United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James F. Holderman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 4400	**DATE**	10/20/2005
CASE TITLE	Joseph M. Mercola, D.O. vs. Department of Financial and Professional Regulation		

DOCKET ENTRY TEXT:

Pursuant to the *Younger* abstention doctrine, this court must abstain from adjudicating this matter. This case is dismissed. Plaintiff Dr. Mercola's petition for a temporary restraining order of August 1, 2005 (Dkt. No. 5), is moot. All other pending motions are moot. Case dismissed.

■[For further details see text below.]

Notices mailed by judge's staff.

STATEMENT

Plaintiff Joseph Mercola, D.O., ("Dr. Mercola"), filed a complaint on August 1, 2005 against defendants Illinois Department of Financial and Professional Regulation, the department's acting director, Daniel E. Bluthardt, and its secretary, Fernando E. Grillo (collectively "defendants"). (Dkt. No. 1). Dr. Mercola also brought a petition on August 1, 2005 for a temporary restraining order ("TRO"). (Dkt. No. 5). For the reasons set forth below, Mercola's petition for a temporary restraining order is moot because this case must be dismised.

According to his complaint, Dr. Mercola is a doctor licensed to practice medicine in Illinois. (Dkt. No. 1 at pg. 1). The defendants are currently engaged in an administrative disciplinary proceeding with Dr. Mercola over Dr. Mercola's operation of a website. (*Id.* at pg. 2). In the administrative proceeding, the defendants charge Dr. Mercola with publishing false and potentially harmful medical advice on his website. (*Id.* at pg. 5). Dr. Mercola counters that his website is a forum for discussion of health related issues and he does not practice medicine on the website. (*Id.* at pg. 7). Dr. Mercola charges that the defendants are violating his right to free speech as protected under the First and Fourteenth Amendments, the defendants lack jurisdiction to regulate the flow of information to non-patients on the Internet and the defendants have engaged in a selective prosecution of him. (*Id.* at pg. 3). Dr. Mercola seeks a TRO from this court enjoining the defendants from proceeding in their administrative proceeding and monetary relief.

"A TRO is an emergency remedy issued to maintain the status quo until a hearing can be held on an application for a preliminary injunction." *Abbott Lab v. Andrx Pharm., Inc.*, No. 05 C 1490, 2005 WL 1273105, at *1 (N.D. Ill. May 20, 2005). Although Dr. Mercola originally styled his motion for a TRO, the parties appear to have transformed this matter into a request for a preliminary injunction. This transformation has no legal effect, however, since "the standards for a temporary restraining order and a preliminary injunction are identical." *Bernina of America, Inc. v. Fashion Fabrics Inter., Inc.*, No. 01 C 585,

STATEMENT

2001 WL 128164, at *1 (N.D. Ill. Feb. 9, 2001) (quoting *Frederick Atkins, Inc. v. Carson Pirie Scott & Co., Inc.*, No. 99 C 7838, 1999 WL 1249342, at *1 (N.D. Ill. Dec. 13, 1999)).

"A preliminary injunction is an extraordinary remedy that is only granted where there is a clear showing of need." *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). This court's decision on whether to issue a preliminary injunction is reviewed under an abuse of discretion standard. *East St. Louis Laborers' Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700, 703 (7th Cir. 2005) (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). "As a threshold matter, [Dr. Mercola] must show (1) a likelihood of success on the merits, (2) irreparable harm if the preliminary injunction is denied, and (3) the inadequacy of any remedy at law." *E.E.O.C. v. Ralphs Grocery Co.*, 300 F. Supp. 2d 637, 639 (N.D. Ill. 2004). Once the three primary factors are considered, this court must balance the (4) the harm to parties if the preliminary injunction is wrongfully decided ("the private interests"), and (5) the impact on the persons not directly concerned in the dispute ("the public interests"). *Id.*

This court holds that it must abstain from deciding Dr. Mercola's petition for injunctive relief under the *Younger* abstention doctrine. "In *Younger*, the Supreme Court held that absent extraordinary circumstances federal courts should abstain from enjoying ongoing state criminal proceedings." *Simpson v. Rowan*, 73 F.3d 134, 137 (7th Cir. 1995) (citing *Younger v. Harris*, 401 U.S. 37, 53 (1971)). "The *Younger* abstention requires that a federal court abstain out of comity to a state court because both proceedings involve important state functions." *Daniels v. Sheahan*, No. 97 C 5430, 1997 WL 786649, at *3 (N.D. Ill. Dec. 15, 1997). It is presumed under *Younger* "that a plaintiff's federal constitutional claims can be fairly vindicated in the state court proceedings without federal intrusion." *Snell v. Pucinski*, No. 02 C 8172, 2003 WL 21321348, at *2 (N.D. Ill. June 6, 2003).

The *Younger* doctrine has been applied beyond its original factual situation to "non criminal judicial proceedings when important state interests are involved." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). This includes administrative proceedings. *Snell*, No. 02 C 8172, 2003 WL 21321348, at *1.

The existence of factually related concurrent state and federal cases does not by itself require a federal court to abstain under the *Younger* doctrine. "The *Younger* principle is an exception to the rule that a federal court normally will not abstain from deciding a case within its jurisdiction." *American Fed'n of State, County and Mun. Employees v. Tristano*, 898 F.2d 1302, 1304 (7th Cir. 1990) (citing *New Orleans Pub. Serv. v. Counsel of New Orleans*, 491 U.S. 350, 368 (1989); *Moore v. Sims*, 442 U.S. 415, 423 n.8 (1977)). "Federal courts have a virtually unflagging obligation to exercise the jurisdiction given to them. ... [O]nly exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *Trust & Inv. Advisers, Inc. v. Hogsett*, 43 F.3d 290, 295 (7th Cir. 1994) (internal citations omitted).

"In deciding whether the *Younger* abstention applies, a court must determine, at the threshold, whether litigating claims that are present could interfere with an ongoing state proceeding." *Soriano v. Town of Cicero*, No. 04 C 2774, 2004 WL 2966967, at *1 (N.D. Ill. Nov. 22, 2004) (quoting *Robinson v. Lother*, No. 04 C 2382, 2004 WL 2032120, at *2 (N.D. Ill. Sept. 1, 2004)); *see e.g., Fox v. Office of the Sheriff of Will County*, No. 04 C 7309, 2005 WL 991901, at *2 (N.D. Ill. Apr. 13, 2005) (citing *Simpson v. Rowan*, 73 F.3d 134, 138 (7th Cir. 1996)). If litigating the federal case could interfere with the ongoing state proceeding, "a federal court should abstain under *Younger* if the impacted state proceeding: (1) is judicial in nature and ongoing; (2) implicates important state interests; and (3) provides an adequate opportunity to raise constitutional challenges." *Walker v. Village of Northbrook*, No. 04 C 3814, 2005 WL 692402, at *2 (N.D.

STATEMENT

Ill. Mar. 22, 2005) (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

The Seventh Circuit's decision in *Green v. Benden* is factually on point with this case and therefore controls the outcome of this case. In *Green*, a doctor sued the Illinois Department of Professional Regulation ("DPR"), and two of the department's attorneys alleging due process and equal protection violations. 281 F.3d 661, 663 (7th Cir. 2002). The doctor's clinical psychologist license had been suspended by the DPR for two years. *Id.* at 663-64. The suspension had been upheld in the Circuit Court of Cook County and the case was on appeal to the Illinois Appellate Court when the doctor filed his federal lawsuit. *Id.* at 664.

The District Court denied the doctor's request for injunctive relief. *Id.* at 666. The Seventh Circuit reversed, holding that the district court should have not reached the injunctive relief issue but instead should have abstained under *Younger*. *Id.* According to the Seventh Circuit, (1) state-court administrative review is judicial in nature, (2) regulation of mental health-care professional is a important state concern and (3) the state-court administrative review process provided an adequate forum for the doctor to raise his constitutional challenges. *Id.* at 667. The Seventh Circuit concluded that the proper remedy was the dismissal of the federal action. *Id.*

This court must follow the *Green* decision and abstain from adjudicating Dr. Mercola's case. Dr. Mercola's forum for proceeding on this issue is before the Illinois Department of Financial and Professional Regulation. That forum allows him to raise his constitutional challenges. He is able to appeal any adverse decisions to the Illinois courts. There is also no indication that the state administrative proceedings in this matter are motivated by a desire to harass, are conducted in bad faith or so extraordinary that irreparable injury will result if this court does not intercede. *Walker v. Village of Northbrook*, No. 04 C 3814, 2005 WL 692402, at *2-3 (N.D. Ill. Mar. 22, 2005) (citations omitted). Dr. Mercola's first amendment arguments can be litigated through both Illinois administrative proceedings and in the Illinois state courts. This court must respect the State of Illinois' right to regulate the important state concerns of the public health and the medical profession through its administrative proceedings and state court review.

For the reasons set forth above, this court must abstain from adjudicating this matter. This case is dismissed. Dr. Mercola's petition for a temporary restraining order of August 1, 2005 (Dkt. No. 5), is moot. All other pending motions are moot. Case dismissed.