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Bromen Office 1, Inc. v. Coens

Court of Appeals of Minnesota

December 28, 2004, Filed

A04 -946

Reporter
2004 Minn. App. LEXIS 1488 *; 2004 WL 2984374

Bromen Office 1, Inc., Appellant, vs. Terrance J. Coens, et al., Respondents, Trudy Elton, Respondent, Davis Typewriter Co., Inc., et al., Respondents.

Notice: **[*1]** THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Lyon County; Hon. George I. Harrelson, Judge. District Court File No. C4-04-186.

Disposition: Affirmed.

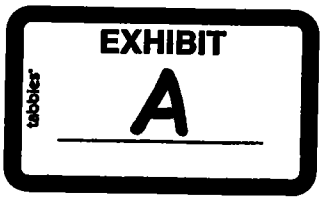
Core Terms

temporary injunction, irreparable harm, district court, injunction, customers, adequate legal remedy, employment contract, former employee, confidential information, tortious interference, restrictive covenant, irreparable injury, former employer, office supplies, trade secret, compensated, considers, quotation, grounded, damages, prevail, argues, enjoin, merits

Case Summary

Procedural Posture
Appellant company sought review of a judgment from the Lyon County District Court (Minnesota) rendered in favor of respondent former employees in an action for injunctive relief brought by the company.

Overview
The former employees left the company to work for a competitor. The company brought an action against the former employees seeking to temporarily enjoin them from working for the competitor. The trial court denied the request, and the company appealed the judgment contending that it was erroneous. The court noted that to obtain a temporary injunction, the requesting party must have demonstrated the nature and background of the parties' relationship, relative harm including irreparable harm, the likelihood of success on the merits, public policy considerations, and the administrative burden created by a temporary injunction. The company's claimed irreparable harm. In the area of employment contracts, an irreparable injury was not shown by the mere fact that the employee had left the service and had entered the service of a rival. The court concluded that the company failed to establish that it would have been irrevocably harmed absent a temporary injunction. In addition, the balance of the harm favored the former employees. Therefore, the trial court did not abuse its discretion in denying the company's request for a temporary injunction. The judgment was affirmed.



Outcome
The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1 **Standards of Review, Abuse of Discretion**

The district court's decision regarding a motion for a temporary injunction is reviewed for abuse of discretion. The reviewing court considers the facts in a light most favorable to the prevailing party.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN2 **Injunctions, Preliminary & Temporary Injunctions**

The purpose of a temporary injunction is to preserve the status quo pending a decision on the merits of the action.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3 **Injunctions, Grounds for Injunctions**

The party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. Failure to establish irreparable harm is by itself, a sufficient ground for denying a temporary injunction.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

HN4 **Standards of Review, De Novo Review**

The appellate court reviews the question of whether a party has an adequate legal remedy de novo.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN5 **Injunctions, Preliminary & Temporary Injunctions**

When deciding whether to grant a temporary injunction, the district court considers five factors: (1) the nature and background of the parties' relationship; (2) the relative harm suffered by either party, including whether the moving party will suffer irreparable harm absent a temporary injunction; (3) the relative likelihood of success on the merits; (4) public policy considerations; and (5) the administrative burden created by judicial enforcement and supervision of a temporary injunction.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN6 **Injunctions, Grounds for Injunctions**

Irreparable harm occurs when a party has no adequate legal remedy. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a temporary injunction, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Civil Procedure > ... > Injunctions > Grounds for

Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN7 **Injunctions, Grounds for Injunctions**

Where the injury alleged is primarily economic, grounds for a temporary injunction are not established.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

HN8 **Injunctions, Grounds for Injunctions**

In the area of employment contracts, an irreparable injury is not shown by the mere fact that the employee has left the service and has entered the employ of a rival concern. Harm is found where a former employee trades on good will established while working for a former employer or where a professional exercises personal influence over patients or clients of a former employer.

Counsel: M. Barry Darval, Darval Wermerskirchen & Frank, P.A., Willmar, MN (for appellant).

Paul E. Stoneberg, Stoneberg, Giles & Stroup, P.A., Marshall, MN (for respondents Coens, et al.).

Glen A. Petersen, Petersen Law Office, Tyler, MN (for respondent Elton).

William J. Wetering, Hedeen, Hughes & Wetering, Worthington, MN (for respondents Davis Typewriter Co., et al.)

Judges: Considered and decided by Harten, Presiding Judge, Klaphake, Judge, and Stoneburner, Judge.

Opinion by: KLAPHAKE

Opinion

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Bromen Office 1, Inc. (Bromen) brought this suit alleging breach of restrictive covenants in employment contracts, tortious interference with contract, misappropriation of trade secrets, and unfair competition against three former employees, respondents Terrance Coens, Norbert Padfield, and Trudy Elton; their current employer, respondent Davis Typewriter Co., Inc.; and the owner of Davis Typewriter, respondent Larry Davis. Bromen sought a temporary injunction **[*2]** to enjoin its former employees from working for Davis Typewriter and to enjoin Davis Typewriter from soliciting for employment any other Bromen employees, using any confidential information, or contacting any Bromen customers. The district court denied Bromen's motion and Bromen appeals.

Because Bromen failed to establish that it would be irrevocably harmed absent a temporary injunction, we affirm.

DECISION

I. Standard of Review

HN1 The district court's decision regarding a motion for a temporary injunction is reviewed for abuse of discretion. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship, 638 N.W.2d 214, 220 (Minn. App. 2002), review denied* (Minn. Feb. 4, 2002). The reviewing court considers the facts in a light most favorable to the prevailing party. *Id.* ***HN2*** The purpose of a temporary injunction is to preserve the status quo pending a decision on the merits of the action. *Id. at 221.* ***HN3*** "The party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm." *Medtronic, Inc. v. Advanced Bionics Corp., 630 N.W.2d 438, 451 (Minn. App. 2001).* **[*3]** Failure to establish irreparable harm is "by itself, a sufficient ground for denying a temporary injunction." *Id.* ***HN4*** This court reviews the question of whether a party has an

adequate legal remedy de novo. *Id.*

II. Denial of Injunction

HN5[↑] When deciding whether to grant a temporary injunction, the district court considers five factors: (1) the nature and background of the parties' relationship; (2) the relative harm suffered by either party, including whether the moving party would suffer irreparable harm absent a temporary injunction; (3) the relative likelihood of success on the merits; (4) public policy considerations; and (5) the administrative burden created by judicial enforcement and supervision of a temporary injunction. *Id.* (citing *Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)*).

HN6[↑] Irreparable harm occurs when a party has no adequate legal remedy. *Medtronic, 630 N.W.2d at 451*.

> Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence [of a temporary injunction], are not enough. The possibility that adequate compensatory or **[*4]** other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Miller v. Foley, 317 N.W.2d 710, 713 (Minn. 1982) (quotation omitted). ***HN7***[↑] Where the injury alleged is primarily economic, grounds for a temporary injunction are not established. *See Morse v. City of Waterville, 458 N.W.2d 728, 729-30 (Minn. App. 1990), review denied* (Minn. Sept. 28, 1990).

HN8[↑] In the area of employment contracts, an irreparable injury is "not shown by the mere fact that the employee has left the service and has entered the employ of a rival concern." *Rosewood Mortg. Corp. v. Hefty, 383 N.W.2d 456, 459 (Minn. App. 1986)* (quotation omitted). Harm has been found where a former employee trades on good will established while working for a former employer or where a professional exercises personal influence over patients or clients of a former employer. *Id.*

The record here includes the employment contracts signed by respondents Coens, Elton, and Padfield. Two of those contracts contain a liquidated damages clause equal to six months of salary. Presumably, were Bromen **[*5]** to prevail in the underlying action, those damages would go toward compensating Bromen for the economic loss it claims. Although Bromen seeks protection for confidential information, the nature of its business (acting as a middleman between office supply manufacturers and business customers) does not suggest that Bromen has or seeks to protect highly confidential systems or designs. Most of Bromen's customers are supplied by other office supply vendors as well, and there is no claim made that Bromen has exclusive rights to these customers. In short, Bromen's claim is grounded in financial losses, something readily compensated by a damage award, thus implying that Bromen would not suffer irreparable injury if a temporary injunction is not granted.

The district court balanced the relative harm to Bromen against potential harm to all of the individual respondents, relying on affidavits submitted by them as the source of its conclusions. These respondents generally averred that they would have difficulty finding employment because of the economy, physical limitations, or family responsibilities, and that they are the sole or major source of support for their families. We therefore conclude **[*6]** that there is adequate support in the record for the district court's determination that Bromen would not suffer irreparable loss and that the balance of harm favors respondents. [1]

The district court did not abuse its discretion in denying Bromen's request for a temporary injunction.

Affirmed.

End of Document

[1] Bromen argues that the district court based its decision solely on an analysis of breach of the employment agreements' restrictive covenants. Bromen argues that the court failed to make adequate findings on Bromen's other claims, which allege violations of the *Uniform Trade Secrets Act, Minn. Stat. § 325C.01-.08* (2002), and tortious interference with contract. Because Bromen failed to sustain its burden of proving irreparable harm on its breach of contract claim on the same facts, we need not decide whether Bromen is entitled to injunctive relief on its other claims.

U Otter Stop Inn v. City of Minneapolis

Court of Appeals of Minnesota

March 28, 2006, Filed

A05-1335

Reporter
2006 Minn. App. Unpub. LEXIS 286 *; 2006 WL 771936

U Otter Stop Inn, Inc., d/b/a U Otter Stopp Inn, et al., Appellants, vs. The City of Minneapolis, Respondent.

Notice: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Hennepin County District Court File No. 05-7572. Hon. Charles A. Porter, Jr.

Disposition: Affirmed.

Core Terms

district court, ordinance, smoking, temporary injunction, appellants', merits, irreparable, injunction, likelihood of success, immunity, parties

Case Summary

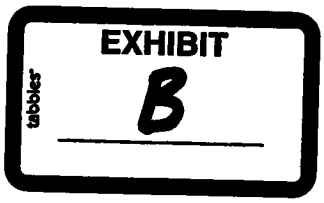
Procedural Posture
Appellant business establishments appealed the judgment of the Hennepin County District Court, Minnesota, denying a temporary injunction suspending the enforcement of a smoking ban in Minneapolis.

Overview

Minneapolis, Minn., Code Ordinances 234.20, the indoor-smoking ordinance, prohibited smoking in bowling alleys and pool and billiard halls and liquor and food establishments. The ordinance was drafted with the intent that it would complement the Minnesota Clean Indoor Air Act, *Minn. Stat. §§ 144.411*-.417 (2004). Several establishments sought a temporary injunction suspending the enforcement of a smoking ban, claiming that they would go out of business. The district court held that they were not entitled to injunctive relief. The establishments failed to demonstrate that there was not an outdoor area available in which patrons could smoke. The establishments' economic injuries could be adequately compensated with monetary damages. The establishments failed to articulate any underlying tort claim that would trigger the city's governmental immunity under *Minn. Stat. § 466.03, subd. 5.*

Outcome
The judgment was affirmed.

LexisNexis® Headnotes



Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1[] Standards of Review, Abuse of Discretion

A decision on whether to grant a temporary injunction is left to the discretion of the district court and will not be overturned on review absent a clear abuse of that discretion. The Court of Appeals of Minnesota considers the facts in the light most favorable to the prevailing party.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN2[] Standards of Review, Abuse of Discretion

The Court of Appeals of Minnesota considers five factors in determining whether the district court abused its discretion in denying a temporary injunction: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. The failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3[] Injunctions, Preliminary & Temporary Injunctions

A party seeking temporary injunctive relief must establish that an injunction is necessary to prevent great and irreparable injury. To be granted relief, the moving party must offer more than a mere statement that it is suffering or will suffer irreparable injury. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a temporary injunction, are not enough. The injury must be of such a nature that money damages alone would not provide adequate relief.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN4[] Standards of Review, De Novo Review

Whether a party seeking temporary injunctive relief has an adequate remedy at law is a legal question that the Court of Appeals of Minnesota reviews de novo.

Torts > Public Entity Liability > Immunities > General Overview

Torts > Public Entity Liability > Liability > General Overview

HN5[] Public Entity Liability, Immunities

Local governmental entities are subject to liability for their torts. Minn. Stat. § 466.02 (2004). Immunity is granted, however, for any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution, or rule. *Minn. Stat. § 466.03, subd. 5.* Immunity is also available for any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused. *Minn. Stat. § 466.03, subd. 6.*

Torts > Public Entity Liability > Immunities > General Overview

HN6[] Public Entity Liability, Immunities

Minnesota law does not support the assertion that the availability of an immunity defense necessarily renders a claimant devoid of an adequate legal remedy.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN7[↓] Injunctions, Preliminary & Temporary Injunctions

In order for temporary injunctive relief to be granted, the moving party must offer more than a mere statement that it is suffering or will suffer irreparable injury.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN8[↓] Injunctions, Preliminary & Temporary Injunctions

The Dahlberg factors compare the moving party's harm if the injunction is denied to the nonmoving party's harm if the temporary injunction is granted.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN9[↓] Injunctions, Preliminary & Temporary Injunctions

The Court of Appeals of Minnesota does not decide the merits of the case on appeal from a motion for a temporary injunction, but the likelihood of success is one of the Dahlberg factors that the court of appeals reviews. Probability of success in the underlying action is a primary factor in determining whether to issue a temporary injunction. Even when a petitioner makes a strong showing of irreparable harm, a district court should not grant a temporary injunction where the petitioner has demonstrated no likelihood of success on the merits.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Local Governments > Ordinances & Regulations

HN10[↓] Standards of Review, De Novo Review

The interpretation of an existing ordinance is a question of law, and statutory construction is a question of law which the Court of Appeals of Minnesota reviews de novo.

Antitrust & Trade Law > Consumer Protection > Tobacco Products > State Regulation

Environmental Law > Air Quality > State Implementation Plans

HN11[↓] Tobacco Products, State Regulation

The indoor-smoking ordinance states that smoking is prohibited in bowling alleys and pool and billiard halls and liquor and food establishments. Minneapolis, Minn., Code Ordinances 234.20 (2004). Not included in the prohibition are hotel or motel guest rooms, outdoor spaces, locations where smoking is expressly authorized by state or federal law or rule, or the use of tobacco as part of a recognized religious ritual or activity. The ordinance was drafted with the intent that it would complement the Minnesota Clean Indoor Air Act, *Minn. Stat. §§ 144.411*-.417 (2004). Minneapolis, Minn., Code Ordinances 234.70 (2004).

Antitrust & Trade Law > Consumer Protection > Tobacco Products > State Regulation

Environmental Law > Air Quality > State Implementation Plans

HN12[↓] Tobacco Products, State Regulation

See *Minn. Stat. § 144.415*.

Antitrust & Trade Law > Consumer Protection > Tobacco Products > State Regulation

Environmental Law > Air Quality > State Implementation Plans

HN13[↓] Tobacco Products, State Regulation

The Minnesota Clean Indoor Air Act (CIAA), *Minn. Stat. §§ 144.411*-.417 (2004), does not expressly authorize smoking in designated areas. The CIAA provides that

smoking may be permitted except when prohibited by an ordinance. The ordinance prohibits smoking in bowling alleys and pool and billiard halls and liquor and food establishments.

Antitrust & Trade Law > Consumer Protection > Tobacco Products > State Regulation

Environmental Law > Air Quality > State Implementation Plans

HN14 **Tobacco Products, State Regulation**

The Minnesota Health Department Rules implementing the Minnesota Clean Indoor Air Act (CIAA), *Minn. Stat. §§ 144.411*-.417, which are read in conjunction with the CIAA, state that nothing in the rules interpreting the CIAA shall be construed to affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations or to affect the right of building owners or operators to designate their premises as smoke-free. *Minn. R. 4620.0050* (2005).

Antitrust & Trade Law > Consumer Protection > Tobacco Products > State Regulation

Environmental Law > Air Quality > State Implementation Plans

Governments > Local Governments > Police Power

HN15 **Tobacco Products, State Regulation**

The Minnesota legislature has addressed smoking in public places through the Minnesota Clean Indoor Air Act, *Minn. Stat. §§ 144.411*-.417 (2004), while expressly preserving the power of local government to impose more stringent smoking limitations.

Governments > Courts > Judicial Precedent

HN16 **Courts, Judicial Precedent**

While not determinative on its own, an opinion of the attorney general is entitled to great weight.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN17 **Injunctions, Preliminary & Temporary Injunctions**

See *Minn. R. Civ. P. 65.03(a)*.

Counsel: For Appellants: Randall D.B. Tigue, Randall Tigue Law Office, P.A., Minneapolis, MN.

For Respondent: Jay M. Heffern, Minneapolis City Attorney, James A. Moore, Assistant City Attorney, Minneapolis, MN.

Judges: Considered and decided by Worke, Presiding Judge; Wright, Judge; and Dietzen, Judge.

Opinion by: WORKE

Opinion

UNPUBLISHED OPINION

WORKE, Judge

On appeal from the district court's denial of a temporary injunction suspending the enforcement of a smoking ban in Minneapolis, appellant establishments argue that (1) they made a sufficient showing of irreparable economic injury for which respondent city will be immune from damages; (2) they made a sufficient showing that they are likely to prevail on the merits of their claim that the Minneapolis anti-smoking ordinance contains an exception for areas in which smoking is permitted under the Minnesota Clean Indoor Air Act; and (3) any security for the injunction should be waived. We affirm.

DECISION

The sole issue before us is whether **[*2]** the district court abused its discretion in denying appellants' motion for a temporary injunction. ***HN1***[↑] "A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis, 502 N.W.2d 203, 209 (Minn. 1993)*. We consider the facts in the light most favorable to the prevailing party. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship., 638 N.W.2d 214, 220 (Minn. App. 2002)*, *review denied* (Minn. Feb. 4, 2002).

HN2[↑] This court considers five factors in determining whether the district court abused its discretion in denying a temporary injunction: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Id. at 220-21*; *Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)*. Because an injunction is an equitable remedy, the **[*3]** party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc., v. Grounds & Assocs., Inc., 278 N.W.2d 81, 92 (Minn. 1979)*. Generally, the failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction. *Morse v. City of Waterville, 458 N.W.2d 728, 729 (Minn. App. 1990)*, *review denied* (Minn. Sept. 28, 1990).

The first *Dahlberg* factor requires the court to consider the nature and relationship of the parties. The district court determined that the nature of the parties' relationship did not affect the outcome. Appellants are business establishments operating in respondent city. Appellants sought to preclude respondent from enforcing its anti-smoking ordinance. The district court did not abuse its discretion in ruling that the relationship of the parties did not either favor or disfavor granting the temporary injunction.

The second *Dahlberg* factor requires the court to balance the relative harm between the two parties. The district court determined that appellants made a strong showing that they **[*4]** would suffer serious economic injury if the anti-smoking ordinance remained in effect. Conversely, the district court determined that respondent would suffer little, if any, harm because not enforcing the ordinance would put respondent in the position it was in before the ordinance became effective.

HN3[↑] A party seeking temporary injunctive relief must establish that an injunction is necessary "to prevent great and irreparable injury." *Minn. Twins, 638 N.W.2d at 222*. To be granted relief, the moving party must offer more than a "mere statement that it is suffering or will suffer irreparable injury[.]" *Bolander, 502 N.W.2d at 209*. "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence [of a temporary injunction], are not enough." *Miller v. Foley, 317 N.W.2d 710, 713 (Minn. 1982)* (quotation omitted). Generally, the injury must be of such a nature that money damages alone would not provide adequate relief. *Morse, 458 N.W.2d at 729-30*. Relying on affidavits provided by appellants, the district court determined that it was possible that some, if not all, appellants would **[*5]** eventually go out of business. Appellants' economic injuries, however, can be adequately compensated with monetary damages and this is generally insufficient to establish irreparable harm. *See Miller, 317 N.W.2d at 713*.

Appellants argue, however, that respondent could claim discretionary immunity, thereby leaving appellants without an adequate remedy at law. ***HN4***[↑] Whether a party has an adequate remedy at law is a legal question that this court reviews de novo. *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc., 544 N.W.2d 302, 305 (Minn. 1996)*. Appellants cite *Minn. Stat. § 466.03, subds. 5, 6* (2004), as authority under which respondent could assert immunity. ***HN5***[↑] Local governmental entities are subject to liability for their torts. *Minn. Stat. § 466.02* (2004). Immunity is granted, however, for "any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution, or rule." *Minn. Stat. § 466.03, subd. 5.* Immunity is also available for "any claim based upon the performance or the failure **[*6]** to exercise or perform a discretionary function or duty, whether or not the discretion is abused." *Minn. Stat. § 466.03, subd. 6.* But appellants fail to articulate any underlying tort claim that would trigger respondent's immunity. ***HN6***[↑] Minnesota law does not support appellants' assertion that the availability of an immunity defense necessarily renders a claimant devoid of an adequate legal remedy.

Appellants also argue that they are harmed because their patrons are forced to smoke outside and may be subject to traffic accidents, and increased loitering will increase violence. The district court determined that appellants' argument regarding safety concerns failed

for two reasons. First, appellants produced no evidence that any safety-related injuries actually occurred. Second, appellants failed to demonstrate that there was not another outdoor area available in which patrons could smoke. There is no evidence in the record to show that appellants' patrons experienced safety-related injuries or that crime increased. Thus, the district court did not abuse its discretion in determining that appellants' argument failed. *See* Bolander, 502 N.W.2d at 209 **[*7]** ***HN7***[⬆] (stating that in order for relief to be granted, the moving party must offer more than a "mere statement that it is suffering or will suffer irreparable injury").

Appellants also argue that lost revenues will result in a significant reduction in charitable gambling revenues. The district court determined that this consequence was remote and incidental and that respondent did not owe a duty to appellants' charitable recipients. Because ***HN8***[⬆] the *Dahlberg* factors compare the *moving party's* harm if the injunction is denied to the *nonmoving party's* harm if the injunction is granted, the district court did not abuse its discretion in determining that respondent did not owe a duty to a third party. *See* Eason v. Indep. Sch. Dist. No. 11, 598 N.W.2d 414, 417 (Minn. App. 1999) (citing Dahlberg, 272 Minn. at 274-75, 137 N.W.2d at 321-22). The district court did not abuse its discretion in determining that appellants would suffer severe economic harm but would not be harmed by safety-related concerns or reductions in charitable gambling revenues.

The third *Dahlberg* factor requires the court to consider the likelihood of success on the merits. ***HN9***[⬆] This **[*8]** court does not decide the merits of the case on appeal from a motion for a temporary injunction, but the likelihood of success is one of the *Dahlberg* factors that this court reviews. Miller, 317 N.W.2d at 713. Probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction. Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schs., 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied* (Minn. Mar. 31, 1994). Even when a petitioner makes a strong showing of irreparable harm, a district court should not grant a temporary injunction where the petitioner has demonstrated no likelihood of success on the merits. Sanborn Mfg. Co. v. Currie, 500 N.W.2d 161, 165 (Minn. App. 1993).

Appellants argue that they are likely to prevail on the merits. The district court concluded that appellants were not entitled to the requested relief because appellants' likelihood of success on the merits was "very slight at best." Evaluating appellants' likelihood of success on the merits requires this court to review the city's indoor-smoking ordinance and applicable statutes. ***HN10***[⬆] The interpretation **[*9]** of an existing ordinance is a question of law, Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn. 1980), and statutory construction is a question of law which this court reviews de novo. Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998).

HN11[⬆] The indoor-smoking ordinance states that "smoking is prohibited in bowling alleys and pool and billiard halls and liquor and food establishments." Minneapolis, Minn., Code of Ordinances § 234.20 (2004). Not included in the prohibition are hotel or motel guest rooms, outdoor spaces, locations where smoking is expressly authorized by state or federal law or rule, or the use of tobacco as part of a recognized religious ritual or activity. *Id.* The ordinance was drafted with the intent that it would complement the Minnesota Clean Indoor Air Act (CIAA), Minn. Stat. §§ 144.411-.417 (2004). Minneapolis, Minn., Code of Ordinances § 234.70 (2004).

The CIAA states: ***HN12***[⬆] "Smoking areas may be designated by proprietors or other persons in charge of public places, *except in places in which smoking is prohibited by the fire marshal or by other* **[*10]** *law, ordinance or rule*." Minn. Stat. § 144.415 (emphasis added). Appellants contend that the CIAA expressly authorizes smoking in designated areas and that the ordinance permits smoking in locations expressly authorized by statute; thus, the ordinance permits smoking in the bars appellants designated as smoking areas. But ***HN13***[⬆] the CIAA does not *expressly authorize* smoking in designated areas. The CIAA provides that smoking *may* be permitted except when prohibited by an ordinance. The ordinance prohibits smoking in bowling alleys and pool and billiard halls and liquor and food establishments. Furthermore, ***HN14***[⬆] the Minnesota Health Department Rules implementing the CIAA, which are read in conjunction with the CIAA, state that nothing in the rules interpreting the CIAA "shall be construed to affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations or to affect the right of building owners or operators to designate their premises as smoke-free." *Minn. R. 4620.0050* (2005). Moreover, ***HN15***[⬆] an attorney general opinion states that the Minnesota legislature addressed smoking in public places through the **[*11]** CIAA "while expressly preserving the power of local government to impose more stringent smoking limitations." Op. Att'y Gen. 62b (May 4, 2000). ***HN16***[⬆]

While not determinative on its own, the opinion of the attorney general is entitled to great weight. *N. States Power Co. v. Williams, 343 N.W.2d 627, 632 (Minn. 1984)*. Given the language of the city's ordinance, the CIAA, and the attorney general's opinion, the district court did not abuse its discretion in determining that appellants failed to establish a likelihood of success on the merits.

The fourth *Dahlberg* factor requires the court to contemplate public-policy considerations. Appellants argue that safety issues and charitable concerns affect public-policy considerations. Respondent counters that the public-health concern regarding the effects of second-hand smoke is the reason the ordinance was enacted. The district court determined that arguments regarding policy concerns were not determinative because they were overpowered by the express language of the statute. The district court did not abuse its discretion in determining that public-policy considerations were not determinative.

Finally, the fifth *Dahlberg* **[*12]** factor requires the court to consider administrative burdens involving judicial supervision and enforcement. The district court determined that there would not be any excessive administrative burden. The parties do not challenge this conclusion. And our review establishes that the district court did not abuse its discretion in determining that the administrative burden would not be excessive.

Because the district court did not clearly abuse its discretion in determining that despite appellants' showing of serious economic injury appellants would not likely succeed on the merits and the other three *Dahlberg* factors were neutral, we conclude that the district court did not abuse its discretion in denying appellants' motion for a temporary injunction.

Appellants argue that security should be waived in the event a temporary injunction is granted. Under ***HN17***[⬆] *Minn. R. Civ. P. 65.03(a)* "no temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant[.]" But the district court denied appellants' motion for a temporary injunction, thus we do not need to address this issue.

Affirmed.

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Minn. Chamber of Commerce v. Minn. Pollution Control Agency

Minnesota District Court, County of Ramsey, Second Judicial District

May 10, 2012, Decided; May 10, 2012, Entered

Court File No. 62-CV-10-11824

Reporter
2012 Minn. Dist. LEXIS 194 *

Minnesota Chamber of Commerce, Plaintiff, vs. Minnesota Pollution Control Agency, Defendant, and WaterLegacy, Defendant-Intervenor.

Judges: HON. MARGARET M. MARRINAN, JUDGE OF DISTRICT COURT.

Subsequent History: Affirmed by *Minn. Chamber of Commerce v. Minn. Pollution Control Agency, 2012 Minn. App. Unpub. LEXIS 1199 (Minn. Ct. App., Dec. 17, 2012)*

Opinion by: MARGARET M. MARRINAN

Prior History: *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency, 469 N.W.2d 100, 1991 Minn. App. LEXIS 388 (Minn. Ct. App., 1991)*

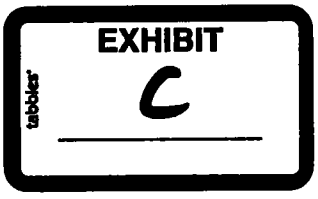
Core Terms

wild rice, sulfate, waters, water quality standards, subp, void for vagueness, discharges, irrigation, stands, cultivated, narrative, plant, vague, rice, summary judgment, Pollution, wildlife, Lake, unconstitutionally vague, agricultural, designated, wetlands, aquatic, levels, declaratory judgment, matter of law, propagation, susceptible, injunction, habitat

Counsel: **[*1]** For Plaintiff: Thaddeus Lightfoot, Esq.

For Minnesota Pollution Control Agency, Defendant: Robert B. Roche, Assistant Attorney General.

For WaterLegacy, Defendant-Intervenor: Paula Maccabee, Esq.



Erin Lisle

Opinion

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

This matter came on for hearing on the parties' cross motions for summary judgment on March 1, 2012. Thaddeus Lightfoot, Esq., appeared on behalf of Plaintiff; Assistant Attorney General Robert B. Roche appeared on behalf of Defendant Minnesota Pollution Control Agency; Paula Maccabee, Esq., appeared on behalf of Defendant-Intervenor WaterLegacy.

Plaintiff has withdrawn its claim regarding Count I of the Amended Complaint.

Plaintiff seeks partial summary judgment on the remaining following counts:

1) Count II: in which it alleges that the "Wild Rice Rule" is unconstitutionally vague and thus a violation of due process. The basis for this allegation is that the term "when rice may be susceptible to damage from high sulfate levels" is not defined.

2) Count III: in which it alleges that Defendant's actions applying the "Wild Rice Rule" exceed Defendant's statutory authority **[*2]** and are

arbitrary and capricious because:

a. Defendant would apply them to all waters in the state rather than limit them to waters used for agricultural irrigation in the production of wild rice; and

b. Defendant has created a narrative wild rice classification for Class 4A waters without specifically listing or otherwise classifying those waters; and

c. Defendant has required that Plaintiff members perform wild rice surveys to determine whether waters fall within the narrative sub-classification.

3) Count IV: in which it asks the Court to construe the Wild Rice Rule under the authority of the Minnesota Declaratory Judgments Act (*Minn. Stat. Ch.555*).

Defendant and Defendant-Intervenor seek summary judgment regarding all of Plaintiff's claims.

FINDINGS OF FACT

1. The Minnesota Legislature has adopted wild rice as the official grain of the State of Minnesota and has explicitly recognized the importance of protecting it. *Minn. Stat. § 1.148, subd. 1* (2010).

2. In keeping with the policy set by *Minn. R. 7050.0186*,[1] and in order to comply with the United States Environmental Protection Agency (EPA) requirements under the Federal Water Pollution Control Act Amendments of 1972, in 1973 the Minnesota Pollution Control Agency **[*3]** (MPCA) adopted water quality standards for Class 4 waters of the state.

The rationale for protection of these waters is addressed by *Minn. R. 7050.0224, subp.1*:

> The *numeric* and *narrative* [emphasis supplied] water quality standards in this part prescribe the qualities or properties of the waters of the state that are necessary for the agriculture and wildlife designated public uses and benefits. Wild rice is an aquatic plant resource found in certain waters within the state. The harvest and use of grains from this plant serve as a food source for wildlife and humans. In recognition of the ecological importance of this resource, and in conjunction with Minnesota Indian tribes, selected wild rice waters have been specifically identified [WR] and listed in part 7050.0470, subp.1.[2] The quality of these waters and the aquatic habitat necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded. If the standards in this part are exceeded in waters of the state that have the Class 4 designation, it is considered indicative of a polluted condition which is actually or potentially deleterious, harmful, detrimental, or injurious with **[*4]** respect to the designated uses.

Minnesota's wild rice sulfate standard is found in *Minn. R. 7050.0224, subp. 2* (2011). The rule provides in pertinent part:

> Class 4A waters. The quality of Class 4A waters of the state shall be such as to permit their use for irrigation without significant damage or adverse effects *upon any crops or vegetation usually grown in the waters or area*, [emphasis supplied] including truck garden crops. The following standards shall be used as a guide in determining the suitability of the waters for such uses ...: Sulfates (SO_4) 10 mg/L, applicable to water used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels.
>
> *Minn. R. 7050.0224, subp. 2* (2011).

Of the subparts to the water quality standards in *Minn.R. 7050.0224*, subpart 2 (Class 4A waters) is the only one that specifically refers to crops and vegetation. Classes 4B and C have as their focus livestock and wildlife.

3. The MPCA adopted a wild rice numeric sulfate standard of 10 milligrams per liter ("mg/L") for water used for production of wild rice based on recommendations by the Minnesota Department of Natural Resources ("MDNR") that sulfate concentrations above that level are a serious detriment to the natural and cultivated growth of wild rice.

4. In addition to the numeric standard, Minnesota Rules also adopted a narrative standard that applies only to

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[1] "It is the policy of the state to protect wetlands and prevent significant adverse impacts on wetland beneficial uses caused by chemical, physical, biological or radiological changes. The quality of wetlands shall be maintained to permit the **[*5]** propagation and maintenance of a healthy community of aquatic and terrestrial species indigenous to wetlands, preserve wildlife habitat, and support biological diversity of the landscape. In addition these waters shall be suitable for.... irrigation... as specified in part 7050.0224, subpart 4...."

[2] This rule specifically identifies as [WR] the sub-set of wild rice waters in the Lake Superior watershed.

specifically identified wild rice waters. *Minn.R. 7050.0224, subp.1, supra.*

5. Whether standing alone, or viewed in tandem with the above rules, the term "when the rice may be susceptible to damage by high sulfate levels" is straightforward and understandable: if the rice is at a point in development when sulfates can damage it, the maximum sulfate **[*6]** level is 10 mg/L.

6. Testimony from the hearing on the initial adoption of the wild rice sulfate standard clearly establishes that, from the time of its initial adoption, the MPCA intended the wild rice sulfate standard to protect both naturally growing and cultivated wild rice.[3]

7. The first time that the MPCA imposed a discharge limit based on the wild rice sulfate rule (*Minn. R. 7050.0224*, Subp. 2) was in a 1975 permit for the Clay Boswell Steam Electric Station ("Clay Boswell Permit").

8. The record of the administrative hearing for the Clay Boswell Permit reflects that the hearing examiner supported application of a sulfate limit in that permit in order to protect natural stands of wild rice, not agricultural irrigation of cultivated wild rice.[4]

9. The MPCA issued sulfate limits three other times: a June 17, 2010 permit modification for U.S. Steel Corporation (Keetac mining area) and two October 25, 2011 permits for U.S. Steel (Keetac mining area and tailings basin). It is notable that the areas **[*7]** in question affect *natural* stands of wild rice, not the agricultural irrigation of cultivated rice. The direct receiving waters included both listed waters (Welcome Creek and O'Brien Creek) and unlisted waters (Welcome Lake and O'Brien Reservoir). All of these waters were classified as Class 4A and 4B waters. U.S. Steel neither requested an administrative hearing nor challenged the permit at the Court of Appeals.

10. In 2010, the EPA, addressing the issue of sulfate discharge for the Keetac mine expansion and the proposed PolyMet NorthMet mining project, advised Defendant MPCA that the wild rice protection rule must be applied to limit that discharge in receiving waters. Both of those projects affected natural stands of wild rice, rather than agricultural irrigation for cultivated rice[5] The waters to which this sulfate limit applied included lakes, rivers and creeks not specifically listed as wild rice waters in *Minn. R. 7050.0470*, Subp. 1.[6]

11. The MPCA has approximately ten years of sulfate data for mining discharges because it has monitored wastewater discharges from **[*8]** mining operations in order to evaluate their overall toxicity and their potential to adversely affect groundwater. The agency concluded that this data could be useful in evaluating the potential impact of mining discharges on the wild rice sulfate standard.[7]

12. To determine whether sulfate dischargers are potentially interfering with attaining the wild rice sulfate standard, the MPCA reviews permit applications on a case-by-case basis. Where the data suggests that a discharge has high levels of sulfates upstream of a water identified as one potentially used for production of wild rice, the agency may request dischargers to conduct surveys to determine if the discharge is, in fact, upstream of a water used for production of wild rice. This authority derives from *M.S. 115.03, subd. 1 (e) (7)* **[*9]** which gives the agency the authority to require owners and operators of such discharge systems to do so.

13. As part of the permit review process, the MPCA reviews the following information: (i) available wild rice records and databases that the MDNR maintains; (ii) consultation with aquatic plant biologists at the MDNR; (iii) information received from external stakeholders, including, but not limited to, Native American tribes and environmental groups; and (iv) information provided by the discharger.

14. The MDNR's list of waters where wild rice has been identified is not an exhaustive list of waters used for production of wild rice. Where a permit applicant discharges upstream of a water that is not on the MDNR list, but which has been identified as potentially

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[3] Affidavit of Gerald Blaha, Ex. C, p. 27: testimony of John McGuire, Chief of the Section of Standards and Surveys, Division of Water Quality, MPCA.

[4] Affidavit of Gerald Blaha, Paragraph 9.

[5] Affidavit of Paula Maccabee, Ex. 8 and 9.

[6] Swan Lake, Swan River, Hay Creek, Hay Lake and Upper Partridge River. *Id.*

[7] The MPCA does not yet have similar data for municipal discharges, but is in the process of obtaining it as part of a broader MPCA strategy to evaluate the impact of wastewater discharges on Class 3 and Class 4 water standards. It intends to use the monitoring data to determine whether additional discharge limits are necessary to protect Class 3 and 4 water quality standards, including the wild rice sulfate standard.

producing wild rice, the MPCA has requested that the permit applicant conduct a survey of any wild rice stands in the receiving waters to help determine whether the receiving water is a water used for production of wild rice.

15. Any party who disagrees with the MPCA's determination of 1) whether a water qualifies as a water used for production of wild rice or 2) whether the permit needs to include a sulfate limit **[*10]** has the option of requesting a contested case hearing before an administrative law judge on the issue pursuant to *Minn. R. 7000.1800*. Although Plaintiff's members allege they have been affected by the wild rice sulfate standard, they failed to request such a hearing, and have sought relief under *Chapter 555 of the Minnesota Statutes.*

16. During the 2011 Minnesota Legislative Session, it was proposed that the application of Minnesota's wild rice sulfate standard be suspended, or that the sulfate standard be increased from 10 mg/L to 50 mg/L. In response to those proposals, on May 13, 2011 the U.S. EPA[8] wrote the sponsoring legislators warning that:

> 1) "[L]egislation changes [to] the EPA-approved water quality standards for Minnesota...must be submitted to EPA for review...and are not effective for Clean Water Act (CWA) purposes, including [National Pollutant Discharge Elimination System] permits, unless and until approved by EPA; and
> 2) If it "determined that a state is not administering its federally approved NPDES program in accordance with requirements of the CWA, EPA has the authority to...withdraw authorization of the program...."

17. Rather than passing either of the above bills, the 2011 Minnesota legislature passed, and the governor signed, a bill regarding the wild rice sulfate standard. Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32. That law requires the MPCA to form an advisory group and conduct an extensive study of the impacts of sulfates and other substances on wild rice. *Id.* at § 32(c)&(d). Once that research is complete, the bill requires the MPCA to amend the wild rice sulfate standard to:

> (i) address water quality for both natural stands of wild rice and cultivated wild rice;
> (ii) specifically designate waters to which the wild rice sulfate standard applies; and
>
> (iii) designate the times of year when the standard applies. *Id.* at § 32(a)(1)-(3).

18. Pursuant to that legislation, the MPCA has formed an advisory group and held three meetings of that group to date (October 10, 2011, November 30, 2011 and March 27, 2012), established a study protocol, published a Request for Proposals to undertake research outlined in the study protocol, submitted a legislative report as required by December 15, 2011, and awarded a contract to the University of Minnesota to conduct the **[*12]** wild rice/sulfate studies.

CONCLUSIONS OF LAW

1. Plaintiff has withdrawn its claim that the MPCA's application of the wild rice sulfate standard has violated the *Equal Protection Clause of the United States Constitution.* Summary Judgment in favor of the MPCA and Defendant-Intervenor is therefore proper as to that claim.

2. Summary judgment is appropriate under the Minnesota Rules of Civil Procedure, when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. *Minn.R.Civ.P. 56.03*.

3. There are no genuine issues of material fact and the MPCA has demonstrated that it is entitled to judgment as a matter of law on each of Plaintiff's alleged claims.

A. Counts II and Count III: The Wild Rice Rule does not violate due process. It is not unconstitutionally vague, nor is the application of the rule arbitrary and capricious.

4. An agency rule is unreasonable (and therefore invalid) when it fails to comport with substantive due process because it is not rationally related to the objective sought to be achieved.[9] **[*13]** The rationale underlying the Wild Rice Rule (*Minn. R. 7050.0224, subp. 2*) is found in the subparagraph preceding it: since wild rice is a food source for both wildlife and humans, the quality of the waters and the aquatic habitat necessary to support its propagation and maintenance must not be materially impaired or

[8] The EPA has delegated the administration of the federal **[*11]** Clean Water Act in Minnesota to the MPCA.

[9] *Mammenga v. Dep't of Human Services, 442 N.W. 2d 786, 789 (Minn. 1989)*.

degraded. The policy upon which this rationale is based (*Minn.R.7050.0186*) is the protection of the quality of wetlands so as to "permit the propagation and maintenance of a healthy community of...species indigenous to wetlands...In addition these waters shall be suitable for...irrigation...."

5. Where a rule is challenged as "invalid as applied", Minnesota law allows only limited judicial inquiry into the validity of an administrative regulation in question. The party challenging the rule bears a heavy burden and must establish that the rule is not rationally related to the legislative ends sought to be achieved or that in adopting the rule the MPCA exceeded its statutory authority.[10]

6. **[*14]** Plaintiff has not met its burden of proving that the MPCA's application of the wild rice sulfate rule conflicts with statutory authority or is otherwise not rationally related to the legislative goal of protecting the environment. MPCA's application of the wild rice sulfate rule is reasonably related to achieving the legitimate goal of protecting Minnesota's environment.

7. Minnesota's Class 4 waters, which encompass the sub-classification of Class 4A waters, are "waters of the state that are or may be used for any agricultural purposes, including stock watering and irrigation, or by waterfowl or other wildlife, and for which quality control is or may be necessary to protect terrestrial life and its habitat or the public health, safety, or welfare." *Minn. R. 7050.0140, subp. 5* (2011).

8. Minnesota's Class 4A water quality standards are intended to protect both naturally occurring vegetation grown in the waters themselves and cultivated crops in the area around the water. The MPCA's application of the wild rice sulfate standard to protect naturally growing wild rice in ambient waters of the state is legally valid because it is consistent with the plain language of the water quality standard. **[*15]** *Minn. R. 7050.0224, subp. 2.*

9. Under Minnesota law, "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." *Minn. Stat. § 645.16* (2010). Minnesota courts apply the provisions of chapter 645 to both statutes and administrative rules. The administrative and legislative records clearly demonstrate that the MPCA has always intended the wild rice sulfate rule to protect both cultivated and natural stands of wild rice. The agency's application of the rule to waters with natural stands of wild rice is legally valid because it is consistent with the administrative history and intention of the regulation.

10. The MPCA's application of the wild rice sulfate rule to protect waters with natural stands of wild rice is also consistent with a number of established legislative policies and statutory duties, among them the duty to ensure that the State of Minnesota maintains its responsibility to administer the federal Clean Water Act in Minnesota.[11]

11. In the 2011 special session, the legislature specifically directed the MPCA to adopt an amended rule which shall "address water quality standards for waters containing natural beds of wild rice, as well as for irrigation waters used for production of wild rice . . . ." Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32 (a)(1). The MPCA's application of the wild rice rule to protect natural stands of wild rice is consistent with legislative policy that explicitly recognizes the importance of wild rice to the State of Minnesota.

12. The wild rice sulfate standard is a numeric standard set forth in *Minn. R. 7050.0224, subp. 2. Minn. R. 7050.0224, subp.1* also includes a narrative standard that applies only to specifically identified wild rice waters. *Minn. R. 7050.0470, subp. 1* (2011), in turn, specifically identifies [WR] the sub-set of wild rice waters in the Lake Superior watershed to which this narrative applies.

To the extent Plaintiff claims that the narrative wild rice standard does **[*17]** not identify the waters to which that narrative standard applies, the claim fails as a matter of law.

13. Under Minnesota law, "[a] statute that does not implicate *First Amendment* freedoms is facially void for vagueness only if it is vague in all its applications. Unless the statute proscribes no comprehensible course of conduct at all, it will be upheld against a facial

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[10] *Mammenga v. Dep't of Human Services, 442 N.W. 2d 786 (Minn. 1989)*; *Hirsch v. Bartley-Lindsay Co., 537 N.W.2d 480 (Minn. 1995)*.

[11] ***Minn. Stat. § 115.03, subd. 5*** (2010) ("the agency shall have the authority to . . . establish and appl[y] rules . . . and permit conditions, consistent with and, therefore not less **[*16]** stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the State of Minnesota in the national pollutant discharge elimination system (NPDES)")

challenge."[12]

14. The Plaintiff has not established that the wild rice sulfate rule is vague in all of its applications or that it proscribes no comprehensible course of conduct at all. The MPCA applied this rule in the Clay Boswell Permit and an independent hearing examiner supported the application of the rule in that case. The MPCA has recently applied the rule in the reissuance of the U.S. Steel Keewatin Taconite permit. U.S. Steel neither requested an administrative hearing nor challenged the permit in the Court of Appeals.

15. Under Minnesota law, a party challenging a law on constitutional grounds, including vagueness, bears a heavy burden **[*18]** of proof.[13] The Plaintiff must overcome every presumption of constitutionality and show that the wild rice sulfate standard is unconstitutionally vague as applied to Plaintiff's members. Plaintiff has not met this burden.

Sulfate Standard not Void for Vagueness

16. Contrary to Plaintiff's assertion, the fact that the wild rice sulfate standard does not include an explicit definition for the term "when the rice may be susceptible to damage by high sulfate levels" does not render the rule void as applied. The void for vagueness doctrine demands **[*19]** only that laws be drafted with "sufficient definiteness that ordinary people can understand what conduct is prohibited."[14] Even if a law speaks in "broad, flexible standards that require persons subject to a statute to exercise judgment," or requires persons to "rely on common sense and intelligence to determine whether their conduct complies with the law [it] does not render the law unconstitutionally vague."[15]

17. The civil, regulatory nature of the wild rice sulfate standard is subject to a "vagueness test" that is less strict than for criminal statutes. "To find a civil statute void for vagueness, the statute must be 'so vague and indefinite as really to be no rule or standard at all.'"[16] The challenged law must "define the forbidden or required act in terms so vague that individuals must guess at its meaning . . . ."[17] Put another way: "a statute will be upheld against a facial challenge unless [it] proscribes no comprehensible course of conduct at all".[18]

18. Civil laws regulating business are less likely to be void for vagueness than criminal laws "because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process."[19]

19. The application of the wild rice sulfate rule to Plaintiff in this case is not unconstitutionally vague under this standard. Plaintiff's members are not left to guess as to what conduct is prohibited or required under this rule.

20. The wild rice sulfate rule is an ambient water quality standard. As such, it describes the desired condition of Minnesota's waters, but is not a discharge standard and does not proscribe or prohibit conduct.[20] The only way that the MPCA can require or prohibit action based on the wild rice sulfate standard is through a permitting

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[12] *State v. Normandale Properties, Inc., 420 N.W.2d 259, 262 (Minn. Ct. App. 1988)* (citing *Village of Hoffman Estates v. Flipside Hoffman Estates, Inc., 455 U.S. 489, 102 S.Ct. 1186, 1191, 71 L. Ed. 2d 362 (1982)*.

[13] "In attacking a rule on due process grounds, including a vagueness challenge, the challenger bears a heavy burden [cit. om.] The standard for determining vagueness is well-settled: [it is] void for vagueness if it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement...The rule should be upheld unless the terms are so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent." *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency, 469 N.W.2d 100, 107 (Mn.App. 1991)*.

[14] *State v. Romine, 757 N.W.2d 884, 891 (Minn. Ct. App. 2008)* (quoting *Kolender v. Lawson, 461 U.S. 352, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983))*.

[15] *State v. Enyeart, 676 N.W.2d 311, 321 (Minn. Ct. App. 2004)*.

[16] *Seniors Civil Liberties Ass'n v. Kemp, 965 F.2d 1030, 1036 (11th Cir. 1992)*.

[17] *Humenansky v. Minn. Bd. of Med. Examiners, 525 N.W.2d 559, 564* **[*20]** (citing *Kolender v. Lawson, 461 U.S. 352, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983)*.

[18] *State v. Normandale Properties, Inc., 420 N.W.2d 259, 262 (Minn. App 1988)*.

[19] *Village of Hoffman Estates, 102 S.Ct. at 1193*

[20] ***Minn. R. 7050.0224, subp. 2***.

action.[21]

21. Before the MPCA issues a permit for a point source such as Plaintiff's members, it is legally required to publish a draft of the permit for public review and comment. *Minn. R. 7001.0100* (2011). If Plaintiff's proposed permit includes a limit based on that rule, then Plaintiff's members have thirty days to review, comment on, and question that proposed limit. Any party who disagrees with the terms of a proposed MPCA permit has the right to request a contested case hearing before an administrative law judge to review and clarify the terms of the proposed permit. *Minn. R. 7000.1800* (2011). Any party who is aggrieved by the agency's final decision in a permitting action has a right of certiorari review by the Court of Appeals. *Minn. Stat. § 115.05, subd. 11* (2010). Plaintiff **[*22]** has not and cannot show that any of its members have been left guessing as to what conduct is required or prohibited. Plaintiff's void for vagueness challenge fails as a matter of law.

22. The term "when the rice may be susceptible to damage by high sulfate levels" is straightforward and can be understood using plain language. If wild rice is at a point in its life cycle when sulfates will damage the plant, then the receiving water must not exceed 10 mg/L. Because the rule can be applied based on its plain language, it is not void for vagueness. The goal of the law is to protect production of wild rice in Minnesota. In view of that goal it is reasonable to conclude that the standard applies at a point in the wild rice life cycle when sulfate is found to damage the plant. The rule is not void for vagueness.

"Bodies of Water" not Void for Vagueness

23. The fact that the MPCA does not specifically list every body of water to which the wild rice sulfate standard applies neither violates the *Due Process clause* of the Constitution nor does it exceed MPCA's statutory authority: neither the Constitution nor Minnesota or federal statutes require a state to list expressly every surface water to **[*23]** which a water quality standard applies. Such a requirement would be particularly absurd in a state such as Minnesota.[22]

24. Nor does the lack of a specific listing render the rule unconstitutionally vague. Plaintiff's members are not left guessing as to whether the wild rice sulfate standard applies to a particular water or as to what is required of them under the standard because the proposed permit details exactly what is required of Plaintiff's members.

25. The wild rice sulfate standard is likewise consistent with state and federal statutory requirements.

State Law

26. Under Minnesota law, the MPCA has the duty and the authority "to establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter . . . ." *Minn. Stat. § 115.03, subd. 1(c)* (2010). Nothing in the statute suggests that the MPCA is required to list every single water to which a water quality standard applies. The **[*24]** legislature has given the MPCA broad discretion as to how to best structure Minnesota's water quality standards and has expressly recognized that it is proper for the MPCA to establish water quality standards for *groups* of waters instead of listing every single water to which a standard applies. The legislature has required the MPCA to "group the designated waters of the state into classes, and adopt classifications and standards of purity and quality therefore." *Minn. Stat. § 115.44, subd. 2* (2010).

27. The MPCA's administrative rules likewise recognize the need for the agency to employ grouping in the establishment of water quality standards.[23] The assertion that Minnesota law requires a specific list of each water to which a water quality standard applies is without merit.

28. In adopting the wild rice sulfate standard, the MPCA established a group of waters to which the standard applies. That group of waters consists of "waters used

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[21] See, for **[*21]** example., *40 C.F.R. § 122.44(d)(1) (2011)* (requiring permitting authority to impose discharge limits in permits where evidence shows that discharge has reasonable potential to cause or contribute to a violation of a water quality standard in a receiving water); ***Minn. R. 7001.0150, subp. 2*** (2011) (requiring MPCA issued permits to include terms necessary to achieve compliance with applicable state and federal law).

[22] According to the Minnesota Legislative Manual (2011-2012) there are 11,842 lakes of more than 10 acres, 3 major river systems, and 6,564 (69,200 miles) rivers and streams.

[23] *See* ***Minn. R. 7050.0140, subp. 1*** ("the waters of the state are grouped into one or more of the classes in subparts 2 to 8.")

for production of wild rice." *Minn. R. 7050.0224, subp. 2* (2011). This type of grouping is expressly authorized under Minnesota **[*25]** law.

29. As the EPA made clear in its May 13, 2011 letter to the Minnesota Legislature, the EPA has formally approved Minnesota's wild rice sulfate standard. When the EPA approves a state's water quality standard, it must determine whether the standard is "consistent with the requirements of the Clean Water Act." *40 C.F.R. § 131.5 (a)(1)*. In approving the wild rice sulfate standard, the EPA concluded that the standard is consistent with the federal Clean Water Act. Plaintiff's assertion that the wild rice sulfate standard is in any way inconsistent with the Clean Water Act lacks merit.

Federal Law

30. There is no requirement in federal law for the state to list expressly every single water to which a water quality standard applies in order for the standard to apply. On the contrary, the federal Clean Water Act allows for application of water quality standards to water bodies that are implicated without being expressly listed on an individual basis.

31. Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32(a)(2) directs the MPCA to initiate rulemaking regarding identification of waters to which this wild rice sulfate standard applies. Plaintiff's assertion that state and federal law would require such **[*26]** a listing is inaccurate and would significantly impede the MPCA's ability to fulfill its statutory obligation to promulgate and enforce water quality standards for the State of Minnesota.

32. The Wild Rice Rule (*Minn. R. 7050.0224, subp.2*) is rationally related to both the stated policy and rationale of the rules and is not void for vagueness.

B. Count IV: Plaintiff's are not entitled to a Declaratory Judgment.

33. *M.S. 555.02* specifies the actions a court may construe under the Declaratory Judgment Act:

> Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising [under the same] and obtain a declaration of rights, status or other legal relations thereunder.

34. This act is not an express independent source of jurisdiction[24]: it does not create an independent cause of action. Because Plaintiff's substantive claims all fail as a matter of law, Plaintiff's Declaratory Judgment Act claim must also be dismissed.

35. To the extent that Plaintiff's claims are **[*27]** based on permitting actions that the MPCA may take in the future, those claims are conjectural and not subject to court action at this time.[25]

36. Given the above, Plaintiff has adequate remedies at law and is not entitled to a declaratory judgment.

C. Request for Equitable Relief

37. Plaintiff has requested that the Court "preliminarily and permanently" enjoin the MPCA from imposing any of the sulfate discharge limitations discussed above. Case law addressing *Minn.R.Civ. P. 65.02* (temporary injunctions) has established five factors determining whether such an injunction should be granted: a) the nature of the relationship; b) relative hardships; c) likelihood of success on the merits; d) public policy; and e) administrative burdens.[26]

38. Analyzed under those factors, Plaintiff's request should be denied. As with *Minn. R. Civ.P.65.01*, the threshold question is whether there is immediate and irreparable injury that constitutes a ground for the issuance of the injunction and whether that party **[*28]** does not have an adequate remedy at law.[27] The failure to meet this burden is, in and of itself, a sufficient basis on which to deny the relief.[28] In this case, each of Plaintiff's claims are based on actions that the MPCA allegedly *may* take in the context of permitting proceedings. Plaintiff has an adequate remedy at law for any MPCA permitting decision: the right to request a

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[24] *Alliance for Metropolitan Stability v. Metropolitan Council, 671 N.W.2d 905, 915 (Minn. App. 2003)*.

[25] Any such quasi-judicial action is reviewable via certiorari to the Court of Appeals under *M.S. 115.05, subd. 11*(2010).

[26] *Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 137 N.W.2d 314 (1965)*.

[27] *Unlimited Horizon Mktg., Inc. v. Precision Hub, Inc., 533 N.W. 2d 63 (Minn. App. 1995)*.

[28] *Morse v. City of Waterville, 458 N.W. 2d 728 (Minn. App. 1990)*.

contested case hearing before an administrative law judge on any MPCA permitting matter,[29] and a statutory right of certiorari review of any final MPCA permitting decision before the Minnesota Court of Appeals.[30] Because Plaintiff clearly has adequate remedies at law in this case its request for equitable relief must be denied.

39. Analyzed under the *Dahlberg* factors, the Court reaches the same conclusion. In this case the determinative factors under *Dahlberg* are a) the likelihood of success on the merits (see discussion, *supra*;) and b) public policy[31] Balancing the relative hardships between **[*29]** the parties, the analysis also favors the Defendant. While complying with the rules may be more costly to the Plaintiff's members, the rationale for Defendant's action is clearly stated in *Minn.R. 7050.0224, subp.1*:

> "...The harvest and use of grains from this plant serve as a food source for wildlife and humans...the quality of these waters and aquatic habitat necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded...

40. Plaintiff's argument that its members may have to take action to comply with the wild rice sulfate standard during the interim period in which the MPCA conducts the research necessary to amend the rule as directed by the Legislature is without merit. The Legislature has already addressed how the wild rice sulfate standard is to be applied during that interim period.[32]

For this Court to second-guess the Legislature's determination of how the standard should be applied while the standard is in the process of being amended is inappropriate. Plaintiff's request for injunctive relief **[*30]** should be denied.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The motion for summary judgment of Defendant MPCA and Defendant-Intervenor WaterLegacy's is granted in its entirety.
2. Plaintiff's motion for a "preliminary and permanent" injunction is denied.
2. Plaintiff's partial motion for summary judgment is denied in its entirety.
3. Plaintiff's Complaint is dismissed in its entirety with prejudice and on the merits.

10 May 2012

/s/ Margaret M. Marrinan

HON. MARGARET M. MARRINAN

JUDGE OF DISTRICT COURT

End of Document

[29] ***Minn. R. 7000.1800*** (2011).

[30] *Minn. Stat. § 115.05, subd. 11(1)* (2010).

[31] See discussion supra at p. 3 regarding ***Minn.R. 7050.0186***, *M.S. 1.148, subd. 1*.

[32] Minn. Laws. 2011 1 Sp. c. 2, art. 4, § 32 (e).

Progress Land Co. v. Soo Line R.R. Co.

Court of Appeals of Minnesota

July 6, 2004, Filed

A03-1895

Reporter
2004 Minn. App. LEXIS 784 *; 2004 WL 1489011

Progress Land Company, Inc., Respondent, vs. Soo Line Railroad Company, Appellant, City of Rosemount, Respondent.

Notice: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Dakota County; Hon. Thomas Poch, Judge. District Court File No. C0-03-09440.

Disposition: Reversed and remanded.

Core Terms

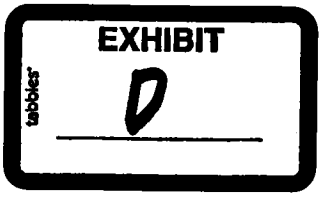
district court, install, injunctive relief, permanent, tracks, drainage, easement, rights, restraining, temporary, merits, temporary injunction, interfering

Case Summary

Procedural Posture
Appellant easement holder sought clarification in the Dakota County District Court, Minnesota, of a temporary retraining order, which prevented it from interfering with respondent landowner's construction of a planned-unit development. The trial court held that the easement holder was enjoined from interfering with the landowner's installation of utilities. The easement holder appealed.

Overview
After the landowner acquired its property, it had been unable to ascertain any interest in spur line railroad tracks or an easement over the property on which those railroad tracks were situated. It began to remove railroad tracks on its property to install utilities when the easement holder objected. The landowner then filed its complaint for a declaratory judgment that it had the legal right to install the utilities and requested preliminary and permanent injunctions enjoining the easement holder from interfering with the installation of utilities. The trial court granted the requested temporary restraining order (TRO) and the easement holder sought clarification of the TRO. The appellate court held that it was improper to use temporary injunctive relief as a vehicle for granting permanent relief without conducting a hearing on the merits of the case. The appellate court further held that although the trial court supported its TRO with a Dahlberg analysis, the principles of equity and the facts did not support its findings, in that it did not assess both parties' positions and the landowner's need for immediate equitable relief.

Outcome
The judgment of the trial court was reversed and remanded.



LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1 **Standards of Review, Abuse of Discretion**

A trial court has discretion whether to grant or deny injunctive relief. A reviewing court will not disturb that decision absent a clear abuse of discretion. A clear abuse of discretion occurs when the trial court disregards either facts or applicable principles of equity.

Civil Procedure > Remedies > Injunctions > Permanent Injunctions

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Remedies > Injunctions > Temporary Restraining Orders

HN2 **Injunctions, Permanent Injunctions**

Three stages of injunctive relief are available under Minnesota rules and substantive law. A temporary restraining order is issued on an emergency basis and operates to prevent immediate irreparable injury until the need for a temporary injunction is determined at a hearing. A temporary injunction is issued after a hearing to preserve the status quo pending adjudication at a trial on the merits. A permanent injunction is issued only after the right to permanent relief has been established at trial.

Civil Procedure > Remedies > Damages > Monetary Damages

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3 **Damages, Monetary Damages**

Temporary injunctive relief is justified if the threatened irreparable harm renders the relief available ineffective or impossible to grant at a later time. The injury must be significant and irreparable in the sense that money damages cannot properly compensate for the loss. It is improper to use temporary injunctive relief as a vehicle for granting permanent relief without conducting a hearing on the merits of the case.

Civil Procedure > Remedies > Damages > Monetary Damages

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN4 **Damages, Monetary Damages**

While economic loss may be presumed, it alone does not constitute irreparable harm justifying an injunction.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Real Property Law > Encumbrances > Limited Use Rights > General Overview

HN5 **Injunctions, Preliminary & Temporary Injunctions**

The purpose of both a temporary restraining order and temporary injunction is preservation of the status quo.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Remedies > Injunctions > General Overview

HN6 **Injunctions, Preliminary & Temporary Injunctions**

A trial court may order the trial of the action on the merits to be advanced and consolidated with the hearing on a motion for a temporary injunction, *Minn. R. Civ. P. 65.02(c)*.

Counsel: Anne Olson, Gary A. Van Cleve, Christopher John Deike, Larkin, Hoffman, Daly & Lindgren, Ltd. Bloomington, MN (for respondent Progress Land Company, Inc.).

Donald Troy Campbell, Leonard Street and Deinard, Minneapolis, MN (for appellant Soo Line Railroad).

George C. Hoff, Justin Lee Templin, Hoff, Barry & Kuderer, P.A., Eden Prairie, MN (for respondent City of Rosemount).

Judges: Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge, and Anderson, Judge.

Opinion by: Toussaint, Chief Judge

Opinion

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

In this appeal from orders granting injunctive relief in a real-estate dispute, appellant easement holder argues that the district court abused its discretion by misapplying the *Dahlberg* factors. Because the district court granted the permanent relief requested in the landowner's complaint without conducting a hearing on the merits of the case, we reverse and remand for trial.

FACTS

On March 26, 2001, respondent **[*2]** Progress Land Company, Inc. (Progress) acquired acreage by a warranty deed indicating the property was subject to easements of record and "spur [railway] tracks crossing over [the] subject property as shown on [a March 2, 2000] survey." Progress purchased the property for a residential development and obtained the City of Rosemount's (the City) approval of a planned-unit development and agreement to subdivide.

The subdivision agreement required that Progress would obtain easements for utilities and the City would install the utilities. For drainage of the affected area, the City would install pipes under the spur tracks and into the "Wye area," surrounded by railroad tracks, where a drainage pond would be located.

On October 4, 2002, Progress, by its then-attorney Ward R. Anderson, wrote to appellant Soo Line Railroad inquiring about the spur line. Anderson stated that he and the title companies "had been unable to ascertain any interest in the spur line railroad tracks or an easement over the property on which those railroad tracks are situated." He gave Soo Line notice that Progress "will commence, thirty (30) days after the date of this letter, activities which will physically **[*3]** remove the tracks from" Progress's property. He also stated that if Soo Line has "written documentation of a reservation or right, or some other basis for which your company retains some interest over the tracks," he wanted that documentation before expiration of the 30-day period. Progress did not wait 30 days before it began removing tracks.

When settlement negotiations failed, Progress simultaneously filed a verified complaint and a motion for a temporary restraining order. The motion sought to enjoin Soo Line "from interfering with Progress's installation of utilities on its property until Progress's claims and defenses are finally disposed of by trial, hearing or settlement." The complaint sought a declaratory judgment that Progress had the legal right to install the utilities and requested preliminary and permanent injunctions enjoining Soo Line from interfering with Progress's installation of utilities and requiring the City to install the utilities.

After oral argument, the district court granted the requested temporary restraining order (TRO). The August 27 order restrained Soo Line "from interfering with [Progress's] or [Progress's] agents' right to install utilities **[*4]** on its real property" and required Progress to post $ 25,000 as security. The court based its order on the factors enunciated in *Dahlberg Bros. v. Ford*

Motor Co., 272 Minn. 264, 137 N.W.2d 314 (1965), concluding that they favored Progress.

Progress then decided to proceed with excavation of the drainage pond in the Wye area. Soo Line objected and moved the district court for clarification of the TRO. Warren Israelson, who is Progress's president, owner, and the engineer who designed the drainage system, testified at the hearing on the motion for clarification. In the court's subsequent order of September 16, it reiterated that Soo Line was enjoined from interfering with Progress's installation of utilities; clarified that utilities included drainage pipes and a drainage pond; and added that the City "is ordered forthwith to install the integrated drainage system, consisting of underground pipes and a drainage pond, between the 'Wye' tracks on [Progress's] real property . . . and across the surface area of [Soo Line's] claimed easement."

Soo Line appealed, the City settled its appeal with Progress, and the district court issued a stay of proceedings pending review **[*5]** by this court.

DECISION

HN1[↑] A district court has discretion whether to grant or deny injunctive relief. Bird v. Wirtz, 266 N.W.2d 166, 167 (Minn. 1978). A reviewing court will not disturb that decision absent a clear abuse of discretion. Carl Bolander & Sons Co. v. City of Minneapolis, 502 N.W.2d 203, 209 (Minn. 1993). A clear abuse of discretion occurs when the district court disregards either facts or applicable principles of equity. First State Ins. Co. v. Minn. Mining & Mfg. Co., 535 N.W.2d 684, 687 (Minn. App. 1995), *review denied* (Minn. Oct. 18, 1995).

HN2[↑] Three stages of injunctive relief are available under Minnesota rules and substantive law. *See generally* 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 65.1 (1998). A temporary restraining order is issued on an emergency basis and operates to prevent immediate irreparable injury until the need for a temporary injunction is determined at a hearing. Berg v. Wiley, 264 N.W.2d 145, 151 (Minn. 1978). A temporary injunction is issued after a hearing to preserve the status quo pending adjudication at a trial on the merits. Pickerign v. Pasco Mktg., Inc., 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975). **[*6]** A permanent injunction is issued only after the right to permanent relief has been established at trial. Bio-Line, Inc. v. Burman, 404 N.W.2d 318, 320 (Minn. App. 1987).

Here, the August 27 order restrained Soo Line from interfering with Progress's or Progress's agents' right to install utilities on the subject property. This was the permanent relief requested by Progress against Soo Line in its complaint. Although the district court did not use the term "permanent injunction" in the August 27 order, it granted all of the injunctive relief requested by Progress in its action against Soo Line and ordered the excavation of the Wye area, the surface rights of which were claimed by both parties. When the court clarified its order on September 16, it reissued all of the permanent injunctive relief sought by Progress in its complaint against Soo Line and then added the remaining permanent injunctive relief requested by Progress against the City.

HN3[↑] Temporary injunctive relief is justified if the threatened irreparable harm renders the relief available ineffective or impossible to grant at a later time. 2A Herr & Haydock, *supra*, at § 65.4. The injury must be significant **[*7]** and irreparable in the sense that money damages cannot properly compensate for the loss. Thomas v. Ramberg, 240 Minn. 1, 5-6, 60 N.W.2d 18, 21 (1953). It is improper to use temporary injunctive relief as a vehicle for granting permanent relief without conducting a hearing on the merits of the case. Bio-Line, 404 N.W.2d at 320.

Although the district court supported its TRO with a *Dahlberg* analysis, the principles of equity and the facts did not support its findings. *See* Dahlberg, 272 Minn. at 274-75, 137 N.W.2d at 321-22 (setting out factors to be considered on motion for temporary restraining order). First, there is no support in the record for the district court's finding that Progress would suffer "an incalculable loss of community good will[] and a devastating loss of reputation and prestige with other developers and sub-contractors." ***HN4***[↑] While economic loss may be presumed, it alone does not constitute irreparable harm justifying an injunction. *See* Rexton, Inc. v. State, 521 N.W.2d 51, 54 (Minn. App. 1994) (absent showing that award of monetary damages would be inadequate, district court properly denied motion **[*8]** for temporary injunction). Second, an order does not maintain the status quo between parties if it grants all of the rights claimed by one party and denies all of the rights claimed by the other party; the district court's equitable power protects the basic rights of the *parties* pending resolution of the dispute. Pickerign, 303 Minn. at 446-47, 228 N.W.2d at 565 (***HN5***[↑] purpose of both TRO and temporary injunction is preservation of status quo). Third, the district court's analysis of the merits of the claims disregarded Soo Line's claimed rights as easement holder. Even though

the court correctly cited the legal principle that a landowner's rights are subject to those of the easement holder, it neither assessed the extent of Soo Line's claimed easement rights nor recognized their superiority to the fee holder's rights. *See* Minneapolis Athletic Club v. Cohler, 287 Minn. 254, 259, 177 N.W.2d 786, 790 (1970). Fourth, the district court's balancing of harms disregarded Soo Line's potential damages. The court stated that Progress's loss of its right to utilize its private property would be "inestimable," but was silent as to the impact on Soo Line if it were **[*9]** to lose its right to utilize its private property. In short, the *Dahlberg* analysis accompanying the August 27 TRO did not assess both parties' positions and Progress's need for immediate equitable relief.

HN6[↑] A district court may order the trial of the action on the merits to be advanced and consolidated with the hearing on a motion for a temporary injunction. Minn. R. Civ. P. 65.02 (c). Here, however, there is no indication that the district court issued such an order or conducted a trial on the merits. *See* Berggren v. Town of Duluth, 304 N.W.2d 24, 26 (Minn. 1981). Although Progress's president testified at the September hearing, it is evident from the transcript that the court was not conducting a trial and the parties were not litigating the merits of the dispute that day. Soo Line, the moving party, had only moved for a clarification of the extant TRO. For its part, the City stated on the record that it considered itself a third party to the primary dispute between Soo Line and Progress, and the court confirmed that it had intentionally excluded the City from the August 27 TRO. Absent the process litigants are accorded in a trial on the merits, it was improper **[*10]** to grant all of the injunctive relief requested by Progress at the temporary-injunction hearing.

Reversed and remanded.

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North Star Int'l Trucks, Inc. v. Navistar, Inc.

Court of Appeals of Minnesota

January 4, 2011, Filed

A10-864

Reporter
2011 Minn. App. Unpub. LEXIS 19 *; 2011 WL 9173

North Star International Trucks, Inc. d/b/a Astleford International Trucks, et al., Respondents, vs. Navistar, Inc., Appellant, Boyer Ford Trucks, Inc., Defendant.

Notice: THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Subsequent History: Findings of fact/conclusions of law at, Count dismissed at *N. Star Int'l Trucks, Inc. v. Navistar, Inc., 2011 Minn. Dist. LEXIS 238 (2011)*

Prior History: **[*1]** Hennepin County District Court File No. 27-CV-10-511.

N. Star Int'l Trucks, Inc. v. Navistar, Inc., 2010 Minn. Dist. LEXIS 267 (2010)

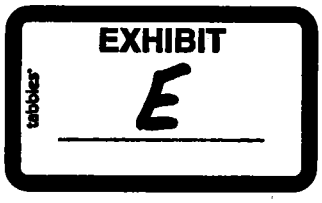
Disposition: Affirmed.

Core Terms

district court, temporary injunction, termination notice, respondents', circumstances, trucks, dealership, injunction, dealer, merits, contracts, customers, substantial change, termination, argues, good cause, irreparable, employees, equitable, zip-code, factors, parties, sales, area of responsibility, injunctive relief, pending trial, ripe, irreparable harm, inappropriate, public-policy

Case Summary

Procedural Posture
The Hennepin County District Court (Minnesota) entered an equitable temporary injunction order preserving the status quo pending adjudication of respondent dealers' claims, alleging appellant manufacturer committed statutory violations regarding the termination of dealerships, by prohibiting the manufacturer from issuing a notice of termination to the dealers. The manufacturer appealed.



Overview

The dealers sued, inter alia, the manufacturer and asserted that the manufacturer violated the Motor Vehicle Sale and Distribution Act, *Minn. Stat. § 80E.01 et seq.*, (Supp. 2009) (MVSDA), and the Heavy and Utility Equipment Manufacturers and Dealers Act, *Minn. Stat. § 325E.068 et seq.* (2008) (HUEMDA), by threatening to end contracts governing the relationship between the parties. Allegedly, the manufacturer notified the dealers that it deemed them to be in breach of their respective contracts. The dealers claimed in their lawsuit that they were not. The trial court heard evidence and then granted an equitable temporary injunction barring the manufacturer from issuing the termination notices. The appellate court found that (1) the temporary injunction was not premature despite the

fact that the notices had not actually been issued, as the dealers' claims were ripe given the harm that the threat of the issuance of the notices was having on their businesses; (2) the trial court did not violate either the MVSDA or HUEMDA in issuing the equitable temporary injunction; and (3) the trial court properly applied the Dahlberg factors in determining whether the injunction should be issued.

Outcome

The appellate court affirmed the trial court's judgment.

LexisNexis® Headnotes

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Preliminary Considerations > Equity > Relief

HN1 **Injunctions, Preliminary & Temporary Injunctions**

A temporary injunction is an extraordinary equitable remedy that preserves the status quo pending a trial on the merits. A temporary injunction should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held.

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Preliminary Considerations > Equity > Relief

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN2 **Standards of Review, Clearly Erroneous Review**

A reviewing court interprets statutes and reviews justiciability issues, such as ripeness, de novo. But the decision of whether to grant an equitable temporary injunction is left to a trial court's discretion; the sole issue on appeal is whether the trial court abused that discretion by disregarding either the facts or principles of equity. A trial court's findings of fact regarding entitlement to injunctive relief will not be set aside unless clearly erroneous. On review, facts are considered in the light most favorable to the prevailing party.

Business & Corporate Law > Distributorships & Franchises > Termination > General Overview

Business & Corporate Law > Distributorships & Franchises > Termination > Grounds

HN3 **Distributorships & Franchises, Termination**

See *Minn. Stat. § 80E.06, subd. 1* (Supp. 2009).

Civil Procedure > Appeals > Standards of Review > General Overview

Governments > Legislation > Interpretation

HN4 **Appeals, Standards of Review**

When interpreting a statute, a reviewing court's object is to ascertain and effectuate the intention of the legislature. *Minn. Stat. § 645.16* (2008). A reviewing court first looks to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation. If the legislature's intent is clearly discernible from a statute's unambiguous language, appellate courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. But where a statute is ambiguous, a reviewing court must turn to other means to discern the legislature's intent, and construe the statute to be consistent with

that intent.

Business & Corporate Law > Distributorships & Franchises > Termination > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Governments > Legislation > Interpretation

Governments > Legislation > Statutory Remedies & Rights

HN5[↓] Distributorships & Franchises, Termination

The Heavy and Utility Equipment Manufacturers and Dealers Act and Motor Vehicle Sale and Distribution Act do not contain any language limiting equitable injunctive relief in cases where claims are brought under those statutes. *Minn. Stat. § 80E.17* (Supp. 2009), *Minn. Stat. § 325E.0684* (2008). A reviewing court cannot read such a prohibition into the plain language of the statute.

Business & Corporate Law > Distributorships & Franchises > Termination > General Overview

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Civil Procedure > Preliminary Considerations > Equity > Relief

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN6[↓] Distributorships & Franchises, Termination

The statutory injunctive relief authorized for violations of the Heavy and Utility Equipment Manufacturers and Dealers Act is in addition to any other remedies permitted by law. *Minn. Stat. § 325E.0684* (2008). The law permits a trial court to order a temporary injunction as a matter of equity when it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Balance of Hardships

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN7[↓] Standards of Review, Abuse of Discretion

In evaluating whether a temporary injunction is warranted, a trial court must consider the five Dahlberg factors: (1) the nature and background of the relationship between the parties; (2) the balance of harm to the parties; (3) the likelihood that the party seeking the injunction will prevail on the merits of the action; (4) whether there are public-policy considerations; and (5) whether there are any administrative burdens involved in judicial supervision and enforcement of the temporary injunction. A reviewing court also considers the Dahlberg factors when determining whether the trial court abused its discretion.

Civil Procedure > Appeals > General Overview

Governments > Courts > Rule Application & Interpretation

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN8[↓] Civil Procedure, Appeals

A trial court must make sufficient findings to permit meaningful appellate review. *Minn. R. Civ. P. 52.01*. When a trial court fails to analyze the Dahlberg factors in granting a temporary injunction, the court commits error.

Business & Corporate Law > Distributorships & Franchises > Termination > Grounds

HN9[↓] Termination, Grounds

A substantial change in competitive circumstances is a

change that has a substantially adverse although not necessarily lethal effect on a dealership. It is a change that is material to the continued existence of the dealership, one that significantly diminishes its viability, its ability to maintain a reasonable profit over the long term or to stay in business.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN10[↓] Injunctions, Grounds for Injunctions

A party requesting a temporary injunction must demonstrate that there is no adequate legal remedy and that an injunction is necessary to prevent irreparable injury. An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN11[↓] Grounds for Injunctions, Irreparable Harm

A showing of irreparable future harm does not require absolute precision.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN12[↓] Injunctions, Preliminary & Temporary Injunctions

Minn. R. Civ. P. 65.02(b) authorizes a trial court to grant a temporary injunction if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefore.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN13[↓] Grounds for Injunctions, Irreparable Harm

Minnesota law recognizes that irreparable harm will result where a party's actions may render the relief sought by the other party ineffectual or impossible to grant at the time of trial.

Counsel: For Respondents: Robert L. DeMay, Douglas R. Boettge, Elizabeth C. Kramer, Kristin R. Sarff, Arthur G. Boylan, Leonard, Street and Deinard, P.A., Minneapolis, Minnesota.

For Appellant: George W. Soule, Melissa R. Stull, Bowman and Brooke, LLP, Minneapolis, Minnesota; and Michael R. Levinson, Seyfarth Shaw, LLP, Chicago, Illinois.

Judges: Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Crippen, Judge. *

Opinion by: TOUSSAINT

Opinion

UNPUBLISHED OPINION

TOUSSAINT, Judge

Respondent-dealers North Star International Trucks, Inc. d/b/a Astleford International Trucks, and Astleford Equipment Co. Inc. d/b/a Astleford International Idealease & Isuzu, sued appellant-manufacturer Navistar, Inc., and defendant Boyer Ford Trucks, Inc., asserting in pertinent part that Navistar violated the Motor Vehicle Sale and Distribution Act (MVSDA), Minn. Stat. §§ 80E.01-.18 (2008 & Supp. 2009), and the Heavy and Utility Equipment Manufacturers and Dealers

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Act (HUEMDA), Minn. Stat. §§ 325E.068-.0684 (2008). Appellant challenges an equitable **[*2]** temporary injunction order preserving the status quo pending adjudication of respondents' claims by prohibiting appellant from issuing a notice of termination to respondents. Because the temporary injunction is not premature, the district court did not violate MVSDA or HUEMDA, and the district court did not misapply the *Dahlberg* factors, we affirm.

DECISION

HN1[↑] "A temporary injunction is an extraordinary equitable remedy that preserves the status quo pending a trial on the merits." Cent. Lakes Educ. Assoc. v. Indep. Sch. Dist. No. 743, Sauk Centre, 411 N.W.2d 875, 878 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). "A temporary injunction should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held." Webb Publ'g Co. v. Fosshage, 426 N.W.2d 445, 448 (Minn. App. 1988).

HN2[↑] This court interprets statutes and reviews justiciability issues, such as ripeness, de novo. Sorenson v. St. Paul Ramsey Med. Ctr., 457 N.W.2d 188, 190 (Minn. 1990) (stating the standard of review for questions of statutory interpretation); Schiff v. Griffin, 639 N.W.2d 56, 59 (Minn. App. 2002) (stating the standard of review for justiciability **[*3]** issues). But the decision of whether to grant an equitable temporary injunction is left to the district court's discretion; the sole issue on appeal is whether the district court abused that discretion by disregarding either the facts or principles of equity. Cent. Lakes Educ. Ass'n, 411 N.W.2d at 878. "A district court's findings of fact regarding entitlement to injunctive relief will not be set aside unless clearly erroneous." Haley v. Forcelle, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). On review, facts are considered in the light most favorable to the prevailing party. Metro. Sports Facilities Comm'n v. Minn. Twins P'ship, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002).

I.

Appellant makes, assembles, and markets International-brand trucks and parts, which it distributes through a network of dealers. Appellant and each of its dealers enter into a contract known as a Dealer/Sales Maintenance Agreement (contract), which is a personal services contract that governs the relationship between the parties. Respondents are each dealers of International trucks and truck parts under separate contracts with appellant. Scott Dawson is **[*4]** the principal of both dealers.

In November 2009, appellant notified respondents that it deemed both to be in breach of their respective contracts due, in relevant part, to their inability to achieve a reasonable share of the market in their sales of heavy and severe service trucks within their areas of responsibility. The letter stated, "Unless [respondents take] appropriate corrective action by April 30, 2010, [appellant] shall consider itself entitled to serve notice to terminate."

In January 2010, respondents sued appellant. Respondents alleged, in pertinent part, that they were *not* in breach of their respective contracts with appellant and that appellant's notice of breach was pretextual and was actually aimed at assisting Boyer in replacing respondents as an International truck and truck-part dealer. Respondents asserted several causes of action against appellant, including counts under MVSDA and HUEMDA for appellant's actions that respondents asserted materially changed the competitive circumstances of their contracts without good cause. Respondents also moved the district court for an equitable temporary injunction prohibiting appellant from issuing notices of termination to respondents **[*5]** pending adjudication of their claims.

The district court determined that respondents' rights would be irreparably injured by appellant's issuance of a notice of termination before adjudication of respondents' claims and therefore granted respondents' temporary-injunction motions. Appellant disagrees, arguing that respondents' claims were not ripe and therefore the temporary injunction was also premature.

Appellant argues that the sole claim under which respondents sought the temporary injunction prohibiting appellant from issuing a notice of termination was their MVSDA claim under Minn. Stat. § 80E.06. Section 80E.06, subdivision 1, provides, in pertinent part, that ***HN3***[↑] "no manufacturer shall *cancel, terminate, or fail to renew* any franchise relationship with a licensed new motor vehicle dealer unless the manufacturer has [satisfied certain conditions]." (Emphasis added.) Appellant argues that because a notice of termination, as opposed to actual termination, does not constitute a redressable injury under Minn. Stat. § 80E.06, respondents' MVSDA claim was not yet ripe and

therefore the temporary injunction sought pending a trial on the merits of the MVSDA claim was premature.

But appellant **[*6]** is incorrect in its assertion that respondents sought the temporary injunction only under their MVSDA claim. Respondents' temporary-injunction motion reflects that they sought the injunction pending a trial on the merits of their HUEMDA claim as well as their MVSDA claim. In their motion, respondents alleged that "there is a very strong likelihood that . . . [appellant] has substantially changed the competitive circumstances of each of [respondents'] dealerships without good cause in violation of *Minn. Stat. § 325E.0681, subd. 1*," which is a part of HUEMDA. Respondents argued that an order enjoining appellant from issuing a notice to terminate respondents' contracts was necessary to preserve the status quo until a trial on the merits.

Respondents' complaint alleged that appellant took several actions that, together, prevented respondents from achieving what appellant considered to be a reasonable market share in the sales of heavy and severe service trucks within their areas of responsibility and therefore substantially changed the competitive circumstances of the contracts without good cause, in violation of *Minn. Stat. § 325E.0681, subd. 1*. For example, respondents alleged that appellant **[*7]** (1) unilaterally removed 51 zip-code areas from respondent North Star's area of responsibility under its contract with appellant, (2) transferred those zip-code areas to Boyer's Rogers location, (3) reimbursed Boyer for International-brand parts replacement and services performed at Boyer's Lauderdale and Savage locations (unauthorized locations less than two miles from North Star's Minneapolis dealership and Astleford's Burnsville dealership, respectively), and (4) employed an inappropriate performance measure so as to intentionally arrive at distorted and misleading results regarding respondents' market-share obligations under their contracts and to inappropriately justify the notice of breach.

Appellant does not dispute that it removed 51 zip-code areas from North Star's area of responsibility and transferred those zip-code areas to Boyer. Respondents supported their allegations regarding appellant's reimbursements to Boyer and its use of inappropriate performance measures with deposition and affidavit testimony respondents submitted to the district court in support of their temporary-injunction motion.

Under these circumstances, the district court could implicitly determine, as it **[*8]** did here, that respondents demonstrated a likely redressable injury under HUEMDA and that their HUEMDA claim was therefore ripe. *See Astleford Equip. Co. Inc. v. Navistar Int'l Transp. Corp., 632 N.W.2d 182, 191 (Minn. 2001)* (construing "substantial change of circumstances" under the statute, stating that "the ultimate conclusion as to whether there was a violation of the statute must be based on the specific facts of the case presented" and "a court should engage in a case-by-case factual inquiry in reaching its ultimate conclusion of whether there has been a substantial change in the competitive circumstances"). Therefore, we conclude that respondents' HUEMDA claim is ripe for consideration by the district court and that the temporary injunction pending adjudication of the claim is not premature.

II.

Appellant argues that the temporary injunction violates HUEMDA and MVSDA because neither statute provides for any relief against a notice to terminate, as opposed to termination itself. ***HN4***[↑] When interpreting a statute, our object is to "ascertain and effectuate the intention of the legislature." *Minn. Stat. § 645.16* (2008). "[An appellate court] first look[s] to see whether the statute's language, **[*9]** on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl, 616 N.W.2d 273, 277 (Minn. 2000)* (quotation and citations omitted). If the legislature's intent is clearly discernible from a statute's unambiguous language, appellate courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. *State v. Anderson, 683 N.W.2d 818, 821 (Minn. 2004)*. "But where a statute is ambiguous, we must turn to other means to discern the legislature's intent, and construe the statute to be consistent with that intent." *Montplaisir v. Indep. Sch. Dist. No. 23, 779 N.W.2d 880, 883 (Minn. App. 2010)*.

Appellant is correct that HUEMDA and MVSDA provide a statutory framework for termination of a dealer agreement by appellant and for establishment or relocation of a dealership. Appellant is also correct that both HUEMDA and MVSDA authorize statutory injunctive relief for violations of those statutes. *Minn. Stat. §§ 80E.01-.17*, *325E.068-.0684*. But appellant's claim that HUEMDA and MVSDA somehow limit the district court's power to **[*10]** grant equitable injunctive

relief is unsupported. [1]

HN5[↑] HUEMDA and MVSDA do not contain any language limiting equitable injunctive relief in cases where claims are brought under those statutes. *Minn. Stat. §§ 80E.17*, *325E.0684*. This court cannot read such a prohibition into the plain language of the statute. *See Tracy State Bank v. Tracy-Garvin Co-op, 573 N.W.2d 393, 395 (Minn. App. 1998)* (stating that "this court is prohibited from adding words to a statute and cannot supply what the legislature **[*11]** either purposely omitted or inadvertently overlooked"); *Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn. App. 1987)* ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

To the contrary, HUEMDA clearly states that ***HN6***[↑] the statutory injunctive relief it authorizes for violations of HUEMDA is "in addition to any other remedies permitted by law." *Minn. Stat. § 325E.0684*. The law permits a district court to order a temporary injunction as a matter of equity when "it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held." *Webb Publ'g Co., 426 N.W.2d at 448*; *see also Cent. Lakes Educ. Ass'n, 411 N.W.2d at 878* (explaining that a temporary injunction is an "equitable remedy that preserves the status quo pending a trial on the merits").

Therefore, we conclude that the district court did not violate MVDSA or HUEMDA by ordering the temporary injunction. We decline to address appellant's argument that the temporary injunction is contrary to public-policy considerations underlying HUEMDA and MVSDA. *See Lefto v. Hoggsbreath Enters., 567 N.W.2d 746, 749 (Minn. App. 1997)* **[*12]** (declining to address appellant's public-policy arguments regarding the interpretation of a statute where the plain language of the statute supported the district court's interpretation), *aff'd on other grounds*, *581 N.W.2d 855 (Minn. 1998)*.

III.

HN7[↑] In evaluating whether a temporary injunction is warranted, the district court must consider the five *Dahlberg* factors: (1) the nature and background of the relationship between the parties; (2) the balance of harm to the parties; (3) the likelihood that the party seeking the injunction will prevail on the merits of the action; (4) whether there are public-policy considerations; and (5) whether there are any administrative burdens involved in judicial supervision and enforcement of the temporary injunction. *Metro. Sports Facilities Comm'n, 638 N.W.2d at 220-21* (quoting *Dahlberg Bros. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)*). This court also considers the *Dahlberg* factors when determining whether the district court abused its discretion. *Id.*

HN8[↑] The district court must make sufficient findings to permit meaningful appellate review. *Minn. R. Civ. P. 52.01*; *Crowley Co. v. Metro. Airports Comm'n, 394 N.W.2d 542, 544-45 (Minn. App. 1986)* **[*13]** (remanding appeal from denial of injunction to district court to make necessary findings). When a district court "fails to analyze the *Dahlberg* factors in granting a temporary injunction, the court commits error." *State by Ulland v. Int'l. Ass'n. of Entrepreneurs of Am., 527 N.W.2d 133, 135 (Minn. App. 1995)*, *review denied* (Minn. Apr. 18, 1995).

In this case, the district court's order reflects that it analyzed each of the five *Dahlberg* factors and made several findings of fact on each factor. The district court ultimately found that each of the five factors weighed in favor of granting respondents a temporary injunction. Appellant does not challenge the district court's finding that the administrative burden weighs in favor of granting the injunction but argues that the district court erred with regard to each of the other *Dahlberg* factors.

A. Appellant argues that the district court misapplied HUEMDA in several ways to erroneously find that the relationship between the parties, the likelihood that respondents would prevail on the merits, and public-policy considerations weighed in favor of granting the temporary injunction. Appellant first contends that the district court ignored the **[*14]** legal standard set forth in *Astleford Equip. Co., 632 N.W.2d at 191*, for what constitutes a substantial change in competitive

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[1] Appellant cites *Metro Motors, LLC v. Nissan Motor Corp., 170 F. Supp. 2d 888 (D. Minn. 2001)*, in support of its argument that the temporary injunction here violates MVSDA. The *Metro Motors* court concluded that a plaintiff's claim for declaratory judgment under MVSDA was not ripe, and therefore the district court had no subject matter jurisdiction over the claim where defendant had not terminated the franchise agreement and had not issued a notice of termination. *170 F. Supp. 2d at 890-91*. But *Metro Motors* contains no discussion of whether an equitable temporary injunction ordered pending a trial on the merits of HUEMDA and MVSDA claims violates either statute, which is the issue we must address here.

circumstances under HUEMDA. We disagree. The district court clearly and accurately articulated the standard set forth by the Minnesota Supreme Court before analyzing the likelihood of success on the merits of respondents' claims. The district court accurately cited *Astleford Equip. Co.* for the proposition that ***HN9***[↑] a substantial change in competitive circumstances is

> a change that has a substantially adverse although not necessarily lethal effect on the dealership. It is a change that is material to the continued existence of the dealership, one that significantly diminishes its viability, its ability to maintain a reasonable profit over the long term or to stay in business.

Astleford Equip. Co., 632 N.W.2d at 191. There is no evidence in the record that the district court failed to apply the *Astleford* standard when it found that appellant has likely taken a number of actions that have substantially changed the competitive circumstances of respondents' contracts, as appellant suggests. *See White v. Dep't of Natural Res., 567 N.W.2d 724, 734 (Minn. App. 1997)* (stating **[*15]** that error is never presumed on appeal), *review denied* (Minn. Oct. 31, 1997).

Appellant next challenges the district court's finding that it removed 51 zip-code areas from North Star's contract, arguing that the finding does not support a substantial change in competitive circumstances under HUEMDA because the removal of zip-code areas was specifically authorized under the contract. [2] But the district court found the removal of zip-code areas to be only one part of a larger pattern of conduct by appellant. Furthermore, the issue of whether or not the contracts permitted appellant to adjust North Star's areas of responsibility (defined by zip codes) is of little consequence because HUEMDA does not permit such actions when taken as a means to substantially change competitive circumstances of dealer agreements without good cause, as the district court found was likely to have occurred here. *See Minn. Stat. § 325E.068, subd. 1* (stating: "No equipment manufacturer . . . may . . . substantially change the competitive circumstances of a dealership agreement without good cause.").

[2] Appellant notes that the district court mistakenly found that appellant "removed fifty-one zip codes from *Plaintiffs'* **[*16]** area of responsibility." (Emphasis added.) Because none of the parties demonstrates prejudice by the district court's mistake, we conclude that the error is harmless. Errors that do not affect the substantial rights of the parties are to be ignored. *Minn. R. Civ. P. 61*.

Appellant next argues that the district court failed to consider whether or not appellant had good cause for its actions under HUEMDA. We disagree. The district court found that respondents were likely to succeed on their HUEMDA claim, and expressly stated, quoting *Minn. Stat. § 325E.0681, subd. 1*, that HUEMDA prohibits a appellant from "substantially chang[ing] the competitive circumstances of a dealership agreement *without good cause*." (Emphasis added.) The record supports the district court's implicit finding that appellant likely did not have good cause for substantially changing the circumstances of the contracts. For example, affidavit testimony and appellant's notice of breach support that appellant inappropriately lumped respondents together to measure their performance and measured the respondents' performance using an unreasonable standard comparing their "in-market" sales with an unspecified "regional average," **[*17]** even though appellant no longer used these measures.

Finally, appellant contends that the district court made no findings or conclusions explaining how changed circumstances in this case warrant an injunction against appellant issuing a notice of termination. Appellant asserts: "It cannot be said that issuing a notice to terminate is itself a 'substantial change in competitive circumstances' [under HUEMDA] because the district court did not find or conclude that it was." But the district court clearly found that a notice of termination would likely constitute a "further change" to the respondents' competitive circumstances. Appellant does not challenge this finding.

We conclude that the district court correctly applied HUEMDA and, therefore, did not err in its findings regarding the relationship between the parties, the likelihood of respondents prevailing on the merits, and public-policy considerations.

B. ***HN10***[↑] The party requesting a temporary injunction must demonstrate that there is no adequate legal remedy and that an injunction is necessary to prevent irreparable injury. *U.S. Bank Nat'l Ass'n v. Angeion Corp., 615 N.W.2d 425, 434 (Minn. App. 2000)*, *review denied* (Minn. Oct. 25, 2000). **[*18]** "An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial." *Hollenkamp v. Peters, 358 N.W.2d 108, 111 (Minn. App. 1984)* (quoting *AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504, 110 N.W.2d 348, 351 (1961)*).

In this case, the district court found that respondents

would likely suffer significant and irreparable loss of customers, employees, and business opportunities if appellant was not enjoined from issuing a notice to terminate. The court found that when respondents' customers and employees learned of a notice of termination, they would be likely to abandon the dealerships due to uncertainty about the respondents' futures, and that even if respondents succeeded on the merits of their claims, their former customers and employees would be unlikely to return after developing relationships with other respondents and their dealerships would effectively be destroyed.

Citing *Minn. R. Evid. 602*, appellant argues that the district court relied on inadmissible, speculative evidence to support its finding that respondents would likely suffer irreparable harm if a temporary injunction **[*19]** was not ordered. Appellant urges this court to require *precise* proof of irreparable harm. But ***HN11***[↑] a showing of irreparable future harm does not require absolute precision. *See Metro. Sports Facilities Comm'n, 638 N.W.2d at 222* (stating that irreparable harm is "not always susceptible of precise proof").

HN12[↑] *Minn. R. Civ. P. 65.02(b)* authorizes a district court to grant a temporary injunction "if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefore." **[*20]** Here, Dawson testified by affidavit that respondents sold 266 International trucks during their fiscal year 2009. Dawson stated that if appellant issued a notice of termination, news of the termination notice would quickly disseminate among respondents' employees as well as potential and existing customers regardless of whether or not the information was publicized. This is because, as Dawson testified, imminent termination would preclude respondents from bidding on contracts involving the future sales of trucks, truck parts, or warranty services to customers; and the employees' work would be drastically impacted as the vast majority of their work is related to the International brand.

Dawson testified that he reasonably anticipated that a notice of termination would result in the loss of over one half of the customers at each dealership within a matter of weeks. Dawson's testimony is based on the fact that more than 90% of Astleford's truck and truck-parts sales, and more than 90% of its service work, involves International; and more than 99% of North Star's truck and truck-parts sales, and more than 95% of its service work, involves International. Further, Dawson testified that in **[*21]** his experience as principal of respondents, truck customers desire a continuity of access to a dealer who can provide service work and do not vary their buying patterns once those patterns have become established and that therefore respondents could not count on their former customers to return to the dealerships.

Dawson also testified that he reasonably anticipated that respondents' employees, faced with imminent termination of their jobs, would have no choice but to seek other work. By way of example, Dawson stated that in 2009, four of the five members of North Star's parts-sales department permanently left North Star to work for Boyer after Boyer informed them that it was replacing respondents as the International dealer in the Twin Cities.

Dawson's affidavit testimony is plainly based on his personal knowledge as principal of respondents, as required by *Minn. R. Evid. 602*, and demonstrates reasonable grounds for respondents to fear a substantial injury should appellant issue a notice of termination. In other words, the affidavit shows that the threatened injury is both real and substantial. Notably, appellant has not produced any evidence to contradict Dawson's affidavit testimony. **[*22]** Therefore, the record supports the district court's finding that respondents would likely suffer significant harm—specifically, loss of customers, employees, and business opportunities—if appellant is not enjoined from issuing a notice to terminate.

Appellant argues that the district court erred by finding that the future harm in this case was preventable. *See John Peterson Motors v. Gen. Motors Corp., 613 F. Supp. 887, 905 (D. Minn. 1985)* (denying preliminary injunction based on alleged "destruction of [plaintiff's] business" from defendant's failure to deliver vehicles because plaintiff's business was already "in serious jeopardy"). Respondents claim to have already lost parts sales and service revenues and suffered reduced profit margins on the trucks and parts they are able to sell. Respondents also acknowledge that they have already lost four employees to Boyer. But there is no evidence that, as appellant's argument implies, respondents have lost half of their customers or that either dealership has been forced to stop bidding on contracts, which is what is reasonably anticipated to occur should appellant issue a notice of termination.

Appellant also argues that respondents have **[*23]** not shown that their injuries will be irreparable, asserting that respondents have an adequate remedy at law and

that any injury to respondents is fully compensable with money damages, making injunctive relief inappropriate. *See* Medtronic, Inc. v. Advanced Bionics Corp., 630 N.W.2d 438, 451 (Minn. App. 2001) (stating that "[t]he party seeking an injunction must demonstrate that there is *no adequate legal remedy* and that the injunction is necessary to prevent irreparable harm" (emphasis added)); Morse v. City of Waterville, 458 N.W.2d 728, 729-730 (Minn. App. 1990) (stating that to be irreparable, the harm must be of such a nature that money damages will not suffice), *review denied* (Minn. Sept. 28, 1990).

But ***HN13***[⬆] Minnesota law recognizes that irreparable harm will result where a party's actions may render the relief sought by the other party ineffectual or impossible to grant at the time of trial. Seward v. Schrieber, 240 Minn. 489, 491-92, 62 N.W.2d 48, 50 (1953). Here, as Dawson's affidavit demonstrates, if appellant issued a notice of termination, harm would likely result and would render ineffectual the statutory injunction to which respondents would be entitled under MVSDA and HUEMDA **[*24]** should they succeed on their claims at trial. *See* Minn. Stat. §§ 80E.17 (providing a civil cause of action to enjoin violations of sections 80E.01 to 80E.17), 325E.0684 (providing a civil cause of action to enjoin unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances in violation of sections 325E.068 to 325E.0684). Respondents, in the face of a notice of termination (which appellant could issue pending trial were it not for the temporary injunction), stand to permanently lose current employees and business opportunities as well as half of their current customers.

Regarding the threatened harm to appellant, the district court found that appellant would, at most, have to retain respondents for longer than it would without an injunction and would have to continue to suffer monetary losses as a result of respondents' allegedly poor performance. But the district court noted that it was unable to assess the "relative magnitude of any losses that [appellant] may incur" because it did not provide any evidence on the matter. Appellant argues that the district court's finding was clearly erroneous. We disagree. In appellant's memorandum in opposition **[*25]** to respondents' temporary-injunction motion, it cited to three pages of deposition testimony in support of its position that it would suffer harm if the injunction were granted. But none of the cited testimony provides evidence as to the magnitude of harm that appellant would suffer from an injunction.

Contrary to appellant's argument, the district court also did not err by finding that appellant does not risk the same degree of harm as respondents as a consequence of having to wait to issue a notice to terminate. *See* Dahlberg, 272 Minn. at 276-277, 137 N.W.2d at 322 (concluding, on similar facts, that the balance of hardships weighed heavily in favor of the district court's grant of a temporary injunction prohibiting appellant from terminating its dealership agreement with dealer). The balance of harms in this case plainly weighs in favor of the temporary injunction granted by the district court.

Affirmed.

End of Document

Earl C. Hill Bloomington Post 550 v. City of Bloomington

Court of Appeals of Minnesota

February 21, 2006, Filed

A05-637

Reporter
2006 Minn. App. Unpub. LEXIS 185 *; 2006 WL 389835

Earl C. Hill Bloomington Post 550, et al., Appellants, vs. City of Bloomington, Respondent, City of Minneapolis, Respondent, County of Hennepin, Respondent.

Notice: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: Hennepin County District Court File No. 05-3733. Hon. John Q. McShane.

Disposition: Affirmed; motion granted in part.

Core Terms

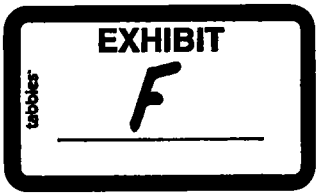
district court, smoking, temporary injunction, appellants', ordinances, public place, designated, parties, injunction, respondents', appendix, favors

Case Summary

Procedural Posture
Appellant establishments brought an action seeking to preclude respondents, two cities and a county, from enforcing their ordinances prohibiting smoking in certain public places. The Hennepin County District Court, Minnesota, denied the establishments' motion for a temporary injunction to enjoin enforcement of the ordinances. The establishments appealed; the cities and the county moved to strike parts of the establishments' brief and appendix.

Overview

On review, the establishments contended the trial court abused its discretion in denying their motion for a temporary injunction. After applying the Dahlberg factors, the appellate court disagreed, finding first that the county lacked regulatory authority over the establishments as they were located in one of the cities where health boards existed; thus, the county ordinance did not apply to the establishments. Further, Minnesota law did not support the establishments' assertion that the availability of an immunity defense to the cities and the county necessarily rendered the establishments devoid of an adequate legal remedy. Given that the Minnesota Clean Indoor Air Act, *Minn. Stat. §§ 144.411*-.417 (2004), expressly preserved the power of local government to impose more stringent smoking limitations, the establishments failed to establish a likelihood of success on the merits, and public policy that the public was best served when it was free from exposure to second-hand smoke favored the cities and the county. As such, the appellate court concluded that the trial court did not abuse its discretion in denying the establishments' motion for a temporary injunction was proper.



Outcome

The judgment was affirmed; the cities' and the county's motion to strike was granted as to certain affidavits in the establishments' appendix and appellate brief but denied as to the establishment's entry of the trial court's order in their appendix and appellate brief.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1 **Standards of Review, Abuse of Discretion**

A decision on whether to grant a temporary injunction is left to the discretion of the trial court and will not be overturned on review absent a clear abuse of that discretion. The appellate court considers the facts in a light most favorable to the prevailing party.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN2 **Injunctions, Preliminary & Temporary Injunctions**

The appellate court considers five factors in determining whether a temporary injunction should be granted: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3 **Injunctions, Preliminary & Temporary Injunctions**

Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. Generally, the failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction.

Governments > Local Governments > Administrative Boards

Public Health & Welfare Law > General Overview

HN4 **Local Governments, Administrative Boards**

A county board of health has the powers and duties of a board of health for all territory within its jurisdiction not under the jurisdiction of a city board of health. *Minn. Stat. § 145A.04, subd. 1* (2004).

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN5 **Injunctions, Preliminary & Temporary Injunctions**

In the context of determining whether to grant a temporary injunction, injuries, however substantial, that can be adequately compensated with monetary damages are generally insufficient to establish irreparable harm.

Environmental Law > Air Quality > General Overview

Governments > Local Governments > Ordinances & Regulations

Public Health & Welfare Law > Housing & Public Buildings > General Overview

HN6 **Environmental Law, Air Quality**

See *Minn. Stat. § 144.415* (2004).

Environmental Law > Air Quality > General Overview

Governments > Local Governments > Ordinances & Regulations

Public Health & Welfare Law > Housing & Public Buildings > General Overview

HN7 **Environmental Law, Air Quality**

Nothing in the rules interpreting the Minnesota Clean Indoor Air Act, *Minn. Stat. §§ 144.411*- .417 (2004), shall be construed to affect smoking prohibitions imposed by the fire marshal or other law, ordinances, or regulations or to affect the right of building owners or operators to designate their premises as smoke-free. *Minn. R. 4620.0050* (2005).

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Strike > General Overview

Civil Procedure > Appeals > Record on Appeal

HN8 **Defenses, Demurrers & Objections, Motions to Strike**

Generally, the appellate court will not consider evidence outside the district court record and will strike documents in a brief that are not part of the appellate record. The record on appeal consists of the papers filed in the trial court, the exhibits, and the transcript of the proceedings. *Minn. R. Civ. App. P. 110.01*.

Civil Procedure > Appeals > Record on Appeal

HN9 **Appeals, Record on Appeal**

A reviewing court may consider cases, statutes, rules, and publicly available articles that were not presented to the district court.

Counsel: For Appellants: Ryan M. Pacyga, Pacyga & Associates, P.A., Woodbury, MN.

For City of Bloomington, Respondent: David R. Ornstein, Bloomington City Attorney, Bloomington, MN.

For City of Minneapolis, Respondent: Jay M. Heffern, Minneapolis City Attorney, Peter W. Ginder, Deputy City Attorney, Burt T. Osborne, Assistant City Attorney, Minneapolis, MN.

For Hennepin County, Respondent: Amy Klobuchar, Hennepin County Attorney, Mark V. Chapin, Assistant County Attorney, Minneapolis, MN.

Judges: Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

Opinion by: KALITOWSKI

Opinion

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellants are establishments that are challenging the district court's decision denying their motion for a temporary injunction to enjoin enforcement of ordinances that ban smoking in certain public places. Respondents made a motion to strike parts of appellants' brief and appendix. We affirm and grant in part respondents' **[*2]** motion to strike.

DECISION

I.

The primary issue before us is whether the district court abused its discretion in denying appellants' motion for a temporary injunction. ***HN1*** "A decision on whether to grant a temporary injunction is left to the discretion of the trial court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis, 502 N.W.2d 203, 209*

(Minn. 1993). We consider the facts in a light most favorable to the prevailing party. Metro. Sports Facilities Comm'n v. Minn. Twins P'ship., 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002).

HN2[↑] This court considers five factors in determining whether a temporary injunction should be granted: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. Id. at 220-21 (citing Dahlberg Bros. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)).

HN3[↑] Because **[*3]** an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. Cherne Indus., Inc., v. Grounds & Assocs., Inc., 278 N.W.2d 81, 92 (Minn. 1979). Generally, the failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction. Morse v. City of Waterville, 458 N.W.2d 728, 729 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

The first *Dahlberg* factor requires the court to consider the nature and relationship of the parties. Dahlberg, 272 Minn. at 274, 137 N.W.2d at 321. The district court found, and the parties do not dispute, that the relationship between and among the parties neither favors nor disfavors injunctive relief. Appellants are establishments doing business in either Minneapolis or Bloomington, Minnesota. Both Bloomington and Minneapolis are located within Hennepin County, Minnesota. Respondents are the City of Bloomington, Minnesota; the City of Minneapolis, Minnesota; and Hennepin County, Minnesota. By filing their motion, appellants **[*4]** sought to preclude respondents from enforcing their ordinances that prohibit smoking in certain public places. *See* Hennepin County, Minn., Ordinance No. 24 § 2.02 (2004) (amended 2005); Bloomington, Minn., City Code ch. 12, § 12.81(a) (2004); Minneapolis, Minn., Code of Ordinances § 234.20 (2004). We conclude that the district court did not clearly abuse its discretion in finding that the parties' relationship did not favor or disfavor granting a temporary injunction here.

The district court also found that respondent Hennepin County's ordinance does not apply to appellants. ***HN4***[↑] A county board of health "has the powers and duties of a board of health for all territory within its jurisdiction not under the jurisdiction of a city board of health." Minn. Stat. § 145A.04, subd. 1 (2004). Here, respondents City of Minneapolis and City of Bloomington have formed their own health boards. Accordingly, Hennepin County lacked regulatory authority over appellants, each of which is located in either Minneapolis or Bloomington. The district court properly determined that the Hennepin County ordinance did not apply to appellants.

The second *Dahlberg* factor requires **[*5]** a district court to balance the relative harm between the two parties. Dahlberg, 272 Minn. at 274-75, 137 N.W.2d at 321. The district court found that the relative hardship criterion did not favor the issuance of a temporary injunction because appellants failed to demonstrate irreparable harm. Here, appellants' anticipated injuries were economic. And ***HN5***[↑] injuries, however substantial, that can be adequately compensated with monetary damages are generally insufficient to establish irreparable harm. Miller v. Foley, 317 N.W.2d 710, 713 (Minn. 1982).

Appellants argue that respondents could claim discretionary immunity, thereby leaving appellants without an adequate remedy at law. But Minnesota law does not support appellants' assertion that the availability of an immunity defense necessarily renders a claimant devoid of an adequate legal remedy. And appellants neither cite the authority under which respondents could assert a potential immunity claim nor articulate the underlying cause of action that would trigger respondents' immunity. In light of the procedural posture of this case and the state of the record before us, we cannot conclude that the district **[*6]** court abused its discretion in finding that the relative harm factor weighed against granting a temporary injunction.

The third *Dahlberg* factor requires the court to consider the likelihood of success on the merits. Dahlberg, 272 Minn. at 275, 137 N.W.2d at 321. Appellants claim that the Minnesota Clean Indoor Air Act (CIAA), Minn. Stat. §§ 144.411--.417 (2004), precludes respondents' ordinances. The district court disagreed, finding that this factor weighed heavily against granting a temporary injunction because appellants failed to show a likelihood of success on the merits. The purpose of the CIAA is "to protect the public health, comfort and environment by prohibiting smoking in areas where children or ill or injured persons are present, and by limiting smoking in public places and at public meetings to designated smoking areas." Minn. Stat. §§ 144.411, 144.412. The CIAA further states:

> ***HN6***[↑] Smoking areas may be designated by proprietors or other persons in charge of public places, *except in places in which smoking is prohibited by the fire marshal or by other law, ordinance* **[*7]** *or rule.*
> Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. In the case of public places consisting of a single room, the provisions of this law shall be considered met if one side of the room is reserved and posted as a no smoking area. No public place other than a bar shall be designated as a smoking area in its entirety. If a bar is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public.

Minn. Stat. § 144.415 (emphasis added). ***HN7***[↑] And nothing in the rules interpreting the CIAA "shall be construed to affect smoking prohibitions imposed by the fire marshal or other law, ordinances, or regulations or to affect the right of building owners or operators to designate their premises as smoke-free." *Minn. R. 4620.0050* (2005). Moreover, an attorney general opinion states that the Minnesota legislature addressed smoking in restaurants and other public places through the CIAA "while expressly preserving the power of local government **[*8]** to impose more stringent smoking limitations." Op. Att'y Gen. 62b (May 4, 2000). Although opinions of the attorney general are not binding on the courts, they are helpful and entitled to consideration. *State ex rel. Holecek v. Ross, 472 N.W.2d 185, 186 (Minn. App. 1991)*. Given the language of the CIAA and the attorney general's opinion interpreting it, we conclude that the district court did not abuse its discretion in finding that appellants failed to establish a likelihood of success on the merits.

The fourth *Dahlberg* factor requires the district court to contemplate the public policy considerations in granting or denying a temporary injunction. *Dahlberg, 272 Minn. at 275, 137 N.W.2d at 321-22*. Without making findings on the health effects of smoking itself, the district court noted that respondents conducted extensive investigations and hearings before enacting their ordinances. The district court found that public policy considerations favored respondents. Appellants argue that public policy favors protecting appellants' rights under the CIAA and promoting business interests, jobs, tax revenue, and economic growth. Respondents assert that **[*9]** the public is best served when it is free from exposure to second-hand smoke. Taking the facts in a light most favorable to respondent, the district court did not clearly abuse its discretion by finding that public policy favors respondents.

Finally, the fifth *Dahlberg* factor requires the district court to consider administrative burdens involving judicial supervision and enforcement. *Dahlberg, 272 Minn. at 275, 137 N.W.2d at 322*. The district court stated, and the parties do not dispute, that this factor neither favors nor disfavors relief. And the record provides no evidence of an unreasonable administrative burden if the temporary injunction were granted. Thus, the district court did not abuse its discretion by finding that this factor weighed neither in favor nor against granting the injunction.

Because the district court did not clearly abuse its discretion in finding that three of the *Dahlberg* factors disfavored issuance of the injunction and that the other two factors were neutral, we conclude that the district court did not abuse its discretion by denying appellants' motion for temporary injunction.

II.

Respondents moved to strike parts of **[*10]** appellants' brief and appendix pertaining to affidavits and a case out of Hennepin County District Court. ***HN8***[↑] Generally, this court will not consider evidence outside the district court record and will strike documents in a brief that are not part of the appellate record. *State v. Dalbec, 594 N.W.2d 530, 533 (Minn. App. 1999)*. The record on appeal consists of "the papers filed in the trial court, the exhibits, and the transcript of the proceedings." *Minn. R. Civ. App. P. 110.01*.

Here, appellants included in the appendix to their brief nine affidavits completed after the district court's March 25, 2005 order denying appellants' motion for temporary injunction. Because those affidavits were not part of the district court record, respondents' motion to strike those affidavits is granted.

The Hennepin County District Court's order contained in appellants' appendix was also entered after the district court's order here. But ***HN9***[↑] a reviewing court may consider cases, statutes, rules, and publicly available articles that were not presented to the district court. *Fairview Hosp. Health Care Servs. v. St. Paul Fire & Marine Ins. Co., 535 N.W.2d 337, 340 n.3 (Minn. 1995)*. **[*11]** Therefore, we deny respondents' motion to strike the court order from appellants' appendix and

brief.

Affirmed; motion granted in part.

End of Document

Advance Contract Equip. & Design LC v. LaMere

Court of Appeals of Minnesota

August 31, 2015, Filed

A15-0084

Reporter
2015 Minn. App. Unpub. LEXIS 874 *; 2015 WL 5089167

Advance Contract Equipment and Design LC, d/b/a, Rapids Foodservice Contract and Design, Respondent, vs. Kevin LaMere, Appellant, Horizon Equipment LLC, Defendant

Prior History: [*1] Ramsey County District Court File No. 62-CV-14-7506.

Disposition: Affirmed.

Core Terms

district court, confidential information, injunction, customers, irreparable harm, merits, temporary injunction, good will, non-compete, foodservice, geographic, temporal, argues, sales

Case Summary

Overview
HOLDINGS: [1]-The court properly granted a temporary injunction in favor the former employer because the former employer demonstrated the existence of irreparable harm and the former employer would likely succeed on the merits; a loss of good will by the former employee leaving was extremely difficult to measure and the record reflected that the new employer directly competed with the former employer, the former employer demonstrated by affidavit that the employee forwarded potential confidential information, and it was unlikely that a determination that the noncompete/nondisclosure agreement was unreasonable in temporal or geographic scope would void the entire agreement.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1 **Standards of Review, Clearly Erroneous Review**

A temporary injunction is an extraordinary equitable

remedy that preserves the status quo pending a trial on the merits. The district court has broad discretion to grant or deny a temporary injunction, and the appellate court will reverse only for an abuse of that discretion. A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

HN2 **Grounds for Injunctions, Irreparable Harm**

A party seeking an injunction must first establish that the legal remedy is inadequate and that the injunction is necessary to prevent great and irreparable injury. Once a party has established irreparable harm, the district court must consider five factors before issuing an injunction to prevent injury. These factors include: (1) the relationship of the parties; (2) the relative harm to the parties if the injunction is or is not granted; (3) the likelihood of success on the merits; (4) public policies expressed in statutes; and (5) the administrative burdens in supervising and enforcing the decree.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3 **Grounds for Injunctions, Irreparable Harm**

An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial. To be granted an injunction, the moving party must offer more than a mere statement that it is suffering or will suffer irreparable injury. Money damages are generally not independently sufficient to provide a basis for injunctive relief. Failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

HN4 **Grounds for Injunctions, Irreparable Harm**

Irreparable injury can be inferred from the breach of a restrictive covenant if the former employee came into contact with the employer's customers in a way which obtains a personal hold on the good will of the business. However, the inference may be rebutted by evidence that the former employee has no hold on the good will of the business or its clientele.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN5 **Injunctions, Preliminary & Temporary Injunctions**

The probability of success in the underlying action is a primary factor in determining whether to issue a temporary injunction. Even if a party makes a strong showing of irreparable harm, a district court need not grant a temporary injunction where that party has demonstrated no likelihood of success on the merits.

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

HN6 **Trade Secrets & Unfair Competition, Noncompetition & Nondisclosure Agreements**

The appellate court looks upon restrictive covenants with disfavor, carefully scrutinizing them because they are agreements in partial restraint of trade. In order to be enforceable, non-compete agreements must be reasonable and supported by consideration. The test of reasonableness is whether or not the restraint is necessary for protection of the business or good will of the employer, and if so, whether the stipulation has imposed upon the employee any greater restraint than is reasonably necessary to protect the employer's business, regard being had to the nature and character of the employment, the time for which the restriction is imposed, and the territorial extent of the locality to which the prohibition extends.

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

HN7 **Trade Secrets & Unfair Competition, Noncompetition & Nondisclosure Agreements**

Agreements protecting confidential information are reasonably necessary to protect legitimate business interests.

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

HN8 **Trade Secrets & Unfair Competition, Noncompetition & Nondisclosure Agreements**

Under the blue-pencil doctrine, a district court that finds a noncompetition provision unreasonable as written may modify the provision to render it reasonable and enforceable.

Counsel: For Respondent: Mark K. Thompson, Andrea L. Nemmers, MKT Law, P.L.C., St. Paul, Minnesota.

Kevin LaMere, Appellant, Pro se, Fridley, Minnesota.

Judges: Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

Opinion by: STAUBER

Opinion

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's grant of a temporary injunction in favor of respondent, appellant, a former employee of respondent, argues that the district court abused its discretion by granting the injunction because respondent (1) would not suffer irreparable harm in the absence of an injunction and (2) is not likely to succeed on the merits of its non-compete claim against appellant. We affirm.

FACTS

Respondent Advance Contract Equipment and Design, L.C., d/b/a Rapids Foodservice Contract and Design (Rapids) is an Iowa limited liability company, which operates throughout the country, including Minnesota, distributing foodservice equipment and supplies. In October 2011, appellant Kevin LaMere began working for Rapids as a Minnesota sales representative. As a condition of his employment, LaMere signed a noncompete/nondisclosure agreement (agreement). **[*2]** The agreement precludes LaMere from using or disclosing Rapids's confidential information, and further precludes him from working for a competitor of Rapids in Minnesota and several other states for a period of one year following his termination of employment with Rapids.

Shortly after beginning his employment with Rapids, LaMere developed concerns about his employer's business practices. LaMere, who has over 30 years of experience in the foodservice industry, eventually began to look for other employment because he was concerned that Rapids's business practices would affect his ability to make "key sales." On October 17, 2014, LaMere received an employment offer from defendant Horizon Equipment, LLC, a direct competitor of Rapids in LaMere's sales territory. LaMere accepted the offer, resigned from his position at Rapids on October 21, 2014, and began working for Horizon as a sales representative the following day.

Rapids brought suit against LaMere and Horizon alleging breach of contract, tortious interference with contracts, and tortious interference with economic advantage. Rapids alleged that LaMere took with him to Horizon certain confidential information as defined by the agreement. **[*3]** Rapids also alleged that LaMere used this confidential information in his new job with Horizon to directly compete with Rapids in the foodservice equipment sales business in the greater Twin Cities metro area.

Shortly after filing suit, Rapids moved for a temporary

restraining order against LaMere and Horizon, seeking compliance with the agreement. The district court treated the motion as one for a temporary injunction and held a hearing. At the hearing, Rapids limited the scope of its requested temporary injunction, seeking to preclude LaMere from competing in the "Twin Cities seven-county metropolitan area only, rather than the full scope outlined in the agreement itself." The district court granted the motion, enjoining LaMere from "working in the field of restaurant equipment and supply sales in the seven-county metropolitan area of the Twin Cities region." The district court also ordered that the injunction would "remain in effect until further order or until completion of a trial on the merits." LaMere appeals.

DECISION

HN1[↑] "A temporary injunction is an extraordinary equitable remedy that preserves the status quo pending a trial on the merits." *Cent. Lakes Educ. Ass'n v. Indep. Sch. Dist. No. 743, Sauk Ctr., 411 N.W.2d 875, 878 (Minn. App. 1987)*, *review denied* (Minn. Nov. 13, 1987). **[*4]** The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for an abuse of that discretion. *Carl Bolander & Sons Co. v. City of Minneapolis, 502 N.W.2d 203, 209 (Minn. 1993)*. A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous. *LaValle v. Kulkay, 277 N.W.2d 400, 402 (Minn. 1979)*.

HN2[↑] "A party seeking an injunction must first establish that the legal remedy is inadequate and that the injunction is necessary to prevent great and irreparable injury." *City of Mounds View v. Metro. Airports Comm'n, 590 N.W.2d 355, 357 (Minn. App. 1999)*. Once a party has established irreparable harm, the district court must consider five factors before issuing an injunction to prevent injury. *Id. at 357-58*. These factors include: (1) the relationship of the parties; (2) the relative harm to the parties if the injunction is or is not granted; (3) the likelihood of success on the merits; (4) public policies expressed in statutes; and (5) the administrative burdens in supervising and enforcing the decree. *Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)*. LaMere challenges the district court's findings with respect to (a) the threshold issue of irreparable harm, and (b) the third *Dahlberg* factor, Rapids's likelihood of success on the merits.

I. Irreparable harm

HN3[↑] "An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened **[*5]** injury must be real and substantial." *Hollenkamp v. Peters, 358 N.W.2d 108, 111-12 (Minn. App. 1984)* (quoting *AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504, 110 N.W.2d 348, 351 (1961)*). To be granted an injunction, the moving party must offer more than a "mere statement that it is suffering or will suffer irreparable injury." *Carl Bolander & Sons, 502 N.W.2d at 209*. Money damages are generally not independently sufficient to provide a basis for injunctive relief. *Miller v. Foley, 317 N.W.2d 710, 713 (Minn. 1982)*. Failure to show irreparable harm is, by itself, a sufficient ground for denying a temporary injunction. *Morse v. City of Waterville, 458 N.W.2d 728, 729 (Minn. App. 1990)*, *review denied* (Minn. Sept. 28, 1990).

The district court found that, "[w]hile money damages may be a potential avenue of recompense for ongoing violations, the Court recognizes the importance of relationships in th[e] highly competitive [foodservice] industry." The district court concluded that, "[t]o the exten[t] goodwill is built by relationships and prior transactions, allowing . . . LaMere to compete directly with [Rapids] in the same market with the same customers creates a strong inference of irreparable harm as recognized in *Webb Publ'g Co. v. Fosshage, 426 N.W.2d 445, 448 (Minn. App. 1988)*."

LaMere argues that the district court's conclusion that Rapids demonstrated the existence of irreparable harm is clearly erroneous because it was "based solely on generalized assertions of hypothetical future injury." We disagree. This court has stated:

> ***HN4***[↑] Irreparable injury can be inferred **[*6]** from the breach of a restrictive covenant if the former employee came into contact with the employer's customers in a way which obtains a personal hold on the good will of the business. . . . However, the inference may be rebutted by evidence that the former employee has no hold on the good will of the business or its clientele.

Fosshage, 426 N.W.2d at 448 (citations omitted).

Here, Joseph A. Schmitt, the CEO of Rapids, testified in his affidavit that in LaMere's three years at Rapids, his sales numbers were "approximately 40% to 50% of [the] Twin Cities branch contract sales." Schmitt also testified

that LaMere "was the second highest grossing salesperson company wide," and that LaMere had "developed significant relationships with [Rapids's] customers [who] know him as the face of [the] company." Schmitt's testimony indicates that LaMere had established good will with a substantial number of Rapids's customers. And, as the district court found, a loss of this good will by LaMere's leaving Rapids is extremely difficult to measure.

Moreover, the record reflects that Horizon directly competes with Rapids. And that over the last few weeks of his employment with Rapids, LaMere accessed a list of restaurants, bars, **[*7]** and other target accounts, and viewed, downloaded, or printed this information. In fact, even if LaMere did not misappropriate confidential information from Rapids's customer database, there is still support for the district court's decision to grant the injunction because LaMere had access and knowledge of specific information regarding (1) Rapids's clients' needs and preferences and (2) rates charged for services. *See* Medtronic, Inc. v. Advanced Bionics Corp., 630 N.W.2d 438, 453 (Minn. App. 2001) (recognizing that, even if the employee did not confiscate internal company documents, "the knowledge he gained while working with Medtronic's customers gives him insight into customer preferences"). Furthermore, Rapids provided evidence that on the day he began working for Horizon LaMere emailed his cousin, a sales manager at Horizon, "with a sales order to place for a Rapids's customer that . . . LaMere recently serviced." Although not overwhelming, evidence of LaMere's access to Rapids's confidential information and his apparent attempt to share at least some of this information with Horizon, along with his success with Rapids and his prominence in the industry, is enough to support an inference of irreparable harm. *See* id. at 452 (inferring irreparable harm when the former **[*8]** employee came into contact with the employer's customers in a way in which he "obtains a personal hold on the good will of the business" (quotation omitted)); *see also* Creative Commc'ns Consultants, Inc. v. Gaylord, 403 N.W.2d 654, 657 (Minn. App. 1987) (finding irreparable harm based, in part, on former employee's threatened disclosure of confidential information). Therefore, the district court's determination that Rapids demonstrated the existence of irreparable harm is not clearly erroneous.

II. Likelihood of Success on the Merits

LaMere also challenges the district court's conclusion that Rapids is likely to succeed on the merits of its non-compete claim. Although each of the five factors articulated in *Dahlberg* is important, this court has stated that ***HN5***[↑] the probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction. Minneapolis Fed'n of Teachers Local 59 v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied* (Minn. Mar. 31, 1994). Even if a party makes a strong showing of irreparable harm, a district court need not grant a temporary injunction where that party has demonstrated no likelihood of success on the merits. Sanborn Mfg. Co. v. Currie, 500 N.W.2d 161, 164-65 (Minn. App. 1993).

HN6[↑] This court "look[s] upon restrictive covenants with disfavor, carefully scrutinizing them because they are agreements in partial restraint of trade." National Recruiters, Inc. v. Cashman, 323 N.W.2d 736, 740 (Minn. 1982). In order to be enforceable, **[*9]** non-compete agreements must be reasonable and supported by consideration. *See* Davies & Davies Agency, Inc. v. Davies, 298 N.W.2d 127, 131 (Minn. 1980) (discussing policy reasons for these elements). The test of reasonableness is

> whether or not the restraint is necessary for protection of the business or good will of the employer, and if so, whether the stipulation has imposed upon the employee any greater restraint than is reasonably necessary to protect the employer's business, regard being had to the nature and character of the employment, the time for which the restriction is imposed, and the territorial extent of the locality to which the prohibition extends.

Softchoice, Inc. v. Schmidt, 763 N.W.2d 660, 667 (Minn. App. 2009) (quoting Bennett v. Storz Broadcasting Co., 270 Minn. 525, 534, 134 N.W.2d 892, 899 (1965)).

LaMere argues that the "district court failed to engage in any form of analysis of the non-compete agreement." He claims that an analysis of the agreement would demonstrate that it is "unreasonable, both in lack of reference to pre-existing customers, the consideration and its temporal and geographic scope." Thus, LaMere contends that the district court abused its discretion by concluding that Rapids was likely to succeed on the merits.

We disagree. LaMere's argument focuses on the district court's failure to analyze the reasonableness of the agreement with respect to temporal and

geographic **[*10]** scope. But a review of the complaint reveals that in addition to alleging that "LaMere breached the Agreement by accepting employment with one of [Rapids's] competitors," the complaint alleged that "LaMere breached the Agreement by using and disclosing [Rapids's] confidential information." And in concluding that Rapids was "likely" to "prevail on the merits of at least some of its claims," the district court found that Rapids demonstrated by affidavit that "LaMere forwarded potential Confidential Information in an e-mail to another Defendant Horizon employee . . . on the day after he resigned that was a clear attempt to elicit a sale from a current or potential customer of Rapids in the Twin Cities." The district court also found that the "fact that that effort may not have resulted in a sale by Defendant Horizon to that customer does not reduce the magnitude of the alleged breach of . . . LaMere's non-compete requirements." LaMere does not challenge the reasonableness of the confidentiality provision. Therefore, because the district court based its analysis of the third *Dahlberg* factor, at least in part, on LaMere's alleged disclosure of confidential information in violation of the **[*11]** agreement's prohibition of such conduct, and because LaMere does not challenge the reasonableness of the confidentiality provision, the district court's failure to analyze the reasonableness of the agreement with respect to temporal or geographic scope is not dispositive of the issue.

LaMere argues that an analysis of the reasonableness of the agreement is necessary because if the agreement "were deemed invalid as an unreasonable restriction on trade," his alleged disclosure of confidential information "would be a non-issue." But LaMere's argument assumes a determination that the agreement was unreasonable in temporal and geographic scope would void the entire agreement. Such a conclusion is unlikely because ***HN7***[↑] agreements protecting confidential information are reasonably necessary to protect legitimate business interests. *See Medtronic, 630 N.W.2d at 456* (stating that restrictive covenants are enforced to the extent reasonably necessary to protect legitimate business interests, which include the "company's good will, trade secrets, and confidential information"). In fact, Rapids invited the district court to blue-pencil the agreement to ensure its reasonableness.[1] And although the district court apparently determined **[*12]** that it was unnecessary to blue-pencil the agreement, it would have that discretion on remand. *See Dynamic Air, 502 N.W.2d at 800* (reminding the district court on remand that it has "the discretion to 'blue pencil' a covenant"). Thus, it is unlikely that a determination that the agreement is unreasonable in temporal or geographic scope would void the entire agreement.

Finally, LaMere argues that his "mere *access* to Confidential Information during his employment falls well short of proving extraordinary circumstances warranting injunctive relief." But LaMere's attempts to downplay his alleged conduct are without merit. As the district court found "LaMere forwarded potential Confidential Information in an email to another . . . Horizon employee" in an attempt to elicit a sale from a current or potential customer of Rapids in the Twin Cities Metro area. The district court's findings are supported by the record and reflect a breach of the agreement. In light of this apparent breach of the agreement, the district court finding that Rapids would **[*13]** likely succeed on the merits is not clearly erroneous. Accordingly, the district court did not abuse its discretion by granting Rapids's request for a temporary injunction.

Affirmed.

End of Document

[1] ***HN8***[↑] Under the blue-pencil doctrine, a district court that finds a noncompetition provision unreasonable as written may modify the provision "to render it reasonable and enforceable." *Dynamic Air, Inc. v. Bloch, 502 N.W.2d 796, 800 (Minn. App. 1993)*.

Emerge Cmty. Dev. v. Minn. Dep't of Empl. & Econ. Dev.

Court of Appeals of Minnesota

December 3, 2018, Filed

A18-0555

Reporter
2018 Minn. App. Unpub. LEXIS 999 *; 2018 WL 6273106

EMERGE Community Development, Respondent, vs. Minnesota Department of Employment and Economic Development, et al., Appellants.

Notice: THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: **[*1]** Ramsey County District Court File No. 62-CV-18-1256.

Disposition: Affirmed in part, reversed in part, and remanded.

Core Terms

district court, writ of mandamus, injunctive relief, argues, funds, monitoring, merits, factors, grantee, parties, temporary injunction, compliance, suspension, temporary, appropriated, contractual, injunction, contends, succeed, notice

Case Summary

Overview

HOLDINGS: [1]-Trial court did not abuse its discretion in denying a grantee's request for a temporary injunction enjoining a state agency from suspending grant funding. The trial court did not abuse its discretion in determining that the essence of the relationship between the parties was a contractual one in light of *Minn. Stat. § 16B.97, subd. 1*, and the grantee's argument that it should receive the funds regardless of the language of the grant contract was inconsistent with its complaint alleging a valid contract; [2]-Trial court abused its discretion in granting the writ of mandamus under *Minn. Stat. § 586.01* because there were factual disputes as to whether the agency acted in good faith and whether its suspension of the grant was proper, so issuance of a writ of mandamus deprived the agency of its jury-trial right under *Minn. Stat. § 586.12*.

Outcome
Judgment affirmed in part and reversed in part. Case remanded.

LexisNexis® Headnotes

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN1[⬇] **Injunctions, Preliminary & Temporary Injunctions**

A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo in a case until adjudication on the merits. The Minnesota Supreme Court has laid out five factors to be considered by a district court when determining whether a temporary injunction is appropriate. The factors under Dahlberg Bros., Inc. v. Ford Motor Co. consist of: (1) the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief; (2) the harm to be suffered by the plaintiff if a temporary restraint is denied as compared to that inflicted on the defendant if the injunction issues pending trial; (3) the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief; (4) the aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and (5) the administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

HN2 **Standards of Review, Abuse of Discretion**

A district court has broad discretion to grant or deny a temporary injunction, and appellate courts will reverse only for abuse of that discretion. Appellate courts will not disturb a district court's findings regarding entitlement to injunctive relief unless they are clearly erroneous. On review, appellate courts view the facts in the light most favorable to the party that prevailed at the district court level.

Governments > State & Territorial Governments > Finance

HN3 **State & Territorial Governments, Finance**

Once a grant has been designated by the legislature, a grantor and granting agency are statutorily required to enter into a grant agreement, which is a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the recipient to support a public purpose authorized by law. *Minn. Stat. § 16B.97, subd. 1* (2016). The state is not bound by the grant in the absence of a valid grant agreement, which requires compliance with statutory requirements. *Minn. Stat. § 16B.98, subd. 5(a)-(e)* (2016).

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Likelihood of Success

HN4 **Grounds for Injunctions, Likelihood of Success**

One of the factors a district court must consider in deciding whether to afford injunctive relief is the likelihood that one party or the other will prevail on the merits when the fact situation is viewed in the light of established precedents fixing the limits of equitable relief.

Governments > State & Territorial Governments > Finance

HN5 **State & Territorial Governments, Finance**

Minn. Stat. §§ 16B.97-16B.98 (2016) requires a grant agreement before a grantee receives funds and provides statutory requirements concerning the creation and validity of grant agreements.

Civil Procedure > Appeals > Standards of Review > Prejudicial Errors

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN6 **Standards of Review, Prejudicial Errors**

An assignment of error based on mere assertion and not supported by authority is forfeited unless prejudicial error is obvious on mere inspection.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN7 **Right to Jury Trial, Actions in Equity**

A writ of mandamus is an extraordinary remedy based on equitable principles, awarded at the district court's discretion. A district court may issue a writ of mandamus to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office. *Minn. Stat. § 586.01* (2016). To obtain a writ of mandamus, a petitioner must demonstrate: (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy. If the mandamus proceeding involves disputed issues of fact, either party shall be entitled to have any issue of fact tried by a jury, as in a civil action. *Minn. Stat. § 586.12* (2016). A district court may proceed without a trial when material facts are substantially undisputed. When a district court's decision on a writ of mandamus is based solely on legal determinations, appellate courts review that decision de novo.

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For Minnesota Department of Employment and Economic Development and Shawntera Hardy, Appellants: Lori Swanson, Attorney General, Steven Forrest, Megan McKenzie, Assistant Attorneys General, St. Paul, Minnesota.

Judges: Considered and decided by Rodenberg, Presiding Judge; Bratvold, Judge; and Stauber, Judge.*.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to *Minn. Const. art. VI, § 10*.

Opinion by: RODENBERG

Opinion

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Department of Employment and Economic Development (DEED) challenges the district court's grant of a writ of mandamus that requires DEED to issue grant-fund reimbursements to respondent EMERGE Community Development (EMERGE). DEED asserts that the writ (1) is unauthorized because EMERGE has an adequate remedy at law; (2) unlawfully controls DEED's discretion; and (3) is procedurally and factually defective. By notice of related appeal, EMERGE challenges the district court's order denying its request for temporary injunctive relief.[1] We reverse and remand the district court's **[*2]** grant of a writ of mandamus, but affirm its denial of injunctive relief to EMERGE.

FACTS

In 2016, the Minnesota State Legislature appropriated $35 million for services to address economic and employment inequality in Minnesota. 2016 Minn. Laws ch. 189, art. 12, § 2. It allocated $34.25 million to DEED, of which

> $4,250,000 in fiscal year 2017 is for a grant to EMERGE Community Development, in collaboration with community partners, for services targeting Minnesota communities with the highest concentrations of African and African-American joblessness, based on the most recent census tract data, to provide employment readiness training, credentialed training placement, job placement and retention services, supportive services for hard-to-

[1] The parties and the district court referred to the relief sought as injunctive relief, an injunction, and a temporary restraining order. We use the terms injunctive relief and injunction in this opinion because the district court denied such relief after a hearing on notice to all parties. *See Minn. R. Civ. P. 65.02(a)* ("No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party."); *cf. Minn. R. Civ. P. 65.01*.

> employ individuals, and a general education development fast track and adult diploma program. For fiscal year 2018 and thereafter, the base amount is $1,000,000 per year.

Id., subd. 2(e).

On June 20, 2016, DEED and EMERGE entered into a master grant contract. In relevant part, the master grant contract provides:

> 5 Conditions of Payment
>
> All services provided by [EMERGE] under this grant contract must be performed to [DEED's] satisfaction, as determined at **[*3]** the sole discretion of [DEED's] Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. [EMERGE] will not receive payment for work found by [DEED] to be unsatisfactory or performed in violation of federal, state, or local law.
>
> . . . .
>
> 19 Grantee Reports
>
> [EMERGE] agrees to provide [DEED] with such progress reports, including, but not limited to, the following:
>
> 19.1 Expenditure and program income including any profit earned must be reported on an accrual basis.
>
> 19.2 Monthly Financial Status Repairs (FSRs) by the 20th of each month reporting expenditures for the previous month.
>
> 19.3 Use of the Management Information System (as described in 27 below).
>
> . . . .
>
> [DEED] shall withhold funding if reporting requirements are not met in a complete, accurate and timely manner.

EMERGE submitted a Project Specific Plan to DEED under the master grant contract. It detailed the designated uses of the funds and identified the nonprofit entities with which EMERGE planned to enter into subgrant contracts. EMERGE then entered into subgrantee contracts with other nonprofit community organizations.

In July 2017, DEED sent C.N., a compliance **[*4]** monitor who had monitored other EMERGE grants, to conduct a monitoring visit. C.N. noted that "this was the most concerned I had ever been regarding a grantee's lack of compliance with contractual obligations and inability to substantiate financial submissions." C.N. immediately contacted her superiors and, due to "the scale of the numerous programmatic and financial concerns," wrote a monitoring report rather than a corrective action report.[2] DEED attempted to obtain further information and documentation from EMERGE.

On September 1, 2017, DEED informed EMERGE that DEED had identified multiple "operational, financial, and programmatic issues that are in violation of the general terms and conditions" of the master grant contract. Due to the violations and EMERGE's alleged failure to provide required information, DEED informed EMERGE that payments to EMERGE, and all grant-funded programming, would be suspended pending resolution of the identified issues. EMERGE claims that it was informed by DEED that it would be reimbursed for acceptable costs during the suspension; DEED claims that it has consistently stated that it would not pay for any costs incurred during the suspension. EMERGE additionally **[*5]** claims that a letter sent on September 11, 2017, fully responded to all of DEED's concerns.

The parties exchanged correspondence concerning whether EMERGE had adequately addressed DEED's concerns. On October 16, DEED notified EMERGE that DEED was indefinitely suspending the grant and that it had hired a third-party auditor to conduct a thorough financial and compliance review of EMERGE and its subgrantees. The auditor released a Phase I report on November 22, 2017, which "did not find concrete evidence of malfeasance during the period under review, but uncovered issues emblematic of poor internal controls, undisciplined record keeping, poor understanding of adequate expense documentation, and poor understanding of 'allowable' expense under the terms of this grant agreement." DEED informed EMERGE on November 29, 2017, that DEED would conduct a "Phase II review" to examine all reported expenses under the grant.

EMERGE claimed that it sent all requested documents for the Phase II review to DEED on February 12, 2018. On February 27, 2018, in response to EMERGE's complaints that DEED was slow-walking the Phase II

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[2] C.N. signed an affidavit stating that DEED's corrective action reports are issued when a "grantee continues to be out of compliance with federal, state and/or local laws and policies and/or legislative or contractual obligations." A corrective action report "outlines the steps the grantee must take to remain in compliance with the contract." It appears to us that a monitoring report summarizes the monitor's review of the grant, grantee, performance measurements, and areas of concern.

review, DEED replied that, because it had not received all the necessary information **[*6]** from EMERGE or the subgrantees, it could not move forward with the review. On February 28, 2018, EMERGE sued DEED for declaratory judgment, breach of contract, injunctive relief, and a writ of mandamus. EMERGE moved the district court for injunctive relief and petitioned for a writ of mandamus.

The district court denied EMERGE's motion for an injunction, concluding that the *Dahlberg* factors weighed against such relief. In the same order, the district court granted a writ of mandamus, ordering DEED to

> promptly process and issue appropriate grant fund reimbursements for program expenses made up to the time DEED suspended funding, which includes (a) $233,000 owed EMERGE for activity prior to the initial suspension and (b) $335,000 for September and October of 2017 for activity up to the point where DEED demanded suspension of activities.

DEED moved for reconsideration or, alternatively, for the court to enter judgment on the writ. The district court denied reconsideration and entered judgment on the writ. DEED appealed, and EMERGE filed a notice of related appeal concerning the district court's denial of injunctive relief. The judgment was stayed pending appeal.

DECISION

I. The district court [*7] did not abuse its discretion by denying EMERGE injunctive relief.

By notice of related appeal, EMERGE contends that the district court erroneously denied its request for an injunction enjoining DEED "from their ongoing suspension of grant funding and programming activities." EMERGE argues that "errors of law in [the district court's] analysis infected [its] decisions on three of the five *Dahlberg* factors." Specifically, EMERGE contends that the district court erred as a matter of law regarding the *Dahlberg* factors concerning the nature and background of the relationship between the parties, the likelihood that EMERGE will succeed on the merits, and considerations of public policy.

HN1[↑] A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo in a case until adjudication on the merits. *Miller v. Foley, 317 N.W.2d 710, 712 (Minn. 1982)*. In *Dahlberg*, the Minnesota Supreme Court laid out five factors to be considered by a district court when determining whether a temporary injunction is appropriate. *Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 137 N.W.2d 314, 321-22 (Minn. 1965)*. The *Dahlberg* factors consist of:

> (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
>
> (2) The harm to be suffered **[*8]** by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
>
> (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
>
> (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
>
> (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Id. ***HN2***[↑] "The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion." *U.S. Bank Nat'l Ass'n v. Angeion Corp., 615 N.W.2d 425, 434 (Minn. App. 2000)*, *review denied* (Minn. Oct. 25, 2000). We will not disturb a district court's findings regarding entitlement to injunctive relief unless they are clearly erroneous. *Haley v. Forcelle, 669 N.W.2d 48, 55 (Minn. App. 2003)*, *review denied* (Minn. Nov. 25, 2003). On review, we view the facts in the light most favorable to the party that prevailed at the district court level. *Bud Johnson Constr. Co. v. Metro. Transit Comm'n, 272 N.W.2d 31, 33 (Minn. 1978)*.

The district court applied the *Dahlberg* factors and concluded that the factors did not support issuing a temporary injunction.

A. Nature and Background of the Parties

EMERGE first **[*9]** contends that the district court incorrectly analyzed the relationship between the parties. In its order denying injunctive relief, the district court found that EMERGE and DEED were "in a grantor-grantee relationship, which is governed by a contract" and that "their relationship and expectations

are clearly set out in the contract." The court also found that "EMERGE had been awarded similar grants in the past, and had worked with the same grant monitor."

EMERGE argues that, in this situation, the "Minnesota Legislature is the grantor; DEED is the Legislature's fiscal agent; EMERGE is the grantee." It argues that the district court erred by focusing on the contract between DEED and EMERGE. Instead, EMERGE argues, the district court should have focused on the relationship between the legislature and EMERGE. EMERGE argues that, because "EMERGE's claims . . . were based on DEED's overstepping the bounds of its legislatively granted authority, the [district] court should not have deferred to DEED's form contract over the letter [of the law] and intent of the Minnesota Legislature."

For the grant at issue, 2016 Minn. Laws ch. 189, art. 12, § 1, titled "Appropriations," states that "[t]he sums **[*10]** shown . . . are appropriated to the agencies and for the purposes specified in this article." 2016 Minn. Laws ch. 189, art. 12, § 1. Under 2016 Minn. Laws ch. 189, art. 12, § 2, titled "Department of Employment and Economic Development," the funds were appropriated to DEED. *Id.*, § 2. DEED was directed to disburse $4.25 million to EMERGE and its community partners for job training, placement, and education services targeting African and African American communities with high rates of joblessness. *Id.*, subd. 2(e).

HN3[↑] Once a grant has been designated by the legislature, a grantor and granting agency are statutorily required to enter into a grant agreement, which is "a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the recipient to support a public purpose authorized by law." *Minn. Stat. § 16B.97, subd. 1* (2016). The "state is not bound by the grant" in the absence of a valid grant agreement, which requires compliance with statutory requirements. *Minn. Stat. § 16B.98, subd. 5(a)-(e)* (2016).

Despite EMERGE's argument that the district court incorrectly found that EMERGE and DEED's relationship was governed by contract, EMERGE **[*11]** sued DEED for breach of contract. The district court did not abuse its discretion in determining that the essence of the relationship between the parties is a contractual one, and its consideration that the nature of the parties' relationship does not favor granting a temporary injunction is not clearly erroneous.

B. Likelihood of Success on the Merits

EMERGE argues that the district court incorrectly determined that EMERGE made a doubtful showing of success on the merits. EMERGE argues that it is likely to succeed because of "the clear provisions of the Legislative grant" and the absence of any indication that EMERGE committed fraud with grant funds.

HN4[↑] One of the factors a district court must consider in deciding whether to afford injunctive relief is "[t]he likelihood that one party or the other will prevail on the merits when the fact situation is viewed in the light of established precedents fixing the limits of equitable relief." *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship, 638 N.W.2d 214, 221 (Minn. App. 2002), review denied* (Minn. Feb. 4, 2002). Here, the district court noted that "it is not clear whether DEED has acted in good faith in how it has handled reviewing and monitoring EMERGE's finances." This disputed issue is central to EMERGE's breach-of-contract **[*12]** claim and remains for trial. The district court also concluded that "it is clear from the grant contract language that DEED was required to suspend funds upon its determination that EMERGE was not performing its contractual duties, and that DEED's authorized representative had sole discretion to make that determination." Because of that contractual language, the district court stated that it "cannot say that EMERGE is likely to succeed on the merits."

EMERGE argues that the district court should have relied on legislative intent and the absence of any criminal misfeasance to determine whether EMERGE could eventually succeed on the merits. EMERGE seems to be arguing that it should receive the funds appropriated by the legislature regardless of the language of the grant contract that it was required by statute to sign and fulfill. *See* ***HN5***[↑] *Minn. Stat. §§ 16B.97-.98* (2016) (requiring a grant agreement before a grantee receives funds and providing statutory requirements concerning the creation and validity of grant agreements). This is inconsistent with EMERGE's complaint alleging a valid contract between EMERGE and DEED.

The district court concluded that EMERGE had not demonstrated a likelihood that it will ultimately **[*13]** succeed on the merits, because the grant contract gave DEED broad discretion in administering the contract and issues concerning DEED's breach-of-contract claims remain for trial. We see no clear error in that conclusion.

C. Public Policy Considerations

Finally, EMERGE argues that the district court improperly evaluated the public policy interests when it denied injunctive relief. The district court observed that the public interest was weighted evenly between EMERGE's interest in receiving grant money "that was specifically designated to it by the Minnesota Legislature in order to effectuate its purpose under that grant" and DEED's interest in ensuring that "taxpayer funds are being used responsibly." EMERGE cites no caselaw in support of its argument that the district court improperly evaluated the public policy interests. ***HN6***[↑] An assignment of error based on "mere assertion" and not supported by authority is forfeited unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co., 290 Minn. 518, 187 N.W.2d 133, 135 (Minn. 1971)*. In the absence of a properly briefed argument and clear error, we cannot say that the district court clearly erred in its determination that public policy considerations did not favor the grant of temporary injunctive **[*14]** relief.[3]

The district court acted within its discretion when it denied EMERGE's request for temporary injunctive relief.

II. The district court abused its discretion by granting a writ of mandamus.

In its appeal of the district court's grant of a writ of mandamus, DEED raises several grounds on which it argues that the district court's grant of mandamus was improper. DEED contends that it was improper for the district court to issue a writ of mandamus "upon a motion with disputed facts and in the absence of a jury trial." Because we conclude that this issue is dispositive, we do not address DEED's other arguments.[4]

HN7[↑] A writ of mandamus is an extraordinary remedy based on equitable principles, awarded at the district court's discretion. *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen, 663 N.W.2d 559, 562 (Minn. App. 2003), review denied* (Minn. Aug. 5, 2003). A district court may issue a writ of mandamus "to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office." *Minn. Stat. § 586.01* (2016). To obtain a writ of mandamus "[a] petitioner must demonstrate: (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific **[*15]** legal remedy." *Coyle v. City of Delano, 526 N.W.2d 205, 207 (Minn. App. 1995)*. If the mandamus proceeding involves disputed issues of fact, "[e]ither party shall be entitled to have any issue of fact tried by a jury, as in a civil action." *Minn. Stat. § 586.12* (2016). A district court may proceed without a trial when material facts are substantially undisputed. *Coyle*, 526 N.W.2d at 208. When a district court's decision on a writ of mandamus is based solely on legal determinations, appellate courts review that decision de novo. *Breza v. City of Minnetrista, 725 N.W.2d 106, 110 (Minn. 2006)*.

Here, the facts are very much in dispute. DEED denies "that EMERGE had $568,000 in grant expense reimbursements performed to DEED's satisfaction." EMERGE claims it is entitled to continued funding under the legislative grant and contends that the "record contains no suggestion, much less actual evidence that EMERGE . . . [was not performing its] duties under the legislative grant." The district court accurately identified these factual disputes, including that "it is not clear whether DEED has acted in good faith in how it has handled reviewing and monitoring EMERGE's finances." Whether or not DEED acted in good faith is a disputed factual question, and one that implicates the pending breach-of-contract claim. Whether DEED's suspension of the grant was proper is **[*16]** very much in dispute.

By issuing a writ of mandamus in this circumstance, the district court deprived DEED of its jury-trial right under *Minn. Stat. § 586.12*. It remains to be seen how these factual disputes will be resolved, but those disputes cannot properly be resolved by the summary issuance of a peremptory writ of mandamus. Therefore, we reverse the district court's grant of a writ of mandamus and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.

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[3] We also observe that the district court's consideration of DEED's responsibility to ensure proper use of taxpayer funds is a perfectly reasonable one.

[4] DEED also argues that the writ of mandamus was improperly granted because EMERGE has an adequate remedy at law through its breach-of-contract claim and because the writ of mandamus improperly interferes with DEED's discretion under the master grant contract to determine whether to make payments. Because we conclude the district court improperly issued the writ of mandamus despite unresolved issues of disputed fact, we do not address DEED's remaining arguments.

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