

IN THE
INDIANA COURT OF APPEALS

Cause No. _____

FRANCISCAN ALLIANCE, INC.,)	
)	
Appellant-Defendant,)	Appeal from the Lake Superior Court
)	Civil Division, Room No. 7
vs.)	
)	Trial Court Cause No. 45D11-2212-PL-000707
CITY OF HAMMOND, INDIANA,)	
)	The Honorable Bruce Parent, Judge
Appellee-Plaintiff.)	

NOTICE OF APPEAL

[This is not an expedited appeal under Ind. App. R. 14.1]
(Appearance)

Party Information

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EXHIBIT A

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Each attorney specified above:

- (a) certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date this Notice of Appeal is filed;
- (b) acknowledges that all orders, opinions, and notices in this matter will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney; and
- (c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information accurate. *See* Ind. Admis. Disc. R. 2(A).

INFORMATION FOR JUDGMENT/ORDER BEING APPEALED

Date of Judgment/Order being appealed: December 22, 2022

Title of Judgment/Order being appealed: "Order on Motion for Preliminary Injunction"

Date Motion to Correct Error denied ☐ or deemed denied ☐, if applicable: N/A

Was the Judgment/Order issued by:

- ☐ A magistrate as a final order under Ind. Code 33-23-5-5
- ☐ A magistrate and approved by a trial judge on _____
- ☒ A trial court judge

Basis for Appellate Jurisdiction:

- ☐ Appeal from a Final Judgment, as defined by Appellate Rule 2(H) and 9(I)
- ☒ Appeal from an interlocutory order, taken as of right pursuant to Appellate Rule 14(A) or 14(D)
- ☐ Appeal from an interlocutory order, accepted by discretion pursuant to Appellate Rule 14(B)(3) or 14(C)(5)
- ☐ Expedited Appeal, taken pursuant to Appellate Rule 14.1

This appeal will be taken to:

- ☒ Court of Appeals of Indiana, pursuant to Appellate Rule 5
- ☐ Indiana Supreme Court, pursuant to Appellate Rule 4
 - ☐ This is an appeal in which a sentence of death or life imprisonment without parole is imposed under Ind. Code § 35-50-2-9 or a post-conviction relief case in which the sentence was death
 - ☐ This is an interlocutory appeal authorized under Rule 14 involving the death penalty or a life without parole case raising a question of interpretation of Ind. Code § 35-50-2-9
 - ☐ This is an appeal from an order declaring a statute unconstitutional
 - ☐ This is an appeal involving a waiver of parental consent to abortion under Rule 62
 - ☐ This is an appeal involving mandate of funds

Trial Court Clerk/Administrative Agency/Court Reporter Instructions:

Pursuant to Appellate Rule 10, the Clerk of the Lake Superior Court, Civil Division, Room No. 7, is requested to assemble the Clerk's Record, as defined in Appellate Rule 2(E).

Pursuant to Appellate Rule 11, the Court Reporter of the Lake Superior Court, Civil Division, Room No. 7, is requested to transcribe, certify, and file with the Clerk of the Lake Superior Court the following hearing of record, including exhibits: December 21, 2022 Preliminary Injunction Hearing.

Public Access

Was the entire trial court or agency record sealed or excluded from public access?

- ☐ Yes ☒ No

Was a portion of the trial court or agency record sealed or excluded from public access?

☐ Yes ☒ No

Appellate Alternative Dispute Resolution

If civil case, is Appellant willing to participate in Appellate Dispute Resolution?

☐ Yes ☒ No

Attachments

The following SHALL be attached to this Notice of Appeal (in all appeals):

☒ Copy of judgment or order being appealed

The following SHALL be attached to this Notice of Appeal if applicable (check if applicable):

- ☒ Copy of the trial court or Administrative Agency's findings and conclusion (in civil cases)
- ☐ Copy of the sentencing order (in criminal cases)
- ☐ Order denying Motion to Correct Error or, if deemed denied, copy of Motion to Correct Error
- ☐ Copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access
- ☐ If proceeding pursuant to Appellate Rule 14(B)(3), copy of Order from Court of Appeals accepting jurisdiction over interlocutory appeal
- ☐ The documents required by Rule 40(C), if proceeding *in forma pauperis*

Certification

By signing below, we certify that:

- (1) This case ☐ does ☒ does not involve an interlocutory appeal; issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights; or an appeal entitled to priority by rule or statute.
- (2) We have reviewed and complied, and will continue to comply, with the requirements of Appellate Rules 9(J), 23(F), and the Rules on Access to Court Records on appeal; and,
- (3) We will make satisfactory payment arrangements for any Transcripts ordered in this Notice of Appeal, as required by Appellate Rule 9(H).

Respectfully submitted,

/s/ Libby Yin Goodknight

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Franciscan Alliance, Inc.*

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 28, 2022, the foregoing was filed electronically with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court using the Indiana E-Filing System (IEFS).

I also certify that on December 28, 2022, the foregoing was served upon the following counsel of record electronically using the Indiana E-Filing System (IEFS):

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I also certify that on December 28, 2022, the foregoing was served by first-class United States mail, postage prepaid, upon the following individuals at the indicated mailing addresses:

The Honorable Bruce D. Parent, Judge
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/s/ Libby Yin Goodknight
Libby Yin Goodknight

STATE OF INDIANA)
)
COUNTY OF LAKE)

LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM SEVEN
CROWN POINT, INDIANA
Cause # 45D11-2212-PL-00707

CITY OF HAMMOND, INDIANA)
 Plaintiff)
)
vs.)
)
FRANCISCAN ALLIANCE INC)
 Defendant)

FILED IN OPEN COURT

DEC 22 2022

Beebe P. P.
JUDGE
SUPERIOR COURT OF LAKE COUNTY

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

On December 21, 2022, the Court held a hearing on a verified motion for preliminary and permanent injunction and a complaint filed by the Plaintiff, CITY OF HAMMOND, INDIANA (hereinafter "PLAINTIFF"), on December 19, 2022, and a response filed by the Defendant, FRANCISCAN ALLIANCE INC (hereinafter "DEFENDANT"), on December 20, 2022. The PLAINTIFF was present by Attorney Michael Tolbert, Attorney Kevin Smith, Attorney David Westland, and Attorney Candace Williams and the DEFENDANT was present by Attorney Robert Anderson and Attorney Hilary Buechler. The Court read the pleadings, received evidence, heard testimony, and heard argument, then took the matter under advisement. The Court now, pursuant to Trial Rule 52(A)(1), found and Ordered:

COURT'S FINDINGS OF FACT

1. The PLAINTIFF has a population of approximately 79,000 residents making it the largest municipality in Lake County, Indiana.
2. Mayor Thomas McDermott, Jr. (hereinafter "Mayor"), has been the Mayor of the PLAINTIFF since January 1, 2004.
3. The DEFENDANT is a nonprofit corporation domiciled in Mishawaka, Indiana, with facilities located regionally in Hammond, Munster, and Dyer.

4. The DEFENDANT is a Catholic healthcare system that operates Franciscan Health Hammond, which is traditionally known as "St. Margaret's Hospital."
5. The parties agreed that Franciscan Health Hammond / St. Margaret's has operated in some form in the City of Hammond for anywhere between 100 and 120 years.
6. The DEFENDANT has provided emergency medical services through its emergency department in its downtown Hammond location for an extended period of time; neither party indicated how long the emergency department had been in place there.
7. It was uncontested that the DEFENDANT has been losing money at the downtown Hammond location for several years, though the parties disagree as to the cause of the losses.
8. It was also uncontested that the PLAINTIFF made no offers to help alleviate the DEFENDANT'S losses in Hammond.
9. The Mayor testified that he has recently focused his energies on revitalizing downtown Hammond.
10. On May 4, 2021, with two hours notice to the PLAINTIFF, the DEFENDANT announced that it was making "changes" at St. Margaret's Hospital.
11. The changes included downsizing the hospital, with an intention to maintain its Emergency Department, along with providing a limited number of hospital beds for inpatient care for short stays, imaging services, laboratory services, wound care, dialysis, prenatal care, and primary care.
12. The DEFENDANT issued a press release that advised certain changes would take place at the hospital, but that a full-service emergency department at the downtown Hammond location would continue to provide "24 / 7" care.
13. The Mayor testified that he understood the press release to mean that the DEFENDANT, though changing its service to the PLAINTIFF and its citizens, was still committed to providing an emergency department in downtown Hammond.

14. On June 9, 2021, the Mayor hosted Sister Jane Marie, Chairwoman of Franciscan Alliance, Kevin Leahy, CEO of Franciscan Alliance, Franciscan board member Cal Bellamy, and Pat Maloney CEO of Franciscan Health Hammond, at his office in Hammond City Hall.
15. The Mayor testified that at the June 9, 2021 meeting, the representatives of the DEFENDANT promised him that St. Margaret's would maintain a full-service emergency department in downtown Hammond.
16. It was uncontested that, at the June 9, 2021 meeting, the Mayor was shown a Power Point presentation which provided plans to "Keep ED¹" with a "New ED Entrance".
17. The Mayor testified that members of the DEFENDANT'S leadership team assured him, "we will keep on accepting patients."
18. It was clear to the Court that the Mayor relied upon the statements of the DEFENDANT'S leadership team, and took them as a reaffirmation of the DEFENDANT'S earlier promise to keep the emergency department open in downtown Hammond.
19. The Mayor testified that he was unhappy that the hospital was downsizing, but that he was certain the emergency department would remain in downtown Hammond.
20. The June 9, 2021 meeting was followed-up by a June 10, 2021 e-mail from Kevin Leahy, advising him that "Our Hammond hospital will continue to offer an emergency department staffed with board certified emergency medicine physicians and well trained, experienced ER nurses. Eight short stay beds will be open. As the downtown area grows the hospital will grow with it."
21. From June 9, 2021 through November 3, 2022, the Mayor relied on the promises made to him by the DEFENDANT, to keep the emergency department in downtown Hammond open.
22. Because of the DEFENDANT'S promise, the Mayor testified that the PLAINTIFF did not take any action to find alternative emergency department services.

¹An Emergency Department

23. It is reasonable to believe the Mayor when he testified that, if he had known that the DEFENDANT would not honor their promise to provide an emergency department, the PLAINTIFF would have looked for a substitute, alternative healthcare provider to provide emergency care to the citizens of Hammond.
24. For the 18-months after the DEFENDANT'S promise, there was no communication from the DEFENDANT to the PLAINTIFF or its mayor, warning of the potential that the emergency department in downtown Hammond would be closing.
25. On November 3, 2022, the DEFENDANT advised the City that it was closing Franciscan Health Hammond.
26. On November 3, 2022, the DEFENDANT reneged on promise of its leadership team to keep the emergency department open for the PLAINTIFF and its residents.
27. On November 3, 2022, the DEFENDANT notified the PLAINTIFF that the downtown Hammond facility would close in 58-days, on December 31, 2022.
28. It was uncontested that the notice of November 3, 2022, was the PLAINTIFF'S first notice that the emergency department was closing.
29. The Mayor testified that he viewed closing of the downtown Hammond emergency department as an "absolute betrayal" and as a breach of the promise of the DEFENDANT'S leadership team's promise to keep the emergency department open.
30. The Mayor further testified that the DEFENDANT'S decision would negatively impact surrounding communities in Northwest Indiana and Illinois, and would have an impact on the reputation on Hammond, and particularly on downtown Hammond.
31. On December 12, 2022, the DEFENDANT issued an email to Hammond Fire Chief Jeffery Smith (hereinafter "Chief Smith"), indicating that it would not accept ambulances at the downtown Hammond emergency room, effective December 23, 2022.
32. Chief Smith viewed the emergency department closure as a problem for Hammond because the majority of the ambulance runs over the past five years (27,388) had been to the DEFENDANT'S downtown Hammond emergency department.

33. The DEFENDANT'S EMS Coordinator, Chris Winkelmann (hereinafter "Winkelmann"), testified, however, that the past two years saw a downward trend whereby the ambulances from the PLAINTIFF were choosing the emergency departments from other hospitals, over that of the DEFENDANT.
34. Chief Smith conceded that the downward trend was true, but testified that the that reason for the downward trend was because the DEFENDANT would refuse ambulances admittance for various reasons including staffing difficulties and the fact that the "Cath Lab" was often closed.
35. Chief Smith testified to that the emergency department closure would have a negative impact on the fire department's response time in the delivery of emergency patient care.
36. Chief Smith testified that the proposed emergency department closure will negatively impact the quality of life of the residents of Hammond.
37. The Mayor described the effect of the emergency department closure as "devastating" to the reputation of the PLAINTIFF because major cities have a hospital with an emergency room.
38. The Mayor testified that the DEFENDANT'S broken promise has and will continue to negatively impact the PLAINTIFF'S efforts to revitalize downtown.
39. Chief Smith testified that had he known of the closure of the emergency room prior to November 3, 2022, he would have discussed budgeting for additional ambulances to assist with the lag time of now having to go outside of the City.
40. Chief Smith testified that the purchase of each new ambulance will cost the PLAINTIFF about \$300,000.00 and each would take approximately eighteen (18) months to procure.
41. Chief Smith testified that delayed patient response time caused by the closure of the emergency department closure will negatively impact the PLAINTIFF and could lead to legal liability for it.
42. Winkelmann conceded that response time that is impacted by the emergency department closure, "could be a big deal."
43. Winkelmann testified that "how long it takes is a big deal" and that "5 to 10 minutes" could be a big deal.

44. The Mayor testified that, had he been aware that the DEFENDANT would break its promise, he would have used the time period from May 4, 2022, until November 3, 2022 to find another emergency department provider.
45. The Mayor testified that since November 3rd, 2022, he has been contacted by two separate groups that want to bring emergency services to the PLAINTIFF.
46. The Mayor testified that he is confident that, had he known that the emergency department was closing, he could have gotten "a deal done" within a year to eighteen months.
47. The DEFENDANT'S General Counsel, Megan Brennan (hereinafter "Brennan") testified that the decision to close the emergency department was driven by a number of factors, including finances and staffing.
48. Brennan conceded that the DEFENDANT did not communicate with the PLAINTIFF about the emergency department's closure between June of 2021 and November 3, 2022.
49. Brennan testified that if this Court issued an Order granting the PLAINTIFF an injunction, the DEFENDANT could not honor it because of licensing and contract issues caused by their winding down of the downtown Hammond location.
50. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have the necessary license to operate an acute care hospital in Hammond, and therefore, cannot lawfully operate an emergency department there.
51. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have emergency medicine physicians contracted to staff its Emergency Department.
52. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have any nurses to provide nursing care in its Emergency Department.
53. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have an operational laboratory on site for its Emergency Department.
54. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have employees to provide radiology services for its Emergency Department.

55. Brennan testified that, as of January 1, 2023, the DEFENDANT will no longer have a contract on-site "transfer ambulance" to coordinate safe and quick transfers of patients to surrounding hospitals, that remained equipped to provide acute care to patients.
56. If any of the foregoing findings of fact are, in fact, conclusions of law, the Court incorporates them into its conclusions of law portion of this Order.

CONCLUSIONS OF LAW

STANDING

57. Initially, the Court found that the PLAINTIFF demonstrated that it is the proper party to bring this action. The Court found that the DEFENDANT'S claim of a lack of standing by the PLAINTIFF is a non-issue.
58. Only those persons who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct will be found to have standing. *Oman v. State*, 737 N.E.2d 1131, 1135 (Ind.2000).
59. Absent this showing, complainants may not invoke the jurisdiction of the court. *Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind.1985).
60. The evidence presented demonstrated that the PLAINTIFF has a personal stake in the outcome of the litigation, that the promise was made directly to it through its mayor, and it demonstrated that it has suffered and, are in immediate danger of further suffering, a direct injury as a result the emergency department closure.

TAKING

61. The Court next found that there is simply no evidence that the grant of an injunction in this matter would be tantamount to a taking under Article I, section 21 of the Indiana Constitution or the Fifth Amendment of the U.S. Constitution.
62. Article I, section 21 of the Indiana Constitution provides that "No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered." See Article. I, Section 21.

- 63. The Fifth Amendment of the U.S. Constitution similarly provides that “nor shall private property be taken for public use, without just compensation.” See Fifth Amendment of the U.S. Constitution
- 64. A regulation effects a taking only when it deprives an owner of all or substantially all economic or productive use of the property. *Carter v. Nugent Sand Co.*, 925 N.E.2d 356 (Ind. 2010).

PRELIMINARY INJUNCTION & PROMISSORY ESTOPPEL

- 65. To obtain a preliminary injunction, the moving party must demonstrate by a preponderance of the evidence: (1) a reasonable likelihood of success on the merits; (2) the remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (3) the threatened injury to the moving party outweighs the potential harm to the nonmoving party from the granting of an injunction; and (4) the public interest would not be disserved by granting the requested injunction. *Duke Energy of Indiana, LLC v. City of Franklin*, 69 N.E.3d 471 (Ind. Ct. App. 2016).
- 66. The doctrine of estoppel springs from equitable principles, and it is designed to aid in the administration of justice where, without its aid, injustice might result. *Sterling Commercial Credit--Michigan, LLC v. Hammert's Iron Works, Inc.* 998 N.E.2d 752 (Ind. Ct. App. 2013).
- 67. The doctrine of promissory estoppel is applicable where there is: (1) a promise by the promisor (2) made with the expectation that the promisee will rely thereon (3) which induces reliance by the promisee (4) of a definite and substantial nature and (5) injustice can be avoided only by enforcement of the promise. *First Nat. Bank of Logansport v. Logan Mfg. Co.*, 577 N.E.2d 949, 954 (Ind. 1991).
- 68. A promisor who induces a substantial change of position by the promisee in reliance upon the promise is estopped from denying the enforceability of the promise. *Id.*
- 69. The PLAINTIFF has satisfied all of the elements establishing promissory estoppel. This Court is therefore obligated under Indiana Law to enforce the DEFENDANT'S promise.
- 70. The PLAINTIFF has satisfied all of the elements to secure a preliminary injunction by the preponderance of the evidence.

71. The PLAINTIFF has demonstrated a reasonable likelihood of success on the merits on its promissory estoppel claim.
72. On June 9, 2021, the DEFENDANT made promises to the PLAINTIFF through Mayor McDermott that the emergency department would remain open.
73. The promise regarding the emergency department was reaffirmed in a June 10, 2021 e-mail from the DEFENDANT'S CEO, Kevin Leahy to the Mayor.
74. The PLAINTIFF, through its mayor, relied on the promises made by the DEFENDANT to keep the emergency department open by not acting to secure another emergency department provider for an 18-month period because the Mayor believed that the promise made by the DEFENDANT to keep the emergency department open would be kept.
75. The PLAINTIFF'S remedies at law are inadequate, thus causing irreparable harm.
76. The PLAINTIFF was not afforded the opportunity to secure a substitute emergency care provider due to the DEFENDANT'S broken promise and unreasonable notice of just 58-days prior to the closure.
77. The DEFENDANT'S broken promise, along with it's the lack of notice, negatively impacted the PLAINTIFF'S efforts to revitalize downtown.
78. The threatened injury to the PLAINTIFF outweighs the potential harm to the DEFENDANT from the granting of an injunction.
79. To this moment, the DEFENDANT is legally operating the emergency department in downtown Hammond.
80. The grant of an injunction to preserve the *status quo* would not be as harmful as the injury to the PLAINTIFF and its residents, should an injunction not be granted.
81. The PLAINTIFF'S reputational injury, delayed ambulance response time subjecting it to potential legal liability, the inability to secure a substitute healthcare provider, and aggravated public safety costs all outweigh any harm that the DEFENDANT would suffer.

82. DEFENDANT'S argument that licensing and other contractual obligations would make it impossible to abide by the Court's injunction order is unavailing because these are problems created by the DEFENDANT.
83. One who comes into a court of equity must come with clean hands. *Traylor v. By-Pass 46 Steak House, Inc.*, 259 Ind. 224, 285 N.E.2d 820 (1972).
84. It can hardly be said that DEFENDANT came to this Court with "clean hands" when they broke a promise made to the PLAINTIFF through its mayor to keep the emergency department open, and then provided the PLAINTIFF only 58-days notice to find a replacement provider.
85. The public interest would not be disserved by granting the requested injunction; in fact, the public interest would be disserved if the Court did not grant the preliminary injunction.
86. This Court could not think of a better way to advance the public interest than by holding DEFENDANT accountable for the promises they made.
87. Based on the specific facts shown, and evidence presented in this matter, the grant of a preliminary injunction is appropriate, and the PLAINTIFF has met its burden of proof.
88. If any of the foregoing conclusions of law are, in fact, findings of fact, the Court incorporates them into its findings of fact portion of this Order.

COURT ORDER

WHEREFORE, based upon all of the foregoing, the Court found and Ordered:

1. The PLAINTIFF'S motion for a preliminary injunction was **GRANTED**.
2. The Court hereby enjoins the DEFENDANT from closing the emergency department presently operating in downtown Hammond.
3. The emergency department is to remain open and the DEFENDANT is Ordered to take all steps necessary to ensure that the facility in downtown Hammond remains legally licensed and operational.
4. The DEFENDANT is prohibited, until further Order of this Court, from taking steps to diminish or in any way reduce the health care currently provided to patients at the downtown Hammond facility for a period of nine (9) months.

5. The PLAINTIFF is instructed to immediately undertake all necessary efforts to obtain an emergency medical provider for the citizens of Hammond.
6. This Court is very unlikely to grant the PLAINTIFF any further extension of time.
7. Any and all motions or requests of either party not specifically ruled upon herein were **DENIED**.

SO ORDERED this December 22, 2022.

A handwritten signature in black ink, appearing to read 'Bruce D. Parent', written over a horizontal line.

BRUCE D. PARENT, JUDGE

Lake Superior Court, Civil Division, Room Seven