

STATE OF MICHIGAN
IN THE 35TH JUDICIAL CIRCUIT COURT FOR THE
COUNTY OF SHIAWASSEE

MICHIGAN DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff,

v

KARL MANKE, an individual,

Defendant.

Jason A. Geissler (P69322)
Andrea L. Moua (P83126)
Joseph E. Potchen (P49501)
Assistant Attorneys General
Attorneys for Plaintiff
Michigan Department of Attorney General
Corporate Oversight Division
525 W. Ottawa St.
Lansing, MI 48909
(517) 335-7632

20 - 4700
Case No. 20- -CZ

HON. MATTHEW J. STEWART

Karl W. Manke
421 W. Main St.
Owosso, MI 48867
(989) 723-2926
Email address: Unknown.

1847 Kilbourn Ave.
Owosso, MI 48867

FILED
35TH CIRCUIT COURT
2020 MAY 11 A 11:49
CAROLINE D. WILSON
SHIAWASSEE
COUNTY CLERK

**MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES'
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

The Michigan Department of Health and Human Services ("The Department" or "MDHHS"), by its attorneys Dana Nessel, Attorney General, and Assistant Attorneys General, Jason A. Geissler, Andrea L. Moua, and Joseph E. Potchen, pursuant to MCR 3.310(B), MCL 333.2437, and MCL 333.2251(2), and supported by the attached Verified Complaint in Support of Motion for Temporary Restraining Order, move for a temporary restraining order, requiring Defendant, his agents and

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employees, and all persons with notice, to cease all business operations at 421 W. Main Street, Owosso, Shiawassee County, Michigan 48867, based on the allegations and information contained in Plaintiff's Verified Complaint.

The Department moves pursuant to MCR 3.310(B) for a temporary restraining order, without notice to the Defendant, because immediate and irreparable injury will result from any delay required to effect notice, as Defendant has been operating in violation of the Governor's Executive Order 2020-69 since approximately May 4, 2020 and continues to endanger the public health, safety, and welfare through its operation of a barbershop in violation of Executive Order 2020-69.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the following relief:

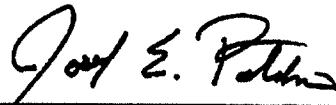
- A. Issue a Temporary Restraining Order, without notice to the Defendant, requiring Karl Manke, his agents, employees, representatives, assigns, those acting in concert with Defendant, and all other persons with notice of the Order to cease all business operations at its 421 W. Main Street, Owosso, Michigan 48867 storefront on penalty of contempt of Court, until further Order of the Court;
- B. Order Defendant to appear and show cause, if any, why a Temporary Restraining Order should not be issued, requiring Karl Manke, his agents, employees, representatives, assigns, those acting in concert with Defendant, and all other persons with notice of the Order to cease

all business operations at 421 W. Main Street, Owosso, Michigan
48867 storefront, on penalty of contempt of Court; and

- C. Enter an order permanently enjoining Defendant Karl Manke, and all of Defendants' employees, agents, representatives, assigns, and those acting in concert with Defendants from operating a barbershop anywhere in the State of Michigan during the pendency of this Matter or until the Governor issues an Executive Order lifting the restrictions contained within Executive Order;
- D. Enter an order imposing such other fines and/or penalties allowed by statute, including costs and attorney fees and any other relief this Court deems just under the circumstances.

Respectfully submitted,

DANA NESSEL
Attorney General



Jason A. Geissler (P69322)
Andrea L. Moua (P83126)
Joseph E. Potchen (PP49501)
Assistant Attorneys General
Attorneys for Plaintiff
Michigan Department of Attorney General
Corporate Oversight Division
525 W. Ottawa St.
Lansing, MI 48909
(517) 335-7632

Dated: May 11, 2020

STATE OF MICHIGAN
IN THE 35TH CIRCUIT COURT FOR SHIAWASSEE COUNTY

MICHIGAN DEPARTMENT OF,
HEALTH AND HUMAN SERVICES,
Plaintiff,

Case No. 20-4700-CZ
Hon. Matthew J. Stewart

v

KARL MANKE,

Defendant.

Opinion & Order

DENYING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

FILED
35TH CIRCUIT COURT
2020 MAY 11 PM 4:38
CAROLINE D. WILSON
SHIAWASSEE
COUNTY CLERK

Plaintiff asks the Court to issue a temporary restraining order (“TRO”) without notice to the Defendant. The Court denies the request.

Under the Public Health Code, Plaintiff may petition the Court to restrain a practice that requires action to avoid, correct, or remove imminent danger. MCL 333.2251(2). Plaintiff seeks relief beyond merely petitioning the Court, however. Plaintiff asks the Court to issue a TRO under MCL 333.2255. As a form of injunctive relief, TROs are extraordinary remedies. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8 (2008).

The court rules set forth the requirements for TROs at MCR 3.310(B)(1)(a) – (c). Generally, an applicant must show that harm will result from the delay required to provide notice, or that notice itself will cause adverse action. MCR 3.310(B)(1)(a). Plaintiff does not argue that notice will precipitate adverse action.

Thus, this motion presents a narrow question. Has Plaintiff shown that irreparable injury will result from the delay required to notify Defendant of this action?

The Court answers “no.” Defendant should have an opportunity to be heard.

Plaintiff alleges that Defendant has operated in violation of the Governor’s Executive Orders (“EOs”) since May 4, 2020. Plaintiff argues that Defendant’s business is an imminent danger to the health or lives of individuals in this state. However, Plaintiff did not file this action until May 11, 2020, one week later.

On May 8, 2020, Plaintiff issued an Imminent Danger and Abatement Order (“abatement order”). While Defendant worked at his place of business, Plaintiff served the abatement order on him, employing troopers of the Michigan State Police as process servers.¹ The abatement order required Defendant to close his business immediately. Violation of the abatement order is a misdemeanor punishable by up to 6 months of incarceration. MCL 333.2261. Similarly, violation of an EO is also a misdemeanor. MCL 10.33; MCL 30.405(3). Although Plaintiff contends Defendant has committed these misdemeanors, the troopers apparently did not take Defendant into custody for committing criminal acts in their presence. This would have immediately ended the imminent public health threat claimed by Plaintiff.

However, Plaintiff did not enforce its own abatement order. Instead, it waited through the weekend to file this action. If the public

¹ The Court has no personal knowledge of these facts, but gleaned them from local and national news coverage.

health did not require Defendant's immediate warrantless arrest, then the public health does not require depriving him of notice.

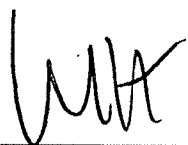
Plaintiff further argues that no notice is required because Defendant is already aware of the EOs and continues to operate in defiance of them. Plaintiff does not demonstrate how this supports the request for a TRO. The court rules contain no such provision. Whether or not Defendant has personal knowledge of the EOs is irrelevant to this motion. Plaintiff must show that injury will result unless Defendant receives no notice of these proceedings.

Notice and the opportunity for a hearing are not empty formalities; they are the core components of due process. Plaintiff has merely recited its conclusion that irreparable injury will result unless the Court grants the TRO immediately and without notice to Defendant. The Court disagrees.

Plaintiff has not shown that irreparable injury will result from the delay required to provide Defendant notice.

THE COURT THEREFORE ORDERS THAT Plaintiff's Motion for a Temporary Restraining Order is DENIED. Plaintiff may schedule this matter for a hearing to obtain a preliminary injunction with notice to Defendant.

Dated: 5-11, 2020



Hon. Matthew J. Stewart, P58047

PROOF OF SERVICE

TO PROCESS SERVER: You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE/AFFIDAVIT OF SERVICE/NONSERVICE

OFFICER CERTIFICATE OR **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the Opinion & Order Denying Plaintiff's Motion to Temporary Restraining Or by:

personal service on:

Name(s)	Complete address(es) of service	Day, date, time

first-class mail on:

Name(s)	Complete address(es) of service	Day, date, time

E-Mail (MCR 2.107(C)(4)) on:

Name(s)	Complete address(es) of service	Day, date, time
DAVID A. KALLMAN	dave@kallmanlegal.com	5/11/20 (a)
JOSEPH E. POTCHEN	POTCHENJ@michigan.gov	16:35

I have personally attempted to serve the Opinion & Order Denying Plaintiff's Motion to Temporary Restraining Or on the have been unable to complete service.

Name(s)	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	TOTAL FEE \$
Incorrect address fee \$	Miles traveled	Fee \$	

Gregory Bretzen
Signature
Name (type or print)
Resegies Attorney
Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of this Opinion & Order Denying Plaintiff's Motion to Temporary Restraining Or o _____
Day, date, time

Signature _____ on behalf of _____

SHIAWASSEE COUNTY CLERK
208 N. SHIAWASSEE ST.
CORUNNA, MI 48817
989/743-2262

Court: C 35 78
Printer: CCLK#OF
DT
Receipt No.: 169757
Receipt Date: 5/12/2020

Case: 2020 0000004700 CZ MICHIGAN DEPARTMENT V MANKE
Paid By: LIZ KOENIG

CCC CERTIFIED COURT COPY		Amount
		7.00
	Total:	7.00
Tendered: CHARGE CARD 2998		7.00
	Total Tendered:	7.00
	Change:	.00