

Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Nailah K. Byrd, Clerk of Courts

EDWARD GRAHAM, ET AL.

Appellant

COA NO. LOWER COURT NO.  
106094 CR-15-846212

COMMON PLEAS COURT

-vs-

CITY OF LAKEWOOD, ET AL.

Appellant

MOTION NO. 517059

Date 04/30/18

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Journal Entry

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Appellants' emergency motion for temporary restraining order ("TRO") and preliminary injunction is granted in part and held in abeyance in part. In aid of its appellate jurisdiction, this court grants appellants' motion for a TRO. We note that appellants "are not seeking to prevent the Lakewood City Council from voting, but seeking a TRO to prevent any implementation that would raze Lakewood Hospital" pending this appeal.

Pursuant to R.C. 2727.02, "A temporary order may be granted restraining an act \* \* \* when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

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Furthermore, pursuant to Civ.R. 65(A), “A temporary restraining order may be granted without written or oral notice to the adverse party \* \* \* only if (1) it clearly appears from specific facts shown by affidavit \* \* \* that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party \* \* \* can be heard in opposition, and (2) the applicant’s attorney certifies to the court in writing efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.”

This court finds that appellants have shown irreparable injury should this TRO not be granted during the pendency of this appeal. This injury is shown in Exhibit 1 of appellants’ motion for TRO, which is an April 2, 2018 agreement between the City of Lakewood and Carnegie Management and Development Corporation entitled “Term Sheet for One Lakewood Place (the “Project”).” Paragraph ten of this document states as follows: “As soon as reasonably practicable following the execution of the Development and Use Agreement, the City will complete the \* \* \* demolition work necessary to deliver the Project Site in a ‘Development and Pad Ready’ condition \* \* \*.”

The Project Site is “bounded by Detroit Avenue, Belle Avenue and Marlowe Avenue in the City of Lakewood” and is the current site of the now closed Lakewood Hospital. All parties to this action are acutely aware that the closure of Lakewood Hospital is the central subject in the case at hand.

The City of Lakewood has scheduled a “Special Meeting of Council” on April 30, 2018, to vote on proposed Ordinance 27-18, which would authorize the City to enter into the said agreement. The City of Lakewood has designated this ordinance “an emergency measure \* \* \* that \* \* \* shall take effect immediately.” Thus, the irreparable injury is the

demolition of Lakewood Hospital that, absent the granting of this TRO, would be authorized to commence at any time after the City Council vote.

This court further finds that appellants have certified that notice of this motion has been sent electronically to the adverse party. Nonetheless, this TRO may be granted without notice pursuant to Civ.R. 65(A), because appellees are taking action that will result in irreparable harm should appellants ultimately prevail on the merits of this appeal.

This court enjoins all parties to this appeal from taking any action "that would raze Lakewood Hospital" after the April 30, 2018 special council meeting. Appellants' motion for preliminary injunction is held in abeyance until further order of this court.

Pursuant to Civ.R. 65(C), "No temporary restraining order or preliminary injunction is operative until the party obtaining it gives a bond executed by sufficient security \* \* \* in an amount fixed by the court or judge allowing it \* \* \*." In this court's discretion, the bond is set at zero dollars.

This TRO shall remain in full force and effect until this court resolves the merits of this appeal, rules on appellants' motion for preliminary injunction, or issues further order.

Presiding Judge Mary J. Boyle, Concur

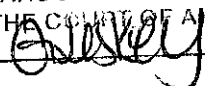
Judge Anita Laster Mays, Concur



Patricia Ann Blackmon  
Judge

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