

STATE OF MICHIGAN
COURT OF APPEALS

VERNON TRZIL, PETE HEMBESBERG, and
TERRY LATOSYNSKI,

UNPUBLISHED
November 26, 2013

Plaintiffs-Appellants,

v

No. 312412
Saginaw Circuit Court
LC No. 12-016638-CK

VILLAGE OF CHESANING,

Defendant-Appellee.

Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this interlocutory appeal, plaintiffs appeal by leave granted from the circuit court's denial of their request for a preliminary injunction. We affirm.

Plaintiffs were employed by and retired from defendant. Plaintiffs were union members whose employment was covered by a collective bargaining agreement that provided for retiree health benefits. In 2008, defendant explored the possibility of decreasing retiree health costs, and, as a result, the parties entered into a Memorandum of Understanding that defendant would provide a "Blue Cross/Blue Shield Flex Blue Plan 2, or its substantial equivalent, as the baseline health insurance plan until Medicare Coverage or age 65, which ever [sic] occurs first."

In February 2012 plaintiffs were informed that defendant was changing their health plan from "Flex Blue 2 to BCN 3." Plaintiffs objected, disagreeing that the BCN 3 plan was a "substantial equivalent" of the Flex Blue 2 plan. Plaintiffs brought suit, alleging breach of contract and promissory estoppel. Plaintiffs requested that the court issue a preliminary and permanent injunction enjoining defendant "from unilaterally altering retiree health insurance benefits to any program which is not substantially equivalent to the insurance benefits Plaintiffs are currently receiving."

After hearing oral argument, the court denied plaintiffs' request for a preliminary injunction, stating as follows:

The Court in considering these factors, in reviewing the briefs of the parties, is of the opinion that there has not been a showing of irreparable injury in this case. The Court also is of the opinion that any increase or requirement to pay

copays or deductibles is damages that can be determined by the parties and would be subject to a consideration for relief in the case at final trial of the matter.

The Court is also of the opinion that there has not been a showing that there – that coverage provided is not substantially equivalent to the prior coverage. The Court understands that further there may not be damages unless certain claims are made by the parties for health care coverage and that – that all remains to be seen.

So the Court, in conclusion, with all due respect to the plaintiffs, does believe that there is an adequate remedy in damages and the Court will have this matter proceed to trial . . .

We review a trial court’s denial of a preliminary injunction for an abuse of discretion. *Davis v Detroit Financial Review Team*, 296 Mich App 568, 612; 821 NW2d 896 (2012). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.*

Plaintiffs first argue that the trial court erred in refusing their request for an evidentiary hearing. We disagree.

“A trial court’s decision on whether to conduct an evidentiary hearing is reviewed for an abuse of discretion.” *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004). “Although it is not compulsory for a trial court to hold an evidentiary hearing before the issuance of an injunction, some formal hearing is required.” *Campau v McMath*, 185 Mich App 724, 728; 463 NW2d 186 (1990). “If a party’s entitlement to the injunction can be established in a particular case by argument, brief, affidavits or other forms of nontestamentary evidence, the trial court need not take testimony at the hearing.” *Id.*

By refusing to hold an evidentiary hearing and accept testimony, the trial court implicitly found that plaintiffs’ lack of entitlement to a preliminary injunction was established by briefing, oral argument, affidavits, or other evidence other than live testimony. The trial court acknowledged that there were differences between the two health plans, as shown by plaintiffs’ trial brief and exhibits. The court also acknowledged that under the new plan, plaintiffs might be liable for higher copayments and other associated health care costs. However, the court determined that any such additional costs could be recouped through money damages, and thus that plaintiffs had a remedy at law. Plaintiffs contend that they would have presented further evidence that there were differences between the plans, but they fail to show how they would have established irreparable harm or harm that could not be compensated by money damages. The issue is only whether the trial court had adequate information to render its ruling without an evidentiary hearing. Because plaintiffs fail to show that “argument, brief, affidavits or other forms of nontestamentary evidence,” *Campau*, 185 Mich App at 728, were insufficient for determining their entitlement to a preliminary injunction, plaintiffs fail to show that the trial court abused its discretion in deciding the matter without an evidentiary hearing.

Plaintiffs argue that the record shows that trial court abused its discretion in denying their motion for a preliminary injunction. We disagree.

The trial court must consider the following four factors when deciding whether it is appropriate to issue a preliminary injunction:

“(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.” [*Davis*, 296 Mich App at 613, quoting *Alliance for the Mentally Ill of Mich v Dep’t of Community Health*, 231 Mich App 647, 660-661; 588 NW2d 133 (1998).]

“Stated another way, injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” *Id.* at 613-614 (quotation marks and citations omitted). “[T]he party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued . . .” MCR 3.310(A)(4).

The above analysis does *not* take into account “a party’s likelihood of success on the merits when the irreparable-harm factor was not established.” *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 148-149; 809 NW2d 444 (2011). Rather, a preliminary injunction *requires* “a particularized showing of irreparable harm.” *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008) (quotation omitted). “The mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Id.* “The injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.” *Mich AFSCME*, 293 Mich App at 149. “Equally important is that a preliminary injunction should not issue where an adequate legal remedy is available.” *Pontiac Fire Fighters*, 482 Mich at 9.

It is undisputed that plaintiffs will be required to pay higher copayments and deductibles under the new plan, and this is the sole concrete injury plaintiffs have shown themselves bound to suffer from defendant’s decision to change policies. As the trial court held, if plaintiffs prevail at trial, these higher out-of-pocket costs are easily compensable by monetary damages. Therefore, plaintiffs have not shown that they are subject to irreparable harm or that, to the extent they would be harmed, they lack an adequate remedy at law. Plaintiffs’ contention that they might not seek medical treatment in response to the higher copayments and deductibles constitutes a “mere apprehension of future injury or damage,” an insufficient basis to warrant injunctive relief. *Pontiac Fire Fighters Union*, 482 Mich at 9.

For these reasons, the trial court did not abuse its discretion in finding that plaintiffs had not shown irreparable harm, or that they lacked an adequate remedy at law.

We are also unpersuaded that plaintiffs would suffer more harm by the absence of an injunction than defendant would suffer by the grant of an injunction. See *Davis*, 296 Mich App at 613. One or the other of the parties will be obligated to pay more—plaintiffs might have to pay higher copayments or deductibles, or defendant would have to pay higher premiums. However, if plaintiffs prevail at trial, they would be entitled to a refund of any such additional

expenses. In contrast, defendant's higher payments would be at taxpayer expense and would likely not be reimbursed. This inability to recoup funds originating from tax revenues is sufficient to establish a greater risk of harm. See *Mich AFSCME*, 293 Mich App at 157-158.

Plaintiffs' broad claim that the denial of a preliminary injunction would undermine the public's faith in contract and collective bargaining is without merit. No breach of contract has yet been established, and any such breach would be compensable at law. Further, "the private interests of union members are not tantamount to the public interest." *Id.* at 157. "In the context of labor disputes, public policy generally disfavors issuing injunctions absent a showing of violence, irreparable injury, or breach of the peace." *Id.* Plaintiffs have not established that they would suffer irreparable harm were the injunction not granted. There is no evidence to indicate that this case involves a showing of violence or otherwise any breach of the peace. "[S]peculation regarding the possible economic and emotional consequences of defendant's actions is insufficient to justify an injunction." *Id.* Thus, the trial court did not abuse its discretion in finding that the public-interest factor favored defendant.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Amy Ronayne Krause