STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0503
A19-0507

In re the Estate of Prince Rogers Nelson, Deceased.

Filed November 25, 2019
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Carver County District Court
File No. 10-PR-16-46

Barbara P. Berens, Erin K. Fogarty Lisle, Carrie L. Zochert, Berens & Miller, P.A., Minneapolis, Minnesota; and

John J. Rosenberg (pro hac vice), Rosenberg, Giger & Perala P.C., New York, New York (for appellants CAK Entertainment, Inc. and Charles Koppelman)

Alan I. Silver, Andrea E. Reisbord, Bassford Remele, Minneapolis, Minnesota (for appellants NorthStar Enterprises Worldwide, Inc. and L. Londell McMillan)

Peter J. Gleekel, William J. Tipping, Bradley R. Prowant, Larson • King, LLP, St. Paul, Minnesota (for respondent Estate)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Reilly, Judge.

S Y L L A B U S

The plain and unambiguous language of Minn. Stat. § 524.3-721 (2018), allows a district court, upon a proper motion, to review the reasonableness of compensation received by a specialized agent employed by the estate, to order appropriate refunds if the compensation received is determined to be excessive, and to fashion interim injunctive relief if warranted after analysis of the factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965).

O P I N I O N

REILLY, Judge

In these consolidated appeals from an order in which the district court directed appellants to refund to respondent estate commissions they previously received, appellants argue that the district court (1) erred by allowing the estate to proceed with its claim under Minn. Stat. § 524.3-721; (2) denied appellants due process of law by allowing the estate to proceed under Minn. Stat. § 524.3-721; (3) erred by granting a temporary injunction without addressing the *Dahlberg* factors; and (4) abused its discretion by holding appellants, including their officers, directors, shareholders, employees, agents, assigns and successors, to be jointly and severally liable to the estate for the funds to be refunded. We affirm in part, reverse in part, and remand.

FACTS

Recording artist Prince Rogers Nelson (Prince) died on April 21, 2016. Shortly thereafter, the district court granted a petition, brought by Prince's sister, to appoint Bremer Trust N.A. (Bremer) as Special Administrator of the Estate of Prince Rogers Nelson (the Estate). Bremer subsequently moved for authorization to negotiate with and potentially employ entertainment industry experts to assist Bremer with management and preservation of the wide-ranging intellectual property of the Estate. The district court granted Bremer's motion, and Bremer later retained appellant L. Londell McMillan (McMillan) on behalf of appellant NorthStar Enterprises Worldwide Inc. (NorthStar), and appellant Charles

Koppelman (Koppelman) on behalf of appellant CAK Entertainment Inc. (CAK), to act as advisors to monetize the Estate's intellectual property.[1]

The "Advisor Agreement" between Bremer and Advisors provided:

> 5. **Services:** During and throughout the Term, Advisor[s] agree[] to be available to perform and shall undertake to perform services in the Entertainment Industry and advise and counsel [Bremer] in all aspects of [Bremer's] business in the Entertainment Industry related to [Prince] . . . . During the Term, [Bremer] agrees to promptly refer to Advisor[s] and to instruct all third parties to refer to Advisor[s] for advice and counsel all verbal and written leads, communications, or requests in connection with all engagements and arrangements that are within the scope of this Agreement.

In exchange for their services, the Advisor Agreement provided that Advisors would be paid a fixed ten-percent commission on "all Gross Monies" paid to the Estate pursuant to agreements entered into by the Estate that resulted from services provided by Advisors. Section 6 of the Advisor Agreement stated that Advisors' commissions were deemed to have been earned by Advisors "simultaneously with the payment to" the Estate of any amounts due under such agreements.

Advisors were paid commissions in connection with two contracts that were entered into by the Estate. The first contract was with Jobu Presents LLC (Jobu) to organize and promote a Prince tribute concert. Under the terms of Jobu's proposal, Jobu would guarantee an advance payment to the Estate of $7 million, one-third of which would be payable to the Estate shortly after the agreement was signed. Bremer accepted Jobu's

[1] NorthStar and CAK will be hereinafter referred to as "Advisors."

proposal on July 7, 2016. Jobu then advanced a portion of the required one-third payment to the Estate and directly paid McMillan $116,666, his half of the ten-percent commission. CAK was not paid its half of the ten-percent commission.

Later, the agreement with Jobu collapsed and Jobu demanded repayment of its advance under the threat of litigation. The Estate refunded the entire advance, including McMillan's $116,666 commission. And Jobu later sued Bremer, Koppelman, CAK, McMillan, and NorthStar, alleging that they fraudulently induced Jobu to enter into the Jobu Agreement (Jobu litigation).

In addition to the contract with Jobu, the Estate contracted with Universal Music Group (UMG) for the distribution and marketing of certain recordings. Pursuant to this agreement, UMG agreed to pay $31 million to the Estate, and, as dictated by terms of the Advisor Agreement, a ten-percent commission would be paid by UMG to Advisors. Bremer submitted the proposed UMG agreement, along with several other proposed agreements, to the district court for approval. Certain heirs opposed the UMG transaction, arguing that the transaction would violate an earlier agreement between Prince and Warner Brothers Records Inc. (WBR). These heirs also challenged, among other things, the reasonableness of the ten-percent commission to be paid to Advisors under the Advisor Agreement.

The district court granted Bremer's motion to approve the UMG agreement. UMG paid the Estate approximately $28 million, which consisted of the $31 million contract price, less Advisors' commissions. UMG also directly paid to Advisors $3.1 million, as their ten-percent of the $31 million contract price, allocated equally between Advisors.

January 31, 2017 marked the final day of Advisors' term as advisors to the Estate and Bremer's appointment as special administrator. The next day, Comerica Bank & Trust N.A. (Comerica) was appointed as personal representative of the Estate. Shortly thereafter, WBR contacted Comerica, claiming an interest in certain recordings that were part of the Estate's agreement with UMG. Because it was concerned about potential litigation with WBR, the Estate rescinded the UMG agreement and refunded the entire advance, including the $3.1 million in commission paid to Advisors.

The district court appointed Peter Gleekel and the law firm Larson • King LLP as second special administrator (SSA) of the Estate and granted the SSA authority to conduct "an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement." The SSA's authority was later expanded to include an independent examination related to the Jobu Agreement.

Following its investigations, the SSA filed two reports, finding actionable conduct by Advisors in connection with both transactions. The SSA brought a motion under Minn. Stat. § 524.3-721, seeking an order requiring Advisors to refund commissions paid in connection with the terminated agreement with Jobu and the rescinded agreement with UMG. The district court granted the motion in part on March 11, 2019, concluding that under Minn. Stat. § 524.3-721, "it is appropriate that the Advisors be required to refund the Jobu and UMG commissions to the Estate." The district court ordered that within 30 days of the entry of the order, appellants, "including [their] officers, directors, shareholders, employees, agents, assigns and successors . . . shall refund to the Estate all compensation received as a result of the terminated Jobu transaction and rescinded UMG transaction,"

and that failure to adhere to the order would result in Advisors "being held in contempt of court." The district court also "deemed" the order "temporary" in "order to protect the assets of the Estate," and ordered that the "refunded commissions . . . be held in a designated escrow account by the attorneys for the Estate and not distributed until further order of the Court." Finally, the district court held Advisors to be "jointly and severally liable to the Estate" for the commissions ordered to be refunded.

Advisors each filed notices of appeal. This court consolidated the appeals and questioned whether the March 11, 2019 order was appealable as a matter of right. After the parties filed informal memoranda, this court concluded that "[b]ecause the March 11, 2019 order has the characteristics of a temporary mandatory injunction, the order is appealable under Minn. R. Civ. App. P. 103.03(b)," and accepted jurisdiction over this appeal.

ISSUES

I. Did the district court err by determining that Advisors are subject to the provisions of Minn. Stat. § 524.3-721?

II. Did the district court's application of Minn. Stat. § 524.3-721 in the context of a temporary injunction deny Advisors due process of law?

III. Did the district court err by granting a temporary injunction in favor of the Estate without analyzing the *Dahlberg* factors?

IV. Did the district court abuse its discretion by holding Advisors, including their officers, directors, shareholders, employees, agents, assigns and successors, jointly and severally liable to the Estate for the commissions ordered to be refunded?

ANALYSIS

I.

Advisors challenge the district court's grant of injunctive relief, arguing that Advisors are not subject to the provisions of Minn. Stat. § 524.3-721. This argument presents a question of statutory interpretation, which is reviewed de novo. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014).

The object of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018); *see also Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 501 (Minn. 2018). This court applies the plain meaning of a statutory provision if the legislative intent "is clear from the unambiguous language of the statute." *Staab*, 853 N.W.2d at 716–17. We also "give effect to all of the statute's provisions," and "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (quotation omitted). "We construe nontechnical words and phrases according to their plain and ordinary meanings" and "look to dictionary definitions to determine the plain meanings of words." *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014).

Minnesota Statutes section 524.3-721 provides:

> After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative services, may be reviewed by the court. Any

> person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

The district court concluded that Advisors are "subject to the provisions of Minn. Stat. § 524.3-721" because they fall into the category of specialized agents. The district court noted that although the Advisor Agreement "includes details as to when commissions are to be paid to Advisors, it is silent as to when, or the circumstances under which, commissions would be refunded to the Estate." The district court also stated that, although it "is aware that many factors were involved in the termination of the Jobu agreement and rescission of the UMG agreement," it "is deeply concerned that the Estate may be out over 3 million dollars as a result." The district court, therefore, required Advisors "to refund the Jobu and UMG commissions to the Estate," and ordered the commissions to "be held in a designated escrow account by the attorneys for the Estate." But the court stated that it would "not . . . make a final determination as to the Estate's entitlement to a refund of the Advisor fees without a full record and consideration of the provisions of the Advisor Agreement."

Advisors argue that section 524.3-721 is not applicable because that statute generally applies to accountants and attorneys hired by the estate. And Advisors contend that although section 524.3-721 refers to "specialized agents," they are not "specialized agents" within the meaning of the statute. We disagree. The term "specialized agent" is not defined by the probate statutes. Consequently, we look to the plain meaning of the term. *De Guardado v. Guardado Menjivar*, 901 N.W.2d 243, 247 (Minn. App. 2017). To determine the plain meaning of a word in a statute, courts often consider dictionary

definitions. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). Plain meaning also assumes the ordinary usage of words that are not statutorily defined. *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002).

A "special agent" is "[a]n agent employed to conduct a particular transaction or to perform a specified act." *Black's Law Dictionary* 77 (10th ed. 2014). And "specialize" means "[t]o provide something particular or have something as a focus: *The shop specializes in mountain-climbing gear*." *The American Heritage Dictionary of the English Language* 1681 (5th ed. 2011). Here, Advisors were specifically appointed as entertainment industry experts to monetize the Estate's intellectual property. Advisors were appointed to conduct particular, specialized acts. The district court therefore did not err by concluding that Advisors are "specialized agents" within the meaning of Minn. Stat. § 524.3-721.

Advisors also argue that the district court's interpretation of section 524.3-721 "is directly contrary to the plain intent and purpose of the statute and contravenes both established Minnesota law and the [district] Court's own prior orders." To support its argument, NorthStar broadly asserts that the district court's reliance on section 524.3-721 was "not appropriate in light of the complexity and disputed facts that are present in connection with the UMG and Jobu Transactions." NorthStar contends that because the issue before the district court required "more analysis, including presentation of testimony and exhibits," it was "not appropriate for consideration by the court on a summary basis by an administrative motion" under Minn. Stat. § 524.3-721.

We are not persuaded. Despite arguing that any consideration of the Estate's claim under Minn. Stat. § 524.3-721 contravenes the "intent" of the statute, NorthStar fails to demonstrate how the statute is ambiguous. It is well settled that, "[w]here the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). And "a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to determine its meaning." *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W.2d 62, 64 (Minn. 1956). We must, therefore, "read and construe a statute as a whole," and "interpret each section in light of the surrounding sections to avoid conflicting interpretations," *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000), in order to "harmonize and give effect to all its parts," *Van Asperen v. Darling Olds, Inc.*, 93 N.W.2d 690, 698 (Minn. 1958).

The district court has jurisdiction over "all subject matter relating to estates of decedents," and the power "to take all . . . action necessary and proper to administer justice in the matters which come before it." Minn. Stat. § 524.1-302 (2018); *see also In re Estate of Sangren*, 504 N.W.2d 786, 789 (Minn. App. 1993) (concluding that the "[district] court has jurisdiction over all problems that arise in resolving an estate except those issues excluded by statute"), *review denied* (Minn. Oct. 28, 1993). The plain language of section 524.3-721 provides that the power afforded the district court includes the authority to review the "reasonableness of the compensation of any person" employed by the personal representative, as well as to order the refund of excessive compensation received. But, as

the district court acknowledged and the parties agree, there is no published caselaw in Minnesota discussing section 524.3-721, in the unique circumstances presented in this case.

Nonetheless, Minn. Stat. § 524.3-721 is modeled after the Uniform Probate Code (UPC) § 3-721. *See In re Beachside I Homeowners Ass'n*, 802 N.W.2d 771, 774 (Minn. App. 2011) (stating that "Minnesota has largely adopted the provisions of the [UPC]"). When interpreting a uniform law, an appellate court "will consider" other jurisdictions' interpretations of their uniform acts. *City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 (Minn. 2017); *see also* Minn. Stat. § 645.22 (2018) ("Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them."). In *In re Estate of Sweetland*, the Maine Supreme Court discussed 18-A.M.R.S.A. § 3-721, which is modeled after section 3-721 of the UPC, and stated that the "plain language of the statute vests the [district] Court with the authority to order appropriate refunds from any person who has received excessive compensation." 770 A.2d 1017, 1020 (Me. 2001) (quotation omitted).

Here, we acknowledge that the size and complexity of Prince's estate undoubtedly presents unique circumstances. But as indicated by the Maine Supreme Court, the plain language of 18-A.M.R.S.A. § 3-721, which is almost identical to Minn. Stat. § 524.3-721, is unambiguous. *Id*. And under the plain and unambiguous language of Minn. Stat. § 524.3-721, an interested person may move the district court to review "the reasonableness of the compensation" received by a "specialized agent" employed by the estate. The statute also plainly and unambiguously allows the district court to order any

specialized agent who has "received excessive compensation from an estate for services rendered" to "make appropriate refunds." Minn. Stat. § 524.3-721. Nothing in the statute indicates that when the estate is complex, a challenge to the reasonableness of compensation received by a specialized agent must be brought in a plenary action under the rules of civil procedure as suggested by Advisors.

Moreover, the procedure followed by the district court in this case is consistent with the comments to section 3-721 of the UPC, which state:

> In view of the broad jurisdiction conferred on the probate court by Section 3-105, description of the special proceeding authorized by this section might be unnecessary. But, the Code's theory that personal representatives may fix their own fees *and* those of estate attorneys marks an important departure from much existing practice under which fees are determined by the court in the first instance. Hence, it seemed wise to emphasize that any interested person can get judicial review of fees if he desires it. Also, if excessive fees have been paid, this section provides a quick and efficient remedy.

UPC § 3-721 cmt.

As indicated by the comment to section 3-721 of the UPC, Minn. Stat. § 524.3-721 provides for a "quick and efficient" procedure for challenging the reasonableness of compensation paid to a specialized agent employed by the estate. *See id*. The complexity of the issues presented does not change the plain and unambiguous language of Minn. Stat. § 524.3-721. Moreover, the district court recognized the complexities involved in this case, stating that it would "not . . . make a final determination as to the Estate's entitlement to a refund of the Advisor fees without a *full record* and consideration of the provisions of the Advisor Agreement." (Emphasis added.) And in considering the fact that related litigation

may impact the outcome of its decision, the district court further ordered that "[n]o determinations on rights to the funds from the Jobu transaction shall be made until after completion of [the Jobu litigation]." This demonstrates that the district court was not intending to decide the issue "on a summary basis" as claimed by NorthStar, but instead would decide the issue after the presentation of testimony and exhibits. Advisors simply appealed the district court's order granting a temporary injunction before such a hearing could take place.

Similar to NorthStar, CAK also contends that the district court's interpretation of Minn. Stat. § 524.3-721 "runs afoul of both the plain intent and purpose" of the statute. But CAK's argument goes a step further than the broad argument made by NorthStar. Specifically, CAK argues that because the "Advisors' compensation was fixed by the Advisor Agreement and, in respect of the UMG Transaction, by the [district] Court's approval of the UMG Agreement," the issue raised by the Estate is "not one of subjective reasonableness," but is "instead one of contract interpretation" that "can only properly be resolved in the context of a plenary action."

CAK is correct that the district court's September 30, 2016 order approved the UMG agreement. And the order also impliedly approves the terms of the Advisor Agreement that allows Advisors to collect a ten-percent commission for their services. But CAK's argument that Minn. Stat. § 524.3-721 cannot now be applied in light of the September 30, 2016 order misconstrues both the September 30 order and the plain language of the statute, by confusing the approval of the *reasonableness of the rate of compensation* with approval of the *reasonableness of the compensation for services actually rendered*.

As stated above, Minn. Stat. § 524.3-721 plainly allows an interested person to seek review by the district court of the "reasonableness of the compensation" paid to a specialized agent. The statute also allows the district court to order a refund of "excessive compensation" paid for "services rendered." Minn. Stat. § 524.3-721. So hypothetically an attorney may negotiate, and a district court may approve, an attorney's $300 per hour billing rate to perform legal services for an estate. And after a legal bill is submitted by the attorney, and paid by the estate, an interested person may bring a motion under Minn. Stat. § 524.3-721 challenging the amount paid to the attorney and asserting that the bill was excessive or unreasonable based on the services performed. The interested person is not challenging the rate of compensation; rather the challenge is to the amount of compensation paid for services performed. This hypothetical mirrors this case. The Estate is not challenging the ten-percent commission rate established in the Advisor Agreement. That rate was impliedly approved in the September 30 order. Instead, the Estate is challenging the reasonableness of Advisors' compensation in light of the terminated and rescinded contracts under which the Estate received nothing of value. Under the plain language of Minn. Stat. § 524.3-721, the challenge is authorized.

Advisors further argue that the district court's order ignores the controlling language of the Advisor Agreement. Advisors argue that, because the Advisor Agreement is controlling, the Estate's claim is contractual in nature, and must be resolved in a plenary action. In fact, NorthStar appears to argue the merits of the original motion, claiming that under the terms of the Advisor Agreement, Advisors were entitled to their commissions because "there is no provision [in the Advisor Agreement] requiring the Advisors to return

commissions earned on an original contract that is later modified or substituted after the term."

To the extent that Advisors argue that they are entitled to their commissions under the Advisor Agreement, that argument is beyond the scope of our review. Minnesota Rule of Civil Appellate Procedure 103.04 provides that an appellate court has the authority to review orders "affecting" the order being appeal. *See* David F. Herr & Mary R. Vasaly, *Appellate Practice in Minnesota: A Decade of Experience With the Court of Appeals*, 19 Wm. Mitchell L. Rev. 613, 618–19 (1993) ("The scope of review . . . determines which matters raised in the [district] court are properly before the appellate court on a particular appeal."). Here, the narrow issue before us concerns the district court's authority to resolve the Estate's motion under Minn. Stat. § 524.3-721. Although the Estate's motion before the district court sought a refund of Advisors' commissions stemming from the Jobu and UMG transactions, the court did not make a final determination on the issue. Instead, the district court required that Advisors refund the commissions received from the Jobu and UMG transactions, but ordered that these funds be held in escrow until final decisions are made. Because these final decisions have not been made, addressing the merits is premature.

Moreover, Advisors' assertion that the district court failed to consider the Advisor Agreement in making its decision is premature. The district court's order acknowledged the Advisor Agreement, but ultimately did not decide the merits of the Estate's motion. The district court specifically stated that it would not make "a final determination as to the

Estate's entitlement to a refund of the Advisor fees" without full "consideration of the provisions of the Advisor Agreement."

Finally, the fact that the terms of the Advisor Agreement may dictate the outcome of the Estate's motion does not deprive the district court of the authority to address the Estate's motion under Minn. Stat. § 524.3-721. For example, although an attorney fee arrangement is often contractual in nature, the statute specifically allows the district court to review whether an attorney's compensation was reasonable. *See* Minn. Stat. § 524.3-721. Similarly here, the terms of the Advisor Agreement may ultimately dictate whether Advisors are entitled to retain their commissions. But the language of Minn. Stat. § 524.3-721 is clear and unambiguous, and there is nothing in the statute indicating that a contract establishing any type of fee arrangement deprives the district court of authority to decide the reasonableness of compensation received. As noted above, the district court stated that, in making a final determination on the issue, it would consider the Advisor Agreement, along with a "full record" following "any necessary discovery." We therefore conclude that the district court did not err by applying Minn. Stat. § 524.3-721.

II.

Advisors argue that the district court's application of Minn. Stat. § 524.3-721 denied them due process of law by "depriv[ing] the Advisors of millions of dollars without even service of process, the opportunity to conduct discovery, the right to trial by jury, the right to present evidence, and the right to assert affirmative defenses or third-party claims." We disagree. The Fourteenth Amendment to the United States Constitution and article I, section 7 of the Minnesota Constitution provide that no person shall be deprived of life,

liberty, or property without due process of law. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976). Whether an individual's due-process rights have been violated is a question of law that is reviewed de novo. *Rew v. Bergstrom*, 845 N.W.2d 764, 785 (Minn. 2014).

"A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits." *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). And the supreme court has stated that it

> is a constitutional principle that no person shall be deprived of his liberty or property except by due process of law, which includes notice and a hearing, yet it was never claimed that . . . in civil actions ex parte and temporary injunctions might not be issued and retained in proper cases until a trial could be had, and the rights of the parties determined.

State ex. rel. Clapp v. Peterson, 52 N.W. 655, 656 (Minn. 1892).

Again, the district court has not made a final determination on the merits of the Estate's claim. Instead, the district court issued a temporary mandatory injunction, ordering that funds be held in escrow until the Jobu litigation is resolved and the court can hold an evidentiary hearing. In fact, the district court recognized that "many factors were involved in the termination of the Jobu Agreement and the rescission of the UMG Agreement," and stated that it would not "make a final determination . . . without a *full record* and consideration of the provisions of the Advisor Agreement." (Emphasis added.) The district court also ordered the parties to "cooperate in establishing a schedule for any

necessary discovery," and scheduled a conference call for the parties "to address the scheduling issue." The district court's order indicated that a decision would not be made without providing Advisors with the process they are due. As the Estate observes, this appeal from the March 11, 2019 temporary injunction interrupted the process. In light of the decision being challenged, Advisors cannot establish that, at this stage of the proceedings, they were deprived of the due process of law.

III.

Advisors argue that the district court erred by granting a temporary mandatory injunction in favor of the Estate.[2] As addressed above, a temporary injunction is an extraordinary equitable remedy to preserve the status quo pending adjudication of a case on its merits. *See Miller*, 317 N.W.2d at 712. The party seeking injunctive relief must demonstrate that there is no adequate remedy at law and that an injunction is necessary to prevent great and irreparable injury. *See Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

A.

We first address the Estate's contention that the March 11, 2019 order is "not a mandatory temporary injunction" and, therefore, this court "lacks jurisdiction" over that order. The Estate's argument ignores this court's April 2, 2019 special term order, which

[2] A mandatory injunction commands the doing of a positive act by the defendant. *See Bellows v. Ericson*, 46 N.W.2d 654, 658 (Minn. 1951). "Mandatory injunctions are generally governed by the same rules that apply to preventive injunctions." *Minneapolis Cmty. Dev. Agency v. Itasco Co. (In re condemnation by Minneapolis Cmty. Dev. Agency)*, 403 N.W.2d 310, 313 (Minn. App. 1987).

concludes that "[b]ecause the March 11, 2019 order has the characteristics of a temporary mandatory injunction, the order is appealable under Minn. R. Civ. App. P. 103.03(b)." Minn. R. Civ. App. P. 140.01 states that "[n]o petition for rehearing shall be allowed in the Court of Appeals." And this court has applied rule 140.01 to foreclose reconsideration of issues previously decided at special term when later considering the merits of the appeal. *See State ex rel. Leino v. Roy*, 910 N.W.2d 477, 481–82 (Minn. App. 2018) (declining to "reconsider this court's prior order regarding the commissioner's mootness challenge"); *see also Sangren*, 504 N.W.2d at 788 n.1 (declining to consider issue previously addressed by this court at special term). We decline to reconsider the special term order determining that the order is appealable.

B.

Advisors argue that the district court erred by granting the Estate a temporary injunction without analyzing the *Dahlberg* factors. Generally, the district court has discretion to grant or deny an injunction, and its action will not be disturbed on appeal unless, based on the record as a whole, it appears there has been an abuse of such discretion. *Cherne*, 278 N.W.2d at 91. A district court abuses its discretion when its decision is contrary to the record or is based on an erroneous view of the law. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011).

Here, the district court granted its injunction under Minn. Stat. § 524.3-721. That statute allows the district court to order any individual who has received excessive compensation from an estate to make appropriate refunds, which is an equitable remedy.

The equitable nature of the injunctive relief available under this statute indicates that application of the *Dahlberg* factors is required. *See Howard v. Svoboda*, 890 N.W.2d 111, 114–15 (Minn. 2017) (referring to the *Dahlberg* factors as "equitable factors" that must be applied to a motion for a temporary injunction).

In *Dahlberg*, the Minnesota Supreme Court laid out five factors to be considered by a district court when determining whether a temporary injunction is appropriate. 137 N.W.2d at 321–22. These factors consist of (1) the preexisting relationship between the parties; (2) the harm that would result if the injunction were denied or issued; (3) the public policy of granting or denying the injunction in light of the facts; (4) any administrative burdens in the judicial oversight and enforcement of the injunction; and (5) the likelihood that one party or the other will prevail on the merits. *Id*.

"Where the [district] court fails to analyze the *Dahlberg* factors in granting a temporary injunction, the court commits error." *State by Ulland v. Int'l Ass'n of Entrepreneurs of Am.*, 527 N.W.2d 133, 135 (Minn. App. 1995), *review denied* (Minn. Apr. 18, 1995). The Estate does not dispute that the *Dahlberg* factors were not considered, but contends that they need not be considered because the March 11 order is not an injunction. As discussed above, this court has already ruled that the March 11 order is a temporary injunction and we see no reason to reconsider that decision. Because the district court was required to apply the *Dahlberg* factors but failed to do so, we reverse and remand for consideration of the *Dahlberg* factors.

IV.

Advisors also contend that the district court abused its discretion by holding Advisors, "including their officers, directors, shareholders, employees, agents, assigns and successors," jointly and severally liable to the Estate for the commissions to be refunded. Although consideration of this issue is arguably unnecessary in light of our reversal of the temporary injunction on other grounds, we address the legal issue in the interests of judicial economy because it is likely to arise on remand. *See McGuire v. Bowlin*, 932 N.W.2d 819, 828 (Minn. 2019) (addressing issue in interests of judicial economy and because it presented a question of law).

When parties are jointly and severally liable, each is liable for the whole award. *See Black's Law Dictionary* 1054 (10th ed. 2014) (explaining that when joint-and-several liability applies "each liable party is individually responsible for the entire obligation"); *see also Erickson v. Hinkley Mun. Liquor Store*, 373 N.W.2d 318, 325–26 (Minn. App. 1985) (holding jointly and severally liable party responsible for entire judgment). Here, the district court's order provides:

> Within thirty . . . days of the entry of this Order, . . . NorthStar Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) including its officers, directors, shareholders, employees, agents, assigns and successors (collectively "NorthStar") and CAK Entertainment, Inc. (providing the services of Charles Koppelman) including its officers, directors, shareholders, employees, agents, assigns and successors (collectively "CAK") shall refund to the Estate all compensation received as a result of the terminated Jobu transaction and rescinded UMG transaction.

The district court then ordered that both "CAK and NorthStar are jointly and severally liable to the Estate" for the commissions to be refunded.

Advisors argue that the district court's order is erroneous because (1) McMillan and Koppelman, as agents for Advisors, cannot be held liable with respect to contracts entered into by Advisors, and (2) Advisors' officers, directors, shareholders, employees, agents, assigns and successors also may not be held personally liable for commissions ordered to be refunded by Advisors. We agree that the district court's order is overly broad. The "general rule is that an officer of a corporation is not liable to its creditors for corporate debts." *Haas v. Harris*, 347 N.W.2d 838, 840 (Minn. App. 1984). "Where an agent, acting for a disclosed principal, enters into a contract with third persons for and on account of his principal and in [the principal's] name, the contract is that of the principal and does not give rise to any contractual obligation running to the agent." *Kost v. Peterson*, 193 N.W.2d 291, 294 (Minn. 1971); *see also Froelich v. Aspenal, Inc.*, 369 N.W.2d 37, 39 (Minn. App. 1985) (citing Restatement (Second) of Agency § 320 (1958)). But "[a] court may pierce the corporate veil to hold a shareholder liable for the debts of the corporation when the shareholder is the alter ego of the corporation." *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007).

Here, both McMillan and Koppelman signed the Advisor Agreement as "Authorized Representative" of Advisors. By signing the Advisor Agreement as agents for their disclosed principals, McMillan and Koppelman are presumptively not liable for the corporate debts of their respective companies. *See Haas*, 347 N.W.2d at 840. The record does not currently support characterization of these companies as mere alter egos for

McMillan or Koppelman. On this record, it was an abuse of discretion for the district court to hold McMillan and Koppelman jointly and severally liable for the commissions to be refunded.

Similarly, as Advisors point out, the district court's order has the improper effect of holding the "officers, directors, shareholders, employees, agents, assigns and successors" of Advisors liable, including secretarial and administrative personnel. *See Northland Temps., Inc. v. Turpin*, 744 N.W.2d 398, 406 (Minn. App. 2008) (acknowledging the general rule that "employees and shareholders of a corporation are not personally liable for the corporation's debts"), *review denied* (Minn. Apr. 29, 2008). On this record, the order holding all "officers, directors, shareholders, employees, [and] agents" of Advisors jointly and severally liable for commissions to be refunded is an abuse of discretion.

D E C I S I O N

The district court did not err by determining that Advisors are specialized agents and subject to the provisions of Minn. Stat. § 524.3-721. Because the temporary injunction granted in this case is not a final determination on the merits, Advisors did not establish, at this stage of the proceedings, that they were deprived of due process of law. But in granting the temporary injunction, the district court failed to apply the *Dahlberg* factors. The district court's failure to apply the *Dahlberg* factors was error. We therefore affirm the district court's application of Minn. Stat. § 524.3-721 to the Estate's claim, but reverse the district court's grant of a temporary injunction and remand for application of the *Dahlberg* factors.

Affirmed in part, reversed in part, and remanded.