**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1657**

Abdi Noor Dolal, et al.,
Appellants,

vs.

The Metropolitan Airports Commission,
Respondent.

**Filed September 9, 2008**
**Affirmed**
**Halbrooks, Judge**

Hennepin County District Court
File No. 27CV-07-12907

Jeffrey A. Hassan, Jeffrey A. Hassan, P.L.C., 9130 Telford Crossing, Brooklyn Park, MN 55443 (for appellants)

Donald W. Selzer, Jr., Jodie F. Friedman, Reagan Wilkins Oden, Littler Mendelson, P.C., 80 South 8th Street, Suite 1300, Minneapolis, MN 55402 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Toussaint, Chief Judge; and Klaphake, Judge.

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

**HALBROOKS,** Judge

Appellants challenge the district court's denial of their motion seeking an injunction to bar enforcement of respondent's ordinances 102 and 106. Appellants argue

that enforcement of the ordinances infringes on their right of religious freedom of exercise established in the Minnesota Constitution. We affirm.

## FACTS

Appellants Abdi Noor Dolal, Mohamed A. Farah, Ali A. Husen, Ibrahim G. Ali, Daud M. Sugule, Abdiwahab A. Mohamed, Mohamed A. Jama, Ali W. Guled, and Abdi Fatah Abdi are taxicab owners and operators who are licensed to do business at the Minneapolis–St. Paul International Airport (MSP Airport). Appellants are Muslims. Respondent Metropolitan Airports Commission (MAC) is a public corporation, organized pursuant to Minn. Stat. §§ 473.601-.680 (2006), which authorizes the MAC to establish ordinances regulating ground transportation at the MSP Airport. Appellants' taxi operations are regulated by Metro. Airports Comm'n, Minn., Ordinance 102 (2005), as amended by Metro. Airports Comm'n, Minn., Ordinance 106 (2007), and appellants have all signed documents acknowledging the requirements of the ordinances and their acceptance of them.

The MAC regulates taxicab services as a one-line or first-come system; the public is referred to the next-available taxi and is not allowed to choose a particular driver or vehicle. This system requires taxicab drivers to wait in a queue until their number is called; they are not permitted to choose their passengers. MAC Ordinance 102, § 7.4, requires drivers to take passengers to their desired destination, provided that the passenger pays the fare, is free from the influence of drugs or alcohol, and does not present a safety risk to the driver.

A taxicab driver who refuses to take a passenger assigned to him is penalized by dismissal from the taxi queue and sent to the end of the queue to wait for another passenger. MAC Ordinance 102, §§ 7.4(c), 12.2(a)(4), (c). Since the MAC began keeping official records of taxicab drivers who refused service to passengers, there have been 5,222 recorded incidents of refusals, although there is not always someone present to document a refusal of service. Included in the total are refusals by taxicab drivers who refuse service to passengers who are carrying alcohol because it violates the drivers' religious beliefs.

According to the affidavit of Sheik Hassan Ali Mohamud, a Muslim taxicab driver must not search the baggage of a potential passenger. But if the driver is aware that the potential passenger is carrying alcohol, it is impermissible for the driver to transport him. As a result of these religious beliefs, Muslim taxi drivers, including appellants, have refused service to passengers seeking transportation from the MSP Airport when the drivers were made aware of alcohol in the passengers' baggage. The district court found that an "increasing number of refusals stem from the religious belief of a large group of Muslim drivers that their faith forbids them from carrying travelers who have exposed alcohol in their possession. While this is not the only reason for trip refusals, it counts for a significant percentage of the number."

MAC representatives met with drivers and other taxi-service staff members in an effort to resolve the problem of service refusals at the MSP Airport. The taxicab drivers proposed placing a special light on taxis to designate those taxis that are intended non-alcohol-carrying passengers. According to the MAC, the drivers' proposal was met with

public scrutiny and displeasure, and the MAC became concerned that if they adopted the drivers' suggestion, the public might selectively boycott taxis with the designated non-alcohol light. The drivers also suggested that the MAC use a system designed for passengers requesting taxis with special accommodations, such as taxis for smoking passengers or "family taxis" that can transport large groups. The drivers volunteered to pay the cost of any software changes to the computerized taxi system that would be needed to make this change, but the MAC concluded that such a change was impractical and inconvenient and rejected the proposal.

MAC Airport Director Steve Wareham recommended an increase in penalties for refusal of service, and this proposed increase was discussed at a public hearing. Drivers voiced objections to the increased penalties, claiming that the proposal forced them to choose between their religious beliefs and their business at the MSP Airport. At the conclusion of the hearing, the MAC kept the record open to allow for additional written comments.

On April 16, 2007, the MAC approved increased penalties for refusal of service and enacted MAC Ordinance 106. The ordinance penalizes a driver who refuses service with a 30-day suspension for the first refusal of service and a two-year suspension for a second refusal of service. Appellants acknowledged these increased penalties in writing before their effective date on May 11, 2007. Appellants filed a complaint in district court on June 25, 2007, seeking, among other things, a temporary injunction prohibiting

enforcement of MAC Ordinances 102 and 106.[1] After a hearing, the district court denied appellants' motion for a temporary injunction. This appeal follows.

**D E C I S I O N**

Appellants argue that the district court abused its discretion by denying their motion for a temporary injunction and assert that the district court applied an incorrect legal standard in its determination.

"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). The party seeking a temporary injunction must show that a legal remedy is inadequate and that an injunction is necessary to prevent irreparable injury. *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 fact that monetary damages are sought does not automatically preclude a finding of irreparable harm. *Id.* (citing *United Steelworkers of Am. v. Fort Pitt Steel Casting*, 598 F.2d 1273, 1280 (3d Cir. 1979)). But the injury must be of such a nature that money alone could not suffice. *Morton v. Beyer*, 822 F.2d 364, 372 (3d Cir. 1987).

[1] In their complaint, appellants also sought compensatory damages and attorney fees for violations of the Minnesota Human Rights Act. There has been no final judgment on those claims, and we do not address them here.

The district court concluded that appellants have not suffered an irreparable harm for two reasons: (1) there is an administrative process available to appellants that stays suspension of their ability to work at the MSP Airport while the administrative review is pending and (2) appellants seek compensatory damages in excess of $50,000, demonstrating that they have a legal remedy available to them. Appellants assert that the availability of an administrative remedy does not negate an irreparable injury. They cite *Nw. Airlines, Inc. v. Metro. Airports Comm'n*, 672 N.W.2d 379 (Minn. App. 2003), for the proposition that an administrative agency lacks subject-matter jurisdiction over their constitutional claims, making any remedy provided through the MAC's administrative-review procedures ineffective. We agree that the administrative procedures through the MAC are not the proper path for resolution of appellants' constitutional claims. *See Nw. Airlines*, 672 N.W.2d at 383-84.

But appellants' constitutional claims can be reviewed properly by this court through a writ of certiorari. *See Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998) (holding that a constitutional question that could not have been properly raised before an administrative body may still be properly addressed by this court when it is fully briefed and argued and presented on a complete record). Although appellants assert that the MAC's administrative hearing is unlikely to be impartial, we decline to address this argument. Any decision made by the MAC on the constitutional issues would have no effect on our decision because of the lack of subject-matter jurisdiction, and our analysis of the constitutional claims would be de novo. Because appellants' constitutional challenge would be properly brought before this court by writ of certiorari,

they have meaningful review available to them. And while this review is pending, appellants suffer no harm.

Metro. Airports Comm'n, Minn., Ordinance 106 (2007), sanctions taxi drivers that refuse service for any reason by suspending their license for 30 days for the first refusal and revocation for the second. But the suspension of a driver's taxi license "shall commence not earlier than fifteen (15) days from the issuance of a Notice of Suspension, or where a[n] [administrative] hearing is requested, the final action of the Commission sustaining the [s]uspension." Metro. Airports Comm'n, Minn., Ordinance 102, § 12.6(b) (2005). The 15-day delay in suspension of a taxicab driver's license is exactly the same duration as the 15-day requirement for filing an appeal of the suspension, which "must be made in writing and received by the Airport Director within fifteen (15) days after the Notice of . . . Suspension . . . has been issued." *Id.*, § 12.8(b). Assuming that appellants properly file a timely appeal, they will not lose their licenses while that review is pending.

The ordinance makes the suspension effective if and when the commission sustains the suspension, but a stay of enforcement of that suspension is available while petitioning this court for review in accordance with Minn. R. Civ. App. P. 108.[2] Minn. R. Civ. App. P. 115.03, subd. 2(b). While the stay is in effect, appellants will be allowed to continue operating at the MSP Airport. At no point during appellants' potential challenge to the constitutionality of these ordinances would they be denied the ability to continue

[2] Appellant would first be required to request a stay from the MAC itself, before requesting a stay from this court, but through either route, a stay is available pending this court's review. Minn. R. Civ. App. P. 115.03, subd. 2(b).

working. Thus, they suffer no harm. The administrative avenue available to appellants creates an adequate remedy; with a remedy available, they lack irreparable harm and are not entitled to injunctive relief. *See Pac. Equip. & Irrigation v. Toro Co.*, 519 N.W.2d 911, 914 (Minn. App. 1994) (stating that "[t]he party seeking the injunction must establish that the legal remedy is not adequate and the injunction is necessary to prevent great and irreparable injury" before an injunction may be granted), *review denied* (Minn. Sept. 16, 1994).

Appellants also argue that the district court abused its discretion in its determination that their request for monetary damages supports the conclusion that they lack irreparable harm. Appellants correctly assert that inclusion of monetary damages in a complaint, by itself, does not preclude a finding of irreparable harm. *See Morse*, 458 N.W.2d at 729. But because we have concluded that appellants lack an irreparable harm, the district court's statement is harmless error and not grounds for reversal. *See* Minn. R. Civ. P. 61.

We note that the district court addressed the five-factor test for granting injunctive relief outlined in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965), and the parties have briefed this issue. But because we conclude appellants have suffered no irreparable harm justifying injunctive relief, we do not address the remaining *Dahlberg* factors.

Appellants also assert that the district court erroneously found an increase in refusals of service by taxi drivers. In support of their argument, appellants have submitted additional documentary evidence and asked this court to take "judicial notice"

of what they describe as "essentially un-controverted documentary evidence that was not included in the district court file." Minn. R. Civ. App. P. 110.01 states that "[t]he papers filed in the [district] court or agency, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." On review, we may not consider matters not produced before the district court or received into evidence. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

A narrow exception exists for documentary evidence that is essentially uncontroverted and not offered in support of a reversal. *In re Risk Level Determination of C.M.*, 578 N.W.2d 391, 394 (Minn. App. 1998). But the documentary evidence that appellants seek to admit for our review is offered to reverse a finding of the district court. We therefore decline to review the evidence that appellants seek to admit.

**Affirmed.**