STATE OF MINNESOTA
IN COURT OF APPEALS
A10-940

Walker Properties of Woodbury II, LLC,
Respondent,

vs.

City of Woodbury,
Appellant.

Filed December 21, 2010
Reversed and remanded
Halbrooks, Judge

Washington County District Court
File No. 82-C2-07-000377

David T. Magnuson, Magnuson Law Firm, Stillwater, Minnesota (for respondent)

James G. Golembeck, Susan Steffen Tice, Jardine, Logan & O'Brien, P.L.L.P., Lake Elmo, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Connolly, Judge.

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

HALBROOKS, Judge

Appellant City of Woodbury challenges the district court's denial of its motion to dissolve a temporary injunction. Because we conclude that the district court's findings

are inadequate to facilitate appellate review and because the district court failed to address all of the city's arguments, we reverse and remand.

FACTS

Respondent Walker Properties of Woodbury II, LLC, owns a seven-acre parcel of land in Woodbury known as Oak View 4th Addition. In October 2005, respondent entered into a Developer's Agreement (the agreement) with the city that allowed respondent to plat 15 single-family lots in accordance with the terms set forth in the agreement. The agreement distinguished between "Plan A Activities," which would be undertaken at respondent's expense, and "Plan B Improvements," which would be constructed by the city at respondent's expense and could be financed through property assessments. The agreement also required respondent to provide the city with two irrevocable letters of credit: the first one for $19,600, which represented 125% of the total estimated cost of Plan A Activities, and the second one for $664,479.08, which represented 125% of the total estimated cost of the Plan B Improvements. The agreement also required respondent to waive its right to challenge the validity of the city's assessments and the procedures used by the city in levying the assessments. The city had the right to draw on the letters of credit in the event that respondent defaulted on the agreement.

Respondent posted the letters of credit required by the agreement, which were issued by Construction Mortgage Investors Company. The final cost for the Plan B Improvements was calculated, and the city served respondent with a "Notice of Assessment" in September 2006. Respondent objected and filed a lawsuit challenging

the assessment. That lawsuit was dismissed in June 2007, based on the waiver clause in the agreement. Respondent then sought release of the letters of credit, arguing that it completed most of the Plan A Activities and that the assessments levied against the property made the letter of credit for the Plan B Improvements unnecessary. The city refused, and respondent filed an action against the city, alleging that the agreement is invalid or, alternatively, that the city breached the agreement by refusing to release the letters of credit.

Because respondent failed to pay the assessments as required by the city's assessment notice, the city sent respondent a notice of default on September 30, 2008. When respondent failed to cure the default within 15 days of the notice, the city sought to avail itself of the remedies provided for in the agreement.

The city notified Construction Mortgage Investors that it intended to draw on the letter of credit posted by respondent. Respondent sought a temporary injunction to enjoin the city from doing so. In January 2009, the district court granted respondent's request for a temporary injunction. The district court determined that a temporary injunction was necessary to preserve the status quo, which was "one that would not allow foreclosure and possibly immediate financial ruin of [respondent]." The district court further concluded that if a temporary injunction was not granted, "foreclosure would be commenced against [respondent] immediately" while the only harm to the city would be delay of payment.

In March 2010, the city moved the district court to dissolve the temporary injunction. The city argued that the circumstances had changed since the imposition of

the temporary injunction because foreclosure proceedings had commenced on one of the lots in Oak View 4th. The city argued alternatively that if the district court declined to dissolve the injunction, the $500 bond posted by respondent was inadequate. The city requested that respondent post a bond in the amount of $987,798.60, which would cover "the existing assessments, interest and penalties, along with estimated final street assessment costs for the curb and gutter and final pavement."

The district court denied the city's motion in April 2010. The district court concluded that because the entire development was not subject to the foreclosure, lifting the injunction and allowing the city to collect on the letters of credit would "lead to a high probability that the entire development would end up in foreclosure." Because the district court was "still interested in preserving the status quo," it denied the city's motion to dissolve the injunction, and did not address the city's arguments with respect to respondent's posted bond. This appeal follows.

D E C I S I O N

A decision on whether to dissolve a temporary injunction "is left to the discretion of the district court and will not be disturbed on appeal absent a clear abuse of that discretion." *Upper Midwest Sales Co. v. Ecolab, Inc.*, 577 N.W.2d 236, 240 (Minn. App. 1998). The district court's findings will not be set aside unless clearly erroneous, and this court views the facts in a light favorable to the prevailing party at the district court. *Id.*

I.

"It is well established that courts have the inherent power to amend, modify, or vacate an injunction where the circumstances have changed and it is just and equitable to

do so." *Jacobson v. Cnty. of Goodhue*, 539 N.W.2d 623, 625 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Jan. 12, 1996). The traditional reasons for modifying or vacating a temporary injunction are changes in the relevant facts or changes in the relevant law. *Id.* at 626 n.3.

The city contends that the district court failed to make adequate findings of fact and conclusions of law in its order denying the city's motion to dissolve the temporary injunction. Minn. R. Civ. P. 52.01 requires the district court to "set forth the findings of fact and conclusions of law which constitute the grounds for its action" in granting or refusing interlocutory injunctions. *See also In re Amitad, Inc.*, 397 N.W.2d 594, 596 (Minn. App. 1986) ("Where the [district] court has broad discretion, the Minnesota Supreme Court has demonstrated persistence in demanding findings to explain the [district] court's exercise of discretion."). Findings are also necessary to aid appellate review in cases where the district court exercises broad discretion. *Crowley Co., Inc. v. Metro. Airports Comm'n*, 394 N.W.2d 542, 545 (Minn. App. 1986).

We are unable to determine from this record whether the district court exercised its discretion appropriately. The district court's order denying the city's motion only notes that one of the lots in Oak View 4th is being foreclosed on and that if the injunction was dissolved, there is a "high probability that the entire development would end up in foreclosure." We cannot discern from the order whether the district court utilized the proper standard in assessing the city's argument. There is no indication in the order as to whether the district court found that one lot in foreclosure was a substantial change in circumstances or whether a balancing of the equities favored or disfavored dissolving the

injunction. Instead, the district court concluded only that the "status quo" was best preserved by denying the motion. But this is not the standard to be utilized when considering a motion to dissolve a temporary injunction. Because we are unable to discern the basis for the district court's decision, we reverse and remand.

II.

The city also argues that the district court's failure to address its argument regarding the posted security by respondent constitutes an abuse of discretion warranting dissolution of the temporary injunction. Minn. R. Civ. P. 65.03(a) states that "[n]o temporary . . . injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper." The amount of security required is within the district court's discretion and may be waived if deemed appropriate. *Bio-Line, Inc. v. Wilfley*, 366 N.W.2d 662, 665 (Minn. App. 1985), *review denied* (Minn. June 27, 1985). But it is an abuse of the district court's discretion to fail to address the security requirement or to waive the requirement without any indication of the grounds for its decision. *Bio-Line, Inc. v. Burman*, 404 N.W.2d 318, 322 (Minn. App. 1987).

It is undisputed that the district court failed to address the city's argument regarding respondent's posted security. On remand, the district court should also consider the city's argument regarding the posted security and make adequate factual findings to support its decision.

Reversed and remanded.