform plaintiffs’ prayer for relief into a request for monetary relief because

plaintiffs seek to determine who has the right to the Edward Jones account. We reject the contention.

¶ 37 Moreover, the fact that the plaintiff's ultimate relief may be a money judgment does not mean that the court cannot grant an injunction. *Carriage Way Apartments v. Pojman*, 172 Ill. App. 3d 827, 839 (1988) (quoting *K.F.K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (1975)). While in *Carriage Way*, the defendants only sought to receive a sum of money for their interest in the partnership thereby rendering a preliminary injunction improper due to the existence of an adequate remedy at law, the court recognized that, in circumstances where the plaintiff's rights could be extinguished, there will be no adequate remedy at law resulting in irreparable harm. *Id.* (citing *K.F.K. Corp.*, 31 Ill. App. 3d at 1021). Here, while the Edward Jones account contains a sum of money, if the account is distributed, plaintiffs' rights to the account may be extinguished, leaving them with no adequate remedy at law and resulting in irreparable harm. *K.F.K. Corp.*, 31 Ill. App. 3d at 1021.

¶ 38 Upendo Village argues that ordering Edward Jones to distribute the proceeds of the account would maintain the status quo. We disagree. The status quo is maintained by having Edward Jones continue to hold the account pending determination of the proper beneficiary. To distribute the account would change the status quo by extinguishing the focus of this action, the Edward Jones account. So long as Edward Jones holds the account intact, the status quo is maintained.

¶ 39 Upendo Village argues that Kathleen had a charitable relationship with it, having donated to it before she changed the beneficiaries to the Edward Jones account. Upendo Village seems to

contend that this purported relationship corroborates the change of beneficiary from plaintiffs to Upendo Village. We disagree. As pointed out by plaintiffs, the copy of the “donation” check notes on the memo line that it was written to purchase “crafts.” The check offers no evidence that it was a donation to Upendo Village. At best, it shows that Kathleen was aware of Upendo Village at some time before she executed the change-in-beneficiary form, but it does not indicate that Kathleen had any sort of donor-donee relationship with Upendo Village. Moreover, even if the check were evidence of some donative intent on Kathleen’s part, this would tend to go to the ultimate merits of which party has a superior right to the Edward Jones account, but it does not sufficiently undermine plaintiffs’ showing that they have a reasonable likelihood of success on the merits.

¶ 40 Upendo Village contends that plaintiffs failed to show irreparable harm because they can be fully compensated by the amount contained in the Edward Jones account should it be erroneously distributed. This confuses the measure of damages with whether plaintiffs demonstrated that there was no adequate remedy at law. Plaintiffs are seeking to invalidate the beneficiary change executed in circumstances casting doubt upon Kathleen’s mental capacity to execute the change. That there is quantifiable monetary harm associated with an erroneous distribution does not change the action into one for money damages; the action remains one seeking to determine the proper beneficiary of the Edward Jones account. *Franz* linked the concepts of irreparable harm and adequate remedy at law, and Upendo Village bases its contentions on *Franz*. *Franz*, 322 Ill. App. 3d at 947. We have determined that plaintiffs sufficiently demonstrated that there was no adequate remedy at law; likewise they have



adequately demonstrated that they could suffer irreparable harm if the preliminary injunction were not granted.

¶ 41 Upendo Village also argues that the grant of a preliminary injunction is invalid because the trial court made no findings of fact. See 735 ILCS 5/11-101 (West 2014) (“[e]very order granting an injunction and every restraining order shall set forth the reasons for its entry”). Upendo Village’s contention is belied by the record. The trial court recited the factors and reasons it was granting a preliminary injunction, and we quoted its reasoning above. This contention is without merit.

¶ 42 B. Attachment

¶ 43 Upendo Village next argues that the trial court improperly attached the funds in the Edward Jones account. Attachment is a remedy by which a party’s property is secured and held to satisfy a debt that the other party hopes to prove. *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190 (2010). Generally, an equitable attachment will not lie in Illinois (*id.* at 190-91); however, the Code of Civil Procedure permits attachment in 11 specific circumstances (735 ILCS 5/4-101 (West 2014); *Hensley Construction*, 399 Ill. App. 3d at 190). Upendo Village argues that the preliminary injunction granted in this matter acts as an attachment for the money judgment plaintiffs hope to prove up against it. We disagree.

¶ 44 In the first place, plaintiffs are not seeking a money judgment; rather, plaintiffs seek a declaration of rights regarding the proper beneficiary of the Edward Jones account. Additionally, while Upendo Village maintains that it is the proper beneficiary of the Edward Jones account, the injunction precludes access to the account until the beneficiary issue is

resolved. Because the account is not a current asset of Upendo Village, we cannot say that the preliminary injunction affects any of Upendo Village's property. If Upendo Village's property is not affected, then we cannot say that it has been attached. Thus, by definition, the preliminary injunction is not an attachment.

¶ 45 Upendo Village relies upon *Kurti v. Silk Plants Etc. Franchise Systems, Inc.*, 200 Ill. App. 3d 605, 611 (1990), for the proposition that the specific-funds exception to the rule against equitable attachment does not apply here, because plaintiffs have no interest in the Edward Jones account. Upendo Village's reliance in *Kurti* is misplaced for at least two reasons. First, the preliminary injunction is not an attachment of Upendo Village's assets; rather, it freezes an account that is not one of Upendo Village's assets. Second, the account is the subject of the suit here. Therefore, arguably, the specific-funds exception applies. See *American Re-Insurance Co. v. MGIC Investment Corp.*, 73 Ill. App. 3d 316, 325 (1979) (where the asset is the object of the action and the trial court's final order will dispose of the asset, an equitable attachment may be proper).

¶ 46 Upendo Village argues that it is the owner of the Edward Jones account and, therefore, the preliminary injunction extinguishes its contractual rights to the account by virtue of the change-in-beneficiary form executed by Kathleen. Excusing the inconsistency of the claim that it is the owner versus the claim that it has a contractual right to the funds, the object of the suit in this case is the determination of the proper beneficiary. Even if, as Upendo Village argues, the preliminary injunction affects its contractual rights under the beneficiary designation, it is now making precisely the arguments it disputes regarding plaintiffs' claims. Moreover, any

contractual rights are in dispute by virtue of plaintiffs' complaint, so they must be settled before the account can be distributed. Accordingly, Upendo Village's argument is unpersuasive.

¶ 47 Upendo Village contends that the preliminary injunction acting as an equitable attachment improperly deprives it of the use of the funds in the Edward Jones account. This is simply a different way of trying to say that it is the owner of the account. This claim is rebutted by the record, and, in any event, unpersuasive. We reject this contention.

¶ 48

### III. CONCLUSION

¶ 49 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 50 Affirmed.