

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

GEORGE WILLIAMS, MEGAN ALLEN,
KEVIN DOYLE, LORI GOODWIN,
ADAM TEICHNER, BRIAN ENGLAND,
MARTHA BAKER, MAGALIE VANCOL PENA,
ROLANDO TABARES, ALLEN JONES,
and JUAN BASO, individually and
on behalf of all other individuals similarly situated,

Plaintiffs,

JOHN PARK; RANDALL HAIRE;
CHARLES E. BROOKFIELD LODGE #86,
FRATERNAL ORDER OF POLICE;
BRETT SANDLIN; RODNEY DURBIN;
the GOVERNMENT SUPERVISORS
ASSOCIATION OF FLORIDA, OFFICE
AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 100;
GREGORY L. BLACKMAN; the FLORIDA
NURSES ASSOCIATION and
DEBORAH HOGAN,

Intervenors/Plaintiffs,

vs.

RICK SCOTT, JEFF ATWATER, and
PAM BONDI, in their capacities as
the STATE BOARD OF ADMINISTRATION,
JEFF ATWATER, as Chief Financial Officer
of Florida, and JOHN P. MILES, Secretary
of the Department of Management Services and
Administrator of the Florida Retirement
System,

Defendants.

CLASS REPRESENTATION

CASE NO.: 2011 CA 1584

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**ORDER DENYING TEMPORARY
INJUNCTION and SETTING TRIAL DATE**

This cause came before the Court on Plaintiffs' motion for a temporary injunction filed pursuant to Florida Rule of Civil Procedure 1.610. Upon consideration of the motion and supporting memorandum of law, the response, having heard argument of counsel, and being otherwise fully advised, the Court finds as follows:

In this action Plaintiffs challenge the provisions of Chapter 2011-68, Laws of Florida, that mandate the deduction of three percent (3%) of the gross compensation of employees in the Florida Retirement System (FRS) to serve as contributions toward the employees' retirement benefits under the FRS. Ch. 2011-68, §§ 5, 7, 11, 13, 24, 26, 29, 33, 40, Laws of Fla. (2011). Plaintiffs also challenge the provisions of Chapter 2011-68, Laws of Florida, that reduce the cost-of-living adjustment for those retiring after July 1, 2011, by the proportion of service credit the retiree earns after July 1, 2011. *See id.* § 17. Plaintiffs bring this case as a class action pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure on behalf of themselves and a class consisting of all public employees in Florida who were members of the Florida Retirement System (FRS) prior to July 1, 2011, and who will be subject to the challenged provisions of Chapter 2011-68, Laws of Florida, effective July 1, 2011 ("the Class").

Plaintiffs move for a temporary injunction directing the Defendants to segregate the 3% salary deductions received from the Class members and place such funds either in an interest bearing account or a short term investment fund until final disposition of the Complaint. Plaintiffs do not seek temporary injunctive relief with respect to the cost-of-living adjustment.

FACTS

Plaintiffs are public workers who were members of the Florida Retirement System (FRS) prior to July 1, 2011. Plaintiff Williams has filed an affidavit in which he states he has been a

member of the FRS for 29 years and his current salary is \$32,093. He states it was his understanding that the pension system that was offered to him when he first started public employment would be the pension system throughout his career. He further states that in planning his finances for both before and after retirement, he has relied upon the fact that FRS is and would remain a non-contributory system. He states the basis for this belief is section 121.011(3)(d), Florida Statutes, which provides “the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.”

During the 2011 legislative session the Florida Legislature passed Senate Bill 2100 which makes numerous substantial changes to the FRS. Most of the changes apply only to individuals who become members of the FRS after July 1, 2011. However, one change at the heart of this lawsuit also applies to individuals who were FRS members before July 1, 2011. This change, effective July 1, 2011, imposes a mandatory 3% deduction from the gross compensation of all FRS members as a “contribution” toward their retirement. The bill does not provide any new or increased retirement benefits.

Plaintiff Williams states that, as applied to him, the new law will cause his take-home pay to be reduced by approximately \$68.20 per month. He is participating in this lawsuit because he believes the changes contained in Senate Bill 2100 violate the state’s contract with him and are unconstitutional. As the remedy for this violation at the conclusion of the litigation, he asks the Court to refund the full value of any “contributions” deducted pursuant to Senate Bill 2100, with interest.

However, Plaintiff Williams states he is concerned that once FRS members' contributions are deposited in the trust fund and invested by the State Board of Administration (SBA), there will not be a way to recover the funds because there is no mechanism for payments to be made out of the trust fund other than to pay retirement benefits. Additionally, he is concerned that because the trust fund is subject to short term volatility, the funds may lose principal. If he is not able to obtain a full refund of his contributions, Plaintiff Williams asserts he will be irreparably harmed.

CONCLUSIONS OF LAW

A temporary injunction is an extraordinary and drastic remedy which should be granted only sparingly. *Reliance Wholesale, Inc. v. Godfrey*, 51 So. 3d 561 (Fla. 3d DCA 2010). Temporary injunctions must be granted cautiously, and only in clear cases, reasonably free from doubt. *Storer Communications, Inc. v. State of Florida, Dept. of Legal Affairs*, 591 So.2d 238, 240 (Fla. 4th DCA 1991).

In determining whether to issue a temporary injunction, this Court must address "(1) [t]he likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest." *Thompson v. Planning Comm'n*, 464 So.2d 1231, 1236 (Fla. 1st DCA 1985); *See also Milin v. Northwest Fla. Land L.C.*, 870 So.2d 135, 136 (Fla. 1st DCA 2003) (applying *Thompson*). Before this Court can properly issue a temporary injunction, the movant must demonstrate that all four factors have been met. The failure to satisfy one is fatal to obtaining that relief. *See e.g. De Leon v. Aerochago, S.A.*, 593 So.2d 558, 559 (Fla. 3d DCA 1992).

I. IRREPARABLE HARM

Plaintiff Williams asserts he and the Class members will suffer irreparable harm if this Court does not promptly issue an injunction safeguarding the funds that are deducted from their salary. The Plaintiffs base their claim of irreparable harm in large part on the structure of the FRS trust fund. The FRS trust fund is a long term investment fund from which payments are generally made once the member has retired. It is not a short term investment depository with a mechanism for a payout outside of the statutorily mandated payment system. Thus, if the 3% public employee deductions are invested in the FRS trust fund, there does not appear to be a statutory mechanism for retrieving those funds. The Plaintiff argues that even if there was, the short term risk of loss could irreparably harm the Plaintiffs and Class members.

The Plaintiffs ask that the Court direct the State Board of Administration to segregate the funds at issue in this case to protect the funds from loss. Florida courts have not yet had the opportunity to address the unique issues presented in this case. The uniqueness of the issues, however, does not change the analysis the Court must undertake to determine whether irreparable harm exists. The law in Florida is clear: irreparable injury is an “[i]njury which cannot be redressed in a court of law.” *Tamiami Trail Tours v. S. Greyhound Lines Div.*, 212 So.2d 365, 366 (Fla. 4th DCA 1968) (emphasis added) (court reversed a temporary injunction finding that even the threatened loss of business caused by allegedly unlawful conduct by a competitor is legally insufficient to establish irreparable injury). *See also State Dep’t of Health and Rehabilitative Servs. v. Artis*, 345 So.2d 1109, 1111 (Fla. 4th DCA 1977) (court reversed a temporary injunction, finding that loss of income during litigation does not constitute irreparable harm).

Irreparable injury is an injury which is of a peculiar nature, so that compensation in money cannot atone for it. *Mullinix v. Mullinix*, 182 So.2d 268 (Fla. 4th DCA 1966). In other words, an injury is not irreparable when it can be adequately compensated by money damages or a monetary award. *B.G.H. Ins. Syndicate, Inc. v. Presidential Fire & Cas. Co.*, 549 So.2d 197 (Fla. 3d DCA 1989). Florida Courts have refused to uphold temporary injunctions for a wide variety of circumstances of alleged irreparable harm. For example, the mere diminution in the value of property,¹ the loss of employment,² the loss of income suffered by a dismissed employee,³ the loss of money from a bank account,⁴ nor the loss of business,⁵ constitute irreparable injury necessary to issue an injunction.

It is only in those circumstances where an award of money damages would not make the Plaintiff whole, that Florida Courts will find irreparable harm and affirm the issuance of temporary injunctions. *See Zuckerman v. Professional Writers of Florida, Inc.* 398 So.2d 870 (Fla. 4th DCA 1981) (where there was a threat of the destruction of business records required for the day to day operations of a business); *U.S. 1 Office Corp. v. Falls Home Furnishings, Inc.* 655 So. 2d 209 (Fla. 3d DCA 1995) (total destruction of a business without a track record from which to calculate the potential loss and with harm of a continuing nature may constitute irreparable harm to support temporary injunctive relief).

The Plaintiffs here claim a loss of money, by an improper taking of their salaries. The Court can redress this injury by an award of money damages. Therefore, Plaintiffs cannot make a showing of irreparable harm.

¹ *Professional Golfers Ass'n of America v. Bankers Life & Cas. Co.*, 166 So.2d 488 (Fla. 2d DCA 1964).

² *City of Boynton Beach v. Finizio*, 611 So.2d 74 (Fla. 4th DCA 1992).

³ *Dania Jai Alai Intern., Inc. v. Murua*, 375 So.2d 57 (Fla. 4th DCA 1979).

⁴ *Hiles v. Auto Bahn Federation, Inc.* 498 So.2d 997 (Fla. 4th DCA 1986).

⁵ *State Agency for Health Care Admin. v. Continental Car Services, Inc.*, 650 So.2d 173 (Fla. 2d DCA 1995); *State Dept. of Transport. v. Kountry Kitchen of Key Largo, Inc.*, 645 So.2d 1086 (Fla. 3d DCA 1994); *South Florida Limousines, Inc. v. Broward County Aviation Dept.*, 512 So.2d 1059 (Fla. 4th DCA 1987).

II. ADEQUATE REMEDY AT LAW

For the same reasons outlined above, Plaintiffs also have an adequate remedy at law. An adequate remedy at law exists if monetary compensation will suffice or atone for the loss. *Supreme Serv. Station Corp. v. Telecredit Serv. Ctr., Inc.*, 424 So.2d 844 (Fla. 3d DCA 1983) (“Irreparable harm for the purpose of an injunction is not established where the harm can be compensated for adequately by money damages.”) (Citing *Saripson v. Murray*, 415 U.S. 61 (1974)).

The Plaintiffs, on behalf of the Class, argue that they have no adequate remedy at law, inasmuch as they have no mechanism available to recover the funds deducted from their salaries once such funds are placed in the FRS trust fund. From the arguments of counsel for the Defendants at the hearing on this matter, it is certainly unclear from what source Plaintiffs will be paid, should the Court ultimately determine that the 3% mandatory salary deduction for contribution into the retirement plan was in error. The role of this Court, however, is not to determine and designate a source from which Plaintiffs will recover if they are ultimately successful in their claims. The Court is limited to a determination as to whether recovery of money would make the Plaintiffs whole. If the answer to that question is “yes,” then issuance of a temporary injunction is not permitted. Although there may be no statutory mechanism by which the funds may be removed from the FRS trust fund, the Court must assume that the State of Florida would comply with an order from this Court to refund to employees any funds that have been wrongfully deducted from their salary. The State, through counsel in fact, stipulated that should they ultimately be ordered to refund the 3% employee contributions, it was not a matter of whether the refunds would be given, it was only a matter of the State of Florida

determining from what source it would make the refunds, in the best financial interest of the public.

III. LIKELIHOOD OF SUCCESS ON THE MERITS

The Plaintiffs claim that the 3% deduction unconstitutionally impairs current FRS members' contractual rights in their retirement benefits. Plaintiffs also assert the deduction constitutes an unconstitutional taking of current FRS members' property without full compensation, and unconstitutionally abridges their right to collectively bargain. In light of its determination that a temporary injunction cannot be issued, the Court declines to address this issue at this time as moot. This should not be construed to mean the Court has concluded the Plaintiffs are unlikely to succeed on the merits of this case, but rather that the Court will save that determination for a ruling on summary judgment or the trial of this cause.

IV. PUBLIC INTEREST

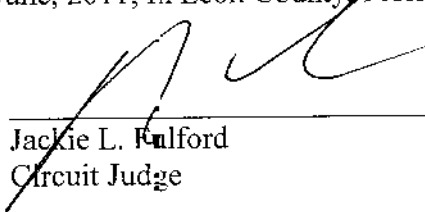
Likewise, the Court declines to address the issue of whether a temporary injunction of the nature sought by Plaintiffs would serve the public interest, as the Court has concluded it is without authority to issue a temporary injunction.

Accordingly, it is **ORDERED**:

Plaintiff's Motion for Temporary Injunction is **DENIED**.

This matter is set for trial on Wednesday, October 26, 2011 at 7:30 a.m. Pre-trial deadlines will be established by a separate scheduling order to be submitted by the parties within ten days.

DONE and ORDERED this 30th day of June, 2011, in Leon County, Florida.



Jackie L. Rulford
Circuit Judge

Copies to: Counsel of Record