

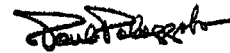
IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS

**FILED**

DEC 21 2020 37

IN RE: COVID-19 LITIGATION

Case No: 2020-MR-589



Clerk of the  
Circuit Court

*Honorable Raylene D. Grischow*

**OPINION AND ORDER ON MOTION TO RECONSIDER**

Governor JB Pritzker (“Governor”) is the defendant in *Clay County Case No: 20-CH-6* filed by State Representative Darren Bailey (“Bailey”) and consolidated in this matter by order of the Illinois Supreme Court. The cause is now before the Court on the Governor’s motion to reconsider the July 2, 2020 summary judgment order granting summary judgment on Counts II and III. Bailey elected to forego a written response to the motion to reconsider. The parties agreed to waive oral arguments that were scheduled for December 21, 2020 and requested the Court rule based on the Governor’s written submissions.

For the reasons set forth below, the Court, having considered the record, including all filed pleadings, memoranda, exhibits, transcripts of proceedings, and facts of which the Court may take judicial notice, grants the Governor’s motion to reconsider.

**PROCEDURAL HISTORY**

On April 23, 2020, Bailey filed this action in his personal capacity against the Governor in the Fourth Judicial Circuit in Clay County. The case was assigned to Judge Michael McHaney. The complaint challenged the Governor’s authority to issue disaster proclamations and executive orders to combat the COVID-19 pandemic. Judge McHaney granted the requested Temporary Restraining Order on April 27, 2020. After the Governor appealed, Bailey agreed to vacate the TRO.

On May 15, 2020, Bailey was allowed to file an amended complaint which consisted of four counts: Count I, declaratory judgment that the April 30, 2020 proclamation did not satisfy the definition of disaster in the IEMAA; Count II, declaratory judgment that the Governor's emergency authority lapsed 30 days after the initial disaster proclamation on March 9, 2020; Count III, declaratory judgment that the Department of Public Health Act, 20 ILCS 2305/2, controls the State's response to the COVID-19 pandemic rather than the Illinois Emergency Management Agency Act; and Count IV, injunctive relief. On that same date, the Governor's motion to transfer pursuant to forum non conveniens was argued and denied. Judge McHaney then ordered Bailey to file a motion for summary judgment on or before May 18, 2020, and required the Governor to file a written response on or before May 21, 2020.

On May 18, 2020, Bailey filed a motion for summary judgment on the three declaratory judgment counts, but not on Count IV, which sought injunctive relief. The Clay County Local Rules provide that a motion for summary judgment will not be heard before ten (10) days after service of the notice of motion under Supreme Court Rule 11. The court scheduled a hearing date four days later on May 22, 2020.<sup>1</sup> Instead of filing a response to Bailey's motion for summary judgment, counsel for the Governor filed a Notice of Removal in Federal Court.

After the removal issue was resolved with the Federal Court, the matter was remanded to Clay County on June 29, 2020. On June 30, 2020, Bailey filed a notice of hearing scheduling the motion for summary judgment for oral arguments on July 2, 2020.

On July 2, 2020, arguments were heard on the motion for summary judgment and counsel for the Governor argued the Clay County Court did not have jurisdiction because a certified copy

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<sup>1</sup> It is not known whether this hearing date was objected to by counsel for the Governor. The docket sheet shows it was objected to by counsel for the Governor at the July 2, 2020 hearing.

of the remand order had not been filed with the circuit clerk.<sup>2</sup> Judge McHaney decided jurisdiction was proper and proceeded with the hearing. At the conclusion of the hearing, Judge McHaney orally denied Bailey's motion for summary judgment as to Count I, granted Bailey's oral motion to dismiss Count IV seeking injunctive relief with prejudice, and granted Bailey's motion for summary judgment on Counts II and III. Judge McHaney stated that the basis for his ruling was that the Governor's exercise of his emergency powers was "absolute power and it is unconstitutional."<sup>3</sup> Later in the day Judge McHaney issued a written order. As the Order pertained to Count II, the judge declared that the Governor's emergency powers under Section 7 of the Illinois Emergency Management Agency Act lapsed on April 8, 2020 and that any executive orders in effect after April 8, 2020 relating to COVID-19 "are void ab initio." Regarding Count III, the judge declared the "proper authority to restrict a citizen's movement or activities and/or forcibly close their business premises due to any public health risks has been expressly delegated to the Department of Health." The judge granted Bailey's request to dismiss Count IV with prejudice and granted Bailey's oral request that his amended complaint be a representative action and apply to all citizens of the State of Illinois. The Order did not include any injunctive relief against the Governor, nor did it include any Rule 304(a) findings making the Order a final, enforceable and appealable order.

On August 5, 2020, Bailey filed a petition asking Judge McHaney to enter an order to show cause why the Governor should not be judged in contempt of court, which was granted on August 7, 2020. The Illinois Supreme Court, on its own motion pursuant to Rule 384, removed this action from Clay County and transferred it to Sangamon County.

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<sup>2</sup> The jurisdictional issue has already been decided by this Court. See the Order dated October 19, 2020.

<sup>3</sup> See July 2, 2020 transcript, p. 79, Lines 8-9. See also Judge McHaney's Order of July 2, 2020 p. 2.

On October 22, 2020, Bailey filed a Verified Petition for Adjudication of Indirect Civil Contempt. On November 2, 2020, the Governor filed a Motion to Reconsider July 2, 2020 Summary Judgment Order. On that same date, this Court entered an Amended Briefing Order setting forth deadlines as it pertained to the State's Motion to Reconsider the July 2, 2020 summary judgment order. Despite the deadlines outlined in the Amended Briefing Order, Bailey chose not to file any written pleadings with this Court.

### **LEGAL STANDARD**

The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Landeros v. Equity Prop. & Dev.*, 321 Ill. App. 3d 57, 65, 747 N.E.2d 391, 399 (2001)(citing *Gardner v. Navistar Intern Transport Corp.*, 213 Ill.App.3d 242, 248, 157 Ill.Dec. 88, 571 N.E.2d 1107 (4<sup>th</sup> Dist. 2008)). As a general rule a motion to reconsider is addressed to the trial court's sound discretion. However, a motion to reconsider an order granting summary judgment raises the question of whether the judge erred in his previous application of existing law. *Sacramento Crushing Corp. v. Correct/All Sewer, Inc.*, 318 Ill. App. 3d 571, 577, 742 N.E.2d 829, 835 (1<sup>st</sup> Dist. 2000)(citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill.App.3d 622, 627, 157 Ill.Dec. 690, 572 N.E.2d 1154 (1<sup>st</sup> Dist. 1991)). The Governor has asked this Court to reconsider and vacate Judge McHaney's July 2, 2020 order granting summary judgment in favor of Bailey on Counts II and III and vacate the Order applying it to all citizens of the State of Illinois.

**ANALYSIS**

**Motion for Summary Judgment - Count II**

Judge McHaney's Order declared that the Governor's emergency powers under Section 7 of the IEMAA lapsed on April 8, 2020 and that any executive orders relating to COVID-19 were "void ab initio." In entering this Order, the Clay County court erred in its application of the law. The Governor is not limited to one disaster declaration. There is no limitation in Section 7, or elsewhere in the statute, on the number of proclamations the Governor may issue regarding a particular disaster. The assertion that section 7 of the emergency powers were statutory permitted for only one single 30-day period after the initial declaration proclamation is contrary to the plain reading of the IEMAA. "When interpreting a statute, a court's primary objective is to ascertain the legislative intent. *Landis v. Marc Realty, L.L.C.*, 235 Ill.2d 1, 6 (2009). The best indicator of the legislative intent is the statute's language, given its plain and ordinary meaning. *Id.* Where a statute is unambiguous, a court should apply the statute as written, without the use of extrinsic aids. *Id.* The fundamental principles of statutory construction are that words and phrases should not be construed in isolation, but interpreted in light of other relevant provisions of the statute. *Van Dyke v. White*, 2019 IL 121452 ¶39.

Section 7 of the IEMAA permits the Governor to exercise his emergency powers for "a period not to exceed 30 days" following the issuance of a disaster proclamation. The Governor's emergency powers are triggered by a declaration by the Governor that there is a disaster, not by the date upon which the disaster initially arose. Section permits the Governor to continue utilizing his emergency powers for 30 days if a disaster still exists following a new disaster proclamation.<sup>4</sup>

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<sup>4</sup> See this Court's Opinion and Order in *Running Central, Inc. v. Pritzker*, No. 2020-CH-105, slip op. (Ill. 7<sup>th</sup> Jud. Cir. Ct. Sangamon Cty. May 21, 2020 at 4; *JL Props. Grp. B LLC v. Pritzker*, No. 20-CH-601 (Ill. 12<sup>th</sup> Jud. Cir. Ct. Will Cty. July 31, 2020), Memorandum Opinion and Order at 10-12; *Edwardsville/ Glen Carbon Chamber of*

Judge McHaney's interpretation of the statute failed to consider the statute as a whole. Limitations are specifically outlined in Section 3 of the statute. However, no there are no limitations that restrict the Governor from making more than one disaster proclamation per disaster. Sections 6 and 9 specify that the General Assembly must be involved in certain unrelated aspects of an emergency. Section 11(a) permits a political subdivision to declare a "local disaster" but specifically limits that declaration to a period of seven days, except by or with the consent of the governing board of the political subdivision. As this Court has previously stated, had the General Assembly intended to limit the Governor in a similar fashion, it would have done so.

Judge McHaney's reading of the statute produces unjust and harmful results that are contrary to IEMAA. The express purpose of the IEMAA is to ensure that the State will be prepared and capable of dealing with disasters, to preserve the lives of Illinois citizens and protect their property. Bailey's theory is contrary to the legislative intent and strips the Governor of his emergency powers for the rest of the pandemic. Had the legislature intended such an absurd result, it could have convened and amended the statute. The General Assembly has amended the IEMAA at least 11 times in the last 40 years, but has never limited the Governor to only one disaster proclamation.<sup>5</sup> The legislature convened in May of 2020, and again, it did not amend the IEMAA to limit the Governor's authority to only one proclamation. The legislature did, however, recognize the Governor's authority to issue successive disaster proclamations when they amended the Unemployment Insurance Act<sup>6</sup>, the Sexual Assault Provider Emergency

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*Commerce v. Pritzker*, No. 20-MR-550 (Ill. 3<sup>rd</sup> Jud. Cir. Ct. Madison Cty. June 5, 2020) at 6-8; *Mahwikizi v. Pritzker*, No. 20-CH-04089 (Ill. Cook Cty. Cir. Ct. May 8, 2020) at ¶¶ 21-27; and *Cassell v. Snyders*, 2020 WL 2112374 (N.D. Ill. May 3, 2020) Memorandum Opinion and Order at \*13-\*14.

<sup>5</sup> See P.A. 88-606; P.A. 92-73; P.A. 94-733; P.A. 98-465; P.A. 98-756; P.A. 99-36; P.A. 100-508; P.A. 100-444; P.A. 100-587; P.A. 100-863; P.A. 100-1179.

<sup>6</sup> Adding 820 ILCS 405/500(D-5) which references "any subsequent Gubernatorial Disaster Proclamation in response to COVID-19."

Treatment Act<sup>7</sup> and the Township Code.<sup>8</sup> Bailey, a member of the General Assembly, voted in favor of all three bills which recognized the Governor's authority to issue successive disaster proclamations.

This Court's analysis is consistent with the Second District Appellate Court's recent decision in *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623 and is further support that Judge McHaney's order granting summary judgment cannot stand. The Appellate Court expressly found that the IEMAA authorizes the Governor to issue successive disaster proclamations stemming from one ongoing disaster. The Appellate Court found nothing in the statutory "language the precluded the Governor from issuing multiple disaster proclamations – each with its own 30-day grant of emergency powers – arising from one ongoing disaster." *Id.* ¶26.

### **Motion for Summary Judgment - Count III**

Judge McHaney said the Governor has no constitutional authority as Governor under the cited provisions of the IEMAA to restrict a citizen's movement or activities and to forcibly close businesses because any such authority was restricted to the Department of Health. This Court has previously held that the State's police powers authorize measures to be implemented to protect its citizens when confronted with contagious diseases and other threats to public health and safety. Again, this Court reiterates that the state's police powers are outlined in both the state and federal constitution and supports the Governor's actions in combating this pandemic. Without such authority the state would be paralyzed to act when needed. The Illinois constitution provides the Governor with supreme executive authority. (Ill. Const. 1970, art. V,

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<sup>7</sup> Adding 410 ILCS 70/2-1(b-5) and 410 ILCS 70/2.05-1(b)(6), both of which reference "a successive proclamation regarding the same disaster."

<sup>8</sup> Adding 60 ILCS 1/30-5(d), which references when "a subsequent disaster is declared under Section 7 of the IEMAA.

sec. 8). This grant of authority includes providing for the health, safety and welfare of the people under a rational basis standard.

Judge McHaney's declaration that the Governor has no authority to promulgate the emergency executive orders is also misguided. The general assembly used broad language when it conferred the emergency powers that are outlined in sections 7(1) through 7(14). These powers include the authority to "utilize all available resources of the State government as reasonably necessary to cope with a disaster" and to "transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitation disaster response and recovery programs." 20 ILCS 3305/7(2)-(3). Also outlined in IEMAA is the Governor's authority to control ingress & egress from disaster areas and regulate the sale, distribution of food, fuel, clothing or other commodities as well as perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population. 3305/7(12). The State's police powers require it to implement preventative measures when confronted with a situations that pose a threat to the public health and COVID-19 falls squarely within this statutory scheme. If this broad authority were not authorized, the State would not be able to act when an unanticipated threat to the safety and well-being of its citizens arose. As the Illinois Constitution specifically states, providing for the "health, safety and welfare" is of the highest necessity. Ill. Const. 1970, preamble.

#### **Department of Public Health**

As to Judge McHaney's opinion that the Governor's actions are unlawful because such powers have been expressly delegated to the department of public health, this is also improper. The Public Health Act places no restrictions on the Governor's emergency powers that exist



under the IEMAA. Section 2(m) of the Public Health Act specifically states that “nothing in this section shall supersede the procedures set forth in the IEMAA.

A plain reading to the two statutes makes it clear that the Public Health Act is a supplement to IEMAA. Judge Bradley Waller stated it well in his opinion where he wrote, “The IEMAA is really the umbrella over which all the other statutes are subservient to. The Governor has the authority for purposes of preserving the public health, safety and welfare under a rational basis standard.”<sup>9</sup>

In addition, the executive orders do not concern “quarantine or isolation” orders from the Department of Public Health which would trigger the department to act. The Governor’s executive authority was not altered by the General Assembly when it enacted the Public Health Act. Thus, an unconstitutional outcome would result if this Court were to uphold Judge McHaney’s Order and strip the Governor of his executive authority to protect the citizens of Illinois.

**No legal basis to bind all Illinois citizens**

Judge McHaney’s ruling specifies that his order applies to all Illinois citizens. In order to be bound by a judgment, generally, the individual must be a party to the lawsuit. In this case, only Bailey and the Governor were parties on July 2, 2020. This Court did not find any motion requesting class certification, nor did the Court find any pleaded facts to bring the matter within the statutory prerequisites for a class action. This portion of the Judge McHaney’s Order has no basis in law.

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<sup>9</sup> Transcript of October 9, 2020 proceedings, *Fatty’s et al. v. Pritzker, et al.*, Case No. 20-CH-65 (Ill. 23<sup>rd</sup> Jud. Cir. Ct. DeKalb Cty. 2020).

Bailey was required to plead and prove facts sufficient to show that a proposed class action would satisfy the four statutory prerequisites set forth in the statute. See 735 ILCS 5/2-801. Specifically, any motion should plead:

- 1) The proposed class is so numerous that joinder of all members is impracticable;
- 2) There are questions of fact or law common to the class;
- 3) The representative parties will fairly & adequately protect the interests of the class;

and

- 4) A class action is an appropriate method for a fair and efficient adjudication of the controversy.

Before a court can certify a class action, it must specifically find that each of these four elements have been met based on evidence presented by the movant. *Weiss v. Waterhouse Secs., Inc.*, 208 Ill.2d 439, 451 (2004). This was not done.

A review of Bailey's amended complaint reveals that it does not allege or prove any facts necessary to maintain a class action. The amended complaint does not reveal any intention to form a class nor does it ask for class certification. Likewise, there is nothing in the record in support of a motion for class certification, nor did the Court read any arguments in any transcript in favor of class certification. Attorney DeVore requested that the court invalidate the executive orders and "apply [it] across the state."<sup>10</sup> In light of these reasons, along with the fact that Judge McHaney failed to enter any findings relating to the four statutory prerequisites required for a class certification language binding all Illinoisans, the order cannot stand.

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<sup>10</sup> July 2, 2020 transcript p. 76, lines 17-22.

Moreover, Judge McHaney's failure to follow the procedures to certify a class action violates the due process rights of persons who are subsequently bound by his decision. The Court found nowhere in the record where Judge McHaney considered whether Bailey might be seeking relief that could potentially be antagonistic to the members of the proposed class.

For all of the reasons outlined above, this Court is vacating the July 2, 2020 Order that granted summary judgment on counts II and III of Bailey's amended complaint. This court is also vacating the order wherein Judge McHaney applied it to "all citizens of the state of Illinois."

IT IS SO ORDERED.

Date: December 21, 2020

By:   
Raylene D. Grischow, *Circuit Court Judge*