

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE BELOVED CHURCH, an Illinois Not-for-)
Profit Corporation, and PASTOR STEPHEN)
CASSELL, an individual,)

Plaintiffs,)

v.)

JAY ROBERT PRITZKER, Governor of the State)
of Illinois, DAVID SNYDERS, Sheriff of)
Stephenson County, Illinois, STEVE SCHAIBLE,)
Chief of Police of the Village of Lena, Illinois and)
CRAIG BEINTEMA, Administrator of the)
Department of Public Health of Stephenson County,)
Illinois, in their official capacities,)

Defendants.)

Case No.: 3:20-cv-50153

Hon. Judge John Z. Lee

Magistrate Judge Iain D. Johnston

**DEFENDANT STEVE SCHAIBLE’S RESPONSE TO PLAINTIFFS’ EMERGENCY
MOTION FOR INJUNCTION PENDING APPEAL**

NOW COMES Defendant STEVE SCHAIBLE, Chief of Police of the Village of Lena, Illinois (collectively “Defendant Schaible”), by and through his attorneys, PETERSON, JOHNSON & MURRAY CHICAGO, LLC, and for his Response to Plaintiffs’ Emergency Motion for Injunction Pending Appeal, states as follows:

I. INTRODUCTION

Plaintiffs contend that an injunction pending appeal is necessary to preserve the status quo and have an effective appellate review of this Court’s denial of their motion for a preliminary injunction. Plaintiffs are wrong. An injunction pending an appeal is generally considered extraordinary relief for which the moving party bears a heavy burden of proof. Furthermore, a decision concerning an injunction pending an appeal is similar in nature to a decision granting or denying a motion for a preliminary injunction. By denying Plaintiffs’ Motion for a Temporary

Restraining Order and Preliminary Injunction, the Court has already expressed its view that Plaintiffs cannot satisfy any of the preliminary injunction factors, including the reasonable likelihood of success factor. The Court (appropriately) never wavered in that assessment. Plaintiffs' instant motion gives the Court no reason to deviate from or abandon its prior analysis in that regard.

Notably, Plaintiffs have not taken umbrage with any of the Court's findings of fact, its balancing of the factors for a preliminary injunction or the legal conclusions memorialized in the May 3, 2020 order. Plaintiffs' failure in that regard is fatal to their present motion. As it is abundantly clear that Plaintiffs are just going through the proverbial motions of seeking an injunction pending appeal with no effort whatsoever being devoted toward addressing the Court's findings and analysis on the preliminary injunction front, the Court can justifiably deny their request.

II. STATEMENT OF FACTS

As and for his Statement of Facts, Defendant Schaible adopts and incorporates by reference the Statement of Facts set forth in his Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 29, Response). In addition to the foregoing facts, Defendant Schaible notes that on May 2, 2020, the Court issued an order denying Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 37, Order). The Court's May 2, 2020 order further indicated that a written opinion and additional order explaining its ruling in that regard would follow. (Doc. 37, Order).

On May 3, 2020, the Court issued the said written opinion and additional order, finding, among other things, that Defendant Governor Pritzker's Executive Order 2020-32 passed constitutional muster and that Plaintiffs could not satisfy any preliminary injunction factors. (Doc.

39, Opinion). Earlier that same day, in defiance of Defendant Pritzker's Executive Order 2020-32, approximately 100 parishioners and/or presumed guests attended in-person services at The Beloved Church without incident.¹ On May 4, 2020, Plaintiffs filed their notice of interlocutory appeal.

III. ARGUMENT

A. Applicable legal standards

Though not referenced in Plaintiffs' motion, the source of their request for an injunction pending appeal is Federal Rule of Civil Procedure 62(c), which provides, in pertinent part: "While an appeal is pending from an interlocutory order . . . that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." *See* Fed. R. Civ. P. 62(c); *see also* Fed. R. App. P. 8(a) (providing that where a stay of an injunction pending appeal has been denied by a district court, the request for a stay may be renewed in the appellate court).

A motion for an injunction pending appeal is an extraordinary remedy. *Kuri v. Edelman*, 491 F.2d 684, 687 (7th Cir. 1974). A decision concerning an injunction pending appeal is similar in nature to a decision granting or denying a motion for a preliminary injunction. Specifically, to make a such determination, a court must consider: (1) "whether the stay applicant has made a strong showing that he is likely to succeed on the merits" on appeal; (2) "whether the applicant

¹ Such facts are the proper subject of judicial notice as they are uncontested and are the subject of a great deal of publicity in the print and broadcast media. *See, e.g.,* <https://wrex.com/2020/05/03/beloved-churches-in-person-church-service-causes-mixed-emotions/>; *see also Mirfasihi v. Fleet Mortgage Corp.*, 356 F.3d 781, 787 (7th Cir. 2004) (taking judicial notice of a newspaper article). Additionally, these facts were chronicled as part of Defendant Pritzker's May 4, 2020 daily coronavirus news conference, to which Plaintiffs themselves have frequently referred in their prior submissions to the Court. (Doc. 33, Reply, p. 3). Finally, the reference to the fact that presumed additional guests attended the in-person service at the Beloved Church on Sunday, May, 3, 2020, derives from Pastor Cassell's prior representations to the Court that only 60 to 80 people regularly attend Sunday Service at The Beloved Church. (Doc. 33, Reply, p. 17; Doc. 34, Cassell Declaration, ¶ 12).

will be irreparably injured absent a stay”; (3) “whether issuance of the stay will substantially injure the other parties interested in the proceeding”; and (4) “where the public interest lies.” *Glick v. Koenig*, 766 F.2d 265, 269 (7th Cir. 1985).

B. There is no basis for granting the extraordinary relief Plaintiffs request.

Nothing in terms of Plaintiffs’ presented legal averments has apparently changed in the four (4) days since the Court denied Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction. To that end, Plaintiffs have not endeavored to present any additional arguments to the Court, choosing instead to merely adopt and incorporate by reference their prior submissions. In doing so, Plaintiffs see fit to basically act as though the Court’s findings of fact, balancing of the factors for a preliminary injunction and the legal conclusions memorialized in its May 3, 2020 order simply do not exist. Such a perfunctory presentation does nothing to demonstrate that Plaintiffs’ appeal has significant merit. Indeed, Plaintiffs have given the Court no reason to believe that its decision denying Plaintiffs’ request for a preliminary injunction was wrong and will be reversed on appeal.

With respect to the irreparable injury factor, Plaintiffs can hardly be said to have made a compelling case that they need an injunction pending appeal to avert serious irreparable harm. In fact, Plaintiffs’ conduct this past weekend belies such an argument. Again, on Sunday, May 3, 2020, Pastor Cassell conducted an in-person service at The Beloved Church without incident. Furthermore, Defendants Schaible, Snyder and Beintema have previously advised the Court that they have no intention of enforcing Defendant Pritzker’s Executive Order 2020-23 against Plaintiffs. For his part, Defendant Schaible makes that same attestation herein. Finally, as the Court has already determined, Defendant Pritzker’s Executive Order 2020-23 permits gatherings of up to ten people and drive-in services, both of which are capable of being conducted at The Beloved

Church. In short, a case of irreparable injury continues not to arise from the circumstances before the Court.

Additionally, it is clear that consideration of the third and fourth aforesaid factors do not weigh in favor of granting Plaintiffs' requested relief. For the reasons already noted by the Court in its May 3, 2020 order, an injunction enjoining the enforcement of Defendant Pritzker's Executive Order 2020-23, even only if for the duration of Plaintiffs' planned appeal, would pose serious risks to public health. Again, Plaintiffs have provided the Court with no additional argument or reasoning to cause the Court to in any way second guess its analysis in that regard.

Finally, in the interest of brevity and so as to comply with the Court's May 5, 2020 order limiting any response to Plaintiff's instant motion to five (5) pages, Defendant Schaible adopts and incorporates by reference herein the arguments presented by Defendants Pritzker, Snyder and Beintema in opposition to Plaintiffs' motion.

IV. CONCLUSION

WHEREFORE Defendant STEVE SCHAIBLE, respectfully requests that this Court enter an order denying Plaintiffs' Emergency Motion for Injunction Pending Appeal.

Respectfully submitted,

/s/ Paul O'Grady

Attorneys for Defendant Steve Schaible

Date: May 6, 2020

Paul O'Grady (pograde@pjmchicago.com)
Dominick L. Lanzito (dlanzito@pjmchicago.com)
Kevin Casey (kcasey@pjmchicago.com)
Jennifer L. Turiello (jturiello@pjmchicago.com)
PETERSON, JOHNSON & MURRAY CHICAGO, LLC
200 West Adams Street, Suite 2125
Chicago, Illinois 60606
Direct: (312) 724-8035
T: (312) 782-7150
F: (312) 896-9318