

**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).

2019 IL App (3d) 190203-UB

Order filed May 17, 2019

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

KURT DREGER, Individually and	)	Appeal from the Circuit Court
Nominally on Behalf of THE DISPENSARY,	)	of the 14th Judicial Circuit,
L.L.C., an Illinois Limited Liability Company,	)	Rock Island County, Illinois
	)	
Plaintiff-Appellant,	)	
	)	Appeal No. 3-19-0203
v.	)	Circuit No. 19-L-14
	)	
DANIEL P. DOLAN,	)	Honorable
	)	Kathleen E. Mesich
Defendant-Appellee.	)	Judge, Presiding

---

JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Lytton and McDade concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* Writ of *mandamus* issued to order the trial court to comply with the dictates of this court's mandate in plaintiff's prior appeal of the trial court's denial of his motion for injunctive relief.

¶ 2 Plaintiff Kurt Dreger filed a motion for *mandamus*, asking that this court order the Rock Island County trial court to comply with the mandate this court issued on May 7, 2019. We grant

his motion for *mandamus* relief, issue a writ of *mandamus*, and order the trial court to comply with this court's previous mandate.

¶ 3

### FACTS

¶ 4

Plaintiff Kurt Dreger and defendant Daniel Dolan each hold interests in The Dispensary, L.L.C., a state-licensed medical cannabis dispensary. Both Dreger and Dolan are required to hold principal officer licenses as members with an interest in the dispensary. Dreger had worked at The Dispensary until October 2018, when he was fired by Dolan, who serves as the dispensary's operating manager.

¶ 5

Dreger filed a complaint, alleging Dolan breached his fiduciary duties to Dreger both individually and as a part owner of the dispensary, and seeking an accounting and the appointment of a receiver for the dispensary. Dolan filed a motion to dismiss Dreger's complaint. Dreger then filed an emergency motion seeking a proportionate distribution as dictated by the operating agreement to enable him to pay his tax liability. He argued, in part, that his inability to pay his taxes due to Dolan's refusal to authorize a distribution put his principal officer license in jeopardy, which, in turn, allows Dolan to disassociate him as a dispensary member. He asked the court to order a distribution for his tax liability and enjoin Dolan from taking any actions to disassociate him.

¶ 6

On Dolan's motion, the trial court dismissed all of the counts in Dreger's complaint except one asking for the appointment of a receiver. The court denied Dreger's emergency motion and he filed an interlocutory appeal under Illinois Supreme Court Rule 307 (eff. Nov. 21, 2017). On April 25, 2019, we found Dreger was entitled to injunctive relief and remanded for the court to proceed as directed in our order. See *Dreger v. Dolan*, 2019 IL App (3d) 190203-U (*Dreger I*). On April 26, 2019, Dreger submitted an order to the trial court for the relief provided

for in our decision. Dolan objected on the basis that the trial court lacked jurisdiction since the mandate from this court had not issued. The trial court agreed and refused to enter the order as submitted by Dreger. He filed a motion in this court to immediately issue the mandate. This court granted the motion and issued the expedited mandate on May 7, 2019. *Dreger v. Dolan*, 2019 IL App (3d) 190203-U (*Dreger II*). Pursuant to the mandate, the trial court was to immediately enter a temporary restraining order (TRO) “enjoining Dolan from taking any action to disassociate Dreger from the company and compelling Dolan to cause The Dispensary to make a distribution to Dreger in the amount of \$101,017.”

¶ 7 Also on May 7, 2019, Dolan filed a motion for bond in the trial court, seeking a \$252,542.50 bond were The Dispensary required to make a distribution to Dreger. On May 8, 2019, Dreger appeared before the trial court seeking entry of an order in accord with our April 25, 2019, decision. Dreger objected to entry of the order and requested a hearing on his bond motion. The trial court again failed to comply with the dictates of the mandate and refused to enter the order submitted by Dreger. He filed a petition for a writ of *mandamus* in this court, asking us to order the trial court to comply with the mandate.

¶ 8 ANALYSIS

¶ 9 The issue for our consideration is whether to grant Dreger’s request for *mandamus* relief. He contends that he has satisfied the *mandamus* requirements and that the bases for Dolan’s objections do not prevent the trial court from complying with this court’s mandate.

¶ 10 *Mandamus* is an extraordinary remedy used to direct a public official or public body to perform official duties not involving judgment or discretion. *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 18 (citing *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999)). A plaintiff seeking *mandamus* must establish a clear right to the requested relief, a clear duty of the public

official to act and clear authority in the official to comply with the requested relief. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555 (2002).

¶ 11 We find that Dreger has satisfied the requirements for a writ of *mandamus* to issue. He has established a clear right to the requested relief. Dreger's ability to remain a member and owner of The Dispensary is the clear right. He needs protection for that right in that without the distribution from the dispensary, Dreger would not be able to satisfy his tax liability, which would threaten his ability to hold a principal officer license, and in turn, remain a member and owner of The Dispensary (or any dispensary). Dreger also has a right to timely execution by the trial court of the mandate issued by this court. See *O'Donnell v. Sears, Roebuck & Co.*, 71 Ill. App. 3d 1, 7 (1979) (*mandamus* proper vehicle for relief where trial court refused to enter judgment).

¶ 12 Dolan argues that Dreger does not have a clear right in need of protection because Illinois Supreme Court Rule 369(c) (eff. July 1, 1982) and his motion for bond prevented the trial court from complying with this court's order.

¶ 13 Illinois Supreme Court Rule 369(c) (eff. July 1, 1982) provides that on remand from the reviewing court for a new trial or a hearing, the trial court shall reinstate the case after the mandate is filed and with 10-day notice to the opponent. Dolan contends that the trial court was required to give him 10-day notice after reinstating the case and before the court could enter the order as directed by this court. Dolan appeared on May 7, 2019, and filed a motion for bond. He thus submitted to the jurisdiction of the court and waived the 10-day notice requirement. It was not a special appearance and Dolan did not object on jurisdictional grounds. See *Cigan v. St. Regis House Hotel*, 72 Ill. App. 3d 884, 887 (1979) (voluntary general appearance waived any objections to notice). Moreover, our remand was not for a new trial or a hearing. Rather, we

remanded with specific directions for the trial court to enter an order enjoining Dolan and requiring a distribution to Dreger. Accordingly, Rule 369(c) has no application to this case.

¶ 14 Dreger's motion for bond does not aid his cause. This court issued its mandate on May 7, 2019, and the following day, Dolan filed a motion for bond. The motion was the first time in the proceedings that Dolan sought a bond be imposed. Part of the remedy Dreger sought in his initial complaint was a distribution from The Dispensary to enable him to satisfy his tax liability. In the first appeal in this matter, Dreger also sought a distribution. Dolan was aware Dreger was seeking a cash payout but did not seek a bond requirement until this case was back in the trial court on remand. We find that he missed his opportunity to seek bond by failing to ask for it in his prior pleadings. See *Hoover v. Crippen*, 151 Ill. App. 3d 864, 869 (1987) (finding issue of bond waived where defendant failed to ask for bond or object to the lack of bond).

¶ 15 Even if Dolan had not waived the issue of bond, the trial court lacks the authority to consider his motion to require bond. The trial court may only take the actions specified in the mandate. See *American National Bank & Trust Co. v. Pennsylvania R.R. Co.*, 40 Ill. 2d 186, 192-93 (1968) (court has no authority "to take any action other than in compliance with that mandate"). We find that the trial court's decision to consider Dolan's Rule 369(c) and bond arguments was not authorized and does not negate Dreger's clear right in need of protection.

¶ 16 Dreger's motion for *mandamus* establishes the other requirements necessary for *mandamus* to issue. The trial court has a clear duty to comply with the orders of this appellate court. See *Ertl v. City of De Kalb*, 2013 IL App (2d) 110199, ¶ 21 (trial court must obey "precise and unambiguous directions in mandate"). Finally, the trial court has the authority to issue the TRO and order the distribution to Dreger. See 735 ILCS 5/11-101, 11-102 (West 2016) (authorizing court to provide injunctive relief).

¶ 17 We issue a writ of *mandamus* commanding the trial court of Rock Island County to follow the directives set forth in this court’s prior order entered April 25, 2019. See *Daley v. Laurie*, 106 Ill. 2d 33, 40 (1985) (“A writ of *mandamus* may also be issued to command an inferior court to obey the opinion and mandate of a reviewing court”).

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we grant Dreger’s motion for *mandamus* relief, issue a writ of *mandamus* and direct the trial court to immediately comply with this court’s mandate issued May 7, 2019.

¶ 20 Writ of *mandamus* issued. Cause remanded.