

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (3d) 240164-U

Order filed March 15, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 18th Judicial Circuit,
MARK SHARP SCHINSKY,)	Du Page County, Illinois,
)	
Petitioner-Appellee,)	
)	Appeal No. 3-24-0164
and)	Circuit No. 22-DC-616
)	
LYDIA SHARP SCHINSKY,)	Honorable
)	Kenton J. Skarin,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Justice Albrecht concurred in the judgment.
Presiding Justice McDade dissented.

ORDER

- ¶ 1 *Held:* This court has jurisdiction. The circuit court did not abuse its discretion by denying the emergency petition for temporary restraining order.
- ¶ 2 Respondent, Lydia Sharp Schinsky, appeals the Du Page County circuit court’s order finding her emergency motion for temporary restraining order (TRO) did not state an emergency, effectively denying the same. Lydia argues that the circuit court abused its discretion by denying

the TRO because she established a fair question as to whether her right deserves protection and she met the requirements for a TRO. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The parties were married in 2003. Petitioner, Mark Sharp Schinsky, filed a petition for dissolution of marriage in July 2022. In October 2023, Mark filed a petition in a Nevada court seeking to have the Nevada court take *in rem* jurisdiction over a trust that both parties created in 2016 under Nevada law, with a situs in Nevada, and a Nevada trustee. In November 2023, Lydia filed a petition for declaratory judgment in the dissolution proceedings, seeking to have the court declare that the assets of the trust were marital property subject to division in the dissolution proceedings.

¶ 5

In February 2024, Lydia filed an emergency petition for TRO and preliminary injunction seeking to restrain Mark from proceeding with the Nevada action until after her petition for declaratory judgment was decided. Mark filed a response objecting to the emergency nature of the motion. The court heard arguments and found that there was no emergency. One of the issues before the court was whether immediate and irreparable injury, loss, or damage would result if the relief was not granted and the court determined it would not. Specifically, the court stated that it was “not at all clear from the face of the emergency motion what the irreparable harm would be of having a coequal sovereign decide a case under its own laws.” The court also noted that it would “presume that a Nevada court will, in fact, apply law in conjunction or consistent with due process, consistent with the rule of law, and will ultimately make a legally-supported decision. Any other presumption would be both insulting to the people of Nevada and their judiciary and also incorrect.” The court gave Mark 21 days to file a response to the petition and set the matter for status. Lydia appeals.

¶ 6

II. ANALYSIS

¶ 7

Lydia argues that the court abused its discretion because she met the requirements for a TRO, including irreparable harm, if Mark is allowed to proceed in Nevada prior to her petition for declaratory judgment being decided. Mark questions this court’s jurisdiction and notes that the circuit court denied the emergency nature of the petition but did not decide the merits. Mark further argues that the court did not abuse its discretion, as Lydia will not suffer irreparable harm.

¶ 8

An interlocutory appeal may be had from an order denying a TRO. Ill. S. Ct. R. 307(a)(1), (d) (eff. Nov. 1, 2017). To determine if an order is appealable under Rule 307(a)(1) we look to the substance of the order and not its form. *In re A Minor*, 127 Ill. 2d 247, 260 (1989). “A TRO is an emergency remedy,” (*Bradford v. Wynstone Property Owners’ Ass’n*, 355 Ill. App. 3d 736, 739 (2005)) and its purpose “is to preserve the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction” (*American Federation of State, County, and Municipal Employees, Council 31 v. Ryan*, 332 Ill. App. 3d 965, 966 (2002)). A TRO is only to be issued in exceptional circumstances and has a brief duration. *County of Boone v. Plote Construction, Inc.*, 2017 IL App (2d) 160184, ¶ 28. “[W]here a TRO is issued after both notice *and* a hearing” it “is the functional equivalent of a preliminary injunction.” *Id.* In order to obtain a TRO, a party must show, among other things, that he or she would suffer irreparable harm without the TRO. *Bradford*, 355 Ill. App. 3d at 739. The circuit court’s denial of a TRO is reviewed for an abuse of discretion. *Id.* “A trial court abuses its discretion when its decision is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court.” *In re Marriage of Osseck*, 2021 IL App (2d) 200268, ¶ 49.

¶ 9 First, we conclude that we have jurisdiction as the court effectively denied Lydia’s request for a TRO and set the matter for further proceedings on her request for a preliminary injunction. Specifically, the court determined that Lydia’s request for injunctive relief did not state an emergency and a TRO is an emergency remedy. Additionally, the court provided Mark 21 days to respond to the motion and set the matter for status. By finding that Lydia had not shown she would suffer irreparable harm if the matter was not heard on an emergency basis, the court effectively determined that Lydia was not entitled to the emergency relief of a TRO to maintain the status quo until the court could conduct a full hearing on the merits after allowing Mark proper time to respond. Thus, although the court did not explicitly state that it was denying the TRO, it effectively did so and we therefore consider the court’s order denying the emergency nature of Lydia’s petition as an order denying her request for a TRO. We therefore have jurisdiction to hear this appeal under Rule 307.

¶ 10 Next, we cannot say that the court abused its discretion by denying the TRO on the basis that Lydia had not shown she would suffer irreparable harm. As the circuit court said, it is not clear “what the irreparable harm would be of having a coequal sovereign decide a case under its own laws.” Without a showing of specific irreparable harm Lydia was not entitled to the emergency relief of a TRO. See *Bradford*, 355 Ill. App. 3d at 739. We therefore affirm the circuit court’s denial of Lydia’s TRO.

¶ 11 III. CONCLUSION

¶ 12 The judgment of the circuit court of Du Page County is affirmed.

¶ 13 Affirmed.

¶ 14 PRESIDING JUSTICE McDADE, dissenting:

¶ 15 I dissent. I would hold that we lack jurisdiction to hear this appeal.

¶ 16 The circuit court’s ruling in this case was only on whether the petition for TRO met the three elements necessary to have the petition heard on an emergency basis under a local court rule. Thus, the court’s finding that there was no irreparable harm shown was only related to the local court rule’s third element and was not at all related to the merits of the petition for TRO itself. The court then explicitly stated it “is not making any determination as to the underlying merits of the *** motion presented today.” Therefore, it is indisputable that the court did not rule on the merits of the petition. I disagree with the majority that the court “effectively” ruled on the merits of the petition such that jurisdiction attaches. The TRO was not denied. Rule 307 only allows an interlocutory appeal from the denial of a TRO (*supra* ¶ 8), which we do not have here. I would hold that we lack jurisdiction under Rule 307 and that this appeal should be dismissed.