

## Question MPT – February 2019 – Selected Answer 1

Statement of the Case

(Omitted)

Statement of Facts

(Omitted)

Argument

The goal of a preliminary injunction is to preserve the status quo. *Lang v. Lone Pine*, Franklin Court of Appeal, 2016. In order to grant a preliminary injunction, the Court must find: (1) that Baker and Little Tots is likely to succeed on the merits; (2) that Baker will suffer irreparable harm due to being shut down; (3) that Baker would suffer the greater injury as a result of denying the preliminary injunction than the state; and (4) that it is in the public interest for Little Tots to remain open for the period of the injunction. *Id.* All of these elements are in favor of granting the injunction. The granting of preliminary injunctions is reviewed using an abuse of discretion standard. *Id.*

1. Baker and Little Tots are likely to succeed on the merits because they have continually improved in meeting the minimum standards, and have outlined further means of improvement.

Baker is likely to succeed on the merits because Little Tots has continually improved in meeting the licensure requirements of the state of Franklin set out in Franklin Administrative Code Sec. 3.01. To be likely to succeed on the merits, a party must show they simply that at least one of their claims have a "better than negligible" chance of of succeeding at trial, and they do not have to meet the trial burdens of proof. *Lang*. Baker can show she has a better than negligible chance of succeeding on the merits, as her facility, Little Tots, has continually improved in meeting the standards, as shown from the Franklin Department of Children and Families (FDCF) Reports from July to January. For instance, with regards to the enrollment forms Baker is required to have on file, from the first report to the last she recieved 32 forms out of 37. FDCF Report. She states that perhaps she had been too patient, but that ultimately the remaining 5 forms would take her less than the amount of time that this preliminary injunction would last to recieve. Baker Testimony. Baker has similarly noted the areas of noncompliance and has outlined ways in which she can come into compliance if given more time, which should address the complaints of the state. *Id.* The state may argue that Baker has not come into compliance thus far, so it is unlikely she will with more time. However, the standard is only a better than negligible chance. As she has outlined her plans to improve, Baker can show that she has a better than negligible chance of coming into compliance across all grounds for revocation, and therefore, under the equitable standard that injunctions are granted on and in interest of preserving the status quo, the court should find that Baker is likely to succeed on the mertis.

2. Baker would suffer irreparable if Little Tots would shut down, as she would lose income, ability to pay back loans, her clients, and would be unlikely to reopen.

Baker would suffer irreparable injury if Little Tots shut down, as she would likely have to close the child care center for good due to lack of funds. Id. To suffer irreparable injury, a party must show that the injured party cannot be adequately compensated by damages or that the damages cannot be measured by any pecuniary standard if revocation was improper. Lang. Here, Baker cannot be adequately compensated by damages because while she would lose money, she would also lose clientele, her livelihood, suffer injury to her credit, and lose grants that would likely be hard to reinstate. Baker testimony. While Baker notes she would personally lose her income, she would also have grants taken away that she would have to recompute for if she were to reopen. Id. She would lose clients, and as a result lose children that she cares for from her center. Id. She has stated that she would lose the ability to pay business loans on time, which may damage her credit. Id. If she were unable to reopen due to lack of clients, she would lose something that she has stated she is passionate about. Id. Baker's damages would go far beyond money damages, and her injury would be of the irreparable sort that supports granting the injunction.

3. Baker and Little Tots will suffer a greater injury than the state if the preliminary injunction is denied, as Little Tots would likely have to close for good.

As has been stated, should Little Tots close, it will likely close for good. In order to determine that this balances in Baker and Little Tots' favor, the court must weigh the benefits of granting the injunction against the possible hardship to the party opposing the injunction. Lang. Here, this patently weighs in favor of Baker. If the Court denies Baker's relief, she will be unlikely to reopen the center due to loss of funds and loss of clients. Baker Testimony. As noted, the injuries to Baker and Little Tots are of the type that are irreparable in nature, and unlikely to be easily remedied. The harm to Baker, as such, is great. The hardship to the state is minimal, due to the length of the preliminary injunction. The state will argue that it has an interest in protecting children and therefore would be injured as a result, but ultimately the state would suffer no injury greater than it has chosen to endure over the time period of their reporting. Further, no child has been injured as a result of any noncompliance and as has been stated, allowing the injunction would ultimately encourage Baker to come into compliance.

3. The Court should grant Baker's Preliminary injunction because Little Tots remaining open furthers the goals of Franklin Child Care Act and the public interest by allowing low income and working parents an affordable place to take their kids.

The community being served by Baker and Little Tots needs this facility to remain open. As such, the public interest weighs heavily in favor of granting the injunction. Public interest favors that have been considered in the past are conservation of resources, the well being of those set to be protected, and if the injunction will serve statutory purposes. Lang. Here, these considerations weigh far more in favor of Baker than the state.

Baker's facility performs a vital function in a low income area- it allows parents to have affordable childcare so that they can work and provide for their families. Robbins Email. Some families have stated that they would have to reconsider the employment of a family member should the facility shut down, because they would no longer have reliable child care. Id. Little

Tots is the only childcare facility in this community serving low income families, and it has a schedule that allows families more flexibility than others. Id. If families have to lose work due to the shut down, they will be unable to conserve resources. Little tots similarly cannot conserve resources if they are shut down.

The well being of these children is also being protected. Little Tots runs an excellent program with regard to child development, such that local Early Childhood students are sent to observe it. Baker testimony. The children "thrive" in this environment. Id. The state may argue that due to the noncompliance, they are unprotected. However, as noted, Little Tots is near compliance across the board, and if allowed this time will come into compliance.

The injunction will serve statutory purposes. The Franklin Child Care Center Act has a stated purpose of encouraging affordable childcare such that low income and working families can have employment rather than need to stay home with their kids. As noted in the Robbins email, should this facility close, people will have to quit their jobs. Robbins Email. As a result, they may lose benefits such as health insurance. Id. There is no nearby facility that serves this population quite like Little Tots.

As all of these public interest factors weigh in favor of Baker and Little Tots, the court should grant the preliminary injunction.

### **Question MPT – February 2019 – Selected Answer 2**

#### **LAW AND ARGUMENT**

This Court should grant Plaintiff's request for a preliminary injunction because, as described below, Plaintiff's case soundly satisfies the four elements of the preliminary injunction test laid out in *Lang v. Lone Pine School District* (Fr. Ct. App. 2016): she is likely to succeed on the merits, she will suffer irreparable harm if the injunction is not granted, the benefits of granting the injunction outweigh the potential hardships to Defendant, and the issuance of a preliminary injunction serves the public interest.

I. Plaintiff can demonstrate a likelihood of success on the merits because she raises a fair question about whether revoking her license to operate Little Tots--the most drastic sanction allowed by the Child Care Center Act--is appropriate when the vast majority of the alleged violations have been cured.

In order to satisfy the first prong of the Lang test, a moving party must only raise a "fair question" regarding his claimed right and corresponding relief if successful at trial. *Lang v. Lone Pine School District* (Ct. App. 2016). The moving party does not have to meet the standard of proof that would be required at trial; he "need only demonstrate that his chances to succeed on at least one of his claims are better than negligible." Id. (citing *Smith v. Pratt* (Fr. Ct. App. 2001)). If the moving party's chance of succeeding is "better than a mere possibility," the court should enter a preliminary injunction. Id.

In this case, Plaintiff can raise a fair question about whether revocation of her license is the appropriate remedy. Section 3(f) of the Franklin Child Care Center Act (CCCA) provides: "If the operator of a child care center is in noncompliance with those standards deemed critical, the Director may, after notice, impose penalties including but not limited to a civil fine of at least \$500 but not more than \$10,000, or revocation of the license of the operator." Accordingly, revocation is the most severe consequence explicitly outlined by the CCCA. Defendant will likely argue that section 3(f) gives DCF it authority to revoke a provider's license for any critical violations. However, a reading of section 3(f) in conjunction with the rest of the CCCA reveals that this is simply not the case.

Section 1 of the CCCA illustrates that the CCCA was enacted in large part to respond to the growing need in our community for affordable child care in economically depressed communities, both to foster the development of children and to enable employment of parents who otherwise could not work outside the home. Allowing DCF to unilaterally revoke licenses for any violation of the CCCA is inconsistent with the purpose of the Act--and indeed, the CCCA explicitly provides for other penalties, including civil fines, that would allow centers to remain open while still encouraging and requiring their compliance with the safety standards set out in the Act.

In this case, Plaintiff has been accused of violating "critical" standards involving enrollment procedures, staff qualifications, staffing, and meals and nutrition. However, as the January 23, 2019 notice of deficiencies itself demonstrates, the staffing violation constituted merely two children overlapping in the same classroom by one week, meaning that the staff-to-child ratio was slightly out of balance; the violation was cured after that week when one of the children moved away. Moreover, the meals and nutrition violation outlined in the notice is invalid in that the conduct it alleges (inadequate supervision in the food area) is not actually a violation of section 3.37, which contains no provision requiring supervision in the food area. Depiste this, though, Plaintiff has pledged to add more supervision in the food area to ensure child safety, and she is even providing an education program for her workers on food safety.

Regarding the other two violations, enrollment procedures and staff qualifications, the errors have mostly been cured and Plaintiff will testify that she will correct the remaining issues within just a few more weeks, certainly before trial. Revocation is simply not appropriate under these circumstances. As in *Lang*, Plaintiff has raised a fair question regarding her rights and the likelihood of receiving a remedy at trial.

II. Plaintiff will suffer irreparable harm if the injunction is not granted because, if her license to operate Little Tots is revoked, she will lose her government grant and may default on her business loans, and therefore will likely not be able to reopen the center even if she is vindicated at trial.

In *Lang*, the Court of Appeals held that "[a]n alleged harm or injury is irreparable when the injured party cannot be adequately compensated by damages or when damages cannot be measured by any certain pecuniary standard." This test is met in the present case. As Plaintiff will testify, she will lose her government grant and will struggle to repay her business loans. Defendant will likely argue that these are only monetary damages that could be adequately

compensated for by a pecuniary standard. However, this view does not adequately capture the damage Plaintiff would suffer. In addition, she will lose her clients and suffer reputational damage that may prevent her from opening another childcare facility. Moreover, she will lose all of the time and effort that she has put into maintaining the business that no one else has been able to offer in her area, and she will likely not be able to reopen such a business. Just as in Lang, the damages to Plaintiff cannot be measured by money alone. Thus, a preliminary injunction is appropriate.

III. The benefits of granting the injunction, which would allow low-income families in the community to maintain employment and foster their children's development, outweigh any potential hardships to the Department of Children and Families, particularly since trial is set in 90 days.

The benefits of granting an injunction in this case, allowing Little Tots to continue in operation while the merits of this case are decided, are hard to overstate. The community served by Little Tots has no other affordable childcare available. If Little Tots's license is revoked, children in this community will be shuttled between overtaxed relatives, or parents will have to quit their jobs in order to care for them, worsening the already economically precarious situation of many families in the community. Parent Jacob Robbins will testify that, if Little Tots were to close, children will miss out on invaluable opportunities to interact with other children in a safe and nurturing environment while their parents are at work.

In contrast, Defendant will not suffer hardships if the injunction is granted. DCF has been monitoring Little Tots in 90-day periods already, and with trial set 90 days out, they will not be forced to monitor Little Tots any more than they would have otherwise. Even in Lang, where the school district would have to expand its policy, and prepare students and staff for the arrival of a service animal--generating substantial costs--the Court of Appeals weighed that against the benefits to one disabled student and concluded that the benefit to the moving party far outweighed the harm to the defendant school district. Judged by that standard, the benefits of granting the injunction in this case and allowing the child care center to remain in operation, serving children up to 96 children who otherwise would not be served, far outweigh the basically nonexistent harm to DCF in granting the injunction in this case.

IV. The issuance of a preliminary injunction in this case clearly serves the public interest because, as the Child Care Center Act itself recognizes, this community has a strong need for child care centers in economically depressed communities, and if Little Tots's license is revoked, an entire community would be left without any provider of affordable child care.

In enacting the CCCA, the legislature of Franklin explicitly found that there was a need for child care centers in underserved and economically depressed communities. If Plaintiff's license is revoked, Little Tots will shut down and will likely not be reopened. Plaintiff took over Little Tots after the previous owner had a hard time meeting expenses and keeping the center operational. Revoking this license and shuttering its doors once again will have a chilling effect on anyone else who desires to open a child care center and serve this community. Granting this injunction will allow Little Tots to remain operational and fix the minor issues outstanding, while continuing to serve children and struggling parents in the community until it can lay out its

case at trial. Such a result is certainly in the public interest in child care for these children, as explicitly recognized by the legislature in the CCCA.

## CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant a preliminary injunction to preserve the status quo until the merits of this case are decided at trial.

### **Question MPT – February 2019 – Selected Answer 3**

#### Body of the Argument

A preliminary injunction requires four elements to be met before a court may grant the injunction: (1) the moving party must show they are likely to be successful on the merits, (2) that the moving party will suffer irreparable harm if the injunction is not granted, (3) the benefits of granting the injunction outweigh the possible hardships to the party opposing the injunction, and (4) the issuance of a preliminary injunction serves the public interest. All four elements are met in this case as explained below, therefore Ms. Baker's Preliminary injunction would be granted.

I. Ms. Baker will be able to raise a fair question regarding the existence of her right to maintain the child care center because the the Franklin Administrative Code provides for other less harsh penalties before revocation that could be utilized by the FDCA.

Requirement number one asks the court to determine if Ms. Baker is likely to succeed on the merits. According to *Lang v. Lone Pine School District*, Ms. Baker need not meet the standard of proof necessary at trial, but instead must raise a fair question regarding the existence of the claimed right and the relief he will be entitled to if successful at trial on the complaint for permanent relief. And according to *Smith v. Pratt*, if the Ms. Baker shows that her chance of succeeding is better than a mere probability, the court should grant the motion.

In the *Lang Case*, the trial court found that there was a dispute as to the type of accommodation needed to provide the child and whether a service animal was necessary or proper, but that was to be decided by the trier of fact when the matter is tried on the merits. In the meantime the Langs had shown a fair question regarding the rights of their son and the likelihood of receiving relief by displaying their son's disability and evidence of his improvement with the service dog.

In this case, Ms. Baker can prove that she has continuously been improving on all requirements of her licensing with each new notice of delinquency. She has shown a good faith effort to correct all the wrongs of the previous employer and to modify all procedure to align with the licensing requirements. This can be evidenced by each notice of deficiency and the decrease of violations each time.

The Franklin Administrative Code also provides that non compliance of deemed critical violations of the ACt may be penalized by imposing fines ranging from \$500 to \$10,000 or revocation of the license.

In this case, Ms. Baker has received notices of deficiency, which she has diligently done her best to correct all violations, yet she has not received any fines. Fines are the least restrictive measures for critical violations and should be utilized first before revocation of a license. Ms. Baker has only been operating this child care center for eight months and during that time from she has been able to complete thirty two out of the 37 incomplete enrollment forms, obtain background checks on half of the employees, and bring the staffing ratio within licensing standards for three of the four age groups. With additional time and the continued diligence of Ms. Baker, the additional violations can be remedied.

The FDCA will argue that after three notices Ms. Baker has had a sufficient opportunity to comply with the Act and has not done so, therefore, revocation is justified. However, seeing as how Ms. Baker has proven her desire and diligence in attempting to comply with these violations, the least restrictive penalty should be imposed upon Ms. Baker first. Therefore, she is likely to be successful at trial on the merits of the case and prevent her license from being revoked.

II. Revocation of Little Tots' license will cause the child care center to be shut down and Ms. Baker to lose all her clients causing her to be without an income and fall behind on her business loan, therefore, Ms. Baker will suffer irreparable harm by denial of a Preliminary Injunction.

Requirement number two asks the court to consider what, if any, irreparable harm Ms. Baker will suffer by denial of the injunction. According to the Lang case, alleged harm or injury is when the injured party cannot be adequately compensated by damages or when damages cannot be measured by any certain pecuniary standard.

IN the Lang Case, the Langs were able to show that their son's education would be interfered with as a result of denying the injunction, that was irreparable.

This case is slightly different, but the requirement is still met. If Ms. Baker's child care center is shut down, she will lose all her clients and no longer have an income. In addition she will not have any income to be able to repay her business loan. It is also undetermined how long the process to get her license back could take and in the mean time all her clients will have to find new child care or quit their jobs. Therefore it would be impossible to know if she could open her center back up after receiving her license back due to lack of clients and sufficient income to run the center.

The FDCA will likely argue that the damages will be able to be determined and repaid if revocation is deemed improper. However, because Baker is unsure if after revocation she would even be able to reopen, that makes damages unascertainable. Because she will be without income and unable to make her business loan payments. Therefore her credit will decline. Also the

parents will either quit their jobs or find new child care which would mean upon reopening Baker may not have enough clients to support the loan payments still. This can all be evidenced by Baker's proposed testimony and Robbins letter to the FDCA. Therefore, the injunction should be granted and the license not revoked.

III. The benefits of granting the Injunction outweigh any hardship to the opposing party because, if a Preliminary Injunction were denied Ms. Baker would be without an income and the parents she services would be without child care for their children which would cause them to have to pay more money or quit their jobs, whereas there is no individual hardship put on the FDCA if the injunction were to be granted.

Requirement three asks the court to consider whether the possible benefits of granting the injunction outweigh any hardship the opposing party may face. According to the Lang case, the court must determine whether greater injury would result from refusal of the injunction than from granting it.

In the Lang case, the Langs were able to show that allowing their son to attend school with his service dog outweighed any hardship to the school such as training.

In this case, if the injunction is granted, Baker will be able to keep the center open for her clients and keep her staff employed. The low income parents would be able to afford to keep their children in child care rather than quitting their jobs. However, if it were denied, Baker would lose income, the staff would be let go and without employment, and the low income parents would be forced to quit their jobs due to no affordable child care in the area. However, there would not be any harm to the FDCA by granting the injunctions.

The FDCA may argue that the harm to them would be the need to continuously monitor the center, however, this does not outweigh the harm done to Baker, the parents, and the staff if the injunction were denied and the license was revoked.

IV. When the only child care center in the neighborhood that serves low-income families will have its license revoked, that is against the public interest of the community because parents may have to quit their job if no other affordable child care is available for their children.

The final requirement asks the court to consider the interest to the public in granting the injunction. According to the Lang case, In this case, Baker's child care center is the only center in the area, 15 mile radius, that provides affordable child care to low income families. This can be evidenced by Mr. Robbins letter to the FDCA. Taking away the center's license would be directly contrary to the purpose of the act which is to encourage affordable and safe child care centers for low income parents in underserved areas. Evidenced by Baker's proposed testimony, this is the only center in the community that offers lower rates for low income families. This is directly in line with the policy and purpose of the Franklin Child Care Center Act.



The FDCA will argue that is against public interest to have centers running that are in violation of the ACT. However, the act expressly provides thhat penalties can be imposed such as fines OR revocation or any other penalty deemed appropraite. Therefore, violations do not require revocation of liceneces. SINce the public interest is benefited by the runing of Baker's child care center the injunction should be granted and the license should not be revoked.

COnsidering the four factors above for a Preliminary Injunction, the Motion should be Granted.