

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

Charles R. Bacon on behalf of I.B., et. al,  
Plaintiffs,

v.

ILLINOIS HIGH SCHOOL ASSOCIATION,  
and BOARD OF EDUCATION OF THE CITY  
OF CHICAGO

Defendants.

Case No. 19 CH 12390  
Judge Eve Reilly  
Calendar 07

**ORDER**

This matter coming to be heard on Plaintiff's Emergency Motion for Temporary Restraining Order, due notice having been given, and the court being fully advised in the premises, IT IS HEREBY ORDERED:

1. On Thursday, October 24, this court received Plaintiffs' JCPXC-TEAM XI, and other similarly situated CPS student-athletes, Emergency Motion for a Temporary Restraining Order against the Illinois High School Association ("IHSA") and the Board of Education of the City of Chicago ("CPS"). The court agreed to hear this case on an emergency basis, and an expedited hearing date was set up for today, Friday, October 25 at 10:30 a.m. In this case, Plaintiffs allege that Defendants IHSA and CPS are wrongfully preventing Plaintiffs from competing at the IHSA Regional Cross Country Meet scheduled for Saturday, October 26, 2019 while the current Chicago Teachers Union Strike is continuing and CPS is not in session.
2. A temporary restraining order is a drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration. *Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 416 (2d Dist. 1987). The purpose of a temporary restraining order is to allow the circuit court to preserve the *status quo*—to prevent a threatened wrong or a continuing injury—pending a hearing to determine whether it should grant a preliminary injunction. *Id.* "The status quo to be preserved is the last actual, peaceable, uncontested status which preceded the pending controversy." *Martin v. Eggert*, 174 Ill. App. 3d 71, 77 (2d Dist. 1988). While the term status quo has been the subject of often inconsistent interpretations, "[preliminary injunctive relief] is designed to prevent a threatened wrong or the further perpetration of an injurious act." *Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1118 (5th Dist. 2009). *Sometimes the status quo is "not a condition of rest but, rather, . . . a condition of action that [is] necessary to prevent irreparable harm."* *Id.* at 1117.
3. To obtain a temporary restraining order, a plaintiff must typically establish: (1) a clearly protected right; (2) irreparable harm by the defendant's conduct if an injunction does not issue; (3) there is no adequate remedy at law; and (4) likelihood of success on the merits.

*Chi. Sch. Reform Bd. of Trs. v. Martin*, 309 Ill. App. 3d 924, 939 (1st Dist. 1999). Additionally, courts often balance the equities or the relative hardships. *Scheffel & Co. v. Fessler*, 356 Ill.App.3d 308, 313 (5th Dist. 2005).

4. To establish a clearly ascertainable right in need of protection, a plaintiff must raise a fair question that it has a substantive interest recognized by statute or common law. *Delta Med. Sys. v. Mid-America Med. Sys., Inc.*, 331 Ill. App. 3d 777, 789-90 (1st Dist. 2002). A well-pleaded complaint for injunctive relief must contain on its face a clear right to relief and allege facts which establish the right to such relief in a positive, certain and precise manner. *Nameoki Tp. v. Cruse*, 155 Ill. App. 3d 889, 898 (5th Dist. 1987).
5. In this case, Plaintiff's argue that CPS student-athletes possess rights conferred on CPS student-athletes as intended third-party beneficiaries of the membership by CPS with the IHSA to participate in the IHSA State Series Competition. To support this claim, Plaintiffs point to a function of IHSA to "govern[s] the equitable participation in interscholastic athletics and activities that enrich the educational experience." Defendants argue that in this context, student-athletes do not have third party beneficiary standing because the school, not the students, are required to meet the qualifications for membership in the association and to adopt the Constitution and By-Laws as its code for athletic competition. Additionally, they argue it is the schools, not the students, who are members of the association. Defendants point to *Proulx* for the proposition that there is no protectable interest in participation in interscholastic athletic, and therefore Plaintiffs have no clearly ascertainable right. *Proulx v. Illinois High School Asso.* 125 Ill. App 3d. 781, 785. However, Plaintiffs are not claiming a protectable right of participation, but rather a protectable right as a third party beneficiary. Accordingly, *Proulx* is distinguishable from the case before us. While contracting parties are presumed to enter contracts only for their own benefit, this presumption can be overcome by identifying the third -party beneficiary in the contract. *Federal Ins. Co. v. Turner Const. Co.*, 277 Ill. App. 3d 262, 269 (4th Dist. 1995). To succeed on a third-party beneficiary claim, the Plaintiff's must show that they were the intended, and not merely incidental beneficiaries to the contract between CPS and IHSA. *Id.* As an initial matter, there can be no doubt that an important function of the IHSA and its Constitution and Bylaws is to benefit student athletes. Additionally, the IHSA through its Constitution and Bylaws occupy a sort of "gatekeeper" position, where IHSA determines the eligibility of each student athlete wishing to participate in interscholastic sports. *Hall v. NCAA*, 985 F. Supp. 782, 796 (1997). Accordingly, Plaintiffs have raised a fair question of a protectable right.
6. The elements of irreparable injury and inadequate remedy at law required for a temporary restraining order are closely related. *Happy R. Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36. An irreparable injury is one which cannot be adequately compensated in damages or be measured by any certain pecuniary standard. *Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass'n*, 173 Ill. App. 3d 431, 435 (2d Dist. 1988). However, irreparable injury does not necessarily mean injury that is great or beyond the possibility of repair or compensation in damages, but is the type of harm of such constant or frequent recurrence that no fair or reasonable redress can be had in a court of law. *Bally Mfg. Corp. v. JS&A Group, Inc.*, 88 Ill. App. 3d 87, 94 (1st Dist. 1980).

11. Plaintiff's Emergency Motion for a Temporary Restraining order is denied.

SO ORDERED.

ENTERED:

**Judge Eve M. Reilly**

OCT 25 2019

**Circuit Court - 2122**

DATED