

NOTICE  
Decision filed 08/31/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110566-U  
NO. 5-11-0566  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

LIGHTSPEED MEDIA CORPORATION, )  
 )  
Petitioner-Appellee, )  
 )  
v. )  
 )  
AT&T INTERNET SERVICES and )  
VERIZON ONLINE LLC, )  
 )  
Respondents-Appellants, )  
 )  
and )  
 )  
BRADLEY UNIVERSITY, CEBRIDGE CONNECTIONS, )  
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, )  
CLEARWIRE US LLC, COMCAST CABLE HOLDINGS, )  
LLC, EASTERN ILLINOIS UNIVERSITY, FAIRPOINT )  
COMMUNICATIONS, INC., FRONTIER )  
COMMUNICATIONS OF AMERICA INC., HARGRAY )  
COMMUNICATIONS GROUP, INC., HOSTFORWEB )  
INC., HOSTING SERVICES, INC., MEDIACOM )  
COMMUNICATIONS CORP., MKE BRIDGED )  
CIRCUITS, NORTHERN ILLINOIS UNIVERSITY, )  
NORTHWESTERN UNIVERSITY, PAETEC-STARNET )  
DIVISION, PSINET, INC., RCN CORPORATION, )  
SANCTUARY HOST, SENTRAL ASSEMBLIES & )  
COMPONENTS, UNIVERSITY OF ILLINOIS AT )  
CHICAGO, WAYPORT, INC., and WIDEPENWEST )  
ILLINOIS, )  
 )  
Respondents. )

Appeal from the  
Circuit Court of  
St. Clair County.  
  
No. 11-L-621

Honorable  
Lloyd A. Cueto,  
Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.  
Justices Welch and Chapman concurred in the judgment.

ORDER

¶1 *Held:* The circuit court erred in entering an order allowing presuit discovery pursuant

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to Illinois Supreme Court Rule 224 (eff. May 30, 2008) without first holding a hearing on the petition as required by law. Order vacated.

¶2 Respondents Verizon Online LLC and AT&T Internet Services (the appellants) appeal the November 9, 2011, order of the circuit court of St. Clair County which allowed the petitioner, Lightspeed Media Corporation, to engage, pursuant to Illinois Supreme Court Rule 224 (eff. May 30, 2008), in discovery before suit to identify responsible persons and entities. For the reasons that follow, we vacate the circuit court's order and remand for further proceedings not inconsistent with this order.

¶3 **FACTS**

¶4 On November 3, 2011, the petitioner filed a petition for discovery before suit to identify responsible persons and entities. In the petition, the petitioner alleged, in essence, that unnamed individuals have unlawfully accessed the private content of one or more websites owned by the petitioner, and that the discovery was necessary to uncover the identities of those individuals so that the petitioner could seek legal redress against them pursuant to federal statute. On November 9, 2011, the circuit court granted the petition. The record on appeal is devoid of proof that any of the respondents were served with a summons or with the petition itself prior to the entry of the circuit court's order, and the appellants claim they were not so served. It is undisputed that no hearing on the petition was held prior to the entry of the circuit court's order.

¶5 **ANALYSIS**

¶6 Rule 224 states that a petition filed thereunder is to be verified and must be served with a summons upon all respondents at least 14 days before a hearing that is to be held "[p]ursuant to law" to determine whether the petition is meritorious. Ill. S. Ct. R. 224 (eff. May 30, 2008). Pursuant to the plain language of the rule, the appellate court repeatedly has held that "[a] hearing must be held before the court can grant or deny a Rule 224 petition." *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 711 (2010); see also *Kamelgard v.*

*American College of Surgeons*, 385 Ill. App. 3d 675, 686 (2008). One purpose of this requirement is to "prevent 'fishing expeditions' " by unscrupulous petitioners. *Maxon*, 402 Ill. App. 3d at 711. Although the ultimate question of whether a Rule 224 petition should be granted or denied may be complicated, the procedural requirements of the rule are not, nor are the cases interpreting those requirements. Nevertheless, the circuit court in this case failed to hold the legally required hearing before granting the petition,<sup>1</sup> and the petitioner in this case failed to properly serve the petition upon the respondents. Accordingly, we vacate the circuit court's order. Although the appellants request additional relief with regard to information obtained by the petitioner pursuant to the circuit court's flawed order, we note that the effect of a vacated order is that of a void order, the substantive effect of which is to restore the parties to their original status. See, e.g., *Kelch v. Watson*, 237 Ill. App. 3d 875, 877 (1992). The remaining arguments put forth by the appellants as to why no Rule 224 petition should be granted in this case are not yet ripe for consideration by this court and are better suited for consideration by the circuit court at the hearing it will hold on remand if and when all of the respondents are properly served pursuant to Rule 224.

¶ 7 CONCLUSION

¶ 8 For the foregoing reasons, we vacate the trial court's order, and this cause is remanded for further proceedings not inconsistent with this order.

¶ 9 Vacated and remanded.

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<sup>1</sup>Although the petitioner contends, with no support from the record, that the order granting the petition was "provisional," the case law is clear that an order that grants a Rule 224 petition "finally adjudicates the rights of the parties and terminates the litigation." *Gaynor v. Burlington Northern & Santa Fe Ry.*, 322 Ill. App. 3d 288, 289 (2001).