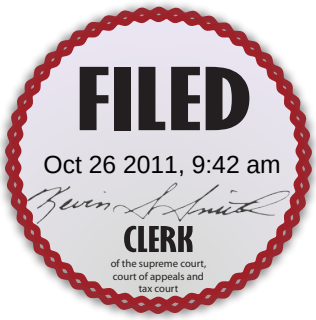

APPELLANT PRO SE:

DEMETREOUS A. BROWN, SR.
Ashland, Kentucky

IN THE
COURT OF APPEALS OF INDIANA

DEMETREOUS A. BROWN, SR.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A02-1009-PL-1124
	)	
ELISHA J. GRAY and PAUL A. BROWN,	)	
	)	
Appellees.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patrick L. McCarty, Judge
Cause No. 49D03-1002-PL-006345

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Pro-se appellant Demetreous A. Brown, Sr. ("Brown") brings an interlocutory appeal from an order denying his request for injunctive relief and dismissing Paul A. Brown ("Paul") as a party.[1] We reverse and remand for further proceedings.

Issue

Brown presents three issues for review, which we consolidate and restate as a single issue: whether Brown was deprived of procedural due process.

Facts and Procedural History

On February 12, 2010, Brown filed a civil complaint seeking rescission of an automobile sale and naming as defendants his former girlfriend, Elisha J. Gray ("Gray") and John or Jane Doe. On June 1, 2010, Brown filed an amended complaint seeking rescission and alternatively seeking damages and punitive damages for fraud. He named Gray and Paul as defendants. Brown's amended complaint alleged that Gray had on October 16, 2009 fraudulently "sold" to Paul a 1977 Pontiac Can Am 2-door coupe belonging to Brown. (App. 4.)

On June 14, 2010, Brown filed his "Request for Temporary Order" seeking to restrain Paul from any attempt to transfer title of the Pontiac. (App. 8.) Subsequently, the trial court issued an order stating that it lacked jurisdiction to rule upon the request "until the Court receives proof that the Defendants have been served with the Amended Complaint." (App. 10.) Service was perfected; Gray answered the complaint on July 6, 2010 and Paul answered

[1] Demetreous Brown and Paul Brown are not related.

the complaint on July 8, 2010.

On August 30, 2010, the trial court conducted a hearing. Brown, then incarcerated in a federal prison in Kentucky, appeared telephonically.[2] Gray appeared pro-se. Paul initially appeared pro-se; however, his attorney arrived belatedly, conducted direct examination of Gray and Paul, and interposed an "oral motion to dismiss" Paul on grounds that Paul was a bona fide purchaser without notice. (App. 60.) The trial court took the matter under advisement.

On the following day, the trial court issued an order providing in relevant part:

> Plaintiff's request for injunctive relief to prevent the transfer of the title of the 1977 Pontiac Can Am 2-door coupe automobile (VIN 2F#7Z7P299923) is denied.
> Counsel's oral motion to dismiss Paul A. Brown from this cause is granted.

(App. 22.) Brown unsuccessfully sought reconsideration of the trial court's decision. He then pursued this interlocutory appeal.[3]

Discussion and Decision

Brown styled his motion as a request for temporary injunctive relief, while seeking to restrain any further transfer of the Pontiac until the matter of ownership could be decided on the merits. Thus, our threshold inquiry is whether the interlocutory appeal is properly before

[2] Brown testified that he has been incarcerated in a federal prison since 2005.

[3] Neither Brown nor Paul has filed an appellee's brief. When the appellees fail to submit a brief, we need not undertake the appellees' burden of responding to arguments that are advanced for reversal by the appellant. Hamiter v. Torrence, 717 N.E.2d 1249, 1252 (Ind. Ct. App. 1999). Rather, we may reverse the trial court if the appellant makes a prima facie case of error. Id. "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." Id. Still, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is required. Mikel v. Johnston, 907 N.E.2d 547, 550 n.3 (Ind. Ct. App. 2009).

this Court. A temporary restraining order is not within any class of appealable interlocutory orders but preliminary injunctions are. Jacob Weinberg News Agency, Inc. v. City of Marion, 163 Ind. App. 181, 190 n.4, 322 N.E.2d 730, 735 n.4 (1975). See Indiana Appellate Rule 14(A)(5) (providing that an interlocutory appeal of right may be taken from the "granting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction").

A temporary restraining order may in some circumstances be granted without notice or hearing; the term shall not exceed ten days. Ind. Trial Rule 65(B). Where a temporary restraining order is entered without notice, the motion for a preliminary injunction shall be set for "the earliest possible time." Id. "No preliminary injunction shall be issued without an opportunity for a hearing upon notice to the adverse party." Indiana Trial Rule 65(A)(1). Restraint continued after a hearing is a preliminary injunction. Jacob Weinberg, 163 Ind. App. 181 at 190 n.4, 322 N.E.2d at 735 n.4. It provides relief intended to preserve the status quo until the trial of the action in which it is issued. Ferrell v. Dunescape Beach Club Condominiums Phase I, Inc., 751 N.E.2d 702, 712 (Ind. Ct. App. 2001). This is the relief Brown sought.

Brown filed a "Request for Temporary Order" seeking to restrain Paul from transferring the Pontiac. (App. 8.) At the outset of the hearing, the trial court attempted to clarify whether or not Brown was seeking "a temporary restraining order" and Brown responded, "I'm trying to get an order from you so I can restrain Defendant Paul Brown from trying to title a vehicle." (App. 41.) A hearing ensued, at which the three parties testified concerning Brown's apparent inability to execute the vehicle title while incarcerated, his

former girlfriend's conduct in obtaining a signed title from Brown's brother, her advertisement of the vehicle for sale on a website, and Paul's purchase and subsequent improvement of the vehicle.

The trial court's order, entered after the presentation of evidence and argument, stated that injunctive relief was denied. As such, the order was an order refusing to grant a preliminary injunction, and jurisdiction of the appeal is properly in this Court.

Analysis

Brown's arguments distill to his contention, "the court's failure to articulate the necessary findings of fact in its order dismissing the appellee from the case deprives the appellate court of the essential merits of the court's decision." Appellant's Brief at 10. We must agree with Brown that we lack an adequate basis upon which to review the denial of injunctive relief and the party dismissal.

The grant or denial of a request for a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion. Robert's Hair Designers, Inc. v. Pearson, 780 N.E.2d 858, 863 (Ind. Ct. App. 2002). A judgment entered upon findings and conclusions will be reversed only when it is clearly erroneous. Id.

Indiana Trial Rule 52(A)(1) provides in relevant part: "The court shall make special findings of fact without request in granting or refusing preliminary injunctions." Here, no findings and conclusions were entered to support the denial of injunctive relief.

Moreover, Paul was inexplicably dismissed. He answered the amended complaint

with a general denial and without alleging an Indiana Trial Rule 8 affirmative defense. Not having moved for dismissal under Trial Rule 12(B), or for judgment on the pleadings under Trial Rule 12(C), counsel orally moved to dismiss Paul as a party at the conclusion of the hearing on injunctive relief. He did so without reference to any provision of our trial rules that would support the requested action.[4] Counsel argued, again without specific reference to the Indiana Uniform Commercial Code, motor vehicle statutes, or any other statute or common law, that Paul was entitled to "dismissal" because he had established himself to be a "bona fide purchaser." (App. 60.) Brown contends that he was not afforded a reasonable opportunity to respond to an oral motion for dismissal predicated on no specific legal authority. We agree.

Brown has shown, prima facie, that he was not afforded procedural due process. We therefore reverse the order denying injunctive relief and dismissing Paul and remand for further proceedings consistent with this opinion.

Reversed and remanded.[5]

MATHIAS, J., and CRONE, J., concur.

[4] Counsel may have been suggesting that his client was entitled to summary judgment. Indiana Trial Rule 12(C) provides in part: "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." However, no motion for judgment on the pleadings had been made, and Brown was not afforded time to respond.

[5] Brown has filed a "Verified Motion for Reversal of Lower Court's Order for Failure to Respond to Appellant's Brief." The motion is rendered moot, as no further relief can be afforded Brown, and we have denied the motion in a contemporaneous order.