

**IN THE DISTRICT COURT OF APPEAL  
FOR THE FIFTH DISTRICT, STATE OF FLORIDA**

Case No. 5D17-0287

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On Appeal from a Final Order of  
The Fifth Judicial Circuit Court  
(Lower Tribunal Case No. 2017-CA-000010)

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GEORGE ROSARIO,

Appellant,

v.

GLEN C. WILSON AND CITY OF GROVELAND, FLORIDA,

Appellees.

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**INITIAL BRIEF OF APPELLANT GEORGE ROSARIO**

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## **INTRODUCTION**

Appellant George Rosario (“Mayor Rosario”) challenges the entry of a temporary injunction which strips him of his authority as mayor of the City of Groveland. The injunction was entered at a time when Mayor Rosario was not a party to the lower court case, was entered without the issuance of process on him, and without notice to him. The temporary injunction was entered in violation of Mayor Rosario’s due process rights and in violation of the requirements of Florida Rule of Civil Procedure 1.610(a). Thus, it must be reversed or quashed.

Citations to the appendix submitted concurrently with this Brief will be noted as “App. \_\_\_ at \_\_\_,” denoting the appendix letter and page number.

## **STATEMENT OF THE CASE AND FACTS**

On January 4, 2017, Appellee Glen C. Wilson filed suit naming the City of Groveland, Florida (the “City”) as the only defendant in the case. App. A; App. B. In his Verified Complaint and Petition for Writ of Mandamus and Injunction (the “Complaint”), Wilson alleged that Appellant, George Rosario holds the office of City Mayor and is Council Member of the City. *Id.* at 1, ¶ 2. However, Wilson claims that Mayor Rosario was convicted of two felony counts in 1987 in the State of Pennsylvania, that he has not had the right to hold public office restored, and that he therefore lacks the qualifications to hold office. *Id.* at 1, 5, 9. In Count II, Wilson “requests the Court grant a temporary injunction, without notice if

necessary, and thereafter a permanent injunction enjoining the City from recognizing the authority of George Rosario as Mayor or Council Member with an award.” *Id.* at 3. In the Verification section of the Complaint, Wilson’s attorney verifies that he had only notified the City Attorney of the request for injunctive relief and his efforts to obtain a temporary injunction. *Id.*

On the same day the lawsuit was filed, January 4, 2017, the trial court held an evidentiary hearing on Wilson’s request for the temporary injunction (as well as on his petition for a writ of mandamus). App. C. The only parties present at the hearing were Wilson’s attorney and the City Attorney. Indeed, in the Notice of Evidentiary Hearing—which appears to have been filed untimely<sup>1</sup>—Wilson’s attorney certifies that a copy of the notice was sent only to the City Attorney, Anita Geraci. *Id.* at 2.

At 4:28 p.m. on that same day, the trial court issued the challenged Temporary Injunction. App. D. The injunction makes findings of fact declaring Mayor Rosario a convicted felon and noting there was no evidence in the record to show his civil rights, including the right to hold public office, were restored. *Id.* at 1. In the Temporary Injunction, the trial court concluded that irreparable harm will likely result absent its entry because the City “intends to rely on the authority of George Rosario as a public office holder in making significant municipal decisions

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<sup>1</sup> The paper gives notice that the hearing would be held at 3:30 p.m. but the electronic filing stamp on the Notice reflects that it was filed at 4:07 p.m.

*in the future*, including settlement of lawsuits and termination of the City Manager.” *Id.* at 2 (emphasis added). The Temporary Injunction, however, made no reference to any efforts to notify Mayor Rosario of the hearing, and stated no reason why the temporary injunction was entered without notice to Mayor Rosario. Yet, the Temporary Injunction enjoins the City from recognizing the authority of Mayor Rosario as the Mayor of the City or as Council Member in the City of Groveland. *Id.* The typewritten Certificate of Service notes that copy of the Temporary Injunction was sent to Wilson’s attorney and the City Attorney; added in handwriting are the names and email address of Mayor Rosario and attorney Jim Jimenez. *Id.* (This was the first time a document in this case purported to give notice to Mayor Rosario of any proceeding or paper filed relating to Wilson’s request for a temporary injunction.)

Mayor Rosario timely filed this appeal pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(B).

### **STANDARD OF REVIEW**

Whether a trial court has complied with the guarantees of due process is subject to de novo review. *State v. McAdams*, 193 So. 3d 824, 829 (Fla. 2016); *VMD Financial Svcs. v. CB Loan Purchase Assoc.*, 68 So. 3d 997, 999 (Fla. 4th DCA 2011).

Moreover, when a temporary injunction is issued without notice, this Court reviews the legal sufficiency of the trial court's order, the complaint, and any supporting documents for strict compliance with Florida Rule of Civil Procedure 1.610. *Florida High Sch. Activities Ass'n, Inc. v. Benitez*, 748 So. 2d 358, 359 (Fla. 5th DCA 1999); *Yardley v. Albu*, 826 So. 2d 467, 469 (Fla. 5th DCA 2002).

### **SUMMARY OF THE ARGUMENT**

The Temporary Injunction clearly targets Mayor Rosario and strips him of his authority as mayor of the City and as Councilmember. However, Mayor Rosario was not a party to the case at the time of the entry of the Temporary Injunction, and therefore, the trial court had no jurisdiction to enter it in Mayor Rosario's absence.

Moreover, the Temporary Injunction, which was issued without notice to Mayor Rosario, is legally deficient because numerous various conditions of Rule 1.610(a) were not followed: (1) the Complaint sets forth *no facts* to show that immediate and irreparable injury, loss, or damage will result to Wilson *before Mayor Rosario can be heard in opposition*; (2) Wilson's attorney failed to certify in writing any efforts made to give notice to Mayor Rosario, and failed to certify in writing any reasons why notice to Mayor Rosario should not be required; (3) despite the lack of notice to Mayor Rosario and the fact that he did not participate in the hearing leading to the entry of the Temporary Injunction, the trial court

considered evidence outside of the Verified Compliant; and (4) the Temporary Injunction fails to define the injury to Wilson, fails to state the reasons why any such injury to Wilson is immediate and irreparable, and, most importantly, fails to give the reasons why the injunction entered without notice.

For each of these reasons, the Temporary Injunction must be reversed or quashed.

### **ARGUMENT**

#### **I. THE TRIAL COURT ERRED IN ISSUING A TEMPORARY INJUNCTION THAT INTERFERED WITH MAYOR ROSARIO'S RIGHT TO HOLD OFFICE WHEN HE WAS NOT A PARTY TO THE ACTION.**

The constitutional guarantee of due process requires that each litigant be given a full and fair opportunity to be heard. *County of Pasco v. Riehl*, 635 So.2d 17, 18 (Fla. 1994); *Edelman v. Breed*, 836 So. 2d 1092, 1094 (Fla. 5th DCA 2003). This Court has clearly established that, “a court is without jurisdiction to issue an injunction which would interfere with the rights of those who are not parties to the action.” *Sheoah Highlands, Inc. v. Daugherty*, 837 So. 2d 579, 583 (Fla. 5th DCA 2003). Thus, an injunction “can lie only when its scope is limited in effect to the rights of parties before the court.” *Id.* (citations omitted). See *Generation Investments, LLC v. Al-Jumaa, Inc.*, 53 So. 3d 372, 376 (Fla. 5th DCA 2011); and *Stevens v. Tarpon Bay Moorings Homeowners Ass’n Inc.*, 15 So. 3d 753 (Fla. 4th

DCA 2009). This concept is so fundamental and so deeply rooted in due process jurisprudence that, as our Supreme Court has succinctly stated: “a citation of supporting authorities is unnecessary to hold that the rights of an individual cannot be adjudicated in a judicial proceeding to which he has not been made a party and from which he has literally been excluded by the failure of the moving party to bring him properly into court.” *Alger v. Peters*, 88 So. 2d 903, 906 (Fla. 1956). Simply put, under our constitutional system, Mayor Rosario’s rights cannot be disposed of or otherwise determined by a temporary injunction entered *in absentia*.

Mayor Rosario has a right to hold public office—a right that is closely entwined with the City residents’ fundamental right to vote. *Cf. Treiman v. Malmquist*, 342 So. 2d 972, 975 (Fla. 1977); *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 31 L. Ed. 2d 92 (1972). And both the Complaint and the Temporary Injunction leave no doubt that Mayor Rosario is the target of the injunction. In fact, the Complaint specifically singles out Mayor Rosario as the target of the temporary and permanent injunction sought in the pleading. *See* App. B at 1–4 (¶¶ 2, 3, 4, 11, 12, 13, 17). Even in the Wherefore Clause of the injunction count at issue, Petitioner Wilson specifically asked the Court to “grant a temporary injunction, without notice if necessary, and thereafter a permanent injunction enjoining the City from recognizing *the authority of George Rosario as Mayor or Council Member . . .*” *Id.* at 3 (emphasis added).

Yet, Petitioner Wilson literally and purposely excluded Mayor Rosario from the proceeding leading to the entry of the Temporary Injunction, and he was not served with process, resulting in a violation of Mayor Rosario's due process rights.<sup>2</sup>

The same situation presented here was confronted by the Second District in *Trans Health Mgmt. Inc. v. Nunziata*, 159 So. 3d 850 (Fla. 2d DCA 2014). In *Nunziata*, the jury returned a large verdict against a nursing home. *Id.* at 855. Thereafter, the trial court issued an injunction that prohibited the court-appointed receiver of the nursing home's dissolved parent corporation and his "agents and assignees" from challenging in any court anywhere in the country any aspect of the plaintiff's entitlement to collect the judgment. *Id.* at 857. The injunction specifically referenced *the actions* of certain nonparties as being the conduct that the plaintiff was seeking to enjoin, although the injunction did not specifically name the nonparties. *Id.* at 857, 859. The nonparties were not notified of the hearing on the plaintiff's request for the injunction. *Id.* at 857. Accordingly, the nonparties appealed the injunction.

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<sup>2</sup> Petitioner Wilson's improper motive to obtain a temporary injunction targeting Mayor Rosario in his absence became even more evident when, *after the Temporary Injunction was issued*, he filed an Amended Complaint, adding for the first time Mayor Rosario as a Defendant and requesting the same injunctive relief sought (and obtained) in the original Complaint. App. E. This Amended Complaint was filed on January 9, 2017, but The Summons to Mayor Rosario was issued on January 25, 2017, and the Complaint was first served on him on that day. App. F.

On appeal, the Second District agreed that the injunction was entered in violation of the due process rights of the nonparties, and therefore, reversed. *Id.* at 857–859. It first explained that, “[i]t is axiomatic that a trial court may not issue an injunction that interferes with the rights of those who are not parties to the action.” *Id.* at 857 (collecting cases). Thus, the nonparties had to be made parties before the issuance of the injunction, “even when one of the parties to the action has partial ‘control’ over the nonparties sought to be enjoined.” *Id.* (citations omitted). Moreover, the Second District held that, even if there was a basis to find that the nonparties were subject to the trial court’s jurisdiction, the court was compelled to reverse the injunction because it was entered without notice and an opportunity to be heard. *Id.* at 858.

Similarly, in this case, the temporary injunction references the actions of Mayor Rosario—and, in fact, names him specifically as the target of the injunction. Yet, Mayor Rosario was not a party to the action, so the injunction was entered without issuance of process on him, without notice to him, and without the opportunity to be heard.

Accordingly, the trial court was without jurisdiction to issue the Temporary Injunction that clearly interferes with the rights of Mayor Rosario who was not a party to the proceeding, and its entry was in violation of Mayor Rosario’s due process rights. Thus, the Temporary Injunction must be reversed or quashed.

**II. THE TEMPORARY INJUNCTION ISSUED WITHOUT NOTICE TO MAYOR ROSARIO WAS IN VIOLATION OF MULTIPLE CONDITIONS OF RULE 1.610.**

Moreover, even if there was some basis upon which to find that Mayor Rosario was subject to the jurisdiction of the trial court, this Court must reverse or quash the Temporary Injunction because it was entered without notice to Mayor Rosario and in violation of Florida Rule of Civil Procedure 1.610(a)(1).

Rule 1.610 delineates the specific conditions for issuing a temporary injunction without notice. “Because a temporary injunction without notice is an extraordinary remedy, it should be granted sparingly and *only upon strict compliance with rule 1.610.*” *Florida High Sch. Activities Ass’n, Inc. v. Benitez*, 748 So. 2d 358, 359 (Fla. 5th DCA 1999) (emphasis added); *see also Yardley v. Albu*, 826 So. 2d 467, 470 (Fla. 5th DCA 2002) (same). Particularly, Rule 1.610(a) dictates that a temporary injunction can be granted without notice to the party adversely affected *only if each* the following conditions (among others) are met: (1) specific facts averred by affidavit or verified pleading must show that immediate and irreparable injury, loss, or damage will result to the movant *before the adverse party can be heard in opposition*; (2) the movant’s attorney must certify in writing the efforts that have been made to give notice *and* the reasons why notice should not be required; (3) the court must consider no evidence except the affidavit or verified pleading unless the adverse party appears at the hearing or

has received reasonable notice of the hearing; and (4) the temporary injunction must define the injury, must state findings by the court why the injury may be irreparable, *and* must give the reasons why the order was granted without notice if notice was not given.

*Each* of these conditions was violated in this case. **First**, the Complaint sets forth *no facts* to show that immediate and irreparable injury, loss, or damage will result to the Wilson *before Mayor Rosario can be heard in opposition*. In fact, the only mention of notice in the Complaint is in the wherefore clause, where Wilson “requests the Court grant a temporary injunction, without notice *if necessary*, and thereafter a permanent injunction . . . .” App. B at 3. The omission of facts showing the immediate and irreparable injury before Mayor Rosario could be heard in opposition requires reversal. *See Lewis v. Sunbelt Rentals, Inc.*, 949 So. 2d 1114, 1115–16 (Fla. 2d DCA 2007) (reversing the entry of a temporary injunction due to noncompliance with the provisions of Rule 1.610 in that, *inter alia*, the motion did not request that the temporary injunction be granted without notice).

**Second**, Wilson’s attorney failed to certify in writing any efforts made to give notice to Mayor Rosario. Rather, the “Verification” section of the Complaint simply states that counsel had “notified *the City Attorney* of the request for injunctive relief and our efforts to obtain a temporary injunction immediately.” App. B at 3. There is simply no certification of any efforts to notify Mayor

Rosario. Moreover, Wilson’s attorney patently failed to certify in writing any reasons why notice to Mayor Rosario should not be required. This, too, requires reversal of the Temporary Injunction. *See Florida High Sch. Activities Ass’n, Inc. v. Benitez*, 748 So. 2d 358, 359 (Fla. 5th DCA 1999) (reversing the temporary injunction because the movant’s attorney failed to certify in writing any efforts that had been made to give adequate notice); *Lewis*, 949 So. 2d at 1115–16 (reversing the entry of a temporary injunction because, among the failures to comply with Rule 1.610(a), the movant’s attorney did not certify in writing any efforts made to give notice or the reasons why notice should not be required).

**Third**, despite the lack of notice to Mayor Rosario and the fact that he did not participate in the hearing, the trial court did consider evidence in addition to the Verified Complaint. Although Mayor Rosario did not receive copies of the evidence apparently presented at the hearing, the Temporary Injunction states that the court “considered the evidence presented” at the hearing. App. D at 1. Additionally, after Wilson filed the Amended Complaint, he filed a request for judicial notice, asking the trial court to “take judicial notice of Plaintiff’s Evidence Exhibits 1 and 2 *accepted as evidence at the evidentiary hearing* held on January 4, 2017,” and attaching a copy of said exhibits. App. G at 1. Review of the exhibits show that some of the documents accepted as evidence at the evidentiary hearing were not part of the verified pleading. Thus, in acceptance of such evidence at the

hearing was in violation of Rule 1.610(a). This, too, evidences lack of strict compliance required, *Benitez*, 748 So. 2d at 359, and warrants reversal of the Temporary Injunction.

**Fourth**, and finally, the Temporary Injunction fails to define the injury to Wilson or why any such injury to Wilson is immediate and irreparable. All the Temporary Injunction says is that “[i]rreparable harm will likely result absent entry of this injunction because the City intends to rely on the authority of George Rosario as a public office holder in making *significant municipal decisions in the future*, including settlement of lawsuits and termination of the City Manager.” App. D at 3. That finding is so vague as to render it insignificant in testing the immediacy and irreparable nature of the alleged injury. Even so, the order completely fails to give the reasons why the order was granted without notice. In fact, the issue of notice is not mentioned at all. This failure is fatal and requires reversal of the Temporary Injunction. *See Lewis*, 949 So. 2d at 1115–16 (establishing as one of the violations of Rule 1.610(a) requiring reversal of the temporary injunction the trial court’s failure to state why the order was granted without notice); *Bieda v. Bieda*, 42 So. 3d 859, 861–62 (Fla. 3d DCA 2010) (reversing a temporary injunction because it did not define the injury, state why such injury is irreparable, or provide reasons why the order was granted without notice); *Bookall v. Sunbelt Rentals, Inc.*, 995 So. 2d 1116, 1117–18 (Fla. 4th DCA

2008) (holding that the temporary injunction entered by the trial court suffered from the fatal defect of failing to give the reasons why the order was granted without notice, as required by Rule 1.610(a)(2)).

### **CONCLUSION**

For each of these reasons, the Temporary Injunction must be reversed, or quashed.

Respectfully submitted this 10th day of February, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Initial Brief has been e-filed via eDCA and furnished via e-mail, pursuant to Fla. R. Jud. Admin. Rule 2.516(b)(1), this 10th day of February, 2017, upon the following:

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief complies with all the requirements set forth in Florida Rule of Appellate Procedure 9.210.

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