

STATE OF MICHIGAN
COURT OF APPEALS

ALANNA FREY, as Next Friend and Attorney-in-Fact for DAVID FREY,

Plaintiff-Appellant,

v

TRINITY HEALTH-MICHIGAN, doing business as SAINT JOSEPH MERCY HEALTH SYSTEM, and ST. JOSEPH MERCY ANN ARBOR,

Defendant-Appellee.

UNPUBLISHED
December 10, 2021

No. 359446
Washtenaw Circuit Court
LC No. 21-001286-CZ

Before: SERVITTO, P.J., and SAWYER and M. J. KELLY, JJ.

M. J. KELLY, J. (*concurring in part and dissenting in part*).

I concur in the majority's determination that plaintiff was not denied due process by the trial court's sua sponte order dismissing her complaint. Additionally, I concur with the majority that plaintiff has failed to meet her burden of establishing that Frey will suffer irreparable harm without the issuance of a preliminary injunction ordering the hospital to administer to him ivermectin. Because failure to meet the irreparable-harm factor is enough to defeat a claim for a preliminary injunction, see *Pharmaceutical Research & Mfrs of America v Dep't of Community Health*, 254 Mich App 397, 403; 657 NW2d 162 (2002), I affirm the trial court's order denying plaintiff's motion for a preliminary injunction.

The hospital submitted an affidavit from its Chief Medical Officer, David M. Vandenberg, M.D., which states in pertinent part:

6. Mr. Frey is currently suffering from severe lung injury, moderate kidney injury, and bacterial pneumonia. *His current condition is not due to active COVID-19 infection. Therefore, it is too late to administer medications that could be effective in the treatment of COVID-19.* [Emphasis added.]

Plaintiff has not produced any evidence to rebut this assertion. Therefore, plaintiff is unable to show that the failure to administer ivermectin will cause irreparable harm and her motion must fail. As a result, I find it unnecessary to address the remaining factors, so I do not join the majority's analysis of them.

/s/ Michael J. Kelly