

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2111

September Term, 2013

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
et al.,

v.

WAL-MART STORES, INC., *et al.*

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: July 7, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The United Food and Commercial Workers International Union (the “Union”), Organized United for Respect at Walmart, Jobs With Justice, Alan Hanson, Sylvia Fabela, and Does 1-10 (collectively, the “Protestors”) appeal from a preliminary injunction entered by the Circuit Court for Anne Arundel County that enjoined them from protesting in certain ways on or near Wal-Mart stores in the State of Maryland. The Protestors argue that Federal law preempts such an injunction, that State law bars it as well, and that the appellees, Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Sam’s East. Inc., (collectively, “Walmart”), lack standing as to one of their claims. The Protestors also contend that Walmart failed to meet its burden of proof for a preliminary injunction, and they dispute in particular the circuit court’s finding that Wal-Mart was likely to succeed on the merits of its permanent injunction claim.

While this appeal was pending, the circuit court considered and granted Walmart’s Motion for Summary Judgment and issued a permanent injunction. That development rendered this appeal moot, and we therefore dismiss it.

I. BACKGROUND

This case, and others like it in other places, arose after the Protestors organized and carried out public protests over various Walmart employment policies and practices on and around Walmart store properties in the State of Maryland. Walmart’s Complaint alleged, and the Protestors do not dispute, that the Protestors conducted a flash mob, interrupted employee team meetings, blocked ingress and egress at a Walmart store, and on numerous occasions continued to protest on store property after being asked to leave. Walmart alleges that the Protestors also have, on at least one occasion, blocked rush-hour traffic on

a road adjacent to a Walmart location, diverting cars through the store parking lot in a manner that blocked access to and from the store and cost Walmart business.

After the protests, Walmart filed a complaint stating counts for trespass and nuisance and seeking injunctive and declaratory relief. Walmart alleged that the protests “interfered with Walmart’s possessory interests,” and caused “injury and material diminution in value” of Walmart’s property, and that unless the Protestors were enjoined from further protests, that “Walmart will suffer substantial and irreparable injury.” Walmart also moved for a preliminary injunction “[p]ursuant to Maryland Rules 15-501 through 15-505.”

The Protestors responded with a Motion to Dismiss for Lack of Jurisdiction, in which they argued that Walmart’s claims were preempted by the National Labor Relations Act (“NLRA”). They also opposed Walmart’s Motion for Preliminary Injunction, reiterating their preemption argument, arguing as well that the Maryland Anti-Injunction Act (“MAIA”) bars Walmart’s claims, and disputing that the Protestors’ actions did not constitute a nuisance or a trespass.

The circuit court held a hearing on the Motion to Dismiss on November 12, 2013, and denied the Motion from the bench, ruling that the NLRA does not bar Walmart’s claim. After another hearing on November 25 and 26, 2013, the court granted Walmart’s Motion for Preliminary Injunction. The circuit court ruled, prior to granting the preliminary injunction, that the subject of this controversy was not a “labor dispute” for purposes of the MAIA, and thus that that Act does not apply. After that threshold ruling, Walmart offered

a series of witnesses, documents and evidence; the Protestors cross-examined Walmart's witnesses but offered none of their own. The court then walked through the four-step analysis for preliminary injunctions, found in Walmart's favor, and enjoined the Protestors, pending trial on the merits, from:

- i) Entering on or inside Walmart private property in the State of Maryland to engage in activities such as unlawful picketing, patrolling, parading, demonstrations, "flash mobs," handbilling, solicitation, customer interference, and manager confrontations;
- ii) Entering on or inside Walmart's private property in the State of Maryland without permission or authorization from Walmart for any purpose other than shopping for and/or purchasing merchandise at Walmart's stores;
- iii) Engaging in any nuisance conduct off Walmart's private property in the State of Maryland which blocks, causes to be blocked, disrupts and/or interferes with Walmart customers' or associates' access to, or ability to move around on, or enter or exit Walmart private property in the State of Maryland.

The Protestors filed a timely Notice of Appeal pursuant to Md. Code (1977, 2013 Repl. Vol.), §12-303(c) of the Courts and Judicial Proceedings Article ("CJ"), but the rest of the case proceeded in parallel in the circuit court. On March 5, 2015, the court granted Walmart's Motion for Summary Judgment, then on March 16 entered "Findings of Fact and Conclusions of Law" and a Permanent Injunction that, although in somewhat different words, mirrors the preliminary injunction in substance.

II. DISCUSSION

We generally do not consider moot questions. *Attorney Gen'l v. Anne Arundel Cnty. School Bus Contractors Ass'n, Inc.*, 286 Md. 324, 327 (1979). When determining whether a case is moot, we consider whether it (1) presents a controversy (2) that can be resolved with an effective judicial remedy. *See Adkins v. State*, 324 Md. 641, 646 (1991) (“The test of mootness is whether, when it is before the court, a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy.” (citations omitted)). An appeal of a preliminary injunction is moot after a permanent injunction is granted because the preliminary injunction merges into the permanent injunction, and thus ceases to exist as a separate, appealable order:

In the case of the usual preliminary injunction, the plaintiff seeks to enjoin, pending the outcome of the litigation, action that he claims is unlawful. If his lawsuit turns out to be meritorious—if he is found to be entitled to the permanent injunction that he seeks—even if the preliminary injunction was wrongfully issued (because at that stage of the litigation the plaintiff’s prospects of winning were not sufficiently clear, or the plaintiff was not suffering irreparable injury) its issuance would in any event be harmless error. The final injunction establishes that the defendant should not have been engaging in the conduct that was enjoined. Hence, it is reasonable to regard the preliminary injunction as merging into the final one: If the latter is valid, the former is, if not procedurally correct, at least harmless.

Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 314-15 (1999) (emphasis omitted); *see also General Motors Corp. v. Miller Buick, Inc.*, 56 Md. App. 374, 386 (1983) (“An interlocutory injunction is issued in order to maintain the *status quo* until the court has either addressed and resolved the merits of the controversy or has

otherwise determined that the claimant has no legal right to proceed. Upon entry of a final appealable judgment on the merits or to that effect, it is regarded as being dissolved by operation of law.”) (emphasis omitted).

This is not a situation where some element of the order on appeal, one that turns on “a ground that has nothing to do with the validity of the permanent injunction,” survives the superseding injunction order. *Compare with Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 314-18 (holding that permanent injunction enjoining transfer of rights to payment did not moot portion of preliminary injunction relating to injunction bond order). The preliminary and permanent injunctions here cover the same claims and same arguments, but against the different evidentiary burdens that reflect the posture of each decision:

Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. A party thus is not required to prove his case in full at a preliminary-injunction hearing . . . , and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.

University of Texas v. Camenisch, 451 U.S. 390, 395 (1981) (citation omitted). And since the notice of appeal begetting this appeal does not encompass the permanent injunction decision—nor could it, since it didn’t exist at the time—that decision is not before us.

In a similar vein, we have also held that *expired* preliminary injunctions are moot on appeal. *See J.L. Matthews, Inc. v. Maryland—National Capital Park & Planning Commission*, 368 Md. 71, 96 (2002); *Hamot v. Telos Corp.*, 185 Md. App. 352, 360 (2009). Whether we consider the preliminary injunction expired, dissolved, or merged into the

permanent injunction, there is no longer an interlocutory injunction for us to review. By its very terms, the permanent injunction was intended to “resolv[e] all disputes between the parties and leav[e] nothing further to be done in this matter.”

APPEAL DISMISSED. COSTS TO BE DIVIDED EQUALLY.