

**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) 190332-U

Order filed June 19, 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. 3-19-0332
v.	)	Circuit No. 19-L-14
	)	
DANIEL P. DOLAN,	)	Honorable
	)	John L. McGehee
Defendant-Appellee.	)	Judge, Presiding

---

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

---

**ORDER**

¶ 1 *Held:* The trial court erred when it denied plaintiff's request for injunctive relief where plaintiff satisfied the requirements for the issuance of a temporary restraining order until his motion for the appointment of a receiver is determined.

¶ 2 Plaintiff Kurt Dreger sought a hearing on his request for a receiver to oversee operations of The Dispensary, a medical cannabis company in which he and defendant Daniel Dolan had ownership interests. After the trial court continued the receivership hearing on Dolan's motion, Dreger orally moved for an order to maintain the status quo of The Dispensary until the

receivership hearing. The trial court denied the motion. Dreger appealed. We reverse and remand.

¶ 3

### FACTS

¶ 4

This appeal is the next in a series that began when plaintiff Kurt Dreger brought a multi-count complaint against defendant Daniel Dolan, alleging Dolan engaged in misconduct in the operation of The Dispensary. He also filed a motion for the appointment of a receiver, for which a hearing was scheduled for March 18, 2019. Dolan moved to dismiss and the trial court dismissed all the counts except his request for a receiver. The trial court also denied Dreger's motion seeking a distribution from The Dispensary to enable him to pay the tax liabilities connected with his ownership interests. Dreger appealed the denial and we reversed and remanded, directing the trial court to order Dolan to make an immediate distribution to Dreger to allow him to pay his taxes. *Dreger v. Dolan*, 2019 IL App (3d) 190203-U.

¶ 5

On remand, Dolan challenged the trial court's jurisdiction and the trial court agreed and did not order as directed in our decision. Dreger sought, and we granted, the immediate issuance of the mandate. *Dreger v. Dolan*, 2019 IL App (3d) 190203-UB. The mandate issued, and the same day, the trial court entered an order directing a distribution from The Dispensary to Dreger for tax purposes. The court also enjoined Dolan from taking any actions to disassociate Dreger from The Dispensary until the receivership hearing. Dolan then filed a motion in this court seeking to supplement the record under Illinois Supreme Court Rule 329 (eff. July 1, 2017). Dreger moved to strike and sought sanctions. These motions remain pending.

¶ 6

Meanwhile, in the trial court, Dreger filed an amended complaint, alleging breach of fiduciary duty and breach of contract, both individually and derivatively. He also sought an accounting and requested the appointment of a receiver. The request for a receiver was based on

a number of instances set forth in the complaint in which Dreger alleged Dolan engaged in self-dealing to the detriment of Dreger and The Dispensary. Dreger scheduled a hearing on his request for the appointment of a receiver for June 7, 2019.

¶ 7 On June 6, Dolan filed a motion to strike or continue Dreger’s request for a receiver. Dolan also filed a motion to disqualify Dreger’s counsel, alleging conflict of interest. The following day, the trial court heard arguments on Dolan’s motion to disqualify and determined it was necessary to decide that issue before addressing Dreger’s motion and continued the receiver hearing generally. Dreger then orally sought a temporary restraining order (TRO) preventing Dolan from self-dealing pending the determination of Dreger’s motion for a receiver. The trial court denied the motion. Dreger timely filed an interlocutory appeal under Illinois Supreme Court Rule 307 (eff. Nov. 1, 2017) challenging the trial court’s denial of his request for injunctive relief.

¶ 8 ANALYSIS

¶ 9 The issue in this interlocutory appeal is whether the trial court erred when it denied Dreger’s oral motion for a TRO. Dreger argues that the circumstances dictate that injunctive relief be provided to prevent Dolan from self-dealing and to maintain the status quo until the trial court determines his request for the appointment of a receiver. We agree.

¶ 10 As a preliminary matter, Dolan argues that Dreger waived his right to challenge the denial of his request to enjoin Dolan from self-dealing when he failed to appeal the trial court’s entry of the order on remand from this court. We disagree. Dreger asked the trial court for injunctive relief when the court extended, on Dolan’s motion, Dreger’s motion for the appointment of a receiver. This ruling was entered on June 7, 2019. Dreger could not appeal by May 21, 2019, as Dolan surmises.

¶ 11 Illinois Supreme Court Rule 307(a), (d) (eff. Nov. 1, 2017) allows for interlocutory appeals as a right for certain decisions of the trial court, including the grant or denial of a motion for a TRO. When deciding an interlocutory appeal under Rule 307, this court considers only whether the parties made a sufficient showing in the trial court to support its grant or denial of the TRO. *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 14. A TRO is a “quick, short-term process that is intended to maintain the status quo.” *Harper v. Missouri Pacific R.R. Co.*, 264 Ill. App. 3d 238, 243 (1994). A party seeking a TRO must demonstrate that (1) it has a protected right, (2) it will be irreparably harmed if injunctive relief is not granted, (3) the remedy at law is inadequate, and (4) there is a likelihood of success on the merits. *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634 (2005). The party requesting a TRO need only demonstrate a fair question about his right and that the trial court should protect it by preserving the status quo until the case is decided on its merits. *Id.* We review the trial court’s denial of a motion for injunctive relief for an abuse of discretion. *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1076 (2007).

¶ 12 We first look at whether Dreger demonstrated a right in need of protection. Dreger asked the trial court to enjoin Dolan from self-dealing until the court decides whether to appoint a receiver. Dreger originally sought the appointment of a receiver because of concerns that Dolan was using the assets of The Dispensary to further his own interests to the detriment of Dreger and The Dispensary. His concerns have not changed. Dreger has pointed to various instances which he claims constitute self-dealing by Dolan and involved substantial amounts of money being regularly disbursed from The Dispensary. As an owner of The Dispensary, Dreger has a right in need of protection.

¶ 13 Dreger must also establish that he will suffer irreparable harm to his right if the trial court does not issue the TRO. According to Dreger, Dolan's alleged self-dealing jeopardizes the continued existence of The Dispensary and threatens the commencement of other business opportunities. Dreger sets forth examples where Dolan made significant disbursements from The Dispensary to what Dreger claims are Dolan's sole business ventures. Dolan claims on appeal as operating manager, he has authority to make the questioned distributions, suggesting that he will continue to engage in what Dreger alleges is self-dealing. Since Dolan terminated Dreger's employment at The Dispensary and has limited his access to information regarding its operation, Dreger has no avenue to ensure that Dolan does not engage in self-dealing.

¶ 14 While Dolan asserts on appeal that The Dispensary has sufficient assets such that the challenged disbursements do not threaten its existence, he has conversely argued to this court that requiring it to make a \$101,017 disbursement to Dreger for payment of taxes would leave it in the difficult position of paying Dreger or meeting its payroll obligations. With Dolan in sole control of The Dispensary without any oversight from Dreger and based on the pattern of disbursements by Dolan, we find Dreger established he would suffer irreparable harm if Dolan is not enjoined from self-dealing.

¶ 15 The next requirement Dreger must satisfy is that his remedy at law is inadequate. Dolan continues to obstruct Dreger's efforts to seek an adequate remedy at law. Dreger filed his first motion to set a hearing for the appointment of a receiver on January 24, 2019. After other challenges, the motion was set for a June 7, 2019, hearing. On June 6, 2019, Dolan moved to continue the hearing. At this point, the parties have agreed to schedule a hearing on motion to disqualify after July 4, 2019. Dolan has thwarted Dreger's attempts to have the court decide whether the appointment of a receiver is warranted while continuing to engage in the very

conduct that Dreger is seeking to deter. Between January and June, Dolan has had sole control of The Dispensary and Dreger is still waiting for his motion for the appointment of a receiver to be heard.

¶ 16 We also consider that although an award of monetary damages would be an adequate remedy that would prevent the issuance of a TRO in most cases involving a dispute between two business partners, the cannabis business and the ability to engage in it are so unique as to require an exception to the normal rules. A medical cannabis dispensary is a highly regulated business entity and the opportunity to operate such a business has been limited to the current license holders, which include Dreger and Dolan collectively as The Dispensary. See 410 ILCS 130/115(a), (b) (West 2016) (number of dispensary registrations limited to 60 and may only operate if issued a registration). See also 410 ILCS 130/130 (rules and procedures regarding operation and administration of dispensaries); 68 Ill. Adm. Code 1290.10 *et seq.* (2018) (same). If Dolan is engaging in self-dealing, the facility may be at risk of being unable to meet its obligations and could become defunct. If that happens, it is unlikely these license holders would ever be allowed to operate a like kind facility again. See 410 ILCS 130/185 (West 2016) (State may suspend or revoke registration); 68 Ill. Adm. Code 1290.510 (2018) (bases to suspend or revoke a registration). A monetary award would be inadequate to compensate for that loss. Given the foregoing, Dreger has demonstrated that he is without an adequate remedy at law.

¶ 17 Finally, we consider that Dreger has a likelihood of success on the merits. In his amended complaint, Dreger alleges breaches of fiduciary duty and contract and seeks an accounting and a receivership. Dreger has submitted various examples of purported self-dealing conduct in which Dolan has engaged in the past and continues to engage. At the very least, Dreger has raised viable concerns that warrant a hearing so the trial court may determine whether the concerns are

justified. Dolan asserts he has unfettered discretion as operating manager, indicating he will continue to ignore Dreger's concerns or disapproval of the disbursements from The Dispensary. Dolan's reticence to allow Dreger to move forward on his motion for the appointment of a receiver suggests Dolan, too, believes Dreger has a likelihood of success on the merits.

¶ 18 Moreover, Dolan's authority as operating manager does not negate the fiduciary responsibility he owes to Dreger as a member in The Dispensary. See *800 S. Wells Commercial LLC v. Cadden*, 2018 IL App (1st) 162882, ¶ 32 (manager of manager-managed LLC owes fiduciary duties to company and other members). The operating agreement provides that Dolan owed The Dispensary and its members a duty of loyalty and bound him to discharge his duties with good faith and fair dealing. See Operating Agreement, sec. 3.02(a), (b) (describing manager's duty of loyalty to The Dispensary and its members). Any conduct by Dolan that would violate his duty of loyalty required full disclosure by Dolan and authorization or ratification by Dreger as a member. *Id.* at 3.02(c). See also 805 ILCS 180/15-1(d)(10) (West 2016) (member approval required when manager sells, leases, exchanges or disposes of "all, or substantially all, of the company's property"). As such, Dreger may very well be successful on the merits. Under the circumstances, Dreger has established the likelihood of his success on obtaining the appointment of a receiver.

¶ 19 We find that Dreger has satisfied the requirements for the issuance of a TRO to preserve the status quo until his motion for the appointment of a receiver is decided. See *Streif v. Bovinette*, 88 Ill. App. 3d 1079, 1084 (1980) (objective of injunction is to "preserve the status quo between the parties, defined as the last, actual, peaceable and uncontested status preceding the instant controversy"). On remand, we direct the trial court to issue a TRO enjoining Dolan

from engaging in the conduct Dreger has identified as self-dealing until such time as the court hears Dreger's motion for the appointment of a receiver.

¶ 20

#### CONCLUSION

¶ 21

For the foregoing reasons, the judgment of the circuit court of Rock Island County is reversed and the cause remanded with directions.

¶ 22

Reversed and remanded with directions.