STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1863

Kristina Greene, et al.,
Respondents,

vs.

Minnesota Bureau of Mediation Services, et al.,
Appellants.

Filed July 24, 2017
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CV-16-5981

Douglas P. Seaton, Thomas R. Revnew, Michael R. Link, Seaton, Peters & Revnew, P.A., Minneapolis, Minnesota (for respondents)

Lori Swanson, Attorney General, Jacob Campion, E. Bayley Toft-Dupuy, Assistant Attorneys General, St. Paul, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and Kalitowski, 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

HALBROOKS, Judge

This appeal arises from an action under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01-.90 (2016), and the Minnesota Individual Providers of Direct Support Services Representation Act (representation act), codified at Minn. Stat. §§ 179A.54, 256B.0711 (2016), brought by respondent individual provider personal-care assistants against appellant state agencies. Respondents sought injunctive relief requiring appellants to disclose certain contact information for all members of respondents' bargaining unit, as well as declaratory relief and damages. Appellants now challenge the district court's grant of temporary injunctive relief, which required appellants to disclose requested names, addresses, and telephone numbers. We affirm.

FACTS

Respondents are a subset of individual providers, who are personal-care assistants (PCAs) that are hired by, and provide direct care to, participants in state programs that subsidize the cost of home-based services for persons with disabilities. Respondent individual providers (providers) wish to decertify SEIU Healthcare Minnesota (SEIU) as the representative of their bargaining unit. Because the current collective-bargaining agreement between SEIU and the State of Minnesota expired on June 30, 2017, any decertification petition must have been filed between October 3, 2016 and December 2, 2016, or be set aside until the decertification window reopens about two years later. *See* Minn. Stat. § 179A.12, subd. 4 (2016) (barring consideration of a decertification petition brought outside the window of 270 to 210 days before termination of union's contract with

the state). A decertification petition requires the signatures of 30% of the bargaining unit. Minn. Stat. § 179A.12, subd. 3 (2016); Minn. R. 5510.0710 (2015).

Beginning in May 2016, providers requested current names and contact information for members of their bargaining unit from appellants Minnesota Department of Human Services (DHS) and Minnesota Bureau of Mediation Services (BMS). DHS and BMS responded with a 2014 list of names and addresses compiled by DHS pursuant to Minn. Stat. § 256B.0711, subd. 4(f).[1] Providers assert that, in addition to being out of date, the 2014 list contained approximately 30-40% inaccurate information, seriously hampering their efforts to obtain the number of signatures required for a decertification petition. In September and October, providers made additional requests under the MGDPA for an updated list. Those requests were denied on the basis that providers were not eligible, under Minn. Stat. § 179A.54, subd. 9, to access the current list compiled under Minn. Stat. § 256B.0711, subd. 4(f).

On October 20, 2016, providers filed a complaint against appellants DHS, BMS, and Minnesota Management and Budget (MMB) (collectively, the agencies) in district court. On October 31, the district court granted in part providers' motion for temporary injunctive relief, ordering DHS to disclose within seven days the names, addresses, and telephone numbers of PCAs who had been paid by DHS for providing direct support services within the previous six months. The district court found that providers had made

[1] The commissioner of DHS is required, on a monthly basis, to "compile and maintain a list of the names and addresses of all individual providers who have been paid for providing direct support services to participants within the previous six months." Minn. Stat. § 256B.0711, subd. 4(f).

a sufficient showing of irreparable harm and that all applicable *Dahlberg* factors favored the grant of injunctive relief. Relevant to this appeal, the district court found that providers would be irreparably harmed if denied access to the contact information because "they will essentially be precluded from identifying and contacting" members of the bargaining unit in time to file a decertification petition. And the district court determined that providers are "substantially likely to prevail" on the merits because PCAs are state employees and the information sought is public data under the MGDPA.

After a second hearing, the district court clarified in a November 4 order that the addresses and telephone numbers to be disclosed were the "work location" and "work telephone number," of all individual provider PCAs in the bargaining unit, not all PCAs. *See* Minn. Stat. § 13.43, subd. 2(a)(7) (stating that work location and a work telephone number of current and former employees, volunteers, and independent contractors of government entities are public data). On November 18, the district court issued a second clarifying order, requiring DHS to provide, under Minn. Stat. § 13.43, subd. 4, a current list of names and addresses compiled pursuant to Minn. Stat. § 256B.0711, subd. 4(f), as well as the telephone number that DHS maintains for each individual provider.

The agencies appealed to this court and sought a stay pending appeal in district court, which the district court denied on November 28. On November 29, after this court also denied the agencies' motion for a stay pending appeal, the agencies provided names, addresses, and telephone numbers of individual providers who were paid for direct support services in the six-month period from April through September 2016.

D E C I S I O N

I. The appeal is not moot.

Providers contend that this appeal is moot because the names, addresses, and telephone numbers were disclosed to providers on November 29, 2016.[2] The mootness doctrine "requires that [appellate courts] decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). An assessment of mootness requires "a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *In re Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). "An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). But "the mootness doctrine is a flexible discretionary doctrine, not a mechanical rule that is invoked automatically." *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

The agencies acknowledge that, with respect to names and addresses, relief is not available because the list provided on November 29 has since become publicly available. But the agencies argue that relief is available with respect to telephone numbers in the

[2] Providers also contend that the appeal is moot because a February 7 "nearly identical (although more updated) list," which did not contain telephone numbers, was made publicly available. We need not address this argument because providers acknowledge that the content of the purported February 7 list is different from the names, addresses, and telephone numbers disclosed on November 29.

event of reversal because they can be ordered returned, and that exceptions to the mootness doctrine apply with respect to names and addresses. We agree.

A discretionary exception to the mootness doctrine applies "when there is a reasonable expectation that a complaining party would be subjected to the same action again *and* the duration of the challenged action is too short to be fully litigated before it ceases or expires." *Dean*, 868 N.W.2d at 5 (citing *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005)). Because of the recurring, narrow time frame to file a petition for a decertification election and the need to obtain signatures from 30% of the always fluctuating bargaining unit, we are persuaded that the issues presented in this appeal are capable of repetition but evading review.

II. The district court did not abuse its discretion in granting a temporary injunction.

The district court has broad discretion in ruling on a motion for a temporary injunction, and we will reverse only for abuse of 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). "The party seeking the injunction must demonstrate that there is an inadequate legal remedy and that the injunction is necessary to prevent great and irreparable injury." *Id.* (citing *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91 (Minn. 1979)). A district court must 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 to the parties; (3) the likelihood of success on the merits; (4) public-policy considerations; and (5) any administrative burden involving judicial supervision and enforcement.

Dahlberg Bros. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

The agencies argue that providers failed to show irreparable harm because individual providers benefit from SEIU's representation and it is speculative whether providers could have filed a proper petition without the requested contact information. Providers take a different view of the benefits of SEIU's representation, and we need not resolve this difference of opinion. The district court found that "[i]f they are not provided the information in a timely manner, [providers] will essentially be precluded from identifying and contacting current [members of the bargaining unit]." This finding is supported by the evidence in the record, in light of the unique statutory requirements and restrictions, including the imminent deadline to file a decertification petition. The district court properly determined that providers made a sufficient showing of irreparable harm.

With respect to the *Dahlberg* factors, the agencies challenge the district court's findings on the likelihood of success on the merits and the balance of harms. *See id.* (identifying factors). We note that, although the agencies emphasize providers' chances of obtaining the information under Minn. Stat. § 179A.54, subd. 9, the district court did not rely on this provision in determining that providers were likely to prevail. Rather, the district court found that providers are substantially likely to succeed on the merits because individual providers are state employees and the requested information is personnel data that can be disclosed under the MGDPA. *See* Minn. Stat. § 13.43 (defining and classifying personnel data).

In support of reversal, the agencies argue that individual providers are not state employees for purposes of the MGDPA, the data is not public personnel data, and the district court failed to make required findings under the MGDPA. The agencies contend that individual providers are only considered government employees for purposes of Minnesota Statutes chapter 179A, pointing to Minn. Stat. § 179A.54, subd. 2. This subdivision merely states that individual providers are "executive branch state employees" for purposes of chapter 179A, are not "state employees" for purposes of the Minnesota Tort Claims Act, and are not necessarily "public employees" in other contexts. *See* Minn. Stat. § 179A.54, subd. 2. It does not resolve the question whether individual providers are "employees, volunteers, [or] independent contractors of a government entity" under the MGDPA. *See* Minn. Stat. § 13.43, subds. 1-2 (defining and classifying personnel data).

Moreover, if individual providers' names, addresses, and telephone numbers are not "maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity," *see* Minn. Stat. § 13.43, subd. 1 (defining "personnel data"), then this data could well be public data. *See* Minn. Stat. § 13.03, subd. 1 ("All government data collected . . . maintained or disseminated by a government entity shall be public unless classified by statute . . . as private or confidential."); *Int'l Bhd. of Elec. Workers, Local No. 292 v. City of St. Cloud*, 765 N.W.2d 64, 68 (Minn. 2009) (concluding that section 13.43 did not cover home addresses of government contractor's employees, which were consequently public data). The agencies identify no other statutory provision under which the data is classified as private or confidential data under the MGDPA. The

representation act does not expressly classify the data in the Minn. Stat. § 256B.0711, subd. 4(f) list as private or confidential. *Cf.* Minn. Stat. § 179A.54, subd. 9 ("When the list is available to an employee organization under this subdivision, the list must be made publicly available."). And the representation act expressly states that it does not alter access rights of private parties to data on individual providers. Minn. Stat. § 256B.0711, subd. 4(f) ("Nothing in this section or section 179A.54 shall alter the access rights of other private parties to data on individual providers.").

If individual providers are state employees for purposes of the MGDPA, their names and addresses are likely "personnel data" because MMB and DHS are both government entities. It would be reasonable to conclude that DHS maintains the list required by Minn. Stat. § 256B.0711, subd. 4(f), because individual providers are employees of MMB. *See* Minn. Stat. § 13.43, subd. 1 (defining personnel data as "government data on individuals maintained because the individual is or was an employee of . . . a government entity"). And if an individual provider's name, work telephone number, and work location are "personnel data" under section 13.43, subdivision 1, that data is public personnel data. *See* Minn. Stat. § 13.43, subd. 2(a)(1), (7) (identifying name, work location, and work telephone number as public personnel data).

The agencies assert that the addresses and telephone numbers maintained by DHS are not necessarily "work location" or "work telephone number," and thus are not public personnel data. In addition, because some individual providers provide services in their own home to participants who are family members, the agencies assert that "work telephone" may be a home telephone number, which must not be disclosed. Minn. Stat.

§ 13.43, subds. 2(a)(7), 4. But the district court ultimately relied on Minn. Stat. § 13.43, subd. 4, which states, "All other personnel data is private data on individuals but may be released pursuant to a court order." The district court reasoned that even if the data is not technically public personnel data, the list compiled pursuant to Minn. Stat. § 256B.0711, subd. 4(f), is available upon request to an employee organization, and then becomes publicly available. *See* Minn. Stat. § 179A.54, subd. 9. Thus, the district court concluded that making the data in the list available under section 13.43, subdivision 4, is consistent with legislative intent, even if Minn. Stat. § 13.43, subd. 2(a)(1), (7), does not technically apply.

The agencies also argue that the district court abused its discretion in ordering the release of data under section 13.43, subdivision 4, without making particularized findings. But subdivision 4 does not expressly require findings or consideration of particular factors. *Compare* Minn. Stat. § 13.43, subd. 4 ("All other personnel data is private data on individuals but may be released pursuant to a court order.") *with* Minn. Stat. § 13.03, subd. 6 (requiring consideration of identified factors and application of a balancing test before the district court compels discovery of not-public data).

Finally, we agree with the district court's conclusion that providing individual providers' addresses and telephone numbers does not run afoul of section 256B.0711, subdivision 4(f), which prohibits the disclosure of identifying information about participants, i.e., disabled individuals. As the district court noted in its November 4 order, nothing about the data sought here identifies a participant.

In sum, the agencies' challenge focuses on whether providers are entitled to the section 256B.0711, subdivision 4(f) list under the representation act's terms. But the district court determined that providers were likely to succeed in obtaining the data under the MGDPA. We conclude that the district court's analysis of the likelihood of success on the merits was reasonable.

Similarly, the district court's analysis of the balance of harms withstands scrutiny. The agencies assert that, "the disclosure of personal information regarding providers that is protected by law caused harm." Given the possibility that the telephone numbers disclosed are public personnel data or not personnel data at all, and in light of the low threshold for the section 256B.0711, subdivision 4(f) list of names and addresses becoming publicly available, the agencies' assertion is unconvincing. In contrast, providers demonstrated to the district court's satisfaction that they were unlikely to be able to petition for a decertification election without injunctive relief. We are persuaded that the district court reasonably determined that the balance of harms favored the grant of injunctive relief.

"The grant of a temporary injunction does not establish the law of the case or constitute an adjudication on the merits." *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). The question before this court is not the ultimate merits of providers' entitlement to the requested names, addresses, and telephone numbers, but whether the district court abused its discretion in granting injunctive relief before a trial on the merits. We are satisfied that the district court did not abuse its discretion.

Affirmed.