

AN INJUNCTION CAN BE BINDING AGAINST A NON-PARTY

This note will address the issue of the binding nature of an injunction order against a person who is not a party to the case. The following hypothetical situation is offered as background. Assume that the Wife has obtained an injunctive order prohibiting the Husband from allowing his girlfriend to stay overnight when the Husband is exercising his visitation rights with the minor child. Further assume that it can be established that the Husband discussed the issuance of the order and its injunctive terms with his girlfriend so that she was fully informed regarding the order. Now, in violation of the injunction, the Husband allows the girlfriend to stay overnight when the minor child is present.

The Husband can clearly be punished for contempt. Contempt proceedings can also be brought and should be successful against the girlfriend. The starting point is Section 735 ILCS 5/11-101 dealing with temporary restraining orders. This section provides that a temporary restraining order is binding “upon the parties to the action,..., and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” (emphasis added). In the hypothetical above, the girlfriend has participated with the Husband in the act resulting in the violation of the injunction, and she did so after she had actual notice of the terms of the order. Therefore, the contempt proceedings against her should be successful. Case law supports this conclusion. In Re The Marriage Of Marshall and Nussbaum, 278 Ill.App.3d 1071, 663 N.E.2d 1113 (3rd Dist. 1996) (a matrimonial case where the children were held to be bound by a visitation order entered between the parents); People v. Master Barbers & Beauty Culturists, 9 Ill.App.3d 981, 293 N.E.2d 393 (1st Dist. 1973) (a commercial case upholding a contempt finding against a non-party for violating an injunction entered against a barbers’ association); District

Council of Chicago of the United Brotherhood of Carpenters and Joiners of America, the People of the State of Illinois v. Brittain, 156 Ill.App.327, 1910 WL 2109 (1st Dist. 1910) (a non-party union member found guilty of contempt for violating an injunction issued against the union); In Re The Marriage Of Winter, 2008 WL 5003364 (Ill.App. 1 Dist. Nov 24, 2008) (NO. 1-07-0619) (upholding the issuance of an injunction against a non-party pension fund in order to direct the payment of benefits in a matrimonial case).

Traditional notions of fair play typically require personal jurisdiction as a predicate to relief against a person. Notwithstanding, under the circumstances described above, injunction orders are binding upon and can be enforced against non-party violators. Knowledge of the terms of the injunctive order, followed by violation or participation in violation of the order, can result in liability for contempt.

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