

NOTICE
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2019 IL App (5th) 180535-U

NO. 5-18-0535

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

COLLINSVILLE AREA RECREATION DISTRICT,)	Appeal from the
an Illinois Park District,)	Circuit Court of
)	Madison County.
Plaintiff and Counterdefendant-Appellee,)	
)	
v.)	No. 16-CH-190
)	
WILLIAM C. WHITE,)	Honorable
)	Clarence Harrison II,
Defendant and Counterplaintiff-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justice Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court erred in entering preliminary injunction on unverified complaint lacking any underlying cause of action.
- ¶ 2 Defendant, William C. White, filed a notice of interlocutory appeal as of right pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), against an order of mandatory injunction entered by the circuit court of Madison County. Plaintiff, Collinsville Area Recreation District (hereinafter, CARD), requested mandatory injunctive relief to compel defendant to repair a bridge as required by the language of an easement between the parties. The circuit court ordered that CARD could enter onto

defendant's land for purposes of effectuating the repairs itself, and that a later hearing would resolve which party would be responsible for the repair costs and in what amount.

We reverse.

¶ 3 CARD is an Illinois Park District organized and operating pursuant to the Illinois Park District Code. See 70 ILCS 1205/1-1 *et seq.* (West 2016). CARD owns and operates a golf course known as Arlington Greens Golf Course in Granite City, Illinois. Defendant owns certain real estate adjacent to Arlington Greens Golf Course. The paved roadway entrance into the golf course goes over a large culvert, which separates a lake adjacent to the golf course. The area where the road crosses the culvert, known as the bridge, is owned by defendant. The bridge serves as the only method of ingress and egress from the golf course.

¶ 4 In 1965, defendant's predecessor in interest granted a permanent easement in favor of CARD's predecessor in interest to use the roadway/bridge to access the golf course.

The permanent easement provides in part:

“Grantors covenant and agree that said Easement shall be a permanent covenant running with the land of Grantee, and may be used by Grantee, its agents, servants and invitees, for road purposes, for the purpose of ingress and egress to the property and land of Grantee, without interruption or interference. Grantors shall at all times keep and maintain said roadway in good condition, without cost to the Grantee.”

¶ 5 In November 2015, CARD received a letter from defendant in which he identified himself as the new owner of certain real estate adjacent to the golf course. In February

2016, defendant sent another letter to CARD indicating his intention to close the bridge on March 31, 2016. The bridge would be closed for the remainder of 2016 and likely into 2017. Because defendant's plan would have both interrupted and interfered with CARD's use of the bridge, thereby rendering the golf course inaccessible to the general public, CARD responded to defendant's letter by demanding that defendant not close the bridge. Defendant, referring to the easement as a temporary revocable license, again stated that the bridge would be closing on March 31, 2016.

¶ 6 On March 23, 2016, CARD sought a temporary restraining order, a preliminary injunction and a permanent injunction against defendant, or any agent, vendor, employee or worker on his behalf, from interfering with or in any way interrupting the use of the easement over defendant's land by CARD, its employees, agents and invitees, including but not limited to closing, blocking, damaging or destroying the bridge or roadway on defendant's real estate. Additionally, CARD requested that defendant be prevented from stopping or harassing any passerby traveling across the defendant's land, and that defendant further be prevented from relocating, damaging or even touching CARD's mailbox or any improvement or item erected or installed by CARD on defendant's real estate.

¶ 7 A temporary restraining order without notice was granted to CARD on March 23, 2016, temporarily restraining defendant from interfering with or in any way interrupting CARD's use of the easement, including but not limited to closing, blocking, damaging, or destroying the bridge or roadway on defendant's real estate. A preliminary injunction

was entered granting the same relief on March 28, 2016. On June 9, 2016, this court ordered that the preliminary injunction would remain in force until further order.

¶ 8 In the interim, defendant has not interfered with CARD's use of the bridge, but defendant also has not repaired or maintained the bridge. Believing that the bridge was nearing collapse and/or failure, on May 14, 2018, CARD filed a motion to amend the preliminary injunction by interlineation seeking an order that defendant was to locate a contractor of adequate skill to provide a bid for repairs to the easement in order to place it in serviceable order, with work to begin within 30 days of the court's order. The motion also contained a request for specific performance, seeking the same relief as the motion to amend the preliminary injunction. Defendant filed an objection to CARD's motion to amend on July 11, 2018, pointing out that CARD was alleging a different cause of action without permission of the court, and that CARD was asking for relief not prayed for in its complaint.

¶ 9 On October 31, 2018, the trial court entered the order appealed from allowing CARD to repair the easement bridge at CARD's cost. The court reserved ruling on the issues of which party would ultimately bear responsibility for paying what portions, if any, of the repair costs. The court further allowed CARD to file an amended complaint seeking such relief as it deemed appropriate on or before November 5, 2018. The court was to set the matter for a final evidentiary hearing after the filing of any responsive pleadings, counterclaims, or third-party claims, to address all outstanding issues of purported liability and damages, including which party, if any, was responsible for reimbursing CARD for the repair costs. CARD's motion to amend preliminary

injunction, for mandatory injunctive relief, and for permanent injunction was denied, and defendant's objection to that motion was overruled as moot.

¶ 10 On November 1, 2018, defendant filed notice of interlocutory appeal as of right pursuant to Illinois Supreme Court Rule 307(a)(1). In accordance with the trial court's order, CARD filed its amended complaint November 5, 2018.

¶ 11 Defendant subsequently filed a motion to dismiss this appeal, which was taken with the case. Defendant argues that the injunction should be vacated and the cause remanded to the trial court for an evidentiary hearing on the merits following proper pleadings and discovery. Defendant additionally contends there is no basis for the court's order, pointing out that he is faced with paying for something over which he has no control either in concept or execution. CARD argues that defendant's motion to dismiss is moot. Under Illinois law, a case becomes moot when, pending the decision on appeal, events occur which render it impossible for the reviewing court to grant effectual relief to any of the parties. *Emerson Electric Co. v. Sherman*, 150 Ill. App. 3d 832, 835 (1986). Because work upon the roadway/bridge was completed as of December 12, 2018, the relief sought by defendant is therefore moot. CARD believes the appeal should be dismissed in order to allow the circuit court to consider the legal issues remaining, namely who is responsible for the cost of repairs. CARD asserts that it is not obligated under the law to wait until the easement was damaged or destroyed before bringing an action to enjoin the actions of defendant. *Flower v. Valentine*, 135 Ill. App. 3d 1034, 1044 (1985). CARD further asserts that the condition of the easement had deteriorated to the point of being unsafe and requiring immediate repairs. Because CARD had a clearly

protectable right in the form of a permanent easement to use defendant's real estate without interference or interruption at all times, the remedy it requested was proper.

¶ 12 We initially address whether this appeal is moot. We find that it is not moot. Even though the bridge has been repaired, there are still questions remaining as to whether the court properly granted a preliminary injunction in the first place. Therefore, it is still possible for this court to grant effectual relief to the parties. We therefore choose to address the merits of this appeal.

¶ 13 When presented with an appeal of an interlocutory order, we are to determine whether the lower court abused its discretion in granting the underlying preliminary injunction. We further note that the decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court, and on review, the decision will not be disturbed absent abuse of that discretion. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010).

¶ 14 The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of a case. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 156 (1992). A party seeking an injunction must file a complaint pleading facts that justify a right to injunctive relief. *In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 371 (2001). In other words, a party seeking a preliminary injunction must establish that a clearly ascertained right in need of protection exists, irreparable harm will occur without the injunction, there is not an adequate remedy at law for the injury, and there is a likelihood of success on the merits. *Hartlein*, 151 Ill. 2d at 156.

¶ 15 The key here is that a party seeking an injunction must file a verified complaint pleading facts that justify a right to injunctive relief. See 735 ILCS 5/11-101 (West 2016). CARD did not file a verified complaint. CARD filed a pleading labeled as its complaint. In separate counts, CARD sought a temporary restraining order, a preliminary injunction, and a mandatory injunction. These are forms of relief. CARD did not file a pleading associated with its requests for injunctive relief that were based upon any recognized cause of action. In order to state a cause of action, a complaint must set forth a legally recognized cause of action and plead facts bringing that claim within that cause of action. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (1994).

¶ 16 It was not until CARD attempted to amend the preliminary injunction by interlineation that CARD inserted a claim for specific performance. While the doctrine of specific performance may be used to enforce an easement right (see *City of Marshall v. Knowles*, 125 Ill. App. 3d 726, 731-32 (1984)), CARD did not allege its claim until after the fact. CARD also attempted to amend its pleading by adding additional causes of action or grounds for enforcement of the easement after defendant filed his notice of interlocutory appeal. As a reviewing court, under these circumstances, we can only address those questions which existed when the notice of appeal was filed. See *First Federal Savings & Loan Ass'n of Chicago v. American National Bank & Trust Co. of Chicago*, 100 Ill. App. 2d 460, 466 (1968). Accordingly, anything raised in CARD's amended complaint is outside the record and cannot be considered by this court.

¶ 17 This leaves us with the trial court's order issuing a temporary restraining order and preliminary injunction without an underlying complaint alleging a cause of action.

Again, a complaint incorporating a prayer for injunctive relief must provide grounds upon which a court can fix its equitable jurisdiction before an injunction may issue. See *People ex rel. Carter v. Hurley*, 4 Ill. App. 2d 24, 27 (1954). The trial court therefore abused its discretion in entering any order other than a dismissal of CARD's original unverified pleading. See 735 ILCS 5/11-101 (West 2016). Accordingly, we must also find that the court erred in granting the order regarding the repair of the easement. Even if we were to have found no error with respect to the granting of the original preliminary injunction, we note the general rule that an injunction order should not be broader in scope than the relief sought in the pleadings. See *Cook County v. Rosen & Shane Wine & Spirits, Inc.*, 58 Ill. App. 3d 744, 750 (1978). CARD only asked to have defendant repair the bridge within 30 days of the court's order. It never asked for CARD to be allowed to repair the bridge itself. We therefore reverse the orders entered by the circuit court of Madison County with respect to the easement over defendant's real estate.

¶ 18 Reversed.