

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).

2017 IL App (4th) 170129-U

NO. 4-17-0129

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 28, 2017
Carla Bender
4th District Appellate
Court, IL

CARL GOLD, M.D.,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
JESSICA BAER, in Her Official Capacity as Acting	)	No. 17CH69
Director of the Division of Professional Regulation of	)	
The Illinois Department of Financial and Professional	)	
Regulation; and THE ILLINOIS DEPARTMENT OF	)	
FINANCIAL AND PROFESSIONAL	)	
REGULATION,	)	Honorable
Defendants-Appellees.	)	Ryan Cadagin,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion in denying plaintiff's complaint for a temporary restraining order.

¶ 2 On February 21, 2017, the trial court denied the complaint of plaintiff, Carl Gold, M.D., for a temporary restraining order (TRO) against defendants, Jessica Baer, as Acting Director of the Division of the Professional Regulation of the Illinois Department of Financial and Professional Regulation, and the Department of Financial and Professional Regulation (Department). On February 21, 2017, plaintiff filed with this court a petition for interlocutory appeal seeking reversal of the trial court's order. We find the trial court did not abuse its discretion in denying plaintiff's complaint for a TRO.

¶ 3 I. BACKGROUND

¶ 4 On July 18, 2016, plaintiff entered into a consent order with the Department. As part of the consent order, plaintiff agreed to a minimum 12-month probationary licensure period. In addition, the consent order required plaintiff to "submit blood and/or urine specimens for toxicology testing/evaluation at frequency established by IPHP [(Illinois Professionals Health Program)] agreement through his designated aftercare program's laboratory."

¶ 5 The consent order also contained a provision requiring plaintiff's department chairperson to inform the Department immediately "if there is evidence of inappropriate behavior, professional misconduct, a violation of plaintiff's probation[,], or any violation of the laws and rules governing the practice of medicine." Additionally, pursuant to the consent order, plaintiff agreed that if he violated any of the provisions of the consent order, the Department could issue an order mandating the automatic, immediate, and indefinite suspension of his medical license. Finally, the consent order provided, upon the filing with the Department of an appeal of any suspension, plaintiff would receive a hearing within a 30-day period.

¶ 6 On February 6, 2017, the Department entered an order summarily suspending plaintiff's license to practice medicine for a minimum period of 12 months. The Department's order incorporated by reference the factual allegations in the February 3, 2017, affidavit of Ronald Romano, an investigator for the Department. In his affidavit, Romano attested that the Department received a report from the president of the medical staff of Passavant Hospital stating that on December 9, 2016, plaintiff "approached at least four individuals and discussed obtaining urine samples from them" after learning he would be subjected to random urine testing that day. The report further stated that plaintiff provided "illogical, inconsistent, and incredible explanations when questioned regarding his solicitations of his coworkers."

¶ 7 On February 14, 2017, plaintiff filed a complaint against defendants seeking a declaratory judgment, a TRO, and a preliminary injunction. Plaintiff maintained the defendants unlawfully summarily suspended his license to practice medicine for alleged violations of a prior consent order. Specifically, plaintiff alleged the Department, in suspending his license, failed to allege plaintiff violated the consent order. He further asserted the Department's entry of the suspension order without prior notice to him violated his property right to work in violation of his due-process rights under the Illinois and United States Constitutions. Finally, plaintiff argued he had no adequate remedy at law for an *ex parte* proceeding that suspended his license, through which he earns his living, pending the completion of a hearing that may not be decided for months, and that he would suffer irreparable harm if his license is suspended without a hearing and before charges against him have been proved by clear and convincing evidence.

¶ 8 On February 16, 2017, defendants filed a response to plaintiff's complaint, alleging plaintiff could not establish his entitlement to injunctive relief because he could not demonstrate that his procedural due-process rights would be irreparably violated absent the issuance of preliminary injunctive relief. Defendants further asserted plaintiff had failed to exhaust his administrative remedies and that the circuit court lacked subject matter jurisdiction to resolve the issues on a preliminary basis without the benefit of a factual record developed during an administrative proceeding.

¶ 9 The Department urged that an already scheduled March 3, 2017, hearing on the summary suspension undermined plaintiff's denial-of-due-process claims. The Department noted the statutory requirement that the impending hearing "be promptly instituted and determined." 5 ILCS 100/10-65(d) (West 2014). The Department further pointed out the State's

statutory liability for special damages to the plaintiff in the event of a finding that the summary suspension lacked a reasonable basis in fact of any kind. 225 ILCS 60/46 (West 2014).

¶ 10 On February 16, 2017, the trial court heard arguments on plaintiff's complaint for a TRO. Following the hearing, the court denied plaintiff's complaint and continued the matter for entry of a written order. A written order entered on February 21, 2017, is part of the supporting record in this matter. Although this court has not been provided a transcript of the hearing, the trial court's written order indicates two bases for its denial of plaintiff's complaint. The court found, "[p]laintiff has failed to establish that he has an inadequate remedy of law," and "[p]laintiff has failed to show likelihood of success on the merits of his claim."

¶ 11 On February 21, 2017, plaintiff filed his petition for interlocutory appeal in this court pursuant to Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2016). Defendants have not filed a response.

¶ 12 II. ANALYSIS

¶ 13 A TRO is a drastic remedy and may only be issued in exceptional circumstances and for a short duration. *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (2010). A plaintiff seeking a TRO is required to demonstrate he (1) possesses a protectible right, (2) will suffer irreparable harm without the protection of an injunction, (3) has no adequate remedy at law, and (4) is likely to be successful on the merits his action. *Id.* "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 cause can be decided on the merits." *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 542, 447 N.E.2d 288, 291 (1983).

¶ 14 Generally, the standard of review in matters of this nature is the abuse of discretion standard. *Bartlow*, 399 Ill. App. 3d at 567, 927 N.E.2d at 95. An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Illgen*, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991).

¶ 15 Here, the trial court found plaintiff failed to establish that he had an inadequate remedy at law. In light of the impending hearing on plaintiff's summary suspension and the statutory special damages available in the event of a finding that the summary suspension lacked a reasonable basis in fact of any kind, the court's ruling cannot be considered arbitrary, fanciful, unreasonable, or a view which no reasonable person would take. Accordingly, we conclude the court did not abuse its discretion in denying plaintiff's request for a TRO.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the order of the circuit court denying plaintiff's complaint for a TRO.

¶ 18 Affirmed.