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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2286**

Stephanie A. Boldt,  
Respondent,

vs.

Margaret Burns,  
Appellant,

Professional Administration Corporation, et al.,  
nominal defendants, Appellants,

and

Stephanie A. Boldt, individually and on behalf of  
Professional Administration Corporation and Professional Administration, LLC,  
Respondent,

vs.

Mahoney & Hagberg, a Professional Association,  
n/k/a Mahoney & Emerson, a Professional Association, et al.,  
Appellants.

**Filed December 16, 2008**

**Affirmed; motion denied**

**Minge, Judge**

Hon. Thomas W. Wexler

Hennepin County District Court

File No. 27-CV-04-016164, 27-CV-04-017027, 27-CV-03-016797

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Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Johnson, Judge.

## UNPUBLISHED OPINION

MINGE, Judge

Appellants challenge a temporary restraining order in favor of respondent, arguing that (1) the temporary restraining order violates their right to receive advice from their attorney; (2) the order violates the Supremacy Clause of the United States Constitution and an automatic stay from a bankruptcy proceeding; and (3) the district court improperly applied the *Dahlberg* factors. Appellants also moved to strike most of respondent's statement of facts in her brief on the ground that it lacks supporting citations to the record. We affirm; motion denied.

## FACTS

Respondent Stephanie Boldt alleges that she and appellant Margaret Burns were equal owners of appellant Professional Administration Corporation (PAC), which was incorporated in 1994, and that they agreed to equally split PAC's profits. Under a 1997 contract, PAC agreed to provide office support to the law firm Mahoney & Hagberg (M&H) in return for M&H paying PAC a monthly management fee equal to twenty-five percent (25%) of revenues. Respondent is the daughter of M&H partner Steven Hagberg, and appellant is the daughter of partner Michael Mahoney. A factual dispute exists regarding whether Mahoney drafted the contract and knew of the management-fee clause.

In 2000, PAC failed to file its annual registration and was dissolved by the Minnesota Secretary of State. In 2001, respondent, Burns, and a third person, formed appellant Professional Administration L.L.C. (PAL). Respondent alleges that PAL was treated as a successor entity to PAC, that PAL acquired and used PAC assets, and that PAL retained and utilized PAC employees without hiring them. In 2003, M&H earned significant fees.

In September 2003, respondent initiated an action against PAC and PAL, alleging that she was owed money as an owner of PAC/PAL. In July 2004, respondent filed an amended complaint seeking damages along with declaratory and equitable relief. Later, respondent began a separate action against appellants M&H and Mahoney. In 2005, the cases were consolidated. Respondent claims that PAC/PAL is entitled to a share of the substantial fees earned by M&H in 2003. The district court modified a prior order sealing documents from the litigation that generated the fees to permit disclosure to the extent required in connection with the current case. Mahoney appealed, and this court affirmed. *Boldt v. Burns*, No. A06-642 (Minn. App. Apr. 10, 2007).

In May 2006, appellant Burns hired attorney Alan Maclin to represent her in these proceedings. On July 18, 2007, the district court granted Maclin's motion to withdraw. The district court also concluded that Mahoney would likely be a significant witness in this case and prohibited Mahoney from acting as a lawyer for appellants in this lawsuit. Appellants appealed and this court affirmed. *Boldt v. Burns*, No. A07-1774 (Minn. App. Sept. 23, 2008).

On July 11, 2007, appellants filed paperwork to reinstate PAC as a Minnesota corporation. The next day, appellants caused PAL to file for bankruptcy. On September 11, 2007, respondent filed a motion with the district court to enjoin and restrain appellants from taking any action on behalf of PAC. After a September 26, 2007 hearing, the district court granted the motion enjoining and restraining appellants from taking any action on behalf of PAC pending further order of the court. This appeal follows.

## D E C I S I O N

### I.

Appellants argue that the district court did not have jurisdiction to issue the temporary restraining order (TRO) because the TRO prohibited PAC from receiving legal advice from Mahoney.<sup>1</sup> Appellants also argue that the question of whether Mahoney could provide legal assistance was on appeal to this court and therefore the district court was prohibited from granting a TRO that would interfere with an issue on appeal. This argument is moot as this court recently affirmed the district court decision prohibiting Mahoney from representing any of the appellants in this lawsuit. *Id.*

### II.

Appellants argue that the district court violated the Supremacy Clause of the United States Constitution because the purpose of the TRO is to prohibit PAC from filing for bankruptcy in federal court. This argument mischaracterizes the stated purpose of the

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<sup>1</sup> The restraining order in this proceeding appears to functionally be a temporary injunction. Because the parties and the district court refer to the district court action as a TRO, we do so for consistency with the nomenclature otherwise used within this proceeding.

TRO. In her request for the TRO, respondent states “I am requesting that the Court enjoin and restrain Ms. Burns from taking any further action on behalf of PAC without further order of this Court.” The TRO only prohibits appellants from taking any action on behalf of PAC without court approval. This is not a bar to its filing bankruptcy.

Appellants also argue that the order violates the automatic stay in PAL’s bankruptcy. This argument misstates the nature and effect of the injunction. Appellants are correct in stating that PAL is a party to the overall dispute. PAL and PAC, however, are separate entities, and the injunction has no effect on PAL. Rather, the injunction enjoins and restrains appellants from taking any action on behalf of PAC only. The district court did not violate either the Supremacy Clause or the automatic stay by granting the TRO.

### III.

The remaining issue is whether the district court abused its discretion in granting the TRO. The decision of whether to grant a TRO is left to the discretion of the district court and will not be overturned unless, based upon the whole record, there appears to have been an abuse of that discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993); *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91 (Minn. 1979). We view the facts in the light most favorable to the prevailing party. *Bud Johnson Constr. Co. v. Metro. Transit Comm’n*, 272 N.W.2d 31, 33 (Minn. 1978).

This court considers five factors in determining whether a TRO was properly 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. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220-21 (Minn. App. 2002) (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)), *review denied* (Minn. Feb. 4, 2002). We will refer to these five considerations as the *Dahlberg* factors.

The first *Dahlberg* factor requires the court to consider the nature and relationship of the parties. Appellants argue that the district court changed the status quo by granting the injunction and that the nature and background of the parties favors leaving things as they were. A temporary injunction should be granted to maintain the status quo of the parties until the case can be decided on the merits where the rights of one party will be irreparably injured or where relief sought in the main action will be ineffectual or impossible to grant. *Pickerign v. Pasco Mktg., Inc.*, 303 Minn. 442, 444, 228 N.W.2d 562, 564 (1975). A district court “has the power to shape [injunctive] relief in a manner which protects the basic rights of the parties, even if in some cases it requires disturbing the status quo.” *N. Star State Bank of Roseville v. N. Star Bank Minn.*, 361 N.W.2d 889, 895 (Minn. App. 1985), *review denied* (Minn. Apr. 26, 1985).

Here, the district court found that the dispute centers on who are the rightful shareholders of PAC, what the percentage of ownership is, and whether PAC has the right to recover funds. By granting the TRO, the district court maintained the status quo until the case can be decided on the merits.

The second *Dahlberg* factor requires the court to evaluate and balance the relative harm between the parties. Appellants argue that respondent failed to demonstrate irreparable harm. Because a TRO is an equitable remedy, the party seeking a TRO must demonstrate that there is no adequate legal remedy and that the TRO is necessary to prevent irreparable harm. *Cherne Indus.*, 278 N.W.2d at 92.

The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, 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.

*Miller v. Foley*, 317 N.W.2d 710, 713 (Minn. 1982). In most cases, failure to show irreparable harm is, by itself, a sufficient ground for denying a TRO. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

Irreparable harm is not always susceptible of precise proof. *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). *Haley* held that the district court did not abuse its discretion in finding irreparable harm where a minority shareholder in a closely held corporation was guarantor of company debt and a co-founder, director, officer, and employee of the corporation, and the majority shareholder removed him from the board of directors and terminated his employment in an effort to force him to sell his shares. *Id.* at 57-58.

Respondent was a co-founder, director, officer, and employee of PAC, a closely held corporation. Respondent lost the ability to manage and watch over the corporation

that she helped found and co-owned. Like many complex and protracted suits, determining damage remedies can be complicated, and determining the quality of harm can be difficult. This protracted litigation has involved allegations of impropriety, bankruptcy filings, and multiple motions and appeals that have delayed a decision on the merits. We conclude that appellants' operation or management of what was otherwise a defunct corporation in the context of incessant litigation and the resulting complexities create a material risk that further activity will lead to a situation that will be virtually impossible to unravel or that the amount of damages would defy calculation, and as in *Haley*, this constitutes irreparable harm. Although the district court found that respondent is suffering *substantial* harm, because we have concluded that respondent will suffer *irreparable* harm if the TRO is not granted, any district court error in terminology is harmless.

We further recognize that *Dahlberg* requires that the harm to the parties must be weighed and balanced. 272 Minn. at 275, 137 N.W.2d at 321-22. The harm to appellants appears to be the right to manage and operate PAC as appellants see fit and benefit from contractual rights and litigation proceeds. Minnesota courts are generally reluctant to interfere with corporate decision-making. *Haley*, 669 N.W.2d at 58. Here, harm to appellants is outweighed by the harm to respondent. The record demonstrates that respondent will suffer irreparable harm if the injunction is not granted, and a balancing of the harms weighs in favor of the respondent.

The third *Dahlberg* factor requires that the district court consider the likelihood of success on the merits. Appellants argue that respondent is not likely to succeed on the

merits. The district court found that it was likely that respondent will be entitled to relief based, in part, on appellants' reluctance to address the merits of the case. The district court also noted that there is a dispute between the parties as to whether respondent has been properly removed from PAC and appellants have not provided any documents signed by respondent that authorized her removal. Here the district court properly weighed the likelihood of success on the merits and granted the TRO in favor of respondent.

The fourth *Dahlberg* factor requires the district court to consider the public policy considerations. The record does not support a strong public policy interest in granting or denying respondent's motion. The district court, however, did find that the court has an interest in bringing these consolidated cases to trial on the merits because they are among the oldest in Hennepin County. The district court properly weighed the public interest, finding that it did not favor any party.

The fifth *Dahlberg* factor requires the district court to consider administrative burdens that would result from judicial supervision and enforcement. As the district court correctly noted because ongoing supervision would not be necessary, this factor weighs in favor of granting the TRO.

We conclude that the district court did not abuse its discretion in issuing the TRO. The district court reasonably concluded that (1) the TRO was necessary to maintain the status quo; (2) respondent has a probability of success on the merits; and (3) none of the *Dahlberg* factors favored appellants. Because irreparable harm is supported by the record, appellants' argument fails.

#### IV.

Appellants filed a motion to strike portions of respondent's brief because the challenged portions of respondent's brief contain statements of fact without citations to specific pages of the record. A statement "of a material fact shall be accompanied by a reference to the record." Minn. R. Civ. App. P. 128.02, subd. 1(c). Whenever a brief refers to any part of the record, the reference shall include the specific pages of the appendix or the record where the fact is found. Minn. R. Civ. App. P. 128.03. "Failure to cite to the record is a violation of Minn. R. Civ. App. P. 128.03." *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999), *review denied* (Minn. Nov. 17, 1999). A "flagrant violation" of the rule requiring citations to the record may lead to nonconsideration of an issue or dismissal of the appeal. *Id.* (citing *State ex rel. Barrett v. Korbel*, 300 Minn. 563, 563, 221 N.W.2d 125, 125 (1974), and *Schoepke v. Alexander Smith & Sons Carpet Co.*, 209 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). However, this court has declined to strike portions of a brief if the critical facts are supported by documents in the record. *Hecker v. Hecker*, 543 N.W.2d. 678, 681 n.2 (Minn. App. 1996), *aff'd on other grounds*, 568 N.W.2d 705 (Minn. 1997).

We note that some of the challenged assertions contain sufficient citations to the record, thereby complying with Minn. R. Civ. App. P. 128.03. Although appellants are correct that other assertions do not contain citations to the record, our review of the record satisfies us that those assertions are likewise supported by the record. Additionally, respondent is not required to provide citations to the record in support of her analysis of appellants' position and the effect of the district court's order. *Cf* Minn.

R. Civ. App. P. 128.02, subd. 1(c) (only requiring citation to record for *material* statement of fact). Accordingly, we deny appellants' motion to strike.

**Affirmed; motion denied.**

Dated: