

STATE OF MICHIGAN
IN THE 35TH CIRCUIT COURT FOR SHIAWASSEE COUNTY

MICHIGAN DEPARTMENT OF,
HEALTH AND HUMAN SERVICES,
Plaintiff,

Case No. 20-4700-CZ
Hon. Matthew J. Stewart

v

KARL MANKE,

Defendant.

Opinion & Order

DENYING PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff asks the Court to issue a temporary restraining order (“TRO”) without notice to the Defendant. The Court denies the request.

Under the Public Health Code, Plaintiff may petition the Court to restrain a practice that requires action to avoid, correct, or remove imminent danger. MCL 333.2251(2). Plaintiff seeks relief beyond merely petitioning the Court, however. Plaintiff asks the Court to issue a TRO under MCL 333.2255. As a form of injunctive relief, TROs are extraordinary remedies. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8 (2008).

The court rules set forth the requirements for TROs at MCR 3.310(B)(1)(a) – (c). Generally, an applicant must show that harm will result from the delay required to provide notice, or that notice itself will cause adverse action. MCR 3.310(B)(1)(a). Plaintiff does not argue that notice will precipitate adverse action.

Thus, this motion presents a narrow question. Has Plaintiff shown that irreparable injury will result from the delay required to notify Defendant of this action?

The Court answers “no.” Defendant should have an opportunity to be heard.

Plaintiff alleges that Defendant has operated in violation of the Governor’s Executive Orders (“EOs”) since May 4, 2020. Plaintiff argues that Defendant’s business is an imminent danger to the health or lives of individuals in this state. However, Plaintiff did not file this action until May 11, 2020, one week later.

On May 8, 2020, Plaintiff issued an Imminent Danger and Abatement Order (“abatement order”). While Defendant worked at his place of business, Plaintiff served the abatement order on him, employing troopers of the Michigan State Police as process servers.¹ The abatement order required Defendant to close his business immediately. Violation of the abatement order is a misdemeanor punishable by up to 6 months of incarceration. MCL 333.2261. Similarly, violation of an EO is also a misdemeanor. MCL 10.33; MCL 30.405(3). Although Plaintiff contends Defendant has committed these misdemeanors, the troopers apparently did not take Defendant into custody for committing criminal acts in their presence. This would have immediately ended the imminent public health threat claimed by Plaintiff.

However, Plaintiff did not enforce its own abatement order. Instead, it waited through the weekend to file this action. If the public

¹ The Court has no personal knowledge of these facts, but gleaned them from local and national news coverage.

health did not require Defendant's immediate warrantless arrest, then the public health does not require depriving him of notice.

Plaintiff further argues that no notice is required because Defendant is already aware of the EOs and continues to operate in defiance of them. Plaintiff does not demonstrate how this supports the request for a TRO. The court rules contain no such provision. Whether or not Defendant has personal knowledge of the EOs is irrelevant to this motion. Plaintiff must show that injury will result unless Defendant receives no notice of these proceedings.

Notice and the opportunity for a hearing are not empty formalities; they are the core components of due process. Plaintiff has merely recited its conclusion that irreparable injury will result unless the Court grants the TRO immediately and without notice to Defendant. The Court disagrees.

Plaintiff has not shown that irreparable injury will result from the delay required to provide Defendant notice.

THE COURT THEREFORE ORDERS THAT Plaintiff's Motion for a Temporary Restraining Order is DENIED. Plaintiff may schedule this matter for a hearing to obtain a preliminary injunction with notice to Defendant.

Dated: 5-11, 2020

/s/
Hon. Matthew J. Stewart, P58047