STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0878

Nou Vang,
Appellant,

vs.

Hamline Court, LLC, et al.,
Respondents.

Filed March 3, 2014
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-13-1211

Timothy R. Maher, Guzior Armbrecht Maher, Minneapolis, Minnesota (for appellant)

Daniel R. Kelly, Jacob C. Hendricks, Randi J. Winter, Felhaber, Larson, Fenlon & Vogt, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Kirk, Presiding Judge; Connolly, Judge; and Crippen, 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

CONNOLLY, Judge

Appellant challenges the district court's denial of her motion for a temporary restraining order. We affirm.

FACTS

On November 8, 2006, appellant Nou Vang and respondent Hamline Court LLC, entered into a contract for deed for the sale of an office building to Vang for $700,000. The contract stated that Vang would make three $25,000 lump-sum payments within the first year, with the remaining principal paid over 20 years at an interest rate of eight percent per year. The contract further stated that the monthly payments from Vang to Hamline Court would be $4,911.85. Finally, the contract required Vang to obtain and maintain property casualty insurance on the property listing Hamline Court as a loss-payee.

In 2012, the parties discovered that there had been a mathematical error in calculating the monthly payment on the contract. The monthly payment on $625,000 at eight percent interest should have been $5,193.13, not $4,911.85, a difference of $281.28 per month. Hamline Court sent Vang a bill in December 2012 for $20,252.16 for "past due payments." Thereafter, Vang ceased making all payments to Hamline Court.

On January 15, 2013, Hamline Court notified Vang that it was cancelling the contract for deed for "[f]ailure to pay all or a portion of the monthly installment payments of principal and interest due and payable since November 8, 2006 in the total amount of $30,638.42, plus late fees in the total amount of $2,000.00" and "[f]ailure to maintain

hazard insurance on the . . . property." Vang thereafter filed a complaint with the district court seeking declaratory and injunctive relief, and alleging breach of contract, breach of the duty of good faith and fair dealing, fraud, and unjust enrichment, among other causes of action.

On March 4, Vang moved the district court for a temporary restraining order to stop the cancellation of the contract for deed. Following a hearing, the district court denied Vang's motion. This appeal follows.

D E C I S I O N

Vang argues that the district court abused its discretion by denying his motion for a temporary restraining order. Under Minn. Stat. § 559.211, subd. 1 (2012), a party facing cancellation of a contract for deed may bring an action alleging affirmative defenses to termination. The statute also provides for injunctive relief subject to Minn. R. Civ. P. 65.02, which allows a temporary injunction "if by affidavit . . . it appears that sufficient grounds exist therefor."

A temporary injunction "is an extraordinary equitable remedy" meant to preserve the status quo until an adjudication of the case on the merits. *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). Courts consider five factors to determine whether a temporary injunction is warranted: (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)). "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). Furthermore, 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).

Adequate Findings

The district court made findings of fact and addressed the *Dahlberg* factors in a written memorandum. Vang nonetheless argues that "[i]n ruling on [her] motion, the [district] court failed to make adequate findings in support of its decision." In denying interlocutory injunctions, the district court shall set forth findings of fact and conclusions of law. Minn. R. Civ. P. 52.01. The findings and conclusions may be stated orally rather than written and findings shall not be set aside unless clearly erroneous. *Id*. Factual findings should be sufficient to allow for "meaningful review" on appeal. *State by Drabik v. Martz*, 451 N.W.2d 893, 896 (Minn. App. 1990), *review denied* (Minn. Apr. 25, 1990).

Vang argues that the district court did not make adequate factual findings because it failed to substantively address any of her defenses to the cancellation, "including the defenses of waiver, estoppel, the construction of a contract against the drafter, and unilateral mistake." Vang insists that "[t]his was an error that requires remand." But Vang cites no legal authority requiring the district court to make factual findings regarding her affirmative defenses in a motion for a TRO. This argument is therefore

waived. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

Similarly, Vang contends that the district court was required to make findings regarding the disputed amounts of monthly payments, late fees, and taxes, as well as the insurance-policy dispute. But, again, Vang fails to cite legal precedent requiring the district court to make these specific findings. *See id*. Instead, Vang relies on *Associated Contractors, Inc. v. Midwest Fed. Sav. & Loan Ass'n*, 304 Minn. 528, 532, 232 N.W.2d 740, 742 (1975) for her assertion that "'[t]he difficulty of determination cannot be the basis for refusing to make necessary findings.'" But *Associated Contractors* was not a case involving a request for injunctive relief, but rather, the adequacy of a district court's findings with respect to a fully-adjudicated accounting claim disposed of on its merits. 304 Minn. at 532-33, 232 N.W.2d at 742. In this case, as discussed more fully below, the district court considered the required *Dahlberg* factors, made sufficient findings of fact to allow for meaningful review, and acted within its broad discretion to deny Vang's motion for a temporary restraining order. Despite Vang's seeming assertions to the contrary, the district court was not required to fully adjudicate the parties' dispute on her motion for injunctive relief.

Lastly, Vang argues that the district court clearly erred by finding that "[t]he parties also agree that [Vang] did not obtain the proper insurance required under the contract until October of 2012" and that Vang "has acknowledged . . . that she did not

comply with original requirements for insuring the property." She contends that "[t]hese statements are incorrect and there is no evidence to support the [district] [c]ourt's findings." But the contract required Vang to maintain insurance on the property listing Hamline Court as a loss-payee. And Vang concedes that "[t]he only grain of truth in the [district] [c]ourt's findings was that Vang had not made Hamline an additional *loss payee* until October of 2012." Therefore, under the terms of the contract, by failing to list Hamline Court as a loss-payee, Vang "did not obtain the proper insurance required under the contract until October of 2012" and "did not comply with original requirements for insuring the property." The district court did not clearly err in its findings regarding the contract's insurance requirements.

Dahlberg Factors

Vang argues that "the [district] [c]ourt failed to apply the *Dahlberg* factors." She concedes, however, that "[t]he [district] [c]ourt listed the factors and mentioned each one with respect to the record. . . . The [district] [c]ourt's application of the *Dahlberg* factors was approximately one-page in length." Thus, Vang's contention is not actually that the district court failed to apply the *Dahlberg* factors, but rather that its "findings [as to those factors] were so inadequate and contrary to law as to constitute an abuse of discretion." The adequacy of the district court's findings as to each *Dahlberg* factor will be considered in turn.

A. Relationship of the Parties

The district court concluded that

> [t]he parties each had an opportunity to read and verify the accuracy of every line of their Contract for Deed. There is a dispute as to which party provided the incorrect monthly payment number for the Contract. However, each party was equally capable of confirming that the math in their Contract had been done correctly. There is nothing about the nature and background of the relationship between the parties that would support granting a TRO.

Vang argues that the district court's "analysis of this factor completely ignores that the purpose of a temporary restraining order or a temporary injunction is to preserve the status quo until a hearing on the merits can be convened" and that "[h]ere, where you have a Vendor-Vendee relationship on a contract for deed, and where the Vendor has served a Notice of Cancellation of the contract, the only way to preserve the status quo was for the [district] [c]ourt to grant the motion." But this argument implies that district courts would be required to grant a TRO any time that the facts involve the cancellation of a contract for deed. And Vang cites no legal authority supporting such a broad proposition.

Vang further argues that the "specific relationship" at issue here "warranted the granting of the motion" due to the "obvious superiority of skill and expertise on the part of Hamline's agents" in drafting the contract. But the execution of this contract appears to have been an arm's-length transaction, and the "nature and background of the parties do not appear significant." *See Bell v. Olson*, 424 N.W.2d 829, 832 (Minn. App. 1988). Contrary to the facts of *Dahlberg*, there is nothing in the record indicating that Vang and Hamline Court had a longstanding or specialized relationship. Moreover, as the district court concluded, it appears that both parties were capable of reviewing the contract and

"confirming that the math in their Contract had been done correctly." The district court therefore properly analyzed the relationship factor.

B. Balance of Harms

The district court concluded that

> [i]f the Court grants this TRO, the property continues to be in limbo, while the burden to ensure that it is financially supported falls on Defendant Hamline Court. Hamline Court has a mortgage on the property with a financial institution, and failure to continue to make its payments would result in a foreclosure. [Vang] will still have the opportunity to seek her remedy in a civil action. This factor does not weigh in favor of issuing a TRO.

This analysis is correct. If the district court had granted the TRO, the funds necessary for Hamline Court to continue paying its mortgage would have been tied up indefinitely pending trial on the merits of Vang's claims. As noted by Hamline Court, if it "was unable to make its monthly mortgage payment, the Property would go into default and be foreclosed upon, causing both [Vang] and Hamline to lose their interests in the Property entirely."

Vang, on the other hand, could have paid the amount identified in the cancellation notice as due and then pursued her underlying claims in court. *See* Minn. Stat. § 559.21, subd. 4(c) (2012) (stating that a contract for deed is reinstated if, within the time mentioned, the person served "complies with the conditions in default"). Vang acknowledges this statutory right in her brief, stating that "[n]otwithstanding [her] failure to pay on the [contract] for four months, she had a statutory right to pay the default to reinstate" the contract. The district court therefore did not err when it determined that the

balance-of-harms factor weighed in favor of denying Vang's motion for a TRO. *See Bell*, 424 N.W.2d at 833 (stating that "[g]iven the availability of an adequate legal remedy, [the vendee] has not shown irreparable injury that would outweigh the harm to [the vendors, i.e. the tie-up of funds indefinitely pending trial on the merits] if the injunction were granted").

C. Likelihood of Success on the Merits

The district court concluded that Vang "has acknowledged that she has stopped making any payments on the property, and also that she did not comply with original requirements for insuring the property. This does not support her assertions that she is likely to succeed on the merits of this case." Likelihood of success on the merits is one of the most important *Dahlberg* factors. *See Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App. 1994) (stating that probability of success in the underlying action is a "primary factor" in determining whether to issue a temporary injunction), *review denied* (Minn. Mar. 31, 1994).

At the time of the TRO hearing, Vang had failed to make four monthly payments on the contract. Vang concedes that she defaulted under the contract by failing to make those payments, but argues that it was the district court's "responsibility to determine the amount Vang needed to pay to redeem her interest." Vang further contends that she decided to "escrow her payments to be deposited into Court at the outset of litigation" rather than make her monthly payments. But Vang cites no legal authority to support her position that the court is required to determine the amount due under the contract on a

motion for a TRO. *See Modern Recycling, Inc.*, 558 N.W.2d at 772. Moreover, the contract for deed does not allow Vang to deposit her monthly payments into escrow, or with the court, in the event of a dispute over the contractual terms. The district court therefore properly concluded that Vang was unlikely to succeed on the merits after failing to make monthly payments as required under the contract. *See Lindberg v. Gebo*, 381 N.W.2d 905, 907 (Minn. App. 1986) ("Whether appellant is likely to succeed on the merits of his offset claim is irrelevant since his offset claim is collateral to the default and must be determined in a separate action."), *review denied* (Minn. May 16, 1986).

Vang further argues, as to the insurance provision, that she "had maintained the proper insurance on the Property the entire time" and that she had cured any default that might have existed by adding Hamline Court as a loss-payee in October 2012.[1] But Hamline Court argues that it was harmed by Vang's failure to add it as a loss-payee as required by the contract because it was "required to take out a policy itself." Hamline Court correctly observes that "[w]hile [Vang's] 'cure' of that problem" by adding Hamline Court as a loss-payee in October 2012 "may circumvent future breaches of the Contract, it did not absolve her from paying the costs incurred by Hamline attendant to her admitted breach." Because we view the facts in the light most favorable to the prevailing party, *see Bud Johnson*, 272 N.W.2d at 33, the district court correctly

[1] Vang also argues that the failure to list Hamline Court on the policy as a loss-payee "was not an alleged default." But $8,728 of the $30,480.16 that was in default according to the notice of cancellation was the cost of the insurance that Hamline Court "was forced to purchase . . . to protect its interests."

concluded that Vang "did not comply with original requirements for insuring the property" and was therefore unlikely to succeed on the merits of her claim.

D. Public Policy

The district court concluded that "[p]ublic policy does not weigh heavily in either direction." Vang argues that Minn. Stat. § 559.21 (2012) "allows the vendee to obtain an injunction of the [n]otice [of cancellation] until the vendee's claims and defenses can be adjudicated. . . . The [p]ublic [p]olicy of the State of Minnesota is to enjoin a cancellation where the vendee has legitimate defenses." "At common law, the vendor could declare a forfeiture upon a breach by the buyer without giving the buyer an opportunity to cure the default. The purpose of Minn. Stat. § 559.211 is to ameliorate that rule by providing the purchaser with notice and an opportunity to cure." *Bell*, 424 N.W.2d at 833 (citation omitted). "The injunction provision of Minn. Stat. § 559.211 allows for relief if a purchaser has a meritorious defense, but lacks the resources to cure default and would therefore lose his contract claim unless an injunction issued." *Id*. But, as noted above, it is undisputed that Vang defaulted under the terms of the contract. Vang is therefore unlikely to succeed on the merits. The district court properly concluded that public policy does not support the imposition of a TRO under the facts of this case.

E. Administrative Burdens

The district court concluded that

> [t]he administrative burdens associated with granting this request for a TRO would be great. The Court would need to correct the parties' math, determine the correct payment, determine outstanding payments and late fees, and then oversee the proper payment of these funds to the correct

> entity. This would be required for the duration of this litigation. This factor weighs against granting the TRO.

Vang argues that the district court abused its discretion because "pin-point accuracy was not required," "the [district] [c]ourt simply needed to determine an amount that would have protected Hamline's interest," and "even then, the [district] [c]ourt did not have to calculate anything as Vang had provided several different calculations for the [c]ourt to consider." But the district court is in the best position to determine the administrative burden that will result from its orders. Vang's mere assertion that the district court "would not have been required to undertake the burden of performing any sort of arithmetic" is insufficient to demonstrate an abuse of discretion regarding this factor.

In sum, the district court thoroughly considered the *Dahlberg* factors, made findings of fact sufficient to allow for meaningful appellate review, and appropriately exercised its broad discretion by denying Vang's motion for a TRO.

Affirmed.