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FIFTH DISTRICT

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).

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Honorable
Donald M. Flack,
Judge, presiding.

¶ 3

FACTS

¶ 4 On July 3, 2013, plaintiff, Thomas DeVore, *pro se*, filed a first amended petition for writ of *mandamus* against defendants, Howard Elmore and the Bond County Board. In the petition, DeVore alleged that Elmore is chairman of the Bond County Board and that in such position he was obligated to comply with section 6-15 of the Property Tax Code (35 ILCS 200/6-15 (West 1994)) concerning political affiliations of members of the Board of Review. The statute reads as follows:

"§ 6-15. Political makeup and compensation. The board of review appointed under Section 6-5 shall consist of 2 members affiliated with the political party polling the highest vote for any county office in the county, and one member of the party polling the second highest vote for the same county office at the last general election prior to any appointment made under this Section. Each member of the board of review shall receive an annual salary to be fixed by the county board and paid out of the county treasury." 35 ILCS 200/6-15 (West 1994).

DeVore further alleged that of the current members of the Board of Review prior to Elmore's appointment one is a Republican, Howard Wise, and one is a Democrat, Craig Hudson. The petition further alleges that on July 2, 2013, Elmore, with the approval of the Board, appointed Ronald Shevlin, a Democrat, to be the third member of the Board of Review. He further alleges that at the last general election, November 6, 2012, two contested county office elections were filled, circuit clerk and coroner, and that the highest number of any votes by any candidate in these two elections were cast in favor of Rex Catron, a Republican for Bond County circuit clerk. Accordingly, DeVore alleges that appointment of a Democrat to fill the next vacancy on the Board of Review is without legal justification or authority and that Elmore has a nondiscretionary duty pursuant to the statute cited above to appoint a Republican. DeVore prayed that the court rule the appointment of Shevlin invalid and order

Elmore to appoint pursuant to the statute.

¶ 5 On July 3, 2013, DeVore and the attorney for Elmore appeared before the circuit court of Bond County. After argument, the court ruled as follows:

"[DeVore] appears on request for TRO. The court reviews [DeVore's] motion and hears briefly from [DeVore] and counsel for [Elmore and Bond County Board]. The court hereby finds [DeVore] has failed to meet his burden in establishing likelihood of irreparable harm or likelihood of success on the merits. Case set for hearing July 10, 2013, at 10:30 a.m. for [DeVore] to present evidence and [Elmore and Bond County Board] to respond with evidence on whether a preliminary injunction should issue."

¶ 6 After this ruling, DeVore filed with this court a petition to review the denial of entry of a temporary restraining order by the circuit court and memorandum in support alleging the history of this action, conceding that the court properly treated his request for relief as a request for temporary restraining order and that, at the time of hearing, Elmore had not filed an answer. Citing *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 542, 447 N.E.2d 288, 291 (1983), DeVore alleged that he had presented a "fair question" upon which the circuit court should have preserved the status quo until his amended petition could be determined on the merits. He further alleged that a Republican candidate had received the highest number of votes for county office and, therefore, the duty of the Bond County Board was clear as indicated above. In essence, DeVore asked for a finding that the trial court abused its discretion in denying his request for a temporary restraining order and prayed that this court enter a temporary restraining order enjoining Shevlin from participating as a member of the Board of Review until a preliminary injunction hearing. Attached was the summary of the results of the 2012 general election in Bond County.

¶ 7 Defendants filed in this court a petition for leave to file answer to petition to review denial of entry of a temporary restraining order by the circuit court and memorandum in support thereof. The State's Attorney of Bond County filed a request for leave to file a late response alleging that no party would be prejudiced by granting that filing. Over DeVore's objection, the filing of the late response is allowed. In its response, defendants indicate that the Board of Review is currently meeting and operating, but deny that any decisions of the newly constituted Board of Review are irreversible or prejudice citizens of Bond County. As to the above cited statute, defendants refer to the Illinois Constitution to determine which offices are county offices. The response alleges that, pursuant to the Illinois Constitution delineating county offices, article VII, section 4, the office of circuit clerk is not a county office, but rather is a nonjudicial office of the judiciary, pursuant to article VI, section 18, of the Illinois Constitution. Accordingly, defendants agree a Republican did not get the highest vote total for a contested county office. The election summary report filed by Bond County, Illinois, for the 2012 general election indicates that for the office of coroner, the Democratic candidate received 3,642 votes, while the Republican candidate received 3,512 votes. The other races indicated by this filing were either federal, state legislative, county board, involving a smaller number of votes in total, or judicial. Accordingly, defendants claim that DeVore failed to allege that a Republican candidate received a higher number of votes in a contested county office than did a Democrat and that the office of circuit clerk is not a county office. The response further alleges that there is no evidence of injury suffered by DeVore or anyone else and that DeVore personally has not been impacted by any decision made by the Board of Review and does not direct the court's attention to any other harm or whether said harm would be irreversible. In conclusion, defendants allege that the decision of the circuit court of Bond County was not an abuse of discretion.

¶ 8 DeVore filed a motion to strike and objection to defendants' request for leave to file

an answer, essentially arguing that defendants' response was out of time and that defendants were attempting to introduce new evidence in this manner as these arguments were not made in front of the trial judge. We deny the motion to strike and overrule the objection to defendants' request for leave to file an answer and proceed to consider the merits of this appeal.

¶ 9

ANALYSIS

¶ 10 "A temporary restraining order is a drastic remedy which may issue only in exceptional circumstances and for a brief duration." *American Federation of State, County & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966, 773 N.E.2d 1196, 1198 (2002). A trial court should not enter a temporary restraining order unless it finds the order necessary to prevent immediate and irreparable harm to the party seeking the order. *Diamond Savings & Loan Co. v. Royal Glen Condominium Ass'n*, 173 Ill. App. 3d 431, 434, 526 N.E.2d 372, 375 (1988). The purpose of a temporary restraining order is to allow the trial court to preserve the status quo until it can hold a hearing to determine whether it should grant a preliminary injunction. *Stocker Hinge Manufacturing Co.*, 94 Ill. 2d at 542, 447 N.E.2d at 291. Before issuing a temporary restraining order, the trial court must find that (1) the party seeking relief has a protectable right, (2) they will suffer irreparable injury if injunctive relief is not granted, (3) they have no adequate remedy at law, and (4) there is a likelihood that they will be successful on the merits of their action. *Murges v. Bowman*, 254 Ill. App. 3d 1071, 1081, 627 N.E.2d 330, 337 (1993). The party seeking a temporary restraining order 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 case can be decided on the merits. *Stocker Hinge Manufacturing Co.*, 94 Ill. 2d at 542, 447 N.E.2d at 291. It is well settled that a grant or denial of a temporary restraining order is within the sound discretion of the trial court.

C.D. Peters Construction Co. v. Tri-City Regional Port District, 281 Ill. App. 3d 41, 47, 666 N.E.2d 44, 48 (1996); *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567, 927 N.E.2d 88, 95 (2010). We will reverse the trial court's denial of a temporary restraining order only if the trial court abused its discretion. *C.D. Peters Construction Co.*, 281 Ill. App. 3d at 47, 666 N.E.2d at 48; *American Federation of State, County, & Municipal Employees*, 332 Ill. App. 3d at 967, 773 N.E.2d at 1198. We conclude that the trial court did not abuse its discretion.

¶ 11 As referenced by defendants, the Illinois Constitution of 1970, article VII, section 4, lists county officers. In subparagraph (c) of section 4, county officers are delineated:

"(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance." Ill. Const. 1970, art. VII, § 4(c).

¶ 12 In contrast, article VI, section 18, of the Illinois Constitution deals with clerks of courts. Subparagraph (b) of section 18 reads as follows:

"(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause." Ill. Const., 1970, art. VI, § 18(b).

Our supreme court has held that clerks of circuit courts are not county officials, but are

nonjudicial members of the judicial branch of government. *Drury v. County of McLean*, 89 Ill. 2d 417, 433 N.E.2d 666 (1982); *County of Kane v. Carlson*, 116 Ill. 2d 186, 507 N.E.2d 482 (1987).

¶ 13 Upon examination of this record, we note that there is no basis for the court finding that any irreparable harm would be done due to the actions of the current appointee, Ronald Shevlin. To hold otherwise would require an assumption that decisions of the Board of Review are not subject to appeal by administrative review, which no one party contends. We note that the highest number of votes cast for a *county* officer was for coroner, and that the Democratic candidate, Anthony R. Brooks, received 3,642 votes, 50.91% of the votes cast for that office in the 2012 general election. Accordingly, the highest number of votes cast for a county office in the 2012 general election was cast for a Democratic candidate. Considering all of the above, the record supports the trial court's conclusion that there was little likelihood of success in DeVore's quest. Given the status of the record and the Illinois Constitution, the statutes, and the authorities cited above, we conclude that the circuit court of Bond County did not abuse its discretion in declining to grant a temporary restraining order on DeVore's amended petition.

¶ 14 DeVore argues that the arguments and allegations in defendants' answer to the petition are new arguments that were not made to the circuit court in the brief hearing before the court rendered its decision and, therefore, should not be considered by this court. We disagree with DeVore's position. The circuit court denied DeVore's request for a temporary restraining order based on the record before it, which essentially was the first amended petition for writ of *mandamus*, the allegations as to appointment, the allegations in said petition as to contested "county" offices, and the election summary report from the 2012 general election referred to above. Included also was a motion for preliminary injunction with notice. The matters argued by both parties are contained in the record before the circuit

court. This court, on review, is not prohibited from examining relevant authority in determining whether a circuit judge has abused his discretion. The record indicates that the circuit judge, based on the face of the amended petition and the attachments, including the vote returns from 2012, concluded that no irreparable harm was being done by a temporary restraining order, and further that there was little likelihood that DeVore would succeed in his position. We conclude that the circuit court did not abuse its discretion in reaching these conclusions.

¶ 15 Accordingly, we affirm the order of the circuit court of Bond County.

¶ 16 Affirmed.