

[Cite as *Chandlers Lane Condominium Owners Assn. v. Gillespie*, 2017-Ohio-2862.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105097

**CHANDLERS LANE CONDOMINIUM
OWNERS ASSOCIATION**

PLAINTIFF-APPELLEE

vs.

JUDY GILLESPIE

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-867593

BEFORE: Jones, J., McCormack, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: May 18, 2017

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant, Judy Gillespie, appeals from the trial court’s September 30, 2016 judgment granting a permanent injunction in favor of plaintiff-appellee, Chandlers Lane Condominium Owners Association, and against her. For the reasons that follow, we reverse and remand.

{¶2} On August 12, 2016, Chandlers Lane initiated this action by filing a verified complaint against Gillespie. The caption of the complaint requested an ex parte temporary restraining order and an “expedited request for hearing on preliminary injunction.” The body of the complaint referred to the association’s request for a preliminary injunction and its “motion for a permanent injunction”; in addition to the caption not requesting a permanent injunction, no separate motion for a permanent injunction was filed by Chandlers Lane.

{¶3} On August 16, the trial court held an ex parte pretrial with the association and set the matter for a September 1 preliminary injunction hearing. The docket reflects that the association appeared at the September 1 hearing through counsel and that Gillespie appeared pro se. The docket also reflects that Gillespie had not yet been served with the complaint. Because of the lack of service, the trial court reset the matter for a September 22, 2016 hearing on the association’s “motion for preliminary injunction.”

{¶4} The docket reflects that Gillespie was served with Chandler Lane’s complaint on September 22, and that on that same day the trial court held a hearing on the

association's verified complaint and motion for a "permanent" injunction; Gillespie appeared at the hearing pro se. At the conclusion of the hearing, the trial court found that the association had demonstrated, by a preponderance of the evidence, that Gillespie was a nuisance and had engaged in harrassing behavior and, therefore, granted a permanent injunction in favor of Chandlers Lane and against Gillespie. Gillespie now appeals, raising the following assignments of error for our review:

- I. The trial court abused its discretion and erred by entering judgment against appellant based upon only a preponderance of the evidence.
- II. The court erred by ordering injunctive relief having made no finding that there was a need to prevent irreparable harm.
- III. The court erred by ordering injunctive relief having made no finding that there was no adequate remedy at law.
- IV. The court erred by conducting a hearing right after the defendant had just been served with a copy of the complaint in violation of her constitutional right to due process.

{¶5} A trial court's decision to grant or deny a request for injunctive relief is solely within its discretion; thus, that decision will not be disturbed upon appeal absent a clear showing of an abuse of discretion. *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

{¶6} In Ohio, injunctions are classified as (1) a temporary restraining order, which may be issued ex parte without notice in an emergency situation and which lasts only long enough for a hearing to be held on the matter; (2) a preliminary injunction that is issued after notice and, normally, a hearing, and is used only to maintain the status quo until such time that a fair trial on the merits is held; and (3) a permanent injunction that is issued after

a fair trial on the merits. *Bexley v. Duckworth*, 10th Dist. Franklin No. 99AP-414, 2000 Ohio App. LEXIS 817, 10-11 (Mar. 7, 2000), citing McCormac, *Ohio Civil Rules Practice*, Section 14.08, at 403 (2 Ed.1992).

{¶7} Gillespie has not made the transcript of the September 22, 2016 hearing part of the record, and the association contends that we therefore have to presume the regularity of the proceeding. It is true that we generally presume the regularity of a proceeding when there is no transcript, *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 17, and that the duty to provide a transcript falls on the appellant. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

{¶8} Nonetheless, on this record, we find that the trial court abused its discretion in granting a permanent injunction in favor of the association, and against Gillespie. Although a court may consolidate the merits of a complaint with a motion for a preliminary injunction under Civ.R. 65(B)(2),¹ it is error for a court to consider permanent injunctive relief absent notice to the parties. *Ohio Assn. of Pub. School Emp. v. Mayfield Bd. of Edn.*, 8th Dist. Cuyahoga Nos. 44932 and 45118, 1983 Ohio App. LEXIS 12274, 5 (June 23, 1983). Not only was there no indication that the matter was going to go forward for consideration of a permanent injunction on September 22, 2016, but Gillespie had only been served with the complaint that same day. As such, we find Gillespie's fourth assignment of error well taken and dispositive of this appeal and, therefore, do not

¹See also *Turoff v. Stefanac*, 16 Ohio App.3d 227, 229, 475 N.E.2d 189 (8th Dist.1984).

consider her other assignments of error.

{¶9} Judgment reversed; case remanded for further proceedings.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR