

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Executive Management Services, Inc.,	:	
	:	
Plaintiff-Appellant,	:	No. 11AP-600
v.	:	(C.C. No. 2011-08911)
Cincinnati State Technical and	:	(ACCELERATED CALENDAR)
Community College,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on December 29, 2011

Kegler, Brown, Hill & Ritter Co., LPA, and Christopher J. Weber; Riley Bennett & Egloff, LLP, and Kathleen Hart, pro hac vice, for appellant.

Michael DeWine, Attorney General, and Peggy W. Corn, for appellee.

APPEAL from the Court of Claims of Ohio.

BRYANT, P.J.

{¶1} Plaintiff-appellant, Executive Management Services, Inc., appeals from a judgment of the Ohio Court of Claims denying plaintiff's motion for a preliminary injunction without a hearing and, on a related matter, denying plaintiff's motion for expedited

discovery. Because the Court of Claims erred in not exercising its discretion to determine whether to hold a hearing on plaintiff's request for a preliminary injunction, we reverse.

I. Facts and Procedural History

{¶2} On January 27, 2011, plaintiff filed a "Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Declaratory Relief, and Damages." The complaint arose out of a request for proposal that defendant-appellee, Cincinnati State Technical and Community College initiated regarding the provision of janitorial services for the buildings on defendant's campus. Plaintiff asserted it was improperly denied successful bidder status because defendant did not comply with the request for proposal and its published policy, did not afford fair and equal treatment to plaintiff for the 2011 request for proposal, and failed to evaluate the proposals and award the contract to the best bidder.

{¶3} On the same day plaintiff filed its complaint, it filed also a motion for expedited discovery and an "Emergency Motion for a Temporary Restraining Order." The Court of Claims denied the motion for a temporary restraining order on June 28, 2011. The next day, plaintiff requested a motion for preliminary injunction and an expedited hearing on it.

{¶4} The following day, June 30, 2011, the Court of Claims denied plaintiff's request for a preliminary injunction. Moreover, citing this court's decisions in *Ridenour v. Wilkinson*, 10th Dist. No. 07AP-200, 2007-Ohio-5965, ¶9, appeal not allowed, 117 Ohio St.3d 1439, 2008-Ohio-1279, and *Thomson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-782, 2010-Ohio-416, ¶29, the court concluded it need not conduct a hearing

before deciding the motion. At the same time, it denied plaintiff's motion for expedited discovery.

II. Assignments of Error

{¶5} Plaintiff appeals, assigning the following errors:

I. The Trial Court Abused Its Discretion By Denying Appellant's Motion For A Preliminary Injunction Without A Hearing.

II. The Trial Court Abused Its Discretion By Denying Appellant's Motion For A Preliminary Injunction Without Permitting Any Discovery To Be Taken Prior To Such Denial.

III. Hearing on Preliminary Injunction

{¶6} Because plaintiff's two assignments of error are related, as the Court of Claims' judgment entry acknowledges, we address them jointly. Together they assert the court (1) erred in denying plaintiff's motion for preliminary injunction without first conducting a hearing on it, and (2) because a hearing was appropriate, the court erred in denying the discovery needed to prepare for it.

{¶7} Neither party disputes that the Court of Claims has discretion to determine whether to grant or deny an injunction. See *Perkins v. Quaker City* (1956), 165 Ohio St. 120. The issue on appeal is more specific and concerns the extent to which a hearing is appropriate in the context of a motion for preliminary injunction.

{¶8} "It is customary to hold a hearing before granting or denying preliminary or permanent injunctive relief." *Cleveland v. K.O. Drugs Boxing Co.* (Nov. 19, 1998), 8th Dist. No. 74681. To support its statement, *K.O. Drugs Boxing* cited to the language in Civ.R. 65(B)(2) specifying that "[b]efore or after the commencement of the hearing [on] an

application for a preliminary injunction, the court may order the trial of the action on the merits consolidated with the hearing on the application." Id. Quoting *Sea Lakes, Inc. v. Sea Lakes Camping, Inc.* (1992), 78 Ohio App.3d 472, 476, *K.O. Drugs Boxing* stated, "Based upon the foregoing language in both the rule and the [staff] note, courts in this state have held that a hearing on a motion for preliminary injunction is necessary." See also *Johnson v. Morris* (1995), 108 Ohio App.3d 343, 352, appeal not allowed (1996), 76 Ohio St.3d 1404 (pointing out that "[a]though an evidentiary hearing is not specifically required by Civ.R. 65, the language of the rule strongly suggests that an evidentiary hearing will be held prior to ruling on a preliminary injunction," and thus agreeing "with the decisions of these appellate courts that the trial court must first conduct an evidentiary hearing on a preliminary injunction motion"); *Globe Servs., Inc. v. Palmer* (Aug. 18, 1986), 12th Dist. No. CA86-02-028 (noting that a hearing is necessary based on the "fundamental constitutional principle[]" of allowing the opposing party to present evidence).

{¶19} In reaching the opposite conclusion, the Court of Claims relied on two decisions from this court. In both *Thomson* and *Ridenour*, this court examined Civ.R. 65 and noted it explicitly addresses both temporary restraining orders and preliminary injunctions in Civ.R. 65(A) and (B), respectively. We observed that the rule does not address a hearing on a temporary restraining order, but we added that it specifically requires the court to hold a hearing on a motion for preliminary injunction only if a temporary restraining order has been granted. Pointing out that the Court of Claims in neither case granted a temporary restraining order, we concluded the rule did not require a hearing on a motion for preliminary injunction.

{¶10} Although we can understand how the Court of Claims interpreted our decisions to indicate a hearing only is required on a requested preliminary injunction if a temporary restraining order has been granted, the court misinterprets the decisions. Civ.R. 65 specifically *requires* a hearing only if a temporary restraining order has been granted. It, however, does not suggest a hearing is inappropriate under other circumstances. As the cited cases from other districts indicate, the trial court often will find itself in circumstances where a hearing is appropriate, even if not specifically required under the terms of the rule. For example, if a party were to present a motion for preliminary injunction which on its face appears meritorious, the court would abuse its discretion in denying the motion without a hearing. Similarly, to not hold a hearing on a granted preliminary injunction would deny the opposing party the opportunity to demonstrate why the requested injunction is not appropriate. Indeed, if granting a temporary restraining order were the only event to trigger a hearing, a trial court that denies a temporary restraining order for a technical noncompliance with the rule never would need to conduct a hearing on a request for a preliminary injunction, even though an evidentiary hearing may be necessary to resolve disputed contentions and evaluate the merits of the motion.

{¶11} Thus, in both *Thomson* and *Ridenour*, this court, after noting that the rule mandates a hearing on a preliminary injunction only if a temporary restraining order has been granted, went on to analyze whether the parties were prejudiced when the Court of Claims did not conduct a hearing. In each case we concluded that because the plaintiffs' complaints did not allege a basis for concluding that declaratory or injunctive relief was appropriate, any error by the court in failing to conduct an evidentiary hearing on the

plaintiffs' requests for temporary restraining orders and preliminary injunctions were harmless. *Thomson* at ¶29; *Ridenour* at ¶50. Accordingly, in *Thomson* and *Ridenour*, we acknowledged that a hearing on a preliminary injunction may be appropriate, even if not mandated under the terms of Civ.R. 65.

{¶12} In the final analysis, although Civ.R. 65 articulates a mandatory hearing on a preliminary injunction only if a temporary restraining order has been granted, the rule does not indicate such is the only circumstance warranting a hearing. In determining whether a hearing is appropriate to any motion for preliminary injunction, the trial court must exercise its discretion, assess the nature of the allegations and circumstances, and determine whether a hearing is warranted for that particular motion for preliminary injunction.

{¶13} Because the Court of Claims applied a misinterpretation of *Thomson* and *Ridenour* in flatly denying a hearing on plaintiff's motion for preliminary injunction, we reverse the judgment of the Court of Claims of Ohio and remand this matter so that the court may exercise its discretion and determine whether plaintiff's motion for preliminary injunction warrants a hearing. At the same time, the court will have the opportunity to reassess plaintiff's request for expedited discovery in relation to the preliminary injunction motion.

{¶14} Lastly, defendant filed a motion seeking to dismiss that aspect of plaintiff's appeal which addressed the discovery issue, claiming the matter did not present a final appealable order. Given our disposition of plaintiff's appeal, defendant's motion is moot.

Motion to dismiss moot; judgment reversed and case remanded.

FRENCH and CONNOR, JJ., concur.
