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IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY, ILLINOIS

DARREN BAILEY,)
)
Plaintiff,)
)
vs.) NO. 20-CH-6
)
GOVERNOR JB PRITZKER, in his,)
official capacity,)
)
Defendant.)

REPORT OF PROCEEDINGS of the hearing held
before the Honorable MICHAEL D. MCHANEY on the 15th day
of May, 2020.

APPEARANCES: MR. THOMAS DeVORE
on behalf of the Plaintiff
MR. THOMAS VERTICCHIO
on behalf of the Defendant

PREPARED BY: LORI SIMS
Certified Shorthand Reporter
No. 084-003424
111 Chestnut
Louisville, Illinois 62858

1 THE COURT: Once again, I remind everybody
2 recording this proceeding is strictly forbidden and, at
3 the conclusion of these proceedings, please exit as
4 directed by the sheriff.

5 Before me are two motions. First, by the
6 plaintiff, motion for leave to amend pleading. Second,
7 motion by the defense to move this case to Sangamon
8 County pursuant to *forum non conveniens*. Defense, you
9 got any objection to the plaintiff motion to amend their
10 pleading?

11 MR. VERTICCHIO: Given liberal pleading rules,
12 Your Honor, no, no objection. We would just like time
13 to respond.

14 THE COURT: All right. Motion is granted.
15 Amended pleadings filed instanter.

16 MR. VERTICCHIO: Your Honor, the amended
17 complaint then is deemed filed?

18 THE COURT: Pardon me.

19 MR. VERTICCHIO: The amended complaint is then
20 deemed filed?

21 THE COURT: Yes.

22 MR. VERTICCHIO: Thank you.

23 MR. DeVORE: Just so I'm clear, Judge, you don't
24 need me to file it again? The one that was filed that
25 was already executed by my client is sufficient for the

1 parties?

2 THE COURT: It is.

3 MR. DeVORE: Thank you, sir.

4 THE COURT: Defense motion to transfer. You may
5 proceed.

6 MR. VERTICCHIO: Thank you, Your Honor. Your
7 Honor, the Governor filed a motion to transfer this
8 cause pursuant to the doctrine of *forum non conveniens*
9 after an identical motion was considered by a circuit
10 court judge in Peoria County considering transfer of an
11 action with identical issues as this one. Judge Derek
12 Asbury in Peoria County concluded that it was
13 appropriate to transfer the action before him to
14 Sangamon County, Illinois. Judge Asbury made that
15 decision on May 12th, three days ago.

16 He authored a written opinion that bears
17 directly upon the issues before you and the motion to
18 transfer pending before you this afternoon. Here's what
19 Judge Asbury wrote about generally the action.

20 THE COURT: I did read it, counsel. I have read
21 it.

22 MR. VERTICCHIO: I understand, Your Honor. May
23 I?

24 THE COURT: Yeah.

25 MR. VERTICCHIO: Thank you. Quote, The

1 Plaintiff's verified complaint strictly deals with the
2 executive order promulgated and issued from Sangamon
3 County. Continuing, the majority of the verified
4 complaint addresses a requested declaration that affects
5 the entire state. While the plaintiff requests that
6 this court only consider it in the context of his case,
7 the pleadings seem to suggest otherwise. The court can
8 not ignore the public interest factor of this being a
9 localized versus state-wide controversy touching every
10 corner of the state. Close quote. That's the
11 characterization that Judge Asbury gave to the complaint
12 in Peoria County. The exact same situation exists here,
13 and, when considering the six factors that the Supreme
14 Court directs should be considered on a *forum non*
15 *conveniens* motion like the one here, like the one filed
16 in Peoria County, here's what Judge Asbury concluded and
17 ruled. Quote, it is logical that transferring venue on
18 a state-wide issue for the purpose of uniformity is in
19 the public's greater interest. The court finds it is as
20 important to have consistency in rulings on a state-wide
21 issue during this pandemic. Therefore, the court grants
22 the defendant's motion and transfers venue to Sangamon
23 County where the executive order originated as to all of
24 the state's citizens and businesses. That was three
25 days ago. Same facts. Same legal issues. Same

1 state-wide issues touching every resident of the state
2 of Illinois. Hence, the motion to transfer in front of
3 you.

4 The plaintiff filed a ten-page response to the
5 motion to transfer venue. I believe it was captioned as
6 an objection, ten pages. The most striking thing about
7 those ten pages, Your Honor, is what the plaintiff said
8 about Judge Asbury's ruling and about Judge Asbury's
9 reasoning and about Judge Asbury's conclusions. Here's
10 what the plaintiff said: Nothing. Not a whisper. Ten
11 pages in response to a motion that's premised upon Judge
12 Asbury's ruling. Plaintiff said nothing, not that Judge
13 Asbury was wrong, not that his reasoning was
14 inappropriate, not that the rules he applied were wrong.
15 The plaintiff said nothing.

16 What else is the plaintiff silent on in those
17 ten pages? Well, one of the requirements for a motion
18 to transfer venue pursuant to *forum non conveniens*, of
19 course, is that venue in the proposed transferee forum
20 is proper, Sangamon County. We established in the
21 motion that Sangamon County is the proper venue for this
22 action. Mr. Bailey said nothing.

23 MR. DeVORE: We don't object, Your Honor, that
24 Sangamon County could have been a proper venue, but this
25 is not a venue question. This is a *forum non conveniens*

1 question so it's not even relevant, but we would
2 stipulate it could have been filed there potentially.

3 THE COURT: All right.

4 MR. VERTICCHIO: Thank you for the stipulation.

5 MR. DeVORE: No problem.

6 MR. VERTICCHIO: It's certainly relevant because
7 it's a requirement of the motion. But what does the
8 plaintiff say?

9 THE COURT: Before you go on to what he does
10 say, let's talk about what he didn't say. Judge Asbury
11 may be the greatest judge whoever walked the earth, but
12 he ain't got no authority over me, does he?

13 MR. VERTICCHIO: There's no question, Your
14 Honor. Judge Asbury's opinion and written order in
15 Peoria County is persuasive authority for you.

16 THE COURT: How?

17 MR. VERTICCHIO: He in no way binds you. It's
18 impossible for one circuit judge to bind another. There
19 is no question about that.

20 THE COURT: All right.

21 MR. VERTICCHIO: No question about that.

22 THE COURT: So why is he obligated to even
23 comment on Judge Asbury's decision?

24 MR. VERTICCHIO: Because Judge Asbury's decision
25 is the basis for the entire motion, that Judge Asbury's

1 decision is an issue that touches every citizen in this
2 state. It's appropriate for the decision of the circuit
3 court to be made in the seat of government in this
4 state, in Sangamon County. That case from Peoria, same
5 issues, same executive orders, same statute, now lodged
6 at the seat of government in Sangamon County. For
7 uniformity purposes, it makes all the sense in the world
8 that cases filed in other circuit courts equally should
9 be at the seat of government in Sangamon County and,
10 when you look at the six issues and factors that the
11 Supreme Court has directed should be looked at, this
12 one, it's not even close.

13 Here's what Mr. Bailey says about the private
14 factors. The private factors are, the first one is the
15 convenience of the parties. Well, I think Mr. Bailey is
16 correct, that one is a wash. It's more convenient for
17 Mr. Bailey to be here. It's more convenient for the
18 government and the Governor to litigate this in Sangamon
19 County. That issue is a wash. The next private factor,
20 access to proof. Mr. Bailey says not relevant. Why?
21 Paragraph 64 of his objection, this case, quote,
22 fundamentally and virtually is exclusively an issue of
23 law, close quote. So access to proof, according to Mr.
24 Bailey, is not relevant. Okay.

25 The third factor, practical problems of trial

1 ease. Mr. Bailey says not relevant. Okay. So of the
2 private factors, one is a wash, two aren't relevant
3 according to Mr. Bailey.

4 How about the public factors? Burden on the
5 forum. Mr. Bailey says, paragraph 74 of his objection,
6 it's not relevant. Two, administrative difficulties.
7 Mr. Bailey says, paragraph 74 of his objection, not
8 relevant. That leaves one. That leaves one only
9 relevant issue according to Mr. Bailey, and he's right.

10 The final issue, the final public factor,
11 interest in deciding local controversies. Mr. Bailey
12 says it's the governor's burden to show that that
13 interest, the only one he thinks is relevant and I agree
14 with him, to show that it greatly outweighs staying
15 here, that interest greatly favors sending this case to
16 Sangamon County and, interestingly enough, in his
17 objection, Mr. Bailey concedes this is not a local
18 controversy. It's not a local controversy. It's a
19 state-wide controversy that touches every citizen in
20 this state.

21 Paragraph 67, quote, the controversy is far from
22 localized and has far-reaching effects, close quote.
23 That's Mr. Bailey's objection. Quote, paragraph 70, it
24 applies equally to every county in the state, close
25 quote, and the way the amended complaint is drafted, it

1 shows that he's right. It shows that he's right. This
2 complaint, this lawsuit and the amended complaint which
3 Your Honor just granted leave to file, the wherefore
4 clause in Count I, paragraph E seeks a, quote, finding
5 that the emergency powers under Section 7 of the act
6 which were invoked in EO 32 are null and void *ab initio*.
7 That's Count I, every citizen of the state.

8 Count II, declaring that the proclamation and
9 executive orders had no authority under the emergency
10 powers of the act, again, quote, void *ab initio*. Count
11 III, again, void *ab initio*, every citizen of the state
12 impacted and, Count IV, the injunction count, quote,
13 enter an injunction permanently enjoining Pritzker, or
14 anyone under his authority, from enforcing EO 32 from
15 this date forward, close quote, every citizen of the
16 state and it did not have to be drafted this way.

17 Mr. Bailey could have crafted this complaint to
18 impact him, only him. He chose not to do that. He went
19 far reaching, far reaching. His relief touches every
20 citizen of the state. Mr. Bailey has made public
21 statements to the same effect, all of which, and I
22 understand it's not binding, but all of which brings us
23 back to Judge Asbury's reasoning. It is logical to
24 transfer venue, quote, on a state-wide issue for the
25 purpose of uniformity and the public's greater interest,

1 close quote.

2 Transfer of venue to the seat of government in
3 Sangamon County on an issue that touches every citizen
4 in this state is appropriate under *forum non conveniens*.
5 The parties agree that the only real factor is is this a
6 localized controversy or is it a state-wide controversy.
7 Not only do they agree that that's the factors that the
8 court should concentrate on, they agree it's a state-
9 wide controversy. Greatly outweighs. Their agreement
10 shows that transfer of the forum to Sangamon County
11 under the doctrine of *forum non conveniens* greatly
12 outweighs the interest of leaving this state-wide
13 dispute in Clay County.

14 For that reason, Your Honor, the Governor would
15 respectfully request that the motion to transfer
16 pursuant to *forum non conveniens* be granted and a
17 transfer order be entered. Thank you.

18 THE COURT: What say you, Plaintiff?

19 MR. DeVORE: Thank you, Your Honor. My client
20 doesn't disagree that this cause of action can affect
21 every citizen in this state, every business in this
22 state. That is not a product of what my client's
23 complaint has drafted. That's a product of executive
24 orders that were written in such a way to touch the
25 lives of every human being in this state that's a

1 citizen or business. That was by the construct of the
2 executive orders. So to suggest that my client's cause
3 of action does that is a little bit of a mis-
4 characterization. It's the actions of the Governor that
5 have caused this to be a state-wide issue. I wanted to
6 start with that.

7 The issue of the basis for the entire motion --
8 I heard my colleague say to this court that the basis of
9 this entire motion was an order entered by a judge
10 somewhere up north dealing with centralized matters to
11 Springfield. I believe that's what the court said.
12 Maybe I'm wrong, sir, but it was my impression that the
13 basis for an entire motion for a *forum non conveniens* is
14 grounded in supreme court rule and supreme court
15 precedent and that's what the court is considering and
16 not whether a judge someplace else may have made a
17 decision, for what it's worth to this court, based upon
18 factor analysis that I don't even understand.

19 They talk about -- and my colleague talks about
20 this local, local desire. What is local under the
21 circumstances of this cause of action that's predicated
22 on this executive order? It's the state of Illinois.
23 It's local. Because of that reason, the Governor would
24 ask this court to find that, since it's local, we should
25 do, for the whole state, that it should be in Sangamon

1 County. I don't know what's so special about Sangamon
2 County, sir, the fact that our county seat or our state
3 legislature is there or the governor's mansion is there?
4 The mere fact that that's the place where a state's
5 legislative body takes place, if the legislature had
6 been doing anything for the last two months, we may not
7 be sitting here. So the fact that they're all housed in
8 Springfield I think is moot.

9 THE COURT: Well, the Defendant stated in his
10 motion that the, any witnesses or documents are in
11 Springfield.

12 MR. DeVORE: Well, I don't know that he
13 specifies Springfield in his motion. I think he points
14 out -- and I'll get to that. I don't know that he
15 specifically says in Sangamon County. He doesn't go
16 that far. I'm going to get to that, and my colleague
17 will look that up. He talks about the convenience
18 factor. He didn't argue it here today, but the
19 convenience factor for the Defendant. That's got
20 nothing to do with Sangamon County because we put in our
21 order, every press release that my client has ever seen
22 comes out of Thompson Center in Chicago. So it appears
23 that's happening in Chicago and, more importantly,
24 Judge, we're not talking about the legislative body
25 doing things or meeting, et cetera. What are we talking

1 about? We're talking about executive orders that have
2 been signed and we're talking about proclamations of
3 disaster that have been signed.

4 There is no evidence in front of this court to
5 suggest, even though I don't think it's a relevant
6 factor, that that's being done in Sangamon County. Is
7 Sangamon County -- could it have been a venue for this?
8 Yeah. There's 102 counties that could have been a venue
9 for this issue because of the grand impact it's had on
10 every citizen.

11 THE COURT: Isn't he arguing that these
12 executive orders were written based upon guidance from
13 expert witnesses who are in Sangamon County? Isn't that
14 what he's saying?

15 MR. DeVORE: I think he says Sangamon and Cook
16 County in his pleading and we're looking at that right
17 now. But, again, Your Honor, I don't think -- and if
18 you look at some of the case law on this when it talks
19 about what you have to allege, who are these witnesses?
20 Again, when the Governor signs an executive order,
21 that's what's under attack in this court and whoever
22 signed witnesses -- all of the materials and doc -- I'm
23 reading here, Your Honor, page 5 of their motion, all of
24 these materials and documents and the individuals who
25 will testify can be most easily accessed, that's

1 important language, Judge, and I'm glad Mr. Hyam found
2 it for me, can be most easily accessed in Sangamon
3 County. That is not the same thing to say they are
4 there. I suspect the Governor is getting some kind of
5 direction from the Department of Health director. I
6 don't know because that's not laid out in this motion.
7 She's right there with the Governor the whole time. So
8 it does not say that, Judge. It says can most easily be
9 accessed.

10 Let's talk about these documents and this
11 evidence. This is a declaratory judgment action. If we
12 weren't talking about issues of such great importance,
13 the court and the attorneys in the room are likely aware
14 dec actions deal with interpretation, they deal with
15 applying the law. These are public documents.

16 THE COURT: You also filed a count for
17 injunctive relief, right?

18 MR. DeVORE: That is pending, yes. Correct.
19 Whether my client calls that or not is, we haven't
20 determined, but it is there. As to the declaratory
21 judgment, which are things that my colleague raises
22 about the ramifications if this court would make, those
23 issues are dealing with public documents and the
24 authority of statutes as those public documents are
25 applied to. The amount of -- they're taking about

1 evidence, as I believe my colleague has pointed out,
2 putting on evidence for days regarding the nature of
3 this pandemic and --

4 THE COURT: We're going to get to that later.

5 MR. DeVORE: But I would suggest to the court as
6 to this issue of -- maybe they've not read the amended
7 complaint, but as to this issue of there being, actually
8 existing a public health emergency, my client is not
9 going to even argue about that. I don't even think it's
10 relevant in this case because the fact that there is and
11 has been, at least since April 1st, May 1st, constitute
12 is the word they use, Your Honor, a public health
13 emergency, it cuts against their very ability to say
14 there's a disaster in the first place because the
15 disaster can only be proclaimed if you're invoking
16 emergency powers to avert is the language in the
17 statute.

18 So if they want to come in and put on two days
19 of testimony that we have a public health emergency,
20 they're not going to get any resistance from us. We're
21 going to go, okay, you just pled yourself out of court.
22 So all of that evidence for this motion to transfer,
23 Judge, is not relevant because that's not really what's
24 in front of the court.

25 We have laid out in our objection that I'm quite

1 certain the court has read, you know, this centralized
2 argument, I would ask the court to consider this is a
3 state-wide issue. None of us disagree with that. Why
4 is Sangamon County more convenient? I would ask the
5 court why? Why is this court right here any less able
6 to manage and handle this case than a court in Sangamon
7 County? The Governor's in Cook County. We don't know
8 who these witnesses are that are more easily accessible.
9 Why are they more easily accessible? I don't know who
10 they are. I don't know where they live. I don't know
11 what they're going to testify to. If they really wanted
12 to put forth a motion for this court to consider, they
13 should have pled those things and they didn't.

14 For those reasons, Your Honor, we don't think
15 that they have pled, they have not met the burden that
16 the supreme court has set which says, and I'm going to
17 pull to that, it says that my client's initial choice of
18 forum will prevail unless they put forth something that
19 substantially outweighs that, Judge. It's the
20 *Langenhorst* case, I think it's been quoted
21 significantly, and the factors, all of them together
22 have to strongly favor the court transferring this for
23 non conveniens. Strongly favor, Your Honor, is the
24 standard and, unless the balance of those factors
25 strongly favors Governor Pritzker, my client's choice of

1 forum should not be disturbed.

2 The best they've put forth to you is that this
3 is a state-wide issue and it should be handled in a
4 central location. I don't believe geography has
5 anything to do with it. Just because Sangamon County is
6 in the center, that's not a factor. I mean I know the
7 judge from up north talked about that. With all due
8 respect to another member of our bar and to a judge,
9 those six factors, none of them talk about the central
10 location. I don't even understand it, and we didn't
11 respond to it because I didn't think it was necessary.

12 As to the actual factors elicited, we have the
13 issue of access to documents and people and we have this
14 locality thing that you know of, centralized locality.
15 Neither one of those get them there, Judge. They don't
16 get them there at all. The access to documents and to
17 people is pure conjecture at this point because they
18 haven't adequately laid that out. The nature of this
19 very cause of action -- I can let the court know that
20 sometime in the very near future my client is going to
21 be bringing summary judgment motions. There's not a lot
22 of facts at issue in this case, Judge. It's all
23 applying the law of the Emergency Management Act and
24 Department of Health Act to the disaster proclamations
25 and to the executive orders. That's not going to take a

1 significant amount of evidence and, as I've heard, there
2 is an airport three miles from this court that a plane
3 in the state of Illinois could land at anytime the court
4 thinks that Governor Pritzker might need to come. I
5 don't even see that basis to be necessary at this point.

6 Judge, I think the conclusion is clear. I
7 believe that the elephant in the room is everyone
8 involved knows why this motion for transfer was brought
9 and that's not a proper reason, Judge. We'd ask you to
10 deny it. Thank you.

11 THE COURT: I'll give you one final word if you
12 want it.

13 MR. VERTICCHIO: Thank you, Your Honor. Mr.
14 DeVore just confirmed the point. He's confirmed that in
15 Plaintiff's view there are no factual disputes. They're
16 not even going to contest the public health emergency.
17 In Plaintiff's view, this is all issues of law. This is
18 all issues of law. He's conceded that the only factor
19 for this court to consider is the same one that Judge
20 Asbury has considered, localized controversy, state-wide
21 controversy. That was all conceded in his objection and
22 we heard it just now, and the suggestion, I think he
23 used the word suggestion, that I suggested it touches
24 everybody in the state, I'm not suggesting anything. I
25 can read.

1 His amended complaint, the relief sought can be
2 read in no other way and for the rhetorical question of
3 why is this court less able than some judge in Sangamon
4 County to decide the issue, well, of course, it's not.
5 This court is as able to decide the issue as the court
6 in Sangamon County. It's, of course, as able to decide
7 the issue as the court in Peoria County. The reasoning
8 though holds true.

9 There is a case now pending in Sangamon County
10 with the identical issues in Springfield, Illinois,
11 where the seat of state government lies. Uniformity of
12 decision on an issue that touches not everybody in the
13 room, not everybody in the county, but everybody in the
14 state strongly favors, strongly favors transfer to
15 Sangamon County. We respectfully request the motion be
16 granted. Thank you, Judge.

17 THE COURT: All right. This court finds
18 guidance in the case of *Fennell*, F-e-n-n-e-l-l, versus
19 *Illinois Central Railroad*, 2012 IL 113812, *forum non*
20 *conveniens* motions hinge on private interest and public
21 interest factors. Private interest factors include the
22 convenience of the parties; the relative ease of access
23 to sources of testimonial, documentary and real
24 evidence; the availability of compulsory process to
25 secure attendance of unwilling witnesses; the cost to

1 obtain attendance of willing witnesses; the possibility
2 of viewing the premises, if appropriate; and all other
3 practical problems that make trial of a case easy,
4 expeditious, and inexpensive.

5 The public interest factors include the
6 administrative difficulties caused when litigation is
7 handled in congested venues instead of being handled at
8 its origin; the unfairness of imposing jury duty upon
9 residents of a community with no connection to the
10 litigation; and the interest in having local
11 controversies decided locally.

12 The *Fennell* case states unless the factors weigh
13 strongly in favor of transfer, the Plaintiff's forum
14 choice should rarely be disturbed. If substantial
15 deference is owed to the Plaintiff's choice, a transfer
16 is not proper in most instances despite substantial ties
17 between the suit and the alternative forum. That is
18 *Cradle Society versus Adopt American Network*, 389 Ill.
19 App.3d 73 (1st District 2009).

20 A court generally denies the motion when the
21 potential witnesses are scattered among the potential
22 fora, f-o-r-a, Madam Reporter, including the chosen
23 forum, (ii) the suit has significant ties to the chosen
24 forum, and (iii) a jury view of the accident site is
25 unnecessary. That's *Langenhorst versus Norfolk Southern*

1 *Railroad*, 219 Ill. 2d 430 (2006).

2 Significantly here, *Taylor versus Lemans*
3 *Corporation*, 2013 Ill App (1st) 130033, states if the
4 defendant fails to present affidavits from the witnesses
5 whose inconvenience is claimed to require a transfer,
6 this failure of proof can justify denial of the
7 defendant's motion. In *Cotton versus Louisville &*
8 *Nashville Railroad Company*, 14 Ill. 2d 144, a *forum non*
9 *conveniens* affidavit cannot simply state the conclusion
10 that the alternative forum would be more convenient,
11 without identifying the potential witnesses and
12 indicating what their testimony would be.

13 And, finally, and of particular significance
14 here from the *Fennell* case, a concern animating *forum*
15 *non conveniens* jurisprudence is, quote, curtailing forum
16 shopping by plaintiffs, end quote. That also applies to
17 defendants. This court previously granted a temporary
18 restraining order. Included in that order was a finding
19 that the plaintiff has a substantial likelihood of
20 success on the merits. The defendant, not liking that
21 order, immediately appealed. When the plaintiff bellied
22 up on the TRO, the defendant went to the supreme court
23 saying we don't need to worry about these circuit and
24 appellate court. You tell me, supreme court, I'm right.
25 Well, they didn't.

1 Any pleading filed in this state regarding these
2 executive orders that even mentions the word
3 constitutional, United States Constitution is
4 immediately whisked to federal court. Now, I'm not
5 accusing you, Defense, of judge shopping.

6 MR. VERTICCHIO: Thank you, Your Honor.

7 THE COURT: But if it walks like a duck and
8 quacks like a duck. In any event, I have considered all
9 of these factors. I have exercised my discretion, and
10 the motion to transfer pursuant to *forum non conveniens*
11 is denied.

12 Now, this case needs to be heard. I mean now.
13 So when we going to do it, folks?

14 MR. DeVORE: Judge, I'll have a motion for
15 summary judgment on file Monday.

16 THE COURT: What's your response to that,
17 Defense? Are you saying that I can't go further until
18 you present witnesses or evidence? Isn't this a
19 question of law?

20 MR. VERTICCHIO: I haven't even seen the motion,
21 Your Honor. I can't respond to what do I think about a
22 motion for summary judgment that I have not seen. I
23 think we heard today from the plaintiff that there's
24 going to be no witnesses.

25 THE COURT: You're an excellent lawyer and you

1 know what he's going to say. Are you planning on
2 calling any witnesses? And, if so, what are they going
3 to say?

4 MR. VERTICCHIO: In light of the concessions
5 made today, depending on what count he's moving for
6 summary judgment --

7 MR. DeVORE: All three, sir.

8 MR. VERTICCHIO: There's four.

9 MR. DeVORE: Not the injunction.

10 MR. VERTICCHIO: So not Count IV.

11 MR. DeVORE: It would be moot if any relief is
12 granted in the other, sir.

13 MR. VERTICCHIO: I need to see the motion, Your
14 Honor. I really -- in fairness, to ask me to comment on
15 a motion for summary judgment that I haven't seen is,
16 frankly, it's just not fair.

17 THE COURT: All right. Are you going to file
18 this Monday, Plaintiff?

19 MR. DeVORE: 100 percent certainty, sir. I
20 would ask the court to consider if it can give them a
21 week then we can maybe set it for hearing next Friday.

22 THE COURT: Well, I was getting ready to get
23 there.

24 MR. DeVORE: Yes, sir. I'm sorry.

25 THE COURT: When you get down to it, this ain't

1 a complicated case and the issues are not complicated
2 and they're actually very simple.

3 MR. DeVORE: Yes, sir.

4 THE COURT: And I don't need to hear two days of
5 testimony from a medical expert that if these executive
6 orders aren't continued the world is going to end. I
7 don't need to hear that. This is a legal issue, a legal
8 argument on whether this Governor had the authority to
9 issue this executive order under Illinois law and
10 pursuant to the Illinois Constitution. Period. That
11 ain't hard. File your motion Monday.

12 MR. DeVORE: Yes, sir.

13 THE COURT: We're going to hear this -- this
14 case ends in this court anyway next Friday.

15 MR. DeVORE: Yes, sir.

16 MR. VERTICCHIO: Your Honor, respectfully, I
17 think -- again, I haven't seen the motion, but it's a
18 motion that presumably is seeking judgment on three
19 counts of a 126 paragraph count, paragraph complaint. I
20 would like ten days to respond.

21 THE COURT: I'm going to deny that request.
22 This issue needs resolved. It begs to be resolved.
23 It's got to be resolved in this court and it's going to
24 be and it's going to be resolved Friday. Now what time?

25 MR. VERTICCHIO: Your Honor, I'm sorry.

1 Respectfully, could we have it Tuesday or Wednesday of
2 the following week so that we could have appropriate
3 time to respond to a motion seeking judgment on three
4 counts? I don't think that's too much to ask to get an
5 additional weekend to absorb the motion that's going to
6 be filed on Monday. If the court is going to hear it on
7 Friday, we have virtually no time to respond. I'm
8 respectfully requesting the weekend to respond to a
9 motion for summary judgment on a 126 count, paragraph
10 rather, complaint seeking judgment on three counts on
11 issues that impact every citizen in this state.

12 There's been a representation that it's going to
13 be filed on Monday. It's not asking too much to let the
14 Governor have a week to respond. Respectfully, Your
15 Honor, can we hear the motion the following week so that
16 the Governor can appropriately respond to this motion?
17 Thank you.

18 THE COURT: And it's not asking too much
19 pursuant to the citizens of this state that every hour
20 that goes by they're being deprived of the right to
21 leave their house or make a living is not too much to
22 ask this court to rule Friday. What time?

23 MR. DeVORE: Any time I'm available, sir. Any
24 time.

25 THE COURT: I'll let you pick the time, Mr.

1 Attorney General.

2 MR. VERTICCHIO: 3:00.

3 THE COURT: 3:00 p.m.?

4 MR. VERTICCHIO: Yes, sir.

5 THE COURT: 1:00 p.m. All right. Anything
6 further on behalf of either party?

7 MR. VERTICCHIO: When is my response due, Your
8 Honor? Thursday? Thursday morning?

9 THE COURT: I'll let you respond Thursday
10 morning. Thursday by noon at the latest.

11 MR. VERTICCHIO: Thursday noon. Thank you.

12 THE COURT: All right. Anything further on
13 behalf of either party?

14 MR. DeVORE: Not from the plaintiff, sir. Thank
15 you.

16 MR. VERTICCHIO: Given Your Honor's ruling on
17 the motion for summary judgment, it's somewhat
18 collateral, but just so we have it in the record, could
19 I have 14 days to respond to the amended complaint? I
20 think that the issues will be moot by Friday one way or
21 another but just so we're clear in the record.

22 THE COURT: That's fine. We're still going to
23 proceed on the motion for summary judgment Friday, 1:00
24 p.m.

25 MR. DeVORE: Court will have it Monday, sir.

1 THE COURT: Very well. Again, leave as directed
2 by the sheriff. We're in recess.

3 MR. VERTICCHIO: One more issue. I'm sorry,
4 Your Honor. I almost hate to bring this up, but there
5 has been an issue with plaintiff's not serving the
6 Governor immediately upon filing things. I would
7 respectfully request that an e-mail copy of the filed
8 motion for summary judgment be sent to the Governor's
9 counsel, me, as soon as it's filed because there's been
10 a problem with that in the past. I mean the court knows
11 that Mr. DeVore has come before you on motion for
12 temporary restraining order on these issues without
13 notice to the Governor, even though he knows where I am,
14 so could we get served with this on Monday if it's going
15 to be filed Monday?

16 THE COURT: He's got to be electronically filed,
17 right?

18 MR. DeVORE: Absolutely. I don't even know what
19 he's talking about.

20 MR. VERTICCHIO: The court doesn't automatically
21 send it to us, Your Honor. I'm just asking for counsel
22 to send it to me electronically when he files it.

23 MR. DeVORE: I will absolutely do that, and I
24 would ask counsel to not accuse me of something unless
25 he's going to be specific.

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THE COURT: All right. We're done here.

MR. DeVORE: Thank you, sir.

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CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

I, LORI SIMS, Certified Shorthand Reporter for the Circuit Court of Clay County, Fourth Judicial Circuit of Illinois, do hereby certify that I reported in machine shorthand the proceedings had on the hearing in the above entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable MICHAEL D. MCHANEY, Judge of said Court.

Dated this 15th day of May, 2020.

Lori Sims

Lori Sims
Official Court Reporter
CSR #084-003424