

DA 18-0450

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 184N

KNIGHTS OF COLUMBUS COUNCIL
NO. 668, AND THOMAS J. JOYCE,

Plaintiffs and Appellees,

v.

COLUMBUS PLAZA, INC., and
BUTTE SENIOR HOUSING, INC.,

Defendants and Appellants.

COLUMBUS PLAZA, INC., and
BUTTE SENIOR HOUSING, INC.,

Third-Party Plaintiffs,

v.

JOHN DOES 1-40, and KNIGHTS OF
COLUMBUS FOUNDATION OF
BUTTE, MONTANA,

Third-Party Defendants.

APPEAL FROM: District Court of the Second Judicial District,
In and For the County of Silver Bow, Cause No. DV 18-123
Honorable Brad Newman, Presiding Judge

COUNSEL OF RECORD:

For Appellants and Third-Party Plaintiffs:

Joe C. Maynard, David F. Knobel, Crowley Fleck PLLP, Billings, Montana

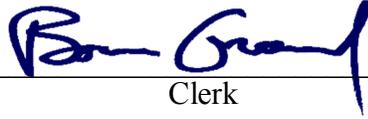
For Appellees:

William P. Joyce, Saidee M. Johnston, Joyce & MacDonald, PLLP, Butte,
Montana

Submitted on Briefs: April 10, 2019

Decided: August 6, 2019

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court’s quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Columbus Plaza, Inc. and Butte Senior Housing, Inc. (collectively, the “Housing Organizations”) appeal a preliminary injunction granted by the Second Judicial District Court, Silver Bow County, in favor of the Knights of Columbus Council No. 668 (the “Knights of Columbus”) and Thomas J. Joyce. We affirm in part and reverse in part.

¶3 Butte, Montana, community members formed the Housing Organizations in the late 1960s and early 1970s to build and operate affordable housing complexes. The Knights of Columbus is a local religious fraternal organization that has been involved with the Housing Organizations since their incorporation. The Housing Organizations’ articles of incorporation provide in pertinent part that “[f]our (4) Directors shall be elected by the membership of Butte Council No. 668 Knights of Columbus. . . . Three (3) Directors shall be elected by the Board of Directors of this corporation from individuals who are broadly representative of community interest and professional experience” The Housing Organizations’ bylaws provide that four directors shall be nominated by the Knights of Columbus and three directors shall be nominated by the Board of Directors. The members

serve staggered terms. From about 1971 until February 2018, the board operated with four members elected from the membership of the Knights of Columbus and three members chosen from the community.

¶4 Two Housing Organization board positions, held by Knights of Columbus members Patrick Fleming and Tom Boyle, were set to expire in February 2018. In January 2018, the Knights of Columbus met and selected Boyle to remain on the board for another term; the Knights of Columbus selected Thomas Joyce to fill Fleming's expiring term. Attorney William Joyce requested at the January meeting that these two Knights of Columbus members be seated but was informed that the terms would not expire until February, at which time the board would conduct elections. At the Housing Organizations' February board meeting, which Fleming did not attend, the remaining six board members voted unanimously to elect Boyle. The vote to elect Joyce failed three to three. Another motion was then made to re-elect Fleming for another term, which also failed on a three-to-three vote. The president of the board then advised that Fleming would remain on the board until further action. When questioned, he pointed out a provision in the bylaws that board members serve until their successor has been elected and duly qualified.

¶5 The Knights of Columbus and Thomas Joyce (collectively, "Plaintiffs") filed suit against the Housing Organizations, claiming that the Housing Organizations were violating the articles of incorporation. Plaintiffs requested a declaration that Joyce be seated as a member of the board of directors. They also sought a preliminary injunction preventing

the Housing Organizations “from initiating any legal actions until such time as the court can determine who are the true members of its Boards of Directors.”

¶6 The Housing Organizations filed an answer and a counterclaim prior to the preliminary injunction hearing. The Housing Organizations also filed a third-party complaint against the Knights of Columbus Foundation of Butte, Montana, a Montana public benefit corporation that owns the building in which the Knights of Columbus conducts operations. The Housing Organizations maintained that the corporate bylaws provide that members of the board of directors have the right to elect the board of directors, and the bylaws control the articles of incorporation. The Housing Organizations alleged improprieties in the conduct of the Knights of Columbus’s business and requested the return of over \$200,000 they alleged the Knights of Columbus Foundation improperly distributed to the Knights of Columbus to be used in for-profit operations.

¶7 The District Court granted Plaintiffs a preliminary injunction pursuant to § 27-19-201(1), (2), and (3), MCA, enjoining the Housing Organizations: (1) from recognizing Fleming as a current member of the board or allowing him to vote; (2) from proceeding with their counterclaims and third-party complaint; (3) from expending funds for related attorney fees and litigation costs; and (4) from taking any action on behalf of the Housing Organizations unless the fully constituted board of directors, or at least a majority of the six remaining members, votes to authorize it. The court allowed the Housing Organizations’ answer and affirmative defenses to proceed.

¶8 We review the grant or denial of a preliminary injunction for manifest abuse of discretion. *BAM Ventures, LLC v. Schifferman*, 2019 MT 67, ¶ 7, 395 Mont. 160, 437 P.3d 142. To the extent the ruling is based on legal conclusions, we review the court’s conclusions of law to determine whether the interpretation is correct. *BAM Ventures, LLC*, ¶ 7. This Court does not determine the underlying merits of the case giving rise to the preliminary injunction because such an inquiry is reserved for a trial on the merits. *BAM Ventures, LLC*, ¶ 7. For an injunction to issue under § 27-19-201(1), MCA, the applicant must show that he “has a legitimate cause of action, and that he is likely to succeed on the merits of that claim,” and must show that an injunction is an appropriate remedy. *Sandroch v. DeTienne*, 2010 MT 237, ¶ 16, 358 Mont. 175, 243 P.3d 1123.

¶9 Reasoning that under § 35-2-217(2), MCA, the Housing Organizations’ bylaws may not contradict the articles of incorporation, and that the articles of incorporation expressly provide the Knights of Columbus authority to elect members, the District Court held that the Plaintiffs showed a likelihood of success on their claim that the articles of incorporation control over the bylaws regarding the election of Knights of Columbus members. *See* § 35-2-217(2), MCA (“The bylaws may contain any provision for regulating and managing the affairs of the corporation consistent with law or the articles of incorporation.”). On appeal, the Housing Organizations do not challenge that portion of the District Court’s order. Nor do they challenge the portion of the order preliminarily enjoining Fleming from taking part in future actions of the board of directors. Based on the preliminary injunction record, we hold that the District Court did not manifestly abuse

its discretion when it concluded that the Knights of Columbus showed a likelihood of success on the merits of their claim regarding board selection pursuant to § 35-2-217(2), MCA, and thereby enjoined Fleming from taking part in future actions of the board of directors.

¶10 The District Court also enjoined the Housing Organizations from prosecuting their counterclaim and third-party complaint or expending corporate funds for attorney fees and costs associated with prosecuting their counterclaim and third-party complaint. Section 27-19-201(2), MCA, authorizes relief when it appears that the commission or continuation of an act during the litigation would produce “a great or irreparable injury”—“that is, an injury so significant it could not later be repaired even by means of the litigation.” *BAM Ventures, LLC*, ¶ 15. The District Court made no finding of irreparable harm absent a preliminary injunction. The Plaintiffs allege no harm other than disharmony among the board of directors and having to pay attorney fees to defend the counterclaim. They submit no authority for the proposition that defending litigation is itself considered injury to support a preliminary injunction.

¶11 The District Court also did not address the Housing Organizations’ arguments that the board members affiliated with the Knights of Columbus or the Knights of Columbus Foundation had a disqualifying conflict of interest or that the board president properly could authorize the counterclaim and third-party complaint without a vote of the full board. Plaintiffs likewise do not address these arguments the Housing Organizations reiterate on appeal.

¶12 It is not this Court’s obligation to “conduct legal research on a party’s behalf, to guess as to a party’s precise position, or to develop legal analysis that may lend support to that position.” *Osman v. Cavalier*, 2011 MT 60, ¶ 8, 360 Mont. 17, 251 P.3d 686 (internal citation omitted). We conclude that the Plaintiffs failed to make a sufficient showing to obtain a preliminary injunction enjoining prosecution of the Housing Organizations’ claims or to present a sufficient argument to support such an injunction on appeal.

¶13 Finally, the District Court concluded that the Housing Organizations’ refusal to seat Joyce and its decision to allow Fleming to remain as a voting member of the board “would tend to render the ultimate judgment in this action ineffectual,” thus entitling them to preliminary relief under § 27-19-201(3), MCA. The court did not invoke § 27-19-201(3), MCA, in its rationale for enjoining the counterclaim and third-party complaint, and the Plaintiffs do not, either. The Housing Organizations point out that the Knights of Columbus made no claim and offered no evidence that additional legal action is contemplated, and they represent that if the court’s final judgment orders Joyce to be seated, they will seat him. The “ultimate judgment” in the case will be on the merits of both parties’ claims. Allowing all claims to advance will not render ineffectual any final judgment on the merits.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm the preliminary injunction insofar as it requires

the Housing Organizations to seat a board of directors in accordance with the articles of incorporation during the pendency of this litigation. We reverse the District Court's order enjoining the Housing Organizations from proceeding with their counterclaim and third-party complaint. The case is remanded with instructions to modify the preliminary injunction in accordance with this Opinion.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH

/S/ JIM RICE

/S/ LAURIE McKINNON

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

Justice James Jeremiah Shea took no part in the consideration of this appeal.