

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*,
ROBERT H. MURIEL, Director of the Illinois
Department of Insurance,

Plaintiffs,

v.

NEXTLEVEL HEALTH PARTNERS, INC., an
Illinois domestic Health Maintenance
Organization,

Defendant.

CASE NO. 20 CH 4431

CALENDAR 11

ORDER

THIS CAUSE coming to be heard on Intervenor Jacqueline Stevens' First Amended Motion to Vacate Orders Denying Access to Hearings and Records in this Proceeding and Declare Unconstitutional 215 ILCS 5/188.1(b)(4,5); due notice having been given; the Court having considered the parties' written and oral arguments and being fully advised in the premises, **IT IS HEREBY FOUND AND ORDERED:**

In her Amended Motion, Ms. Stevens details her status and credentials as a journalist and her particular interest in this case. The Court takes these representations at face value, but they are not necessary for a resolution of this Amended Motion. Ms. Stevens is a member of the public who wants to see a case file, and Court starts from the proposition that court proceedings are ordinarily open to the public. Shielding court proceedings and files from public scrutiny is the exception. This case turns on one of those exceptions.

Background

The Illinois Insurance Code provides in Section 188.1 for certain proceedings known as "conservation" proceedings. These are initiated when the Director of Insurance files a verified complaint alleging that a condition exists (such as insolvency or other hazardous condition) that would justify placing an insurance company in rehabilitation or liquidation proceedings, and "the interests of creditors, policyholders or the public will probably be endangered by delay." In that case, "the circuit court ... shall enter forthwith without a hearing or prior notice an order directing the Director to take possession and control of the property, business, books, records and accounts of the company," enjoining the company from continuing to do business except with

the concurrence of the Director and the court's approval, and directing the Director to assess the company's condition and take further appropriate actions. 215 ILCS 5/188.1(1), (2).

Ms. Stevens challenges this provision of Section 188.1 (the "Privacy Provision"):

(4) The court may hold all hearings in conservation proceedings privately in chambers, and shall do so on request of any officer of the company proceeded against.

(5) In conservation proceedings and judicial reviews thereof, all records of the company, other documents, and all insurance department files and court records and papers, so far as they pertain to and are a part of the record of the conservation proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the court, after hearing arguments in chambers from the Director and the company, shall decide otherwise, or unless the company requests that the matter be made public.

The procedural history of Ms. Stevens' intervention in this matter is outlined in the Court's Order dated December 6, 2021. Briefly, on that date the Court allowed Ms. Stevens to intervene in this conservation matter "for the limited purpose of making arguments regarding the public nature of these proceedings." The court file in this case had been sealed under the Privacy Provision on June 4, 2020, at the inception of the case.

The Court lifted the Order of Sequestration on September 30, 2021 and held that the court file was to be made public, but stayed the order to give the parties an opportunity to identify particular documents they asserted should remain under seal. NextLevel submitted certain documents to the Court for *in camera* inspection. After hearing arguments, on November 29, 2021, the Court lifted the stay and vacated its June 4, 2020 Order sequestering the court file in this case, with the exception of four items from among those submitted for *in camera* inspection—two exhibits containing financial information were to remain under seal, and two references to financial information were to be redacted in the Complaint and the June 9, 2020 Order of Conservation. The following week, the Court in its December 6 Order allowed Ms. Stevens to intervene and gave her some time to review the court file and to amend her Motion to Intervene if she chose to do so. That Order stated, "The amended motion should address the issue of the extent to which the matter is now moot."

Ms. Stevens filed her Amended Motion on January 31, 2022. NextLevel Health Partners, Inc. ("NextLevel") and the Attorney General on behalf of Dana Severinghaus, Director of the Department of Insurance (the "Director") filed briefs in opposition to the Amended Motion; Ms. Stevens filed a reply (designated as a Motion to Vacate); and NextLevel filed a sur-reply. The Court heard oral argument on June 8, 2022 and took the matter under advisement.

Analysis

With limited exceptions, the Court has already granted the relief Ms. Stevens seeks—access to the court file. Her Amended Motion is therefore moot except as to the four documents not made fully public. Ms. Stevens did not address the mootness issue in her Amended Motion, though she did address it in her reply. She contends she wants a chance to make the

constitutional arguments not made by the other parties. She worries that the parties will seek another sequestration order in this case in the future. And she wants “anticipatory relief” to declare the statute unconstitutional going forward, reasoning that this issue is “capable of repetition, yet evading review.”

With respect to the threat of a future sequestration order in this case, the Court will not decide hypothetical issues. These proceedings are now public and any request for a new sequestration order seems remote. In any event, Ms. Stevens could contest such a request. As for the four documents not made fully public, the Director and NextLevel contend that the Privacy Provision was not the basis of the decision. The Director maintains that the November 29, 2021 order specifying the four documents that should be kept under seal or redacted “resulted from a finding that the information was sensitive and confidential and it was not based upon Section 188.1.” (Director Opposition at 7-8). NextLevel characterizes that order as having been entered pursuant to the Court’s “inherent power to control its docket without relying on the [Privacy Provision].” (NextLevel Sur-Reply at 2).

In fact, the Court’s decision to lift the sequestration order is not so easily separated from the decision to keep some of the records confidential. The Court decided which records “shall be and remain confidential ... unless and until the court ... shall decide otherwise.” 215 ILCS 5/188.1(5). The records were designated as confidential in the first place because of the Privacy Provision, which was not lifted as to those few documents.

Ms. Stevens argues that none of the court file should have been sequestered in the first place, because “[t]he secrecy obligated by the Statute fails to protect any legitimate governmental interest, much less a compelling one.” (Amended Motion at ¶ 85). She cites common law, First Amendment, and statutory rights in favor of court access.

Courts are directed not to reach a constitutional question if they can resolve a case on other grounds. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004). However, neither Ms. Stevens’ common law arguments nor her statutory arguments are sufficient in themselves to supersede the effect of the Privacy Provision. The powerful and indeed inspiring language Ms. Stevens cites concerning common law (e.g., “The common law right of access to court records is essential to the proper functioning of a democracy”) was issued in cases that do not involve a statute such as ours, which explicitly provides for certain court proceedings to be conducted outside of public view. Moreover, the Clerk of Courts Act, 705 ILCS 105/16(6) (providing that records “required by law to be kept by such clerks” are deemed to be public) does not pre-empt the more specific provisions governing the records of conservation proceedings.

Further, the Director and NextLevel have not advanced nonconstitutional arguments that can resolve this case. Their mootness argument resolves most of the case, but leaves open the issue of the four documents that were redacted or remain under seal. And, as explained above, the Privacy Provision was in fact the basis for withholding those documents from public view, so the Privacy Provision is squarely at issue. This case cannot be resolved without considering the constitutional arguments.

One who challenges the constitutionality of a statute bears the burden to overcome its strong presumption of constitutionality. *In re S.G.*, 175 Ill. 2d 471, 486 (1997). To show that the Privacy Provision is unconstitutional, Ms. Stevens must first show that a presumption of access applies to records of conservation proceedings. As the Appellate Court stated in *People v. Kelly*, 397 Ill. App. 3d 232, 256 (1st Dist. 2009):

The constitutional presumption applies to court proceedings and records (1) which have been historically open to the public; and (2) which have a purpose and function that would be furthered by disclosure. *Skolnick [v. Alzheimer & Gray]*, 191 Ill. 2d [214], 232 [2000].

Neither prong of this test has been satisfied. NextLevel and the Director set forth in their briefs the history of conservation proceedings in Illinois. Ms. Stevens does not dispute this history, but does disagree with the characterization of conservation proceedings as “not historically open to the public.” The Privacy Provision has been in effect for 55 years and is an extension of provisions enacted 30 years before that. Other states have similar confidentiality provisions. The Court agrees with the Director and NextLevel that conservation proceedings have not historically been open to the public.

The Court also finds that disclosure would not further the purpose and function of conservation proceedings—allowing the Director to quickly ascertain the condition and situation of the company in circumstances when the Director has reason to think creditors, policyholders or the public could be endangered. The reasoning behind the sequester, the Director explained, is concern that public access to the proceedings could lead to a “run on the bank” by the company’s creditors, hampering the Director’s ability to protect the interests of the public.


The interest being protected here is not the interest of the insurance company, but that of its creditors, policyholders and the public. To be clear, that was the intention of the Court in its November 29, 2021 Order describing the withheld information as being “sensitive to NextLevel’s interests.” After the *in camera* review, the Court was persuaded that some financial information was sensitive because its publication could hamper an orderly conservation proceeding. The Privacy Provision gives the Court broad discretion to make that decision.

Having found that no presumption of access applies, the analysis ends here. *See Kelly, id.* The Court finds that the Privacy Provision is constitutional.

By separate order of today’s date, the Court denied most of Ms. Stevens’ “Supplemental Motion to Order Department of Insurance to Release Financial Records, Declare Termination Provision Unconstitutional, Sur-sur reply, Strike Portions of Sur-reply, and Order Sanctions for Rule [137] Violations” and her motion to postpone the Court’s issuance of this ruling on her Amended Motion. Her Supplemental Motion was untimely and the Court found no extenuating circumstances to allow additional argument after briefing and oral argument were complete. The Court set a briefing schedule on the Rule 137 portion of the Supplemental Motion.

As a final note, Ms. Stevens has described difficulties she has experienced in viewing some documents the Court has ordered to be made public. The Court has been in communication with the Clerk's office with some frequency in an effort to ensure that its orders are properly implemented in this case, and the Court will continue to assist if additional problems are brought to its attention.

Ms. Stevens' Amended Motion to Vacate is denied.


Judge Pamela McLean Meyerson
JUN 13 2022
Judge Pamela McLean Meyerson
Circuit Court – 2097