STATE OF MINNESOTA
IN COURT OF APPEALS
A09-427

Friedges Drywall, Inc.,
Appellant,

vs.

North Central States Regional Council of Carpenters, a labor organization,
and Phil Askvig,
Respondents.

Filed December 29, 2009
Affirmed in part, reversed in part, and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CV-08-26817

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Burt A. Johnson, North Central States Regional Council of Carpenters, 700 Olive Street, St. Paul, MN 55130; and

Matthew R. Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North RiverCenter Drive, Suite 202, Milwaukee, WI 53212 (for respondents)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Harten, Judge.*

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

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

This is an appeal from the district court's (1) denial of appellant's request for a temporary injunction or restraining order and (2) dismissal of appellant's complaint alleging unfair labor practices and trespass. Because the district court properly concluded that it lacked jurisdiction to address appellant's claims of unfair labor practices, which are preempted by federal law, we affirm the denial of temporary relief and dismissal of appellant's complaint regarding those claims. But because the district court failed to address appellant's trespass claim when dismissing appellant's complaint, we reverse in part and remand.

FACTS

Appellant Friedges Drywall, Inc. (Friedges), a family-owned drywall company, is in a labor dispute with respondent North Central States Regional Council of Carpenters (the union).[1] Since February 2008, the union has been picketing at Friedges's work sites to protest the wages and benefits that Friedges pays its workers, which the union claims are lower than area standards. The union places picketers at various work sites, and the picketers march, carry signs, and conduct chants. The union picketers also conduct ambulatory picketing, following Friedges's trucks to different sites and picketing where they stop.

In October 2008, Friedges initiated a civil action against the union, alleging unfair labor practices under Minn. Stat. §§ 179.11(5), (6), (7), .13 (2008), and trespass.

[1] Respondent Phil Askvig is the union's assistant director.

Friedges's complaint sought temporary and permanent injunctions and damages. Friedges also applied for a temporary restraining order. In answering Friedges's complaint, the union asserted, among other affirmative defenses, that Friedges's claims are preempted by federal law and should be dismissed.

The district court found the union's preemption argument meritorious, particularly in light of the fact that the National Labor Relations Board (NLRB) had previously reviewed and rejected similar claims.[2] The district court concluded that Friedges's claims would be preempted unless a threat to public safety could be demonstrated. After an evidentiary hearing "to determine if jurisdiction exists, and whether issuance of a temporary injunction is proper," the district court found that there was no imminent threat to public safety and no evidence of unfair labor practices. On that basis, the district court concluded that Friedges's complaint was preempted, denied the temporary restraining order and temporary injunction, and dismissed Friedges's complaint. This appeal follows.

D E C I S I O N

I.

We first consider Friedges's argument that the district court erred in denying its request for a temporary injunction. Whether to grant a temporary injunction generally is left to the discretion of the district court, and its decision will not be overturned on review

[2] In March 2008, Friedges filed a claim with the NLRB, claiming that the union had engaged in unfair labor practices prohibited by the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(ii)(A), (B) (2006). The NLRB concluded that there was insufficient evidence of a violation. Friedges apparently did not appeal the decision.

absent a clear abuse of that discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993); *see also Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965) (setting forth five factors to consider in determining whether to grant an injunction). But the district court does not have discretion to grant an injunction when it lacks subject-matter jurisdiction. *See* Minn. R. Civ. P. 12.08(c) (requiring district court to dismiss any action over which it lacks subject-matter jurisdiction); *Witzke v. Mesabi Rehab. Servs., Inc.*, 768 N.W.2d 127, 129 (Minn. App. 2009) (stating that "subject-matter jurisdiction goes to the court's authority to hear the matter at all"). Whether federal law preempts a state court from addressing a claim is a jurisdictional question subject to de novo review. *Williams v. Bd. of Regents*, 763 N.W.2d 646, 651 (Minn. App. 2009); *Gatfield v. Gatfield*, 682 N.W.2d 632, 635 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

To ensure uniform application of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-69 (2008), and prevent a conflict in power between the states and the NLRB, which has exclusive power to implement the NLRA, states are preempted from regulating conduct governed by the NLRA. *Midwest Pipe Insulation, Inc. v. MD Mech., Inc.*, 771 N.W.2d 28, 31-32 (Minn. 2009) (citing *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244, 79 S. Ct. 773, 779 (1959)). As the Supreme Court held in *Garmon*, when an activity is clearly or "arguably" protected by section 7 or prohibited by section 8 of the NLRA, states lack jurisdiction to regulate the activity, even if the NLRB declines to assert or exercise jurisdiction in a particular case. 359 U.S. at 245-46, 79 S. Ct. at 779-80. Thus, state courts may neither enjoin nor award damages for activities

that are at least arguably protected or prohibited by the NLRA. *Id.* at 246-47, 79 S. Ct. at 780-81. However, states may retain the power to intervene in labor disputes if the activity concerned is "merely peripheral" to the federal regulatory scheme, the activity touches interests "deeply rooted in local feeling and responsibility," or invocation of another rule is unlikely to "disserve the interests promoted by the federal labor statutes." *Farmer v. United Bhd. of Carpenters & Joiners of Am.*, 430 U.S. 290, 296-97, 97 S. Ct. 1056, 1061-62 (1977) (quotations omitted).

The district court determined that the union's picketing was subject to the NLRA. Area-standards picketing is at least arguably protected by section 7 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 206 n.42 98 S. Ct. 1745, 1762 n. 42 (1978) (stating that "[a]rea-standards picketing" had "recently been recognized as a § 7 right"); *Int'l Longshoremen's Local 1416, AFL-CIO v. Ariadne Shipping Co.*, 397 U.S. 195, 200-01, 90 S. Ct. 872, 875 (1970) (stating that union's peaceful area-standards picketing "arguably constituted protected activity under [section] 7"); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139, 78 S. Ct. 206, 211-12 (1957) (stating that district court "entered the pre-empted domain of the [NLRB] insofar as it enjoined peaceful picketing"). And the "[c]onsiderations of federal supremacy" underlying *Garmon* preemption "are implicated to a greater extent when labor-related activity is protected than when it is prohibited." *See Sears*, 436 U.S. at 200, 98 S. Ct. at 1759. The district court, therefore, was preempted from exercising jurisdiction to enjoin any aspect of the picketing except those that implicated a deeply rooted local interest.

Courts traditionally have interpreted the *Garmon* local-interests exception as permitting states to intervene in labor disputes to protect their interest in preventing violence and other malicious behavior. *See id.* at 204, 98 S. Ct. at 1761 (observing that the Supreme Court "has held that state jurisdiction to enforce its laws prohibiting violence, defamation, the intentional infliction of emotional distress, or obstruction of access to property is not pre-empted by the NLRA" (footnotes omitted)); *Hennepin Broad. Assocs., Inc. v. Am. Fed'n of Television & Radio Artists*, 301 Minn. 508, 510, 223 N.W.2d 391, 393 (1974) (stating that *Garmon* held that activity arguably protected or prohibited under NLRA is preempted "except where violence or coercive conduct is involved which presents imminent threats to the public order"); *see also Midwest Motor Exp., Inc. v. Int'l Bhd. of Teamsters*, 512 N.W.2d 881, 888 (Minn. 1994) (stating that statute could not be exempted from preemption as addressing local interest because it did not directly address violence). Whether a threat of imminent violence exists is a factual determination for the district court. *See Youngdahl*, 355 U.S. at 138-39, 78 S. Ct. at 211 (reviewing only whether evidence supported trial court's "finding that violence is imminent").

The district court found that Friedges had not demonstrated that the union's picketing was marked by violence or coercion or posed an imminent threat to public order. Friedges challenges this finding, arguing that (1) the district court improperly resolved factual disputes, (2) the finding that the picketing posed no threat of violence was clearly erroneous, and (3) the district court took an overly narrow view of the issue

because the local-interests exception encompasses more than just protecting against violence.

Resolving factual disputes

Friedges argues that the district court erred in resolving factual disputes. We disagree. The district court was statutorily required to conduct an evidentiary hearing and make findings as to whether an injunction was warranted. *See* Minn. Stat. § 179.14 (2008). And when the union raised the issue of preemption, the district court properly conducted an evidentiary hearing to address factual disputes relevant to that issue to determine whether it had jurisdiction. *See Hengel v. Hyatt*, 312 Minn. 317, 318-19, 252 N.W.2d 105, 106 (1977) (acknowledging that district court's decision on jurisdictional issue turned on disputed facts and reviewing finding underlying jurisdictional decision for reasonable basis in evidence). Friedges acknowledges that determining whether there was a threat of violence was the purpose of the evidentiary hearing, and Friedges never objected to the hearing or claimed that it had insufficient time to prepare to address the violence issue. The district court properly resolved this relevant factual dispute in determining whether it had jurisdiction.

Accuracy of findings

Friedges also challenges the district court's finding that there was no threat of violence or coercion and highlights evidence that it contends supports the opposite determination. Our review of the record reveals ample evidentiary support for the district court's finding. *See Youngdahl*, 355 U.S. at 138-39, 78 S. Ct. at 211 (reviewing violence finding for evidentiary support).

The record demonstrates that the union picketed 30 to 40 work sites between February and October 2008, protesting the wages and benefits paid by Friedges. The union picketers conducted chants at all of the sites, and there was testimony that the picketers sometimes yelled vulgarities and made offensive gestures at Friedges employees. Although there were numerous picketers at each picketing site, with an average of 25-30 picketers at each job, picketers responded to direction from local law enforcement and permitted ingress and egress at the work-site entrances. There is no evidence of violence at any of the protests. And while Friedges employees complained of being followed by ambulatory picketers, they did not feel physically threatened or coerced.

In rejecting Friedges's argument that the picketing presented a threat of violence, the district court noted that no citations or complaints regarding the union's picketing had been received or issued by local law enforcement in the four months preceding the November 2008 hearing. The district court also found that the union's "most egregious conduct"—a picketer's placement of a bottle of urine in the bed of a Friedges's employee's truck—had been addressed by the union and law enforcement. The district court also took into account the behavior of Friedges's employees and the construction-site context in finding that the vulgarities and gestures from picketers did not amount to violent or coercive conduct. And the district court specifically acknowledged and distinguished the *Youngdahl* case, on which Friedges relies heavily. The district court's finding that the union's picketing did not present an imminent threat of violence is supported by the record.

Other local interests

Friedges also argues that the district court took an overly narrow view of the issue and that the local-interests exception encompasses more than just threats of violence. Friedges contends that there is a strong local interest in maintaining safe work places, that the substantial danger inherent in construction work was amplified by the volume and proximity of the picketers, and that this safety interest justified the district court's exercise of jurisdiction. This argument fails for lack of legal and evidentiary support. First, Friedges has not supplied any legal authority for the proposition that workplace safety is an exception to preemption, and our independent research has not revealed any such authority. Second, the district court rejected Friedges's argument by crediting testimony that neither the picketers' proximity to the work sites nor the volume of the picketers' chanting interfered with the ability of Friedges's employees to safely conduct their work. Thus, Friedges failed to demonstrate that a state interest in providing or preserving safe workplaces justified the district court exercising jurisdiction.

The district court properly concluded that it lacked jurisdiction to enjoin the union's picketing activities because they are arguably protected by the NLRA and the union's picketing did not present a threat of violence that took it outside that protection.

II.

Friedges argues that the district court erred in dismissing its complaint. We review de novo the district court's decision to dismiss a claim. *Midwest Pipe Insulation*, 771 N.W.2d at 31. The district court must dismiss an action if it determines that it lacks subject-matter jurisdiction over the dispute. Minn. R. Civ. P. 12.08(c).

Because the district court lacked subject-matter jurisdiction over Friedges's claims under Minn. Stat. §§ 179.11, .13, the district court did not err in dismissing those claims.

However, Friedges also argues that the district court erred in dismissing its trespass claim. This argument has merit. The district court did not indicate any reason for dismissing Friedges's trespass claim, and none is apparent from this record. It is doubtful that preemption was the basis for the district court's decision, because an injunction against trespass likely would not interfere with the protections or prohibitions of the NLRA. *See Sears*, 436 U.S. at 198, 207, 98 S. Ct. at 1758, 1762-63 (holding that trespassory picketing was neither sufficiently protected nor sufficiently prohibited by NLRA so as to deprive state court of jurisdiction to prevent trespassing). Freidges's complaint, although not detailed, provides sufficient notice of a claim that union personnel had trespassed at their work sites. *See Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. App. 2003) (stating that the tort of trespass requires only two essential elements: a rightful possession in the plaintiff and unlawful entry by the defendant), *review denied* (Minn. Aug. 5, 2003). And there is a genuine issue of material fact regarding the sufficiency of Friedges's possessory interest in those work sites to sustain a claim of trespass. Because the district court erroneously dismissed Friedges's trespass claim without any explanation, we reverse the district court's dismissal of that claim and remand it to the district court.

Affirmed in part, reversed in part, and remanded.