

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

McHENRY TOWNSHIP ROAD DISTRICT, &)	Appeal from the Circuit Court
JAMES CONDON, In His Official Capacity as)	of McHenry County.
McHenry Township Road District Commissioner,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 2020 CH 000312
)	
CRAIG M. ADAMS, In His Official Capacity as)	
McHenry Township Supervisor; ROBERT)	
ANDERSON, MICHAEL RAKESTRAW,)	
STANLEY WOJEWSKI, and STEVEN VERR)	
In Their Official Capacities as McHenry Township)	
Trustees, and DANIEL AYLWARD, In His Official)	
Capacity as McHenry Township Clerk,)	HONORABLE
)	Kevin G. Costello
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Hudson and Brennan concurred in the judgment.

SUMMARY ORDER

¶ 1 Plaintiffs, McHenry Township Road District and James Condon, in his official capacity as the McHenry Township Highway Commissioner, appeal from the trial court's denial of their motion for a temporary restraining order (TRO) to compel the named defendants in their official capacity to certify the Highway Commissioner's levy and enjoining them from certifying the levy

approved by them. In this interlocutory appeal brought pursuant to Supreme Court Rule 307(d) (eff. Nov. 1, 2017), plaintiffs seek reversal of the trial court's denial of their TRO petition. Pursuant to Illinois Supreme Court Rule 345 (eff. Sep. 20, 2010), we granted leave to the Township Highway Commissioners of Illinois and the Township Officials of Illinois to file an *amicus curiae* brief supporting plaintiffs' arguments.

¶ 2

I. BACKGROUND

¶ 3 Plaintiffs are the McHenry Township Road District (Road District), which was created pursuant to and operates under the Illinois Highway Code (the Code) (605 ILCS 5/6-101 *et seq.* (West 2018)) and James Condon, the elected McHenry Township Highway Commissioner (Highway Commissioner).

¶ 4 The defendants are Craig M. Adams, in his Official Capacity as McHenry Township Supervisor; Robert Anderson, Michael Rakestraw, Stanley Wojewski, and Steven Verr in their Official Capacities as McHenry Township Trustees, and Daniel Aylward, in his Official Capacity as McHenry Township Clerk. Pursuant to section 605 ILCS 6-501(c) of the Code, the McHenry Township Board of Trustees is required to hold a public hearing to “adopt the tentative budget and appropriation ordinance, or any part as the board of trustees deem necessary.”

¶ 5 Pursuant to section 6-501(c) of the Highway Code (605 ILCS 5/6–501(c) (West 2018)), and 605 ILCS 5/6–201 *et seq.* (West 2018)) the Highway Commissioner is required to determine the taxes necessary to be levied on property within his district for road purposes, which he then submits to the township board for certification. Here, the Highway Commissioner prepared and submitted the 2021 tax levy for road purposes to the McHenry Township Board and Clerk, calling for a levy of \$3,000,000.

¶ 6 At the McHenry Township public meeting on December 10, 2020, the McHenry Township Board of Trustees rejected the Road Commissioner's 2021 tax levy ordinance, and instead passed into law, their own tax levy ordinance in which they determined the amount to be levied. The ordinance adopted by the McHenry Township Board of Trustees approved a modified version of the Highway Commissioner's tentative levy in the amount of \$2,095,000, thereby reducing the levy by \$905,000. The supporting record is devoid of any further explanation as to how these new amounts corresponded to the individual line items in the Highway Commissioner's proposal.

¶ 7 On December 17, 2020, plaintiffs filed a three-count verified complaint for a TRO, an injunction, and *mandamus*. Plaintiffs alleged in all counts that the McHenry Township Board was limited by section 6-501(c), and that it did not have the statutory authority to certify an amount for the levy other than that set forth by the Highway Commissioner. In count I and II, plaintiffs sought injunctive relief to enjoin the defendants from certifying the levy approved by them to the county clerk, and to order defendant Daniel Aylward to certify the \$3,000,000, December 8, 2020, tax levy to the McHenry County Circuit Clerk before December 29, 2020. In count III, plaintiffs sought a writ of *mandamus* to compel the Township Supervisors and Trustees to certify the \$3,000,000, December 8, 2020, tax levy to defendant Daniel Aylward and to compel defendant Daniel Aylward to then certify the levy to the McHenry County Circuit Clerk before December 29, 2020. On December 21, 2020, defendants filed an "Answer" to plaintiffs' verified complaint, wherein they simply argued that plaintiffs' claim for injunctive relief and *mandamus* should be denied. On that same date, the trial court held arguments on the petition and subsequently denied plaintiffs' verified petition. The trial court's written order, dated December 22, 2020, states the following:

"This Matter comes before the Court on hearing of Plaintiffs Motion for Temporary

Restraining Order. The Court, having reviewed the pleadings, applicable cases and statutes, and the arguments of the parties, hereby ORDERS:

I. For the reasons stated in open court, the Motion for Temporary Restraining Order is denied.

The transcripts from the hearings were not included in the supporting records.

¶ 8

II. ANALYSIS

¶ 9 Plaintiffs appeal the denial of their TRO pursuant to Illinois Supreme Court Rule 307(d).

As a preliminary matter, though plaintiffs included the McHenry Township Board of Trustees in their notice of appeal, they did not name the Board as a party in their verified complaint before the trial court. As such we lack personal jurisdiction over the McHenry Township Board of Trustees.

¶ 10 A TRO is a drastic remedy, and a trial court's denial of a TRO is reviewed for an abuse of discretion. *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567 (2010). "An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

A party seeking injunctive relief must demonstrate the following "(1) it has a protected right; (2) it will suffer irreparable harm if injunctive relief is not granted; (3) its remedy at law is inadequate; and (4) there is a likelihood of success on the merits." *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634 (2005). Moreover, where a TRO seeks to alter the *status quo* a party must show a probability of success on the merits. *Keystone Chevrolet Co. v. Kirk*, 69 Ill. 2d 483, 486 (1978).

¶ 11 Plaintiffs' complaint seeks essentially two remedies, to enjoin the defendants from certifying the levy passed by the McHenry Township Board of Trustees and to have the Township Clerk certify the Highway Commissioner's levy.

¶ 12 As such, plaintiffs are seeking a *mandamus*. "*Mandamus* is an extraordinary remedy

traditionally used to compel a public official to perform a ministerial duty. [citation] Generally, a writ of *mandamus* will be awarded only if a plaintiff establishes a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ.” *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464–65.

¶ 13 With regard to the relief sought against Daniel Aylward, in his capacity as McHenry Township Clerk, to compel him certify the Highway Commissioner’s levy to the County Clerk, Aylward has no authority to comply with such a writ. As Township Clerk he is the ex-officio Road District Clerk. 605 ILCS 5/6-113 (West 2018). The highway code explicitly states that “The district clerk shall not certify levies of taxes to the county clerk.” 605 ILCS 5/6-502 (West 2018). Accordingly, plaintiffs are unlikely to succeed on the merits with regard to that aspect of their claims.

¶ 14 With regard to the relief sought against the individual board member enjoining them from certifying the levy passed by the McHenry Township Board of Trustees, they likewise have no duty to act or authority to comply with the writ. It is the Township Board itself which is vested with the duty to certify the levy, and as we have previously discussed the McHenry Township Board of Trustees is not properly before this court and as such no writ can be directed against them. See 605 ILCS 5/6-501(c) (“the township board of trustees * * * shall levy and certify to the county clerk the amount necessary to be raised by taxation for road purposes”). Accordingly, as the plaintiffs’ relief is sought against improper parties, there is no likelihood of success on the merits.

¶ 15 Additionally, we have no record as to what the trial court’s reasoning was for denying the TRO. There is no transcript from the hearing, no bystander’s report, no agreed statement of facts, and the order does not contain any explanation of the trial court’s reasoning. As such, we have no

way of determining whether the trial court's decision constitutes an abuse of discretion. The appellant has the burden of submitting a sufficiently complete record to support their claim, and in the absence of a sufficiently complete record it will be presumed that the trial court's actions conformed with the law. *Muellman-Cohen v. Brak*, 361 Ill. App. 3d 52, 54 (2005). As the record is insufficient to support plaintiffs' claim that the trial court abused its discretion, the judgment of the trial court must be affirmed.

¶ 16

III. CONCLUSION

¶ 17 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed.

¶ 18 Affirmed.