

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 05-20-2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ROBERT LUNDERGAN and DARLENE	)	1 CA-SA 10-0078
LUNDERGAN, individually and as	)	
guardians and conservators of	)	DEPARTMENT B
MICHAEL LUNDERGAN, an	)	
incapacitated adult,	)	Maricopa County
	)	Superior Court
Petitioners,	)	No. CV 2009-029193
	)	
v.	)	
	)	
THE HONORABLE EMMET J. RONAN,	)	
Judge of the SUPERIOR COURT OF	)	
THE STATE OF ARIZONA, in and for	)	
the County of MARICOPA,	)	
	)	
Respondent Judge,	)	
	)	
STATE OF ARIZONA; UNITED	)	
HEALTHCARE INSURANCE COMPANY;	)	<b>D E C I S I O N</b>
and PHILIP HAMILTON, Benefits	)	<b>O R D E R</b>
Manager, ARIZONA DEPARTMENT OF	)	
ADMINISTRATION,	)	
	)	
Real Parties in Interest.	)	
	)	

The court, Acting Presiding Judge Patricia K. Norris and Judges Maurice Portley and Sheldon H. Weisberg participating, has considered the petition for special action by Robert Lundergan and Darlene Lundergan, individually, and as the guardians of their son, Michael Lundergan ("Petitioners"). For the following reasons, we accept special action jurisdiction of

the denial of the preliminary injunction and deny relief, and deny jurisdiction as to the discovery issue.

Petitioners were given notice in July and August 2009, that the home health care services provided to Michael through the benefits plan provided to employees of the State of Arizona would be reduced to 168 hours per month. Petitioners objected and argued that the reduction would violate the 2008 Settlement Agreement ("Agreement") between them, the State, the Department of Administration and its benefits manager, and United Healthcare Insurance Company. As a result, they filed a lawsuit, secured a temporary restraining order, and sought a preliminary injunction.

After an evidentiary hearing, the trial court made findings of fact and conclusions of law, and denied the request for preliminary injunction. The court also vacated the temporary restraining order. Petitioners then filed their special action.

Although there is a statutory right to appeal the denial of a preliminary injunction, see Arizona Revised Statutes ("A.R.S.") section 12-2101(F)(2) (2003), we can review the denial where there is a need to expedite resolution of the issue. See *City of Phoenix v. Superior Court*, 158 Ariz. 214, 216, 762 P.2d 128, 130 (App. 1988). Because of Michael's health condition and the need to resolve whether the State will

continue to pay for twenty-four-hour home health care, we accept jurisdiction.

We review the denial of an order on a preliminary injunction for an abuse of discretion. *Kromko v. City of Tucson*, 202 Ariz. 499, 501, ¶ 4, 47 P.3d 1137, 1139 (App. 2002). A party seeking a preliminary injunction has to establish that there is: "(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury if the requested relief is not granted, (3) a balance of hardships favoring that party, and (4) public policy favoring a grant of the injunction." *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12, ¶ 12, 219 P.3d 216, 222 (App. 2009) (citing *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990)). A trial court can grant a preliminary injunction if the movant proves either: probable success on the merits and the possibility of irreparable injury; or the presence of serious questions and that the balance of hardships is in the movant's favor. *Id.* (quoting *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11, ¶ 10, 132 P.3d 1187, 1190-91 (2006)).

Here, the trial court addressed all the elements required to establish the right to a preliminary injunction. First, the court found that Petitioners did not demonstrate a strong likelihood of success because the Agreement did not

provide that Michael's level of care would never be reduced. In fact, paragraph 2.11 of the Agreement indicates that the level of care could be reduced to the level for EPO health plans.

Second, after recognizing Michael's serious medical issues, the court found that "there [were] other resources and options available and that a combination of DDD monies for skilled care coupled with family support [would] not compromise his care." Third, the court found that the balance of hardships did not tip towards the Petitioners. The court stated that, although Petitioners will have to undertake more responsibility for Michael's care due to the reduction of skilled care, the changes "will not compromise his care" when compared to the annual costs "that are not authorized for any other employee or dependent under the employee benefits plan" during the budget crisis.

Finally, the court determined that granting the injunction to continue Michael's twenty-four-hour daily home health care would violate the public policy favoring settlement agreements and the State's ability to modify conditions of employment and employee benefits. As a result, the court determined that public policy did not favor granting the injunction and denied the request.

Our review of the petition and appendices does not demonstrate an abuse of discretion by respondent Judge Emmet

Ronan when he denied the request for a preliminary injunction. The appendices do not support a contention that there were no substantial facts to support the decision or that the court committed an error of law in reaching the decision. See *State v. Cowles*, 207 Ariz. 8, 9, ¶ 3, 82 P.3d 369, 370 (App. 2004). In fact, because Petitioners did not provide the transcript of the evidentiary hearing, we presume the transcript supports the court's ruling. See *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Consequently, we deny any relief from the trial court's ruling.

The other issue raised in the petition for special action involves whether Judge Ronan erred when he denied the request to compel the Attorney General to disclose an informal opinion it provided to the Arizona Department of Administration regarding House Bill 2013. Our supreme court has advised us that we should rarely take special action jurisdiction over discovery matters. See *Jolly v. Superior Court*, 112 Ariz. 186, 188, 540 P.2d 658, 660 (1975). Consequently, Petitioners can challenge the trial court's ruling on the discovery issue at the conclusion of the case as part of any remedy on appeal.

Accordingly,

**IT IS ORDERED** accepting jurisdiction over Petitioners' special action claim that challenges the denial of the request for preliminary injunction.

**IT IS FURTHER ORDERED** denying relief because the respondent did not abuse his discretion when he denied the request for preliminary injunction.

**IT IS FURTHER ORDERED** declining jurisdiction over Petitioners' special action claim that challenges the denial of the request to disclose an informal Attorney General opinion to the Arizona Department of Administration.

/s/

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MAURICE PORTLEY, Judge