2019 IL App (1st) 190727-U

No. 1-19-0727

Order filed on April 18, 2019.

Second Division

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

VILLAGE OF MELROSE PARK, Plaintiff-Respondent, v. PIPELINE HEALTH SYSTEM, LLC, SRC HOSPITAL INVESTMENTS II, LLC, PIPELINE-WESTLAKE HOSPITAL, LLC, TWG PARTNERS LLC, NICHOLAS ORZANO, and ERIC WHITAKER, Defendants-Petitioners.	)	Appeal from the Circuit Court of Cook County. No. 2019 CH 3041 The Honorable Eve M. Reilly, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justice Pierce concurred in the judgment.
Justice Pucinski specially concurred.

ORDER

¶ 1 *Held*: The circuit court erred by entering a temporary restraining order where plaintiff lacked standing and an ascertainable right that would be impacted by defendants' conduct.

¶ 2 This interlocutory appeal arises from a temporary restraining order (TRO) entered in favor of plaintiff, the Village of Melrose Park (the Village), and against defendants, Pipeline

Health Systems, LLC, SRC Hospital Investments II, LLC (SRC), Pipeline-Westlake Hospital, LLC, TWG Partners, LLC, Nicholas Orzano, and Eric Whitaker.[1] Specifically, the circuit court enjoined defendants from discontinuing medical services offered by Westlake Hospital (Westlake), terminating Westlake's employees or contracts, or failing to maintain its resources. Defendants now appeal. Because the Village failed to demonstrate that a fair question exists as to whether it possesses an ascertainable right subject to harm, we reverse the TRO and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 Defendants purchased Westlake in January 2019, only to announce the following month that they planned to close it. On February 21, 2019, defendants filed a Discontinuation Exemption Application with the Illinois Heath Facilities and Services Review Board (the Board), as required by the Illinois Health Facilities Planning Act (the Act) (20 ILCS 3960/1 *et seq.* (West 2018)). The Board scheduled a hearing for April 30, 2019. On March 7, 2019, however, the Village filed a six-count complaint against defendants in the circuit court, alleging they had falsely represented prior to their purchase of Westlake that they intended to keep Westlake open. Had the Village known defendants' representations were false, they would have objected to the sale. Furthermore, the Village claimed defendants' conduct unreasonably interfered with the health, safety and welfare of the community's residents.

¶ 5 On April 8, 2019, the Village filed a motion for a TRO to enjoin defendants from closing Westlake before the Board had the opportunity to rule on their application or from creating conditions that would require closure. Defendants responded the next day, arguing, among other things, that the Village lacked an ascertainable right affected by their conduct. On that same day,

[1]For purposes of this appeal, we do not distinguish between defendants' individual roles in this matter.

defendants issued a temporary suspension of service notice (77 Ill. Admin. Code § 1130.240(d)) and the court granted the Village's motion for a TRO. Specifically, the court temporarily enjoined defendants from discontinuing or modifying Westlake's services without Board approval, from altering the status quo by terminating Westlake's employees or contracts, and from failing to maintain the facilities, staffing and supplies necessary to provide the present scope of services and an adequate standard of care.[2] Defendants now appeal pursuant to Illinois Supreme Court Rule 307 (eff. Nov. 1, 2017).

¶ 6 ANALYSIS

¶ 7 A TRO that has been issued with notice is subject to the same requirements as a preliminary injunction. *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075 (2007). A party seeking a TRO must demonstrate that (1) it has a protectable right; (2) that right will suffer irreparable harm unless injunctive relief is granted; (3) no adequate legal remedy exits; and (4) a likelihood of success on the merits exists. *Id*. Furthermore, the court must determine whether the balance of hardships warrants injunctive relief. *Northwest Podiatry Center, Ltd. V. Ochwat*, 2013 IL App (1st) 120458, ¶ 30. While interlocutory review under Rule 307 is generally limited to determining whether the court abused its discretion in granting or denying injunctive relief (*Id*.), we review any underlying question of law *de novo* (*Northwest Podiatry Center, Ltd.*, 2013 IL App (1st) 120458, ¶ 29).

¶ 8 Standing to seek injunctive relief requires the party in question to show it has a clearly ascertainable right or interest in need of protection. *Hough v. Weber*, 202 Ill. App. 3d 674, 685 (1990). That party must show it possesses a substantive interest that is recognized by common law or statute. *In re Marriage of Stamberg*, 218 Ill. App. 3d 333, 337 (1991). Stated differently, standing requires the party seeking relief to identify an "injury to a legally recognized interest."

[2]The TRO was ordered to remain in effect until May 1, 2019.

Village of Lake in the Hills v. Laidlaw Waste Systems, Inc., 143 Ill. App. 3d 285, 293 (1986). This ensures that courts resolve actual controversies rather than address abstract questions "or cases brought on behalf of others who may not desire judicial aid." *Hough*, 202 Ill. App. 3d at 685. The party seeking a TRO need only demonstrate that it has raised a "fair question" of whether it has a protectable right. *In re Estate of Wilson*, 373 Ill. App. 3d at 1075. That being said, courts are reluctant to grant injunctive relief, which is an extraordinary remedy, unless a certain and clearly ascertainable right has been demonstrated. *Village of Lake in the Hills*, 143 Ill. App. 3d at 292.

¶ 9 Here, the Village has not identified any ascertainable right or interest recognized by common law or statute that is at stake in this matter. While the Village abstractly asserts that Westlake's closure is "a matter of public interest," this does not translate into the direct interest required to obtain a TRO. The appellate court's decision in *American Federation of State, County & Municipal Employees, Council 31 v. Ryan*, 347 Ill. App. 3d 732 (2004), does not change the result.

¶ 10 In *Ryan*, private parties and the State's Attorney of Madison County asked the circuit court to enjoin the Department of Human Services from closing the Alton Mental Health Center under the Act. *Id*. at 735. At issue was whether the movants had standing. The reviewing court recognized that the State of Illinois' powers and functions under the Act "shall not be exercised, either independently or concurrently, by any home rule unit" (20 ILCS 3960/17 (West 2004)), but found the Act was silent on whether parties other than the Illinois Attorney General could enforce the Act's provisions. *Ryan*, 347 Ill. App. 3d at 738. The court found that while the "Act does not expressly limit enforcement actions to the Attorney General, it does not expressly provide a private right of action either." *Id*. at 740. The reviewing court concluded that the

private plaintiffs lacked the right to bring an enforcement action, finding, among other things, that the statute did not reflect an implicit intent to create a private right of action because the statute was intended to benefit the public at large. *Id*. The court also concluded, however, that the State's Attorney did have the right to bring an enforcement action. *Id*. at 741.

¶ 11 The reviewing court observed that the State's Attorney's duties and powers largely paralleled those of the Attorney General. *Id*. Additionally, the State's Attorney had a statutory duty under the Counties Code to commence civil and criminal actions in which the people of Illinois may be concerned. *Id*. (citing 55 ILCS 5/3-9005(a)(1) (West 2002)). Furthermore, the people had a public interest in access to quality mental health services and the opportunity to participate in the permit process. *Ryan*, 347 Ill. App. 3d at 741. Accordingly, the State's Attorney had the duty and right to pursue such actions.

¶ 12 Here, the Village contends that it, "just like the Madison County State's Attorney, is tasked with preserving the public interest." Additionally, the circuit court below found that the Village's position was analogous to that of the State's Attorney in *Ryan*. Yet, the Village has identified no statute like the Counties Code granting it a duty, and corresponding right, which would be impacted in this instance. The Village and the State's Attorney are not similarly situated. While the Village cites cases addressing its home rule authority to enact ordinances (see *e.g.*, *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110525, ¶ 44); *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 175 (1992)), this has no bearing on whether the Village has an ascertainable right that will be impacted if a TRO does not issue in this case. Simply put, the Village has not shown that any right belonging to the Village itself is in jeopardy. See *Village of Lake in the Hills*, 143 Ill. App. 3d at 295 (finding it was not arguable that the plaintiffs were

"acting in some representative capacity for other interested or affected parties who may sustain injury as plaintiffs lack standing to argue injury to the public in general").

¶ 13 CONCLUSION

¶ 14 The Village has not shown that a fair question exists as to whether it possesses a protectable, ascertainable right that is endangered by defendants' conduct. The Village has not established standing. Consequently, the Village also failed to demonstrate it was entitled to the TRO. In light of our determination, we need not consider the parties' remaining contentions. We reverse and remand for further proceedings.

¶ 15 Reversed and remanded.

¶ 16 JUSTICE PUCINSKI, specially concurring:

¶ 17 I add this special concurrence only because this case represents a perfect example of where timing is everything. This court finds that the Village of Melrose Park has no standing for a temporary restraining order, as we must under the law. The Village has not demonstrated it has any contracts with the defendant health system, and there is nothing in the Constitution or laws of the State which give a municipality the responsibility to protect the health of its citizens as related to a private hospital. However, because the defendant health provider jumped the gun in the process of discontinuation of services and began discontinuing its work at Westlake Hospital after it filed its Discontinuation Application but before the Illinois Health Facilities and Services Review Board gives its final decision on the Discontinuation, which is expected May 1, it is entirely possible that if the Board denies the Discontinuation that it will be moot since the defendant will have literally emptied the hospital and shuts its doors. This is a matter for the legislature to resolve, but in the meantime, no matter how sympathetic a court is to the

community involved, the Village of Melrose Park does not meet the requirements for standing in this matter.