**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0892**

State of Minnesota, by Jan Malcolm,
Commissioner of Health in her official capacity,
Respondent,

vs.

The Iron Waffle Coffee Company LLC,
d/b/a The Iron Waffle Coffee Company,
Appellant.

**Filed February 28, 2022**
**Affirmed**
**Cochran, Judge**

Ramsey County District Court
File No. 62-CV-20-5745

Keith Ellison, Attorney General, Kaitrin C. Vohs, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Richard Dahl, Dahl Law Firm P.A., Brainerd, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**COCHRAN**, Judge

This case arises from a civil enforcement action brought by respondent-commissioner against appellant, a coffee shop business. Respondent brought the enforcement action based on appellant's operation of its coffee shop after its license to operate as a food-and-beverage-service establishment was revoked by the Minnesota Department of Health (MDH).

The district court issued a temporary injunction enjoining appellant from operating without a food-and-beverage-service establishment license from MDH. Appellant challenges the district court's issuance of the temporary injunction and the district court's subsequent contempt order that resulted from appellant's continued operation of the coffee shop following issuance of the temporary injunction. Because we discern no abuse of discretion by the district court in the issuance of the temporary injunction or the contempt order, we affirm.

## FACTS

In June 2020, Governor Walz issued Emergency Executive Order (EEO) 20-74 in response to the COVID-19 pandemic. Emerg. Exec. Ord. No. 20-74, *Continuing to Safely Reopen Minnesota's Economy & Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (June 5, 2020). EEO 20-74 included provisions that placed restrictions on the operation of food-and-beverage-service establishments in the state. *Id.* The governor amended EEO 20-74 in July with the issuance of EEO 20-81, which required Minnesotans to wear a mask or other face covering in indoor businesses and indoor public

settings. Emerg. Exec. Ord. No. 20-81, *Requiring Minnesotans to Wear a Face Covering in Certain Settings to Prevent the Spread of COVID-19* (July 22, 2020). EEO 20-81 applied to food-and-beverage-service workers, and it also required those workers to wear face coverings outdoors when it was not possible to maintain social distancing. *Id.* EEO 20-81 provided a limited exemption to the face-covering requirement for individuals with "a medical condition, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering." *Id.* The governor issued EEOs 20-74 and 20-81 to help slow the spread of COVID-19. *Id.*; EEO 20-74.

On August 4, 2020, employees of MDH conducted an inspection of appellant The Iron Waffle Coffee Company LLC (Iron Waffle), a small coffee shop located near Gull Lake. At the time, Iron Waffle had a license from MDH to operate as a food-and-beverage-service establishment. During the inspection of the coffee shop, MDH saw that several staff members were not wearing masks and signs were posted informing staff and patrons that they were free to choose whether they wore masks. The MDH employees told Iron Waffle to require staff to wear masks and to post signs informing staff and patrons that masks were required. On August 5, 2020, MDH employees again inspected Iron Waffle and saw that three of the four staff present were not wearing masks and that the signs informing staff and patrons that masks were optional were still posted.

On August 6, 2020, MDH issued and sent Iron Waffle a cease-and-desist order, telling it not to operate for 72 hours and advising it that the order could be lifted by correcting specified violations of EEOs 20-74 and 20-81, including the face-covering requirement. MDH employees observed that Iron Waffle was complying with the

cease-and-desist order by not operating on August 7, 2020. But, on August 10, 2020, they observed that Iron Waffle was operating again and three staff members in the establishment were not wearing masks. A week later, on August 17, 2020, MDH employees again saw Iron Waffle in operation with staff members not wearing masks and with signs posted informing staff and patrons that masks were optional.

On August 20, 2020, MDH sent a letter by first-class and certified mail, informing Iron Waffle that MDH observed that its staff had not been wearing masks, that it had ten days to respond to the letter, and that its response would be considered in determining further enforcement action, including a possible $10,000 administrative penalty. No response was received.

On September 11, 2020, MDH conducted another on-site inspection and saw Iron Waffle employees who were not wearing masks. Stacy Stranne, who identified herself to the MDH employees as the person in charge of Iron Waffle, said she had not opened the August 6, 2020 cease-and-desist letter until that day.

On September 24, 2020, MDH sent Iron Waffle by first-class and certified mail an Administrative Penalty Order (APO) assessing penalties for failing to comply with the face-covering requirement and requiring corrective action. MDH also informed Iron Waffle that it could challenge the APO by requesting a contested case hearing before an administrative law judge within 30 days of receipt of the APO letter. No response or request for a contested case hearing was received by MDH. On October 30, 2020, MDH inspected Iron Waffle and saw two employees not wearing masks and the posted signs saying masks were optional.

On November 16, 2020, MDH sent a letter by first-class and certified mail to Iron Waffle's registered address notifying Iron Waffle that the corrective actions required by the APO still had not been completed and, as a result, the full administrative penalty assessed in the APO was now due. The letter also informed Iron Waffle, in bold print, that its license to operate as a food-and-beverage-service establishment would be revoked 20 days after receipt of the letter unless the corrective actions specified in the APO were completed and the penalty paid by Iron Waffle. It further informed Iron Waffle that:

> Since a license to operate a food and beverage service establishment is required under Minnesota Statutes, section 157.16, subd. 1, you are required to discontinue operating the establishment 20 days after receipt of this letter, unless the requirements of the APO have been met. Failure to discontinue operations at that time will result in additional enforcement action by MDH and by the Office of the Attorney General on behalf of MDH.

Finally, the letter put Iron Waffle on notice that, pursuant to Minn. Stat. § 144.99, subd. 10 (2020), it could request a contested case hearing regarding MDH's proposed action to revoke its license, but it needed to do so within 20 days after receipt of the letter.

Iron Waffle never requested a contested case hearing to challenge the proposed revocation of its license. Iron Waffle also failed to take the corrective actions set forth in the APO. As a result, on December 9, 2020, respondent commissioner of health (the commissioner) revoked Iron Waffle's license.

On December 12, 2020, MDH conducted an inspection and found Iron Waffle operating after its license was revoked. MDH also observed Iron Waffle providing indoor dining with neither employees nor patrons wearing masks.

On December 17, 2020, the commissioner filed the complaint in this matter, along with a request for a temporary restraining order and temporary injunctive relief, on the basis that Iron Waffle was operating without a valid MDH license, in violation of Minn. Stat. § 157.16 (2020). On that same date, MDH personally served Iron Waffle's manager, Stacey Stranne, with the summons and complaint. Along with the summons and complaint, MDH served Stranne with a motion for a temporary restraining order and temporary injunctive relief, and with a copy of the November 16, 2020 revocation-notice letter.

On December 18, 2020, the district court issued a temporary restraining order enjoining Iron Waffle from operating as a food-and-beverage-service establishment without a license from MDH.

On March 16, 2021, following a delay requested by Iron Waffle, a hearing was held on MDH's motion for a temporary injunction. On May 18, 2021, the district court issued a temporary injunction continuing the terms of the temporary restraining order throughout the duration of the instant litigation. In its order, the district court expressly declined to address arguments made by Iron Waffle regarding the underlying decision by MDH to revoke Iron Waffle's license and instead focused on the issue raised by the complaint, whether Iron Waffle was operating after its license was revoked in violation of Minn. Stat. § 157.16.

On June 9, 2021, in response to a report that Iron Waffle was open for business, MDH inspected Iron Waffle and found that it was operating without a license in violation of both Minn. Stat. § 157.16 and the temporary injunction. MDH then moved the district court to order Iron Waffle to show cause for why it should not be held in contempt. At a

show-cause hearing on June 22, 2021, the district court held Iron Waffle in civil contempt for its failure to comply with the terms of the temporary injunction (and temporary restraining order) and issued an oral order that Iron Waffle be fined $2,000 for each day that it operated without a license. The district court's oral order was confirmed in a written order for contempt filed on June 29, 2021, with the provision that the fines would begin to accrue on the date of the oral order.

This appeal follows.

## DECISION

Iron Waffle challenges the district court's grant of a temporary injunction pursuant to Minnesota Statutes section 144.99 (2020) barring Iron Waffle from operating as a food-and-beverage-service establishment without a license from MDH. Iron Waffle also contends that this court should reverse the district court's order finding Iron Waffle in contempt for failing to comply with the district court's temporary-injunction order.

Minnesota law requires a license from MDH to operate "a food-and-beverage-service establishment." Minn. Stat. § 157.16, subd. 1. Section 144.99 authorizes the commissioner to bring an action for injunctive relief in district court to enjoin a violation of the provisions of chapter 157. Minn. Stat. § 144.99, subds. 1, 5.

"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 v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). "A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous." *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003),

*rev. denied* (Minn. Nov. 25, 2003). "It is error, however, for the trial court to grant injunctive relief without evaluating specific factors." *Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 388-89 (Minn. App. 1992), *rev. denied* (Minn. Mar. 26, 1992). A district court's civil contempt order is also reviewed for an abuse of discretion. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). For the reasons discussed below, we discern no abuse of discretion by the district court in its issuance of either the temporary-injunction order or the contempt order.

## I. The district court acted within its discretion when it issued the temporary injunction.

Iron Waffle contends that the district court abused its discretion when it granted the temporary injunction, arguing that MDH was not entitled to a temporary injunction and that MDH erred by revoking its license for alleged violations of EEOs 20-74 and 20-81. The commissioner responds that the district court acted within its discretion when it issued the temporary injunction because Iron Waffle was violating Minn. Stat. § 157.16 by operating without a valid food-and-beverage-service establishment license. The commissioner further contends that MDH's underlying license-revocation decision was not within the scope of the temporary-injunction proceeding.

Generally, when a district court considers whether to issue a temporary injunction, it considers five factors commonly known as the *Dahlberg* factors. *See Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965); *DSCC v. Simon*, 950 N.W.2d 280, 286-87 (Minn. 2020). Those factors include: (1) the parties' preexisting relationship; (2) the relative harms suffered by plaintiff if the injunction is denied and by

defendant if the injunction is granted; (3) the likelihood of each party's success on the merits; (4) the requirements or implications of public policy, if any; and (5) the administrative burdens involved, if any. *Dahlberg*, 137 N.W.2d at 321-22.

But when "injunctive relief is explicitly authorized by statute proper exercise of discretion requires the issuance of an injunction if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purposes behind the statute's enactment." *Wadena*, 480 N.W.2d at 389 (citing *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985)); *see also State by Ulland v. Int'l Ass'n. of Entrepreneurs of Am.*, 527 N.W.2d 133, 137 (Minn. App. 1995) (approving use of *Wadena* standard in context of temporary injunction except when a party disputes that it was subject to the statute to be enforced, in which case the district court must consider the *Dahlberg* factors), *rev. denied* (Minn. Apr. 18, 1995). In other words, an injunction authorized by statute may issue without an application of the *Dahlberg* factors where the statutory criteria for the injunction are met and issuance of the injunction serves the purposes of the statute.

In its temporary-injunction order, the district court concluded that a temporary injunction was supported under either standard. First, applying *Wadena*, the district court concluded that the commissioner met her burden for the issuance of an injunction under the authority of section 144.99 because Iron Waffle "continued operating after its license was revoked" in violation of Minn. Stat. § 157.16, subd. 1, and "injunctive relief would fulfill the legislative purpose" of Minn. Stat. § 144.99.[1] Second, and alternatively, the

[1] The court also found that it had authority to issue the temporary injunction under Minn. Stat. § 145.075 (2020) and issuance of the injunction would fulfill the purpose of that

district court concluded that an analysis of the "traditional *Dahlberg* factors" also supported issuance of a temporary injunction. On appeal, Iron Waffle focuses primarily on the district court's *Dahlberg* analysis. In the interest of completeness, we address the district court's analysis under both *Wadena* and *Dahlberg*.

*Wadena Analysis*

We conclude that the issuance of the temporary injunction was a proper exercise of the district court's discretion under the standard set forth in *Wadena* because the injunction was explicitly authorized by section 144.99 and fulfills the purposes of that statute. As noted above, section 144.99 expressly authorizes the commissioner to bring an action "for injunctive relief" in district court "to enjoin a violation" of the provisions of chapter 157. Minn. Stat. § 144.99, subds. 1, 5. Here, the district court found that Iron Waffle was operating without a valid license in violation of section 157.16. Therefore, the district court correctly concluded that the temporary injunction was explicitly authorized by section 144.99. In addition, the issuance of the temporary injunction furthers the purpose of section 144.99 by enjoining that violation of law and, as the district court found, protecting "the health and safety of [Iron Waffle's] patrons and employees during the pendency of th[e] litigation." Accordingly, the issuance of the temporary injunction was consistent with the standard set forth in *Wadena*. *See Wadena*, 480 N.W.2d at 389. Iron Waffle does not argue otherwise.

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statute. Section 145.075 provides that, "[i]n addition to any other remedy provided by law, the commissioner may in the commissioner's own name bring an action in the court of appropriate jurisdiction to enjoin any violation of a statute or rule which the commissioner is empowered to enforce or adopt." Minn. Stat. § 145.075.

*Dahlberg Analysis*

Instead, Iron Waffle challenges the district court's analysis of the *Dahlberg* factors. Iron Waffle contends that "each of the factors in *Dahlberg*" weigh in its favor. Its brief, however, only addresses factors two and three. Accordingly, we limit our analysis to those factors.

The second factor requires the district court to analyze the relative harms to be suffered by the parties if injunctive relief is granted or denied. Iron Waffle argues that the district court abused its discretion in weighing the harms because a temporary injunction would "put [Iron Waffle] out of business for the speculation about . . . employees who were not wearing masks." We are not persuaded that Iron Waffle has demonstrated an abuse of discretion by the district court.

In its order, the district court properly analyzed and balanced the relative harms. The district court considered that the temporary injunction would preclude Iron Waffle from operating without a license but concluded that the harm resulting to Iron Waffle's business from an injunction would not be significant because, lacking a license, Iron Waffle cannot legally operate—with or without an injunction. The district court further found that the potential harm to MDH if the injunction were denied would be considerable because MDH could not fulfill its function of protecting the public by requiring food-and-beverage-service establishments to have licenses. Importantly, the district court found that "[t]he prospect of irreparable harm to the public from unlicensed activity—regardless of whether [the harm] is COVID-19 related—far outweighs the harm to a single business" from an injunction. We discern no abuse of discretion in the district court's analysis of this factor.

The third factor requires the district court to consider the moving party's likelihood of success on the merits. With regard to this factor, the district court concluded that the commissioner "will likely prevail on the merits because [Iron Waffle] continued to operate its business after its license was revoked[,] in violation of Minnesota law." The district court noted that "it is undisputed that [Iron Waffle's] license to operate was revoked and that defendant requires a license before it can operate." Because it is undisputed that Iron Waffle was operating without a license in violation of chapter 157, we discern no abuse of discretion by the district court in its analysis of the third factor. Therefore, we conclude that Iron Waffle has failed to demonstrate that the district court abused its discretion when it determined that the *Dahlberg* factors supported the issuance of a temporary injunction.

*Iron Waffle's Alternative Arguments Regarding the Underlying License Revocation*

Iron Waffle also contends that the district court's decision to issue the temporary injunction was an abuse of discretion because MDH's underlying administrative decision to revoke Iron Waffle's license was improper. This contention is the primary focus of Iron Waffle's brief on appeal. In support of its view that its license was not properly revoked, Iron Waffle argues that: (1) MDH did not properly serve Iron Waffle with the letter notifying it of the proposed revocation of its license;[2] (2) two of its employees qualified

[2] This argument goes to service of the MDH revocation letter, not the complaint in this matter. Iron Waffle argues that service was insufficient because it was by mail rather than by personal service. The commissioner notes that Iron Waffle makes this argument for the first time on appeal. We do not reach the merits of this argument because it is outside the scope of this appeal. But, if we did, we would conclude that the argument fails because Minn. Stat. § 144.99, subd. 10, expressly authorizes the commissioner to provide notice of a proposed license revocation "in writing."

for a medical exemption from the mask requirement under EEO 20-81; and (3) MDH did not have the authority to enforce the EEOs promulgated by the governor. The commissioner counters that these arguments do not go to the merits of its current lawsuit, which is based on Iron Waffle's operation without a MDH license—not the grounds for the license revocation. The commissioner further argues that these arguments amount to an impermissible collateral attack on MDH's decision to revoke Iron Waffle's license, which became final prior to the filing of the current lawsuit.

In its order granting the temporary injunction, the district court declined to address similar arguments regarding MDH's underlying decision to revoke Iron Waffle's license, stating:

> This court has no jurisdiction to review the merits of the revocation of [appellant's] license to operate. If [appellant] disagreed with the revocation of its license, its sole remedy was an administrative appeal and a contested case hearing. Minn. Stat. § 14[4].99, subd. 10 (2020) (sole recourse for challenging validity of administrative license revocation is through the contested case provisions of chapter 14). The only path to appeal from the outcome of a contested case proceeding is certiorari review by the Minnesota Court of Appeals. Minn. Stat. §§ 14.63-.68 (2020). Based on [appellant's] failure to file an administrative appeal from any of the administrative orders, including but not limited to the order revoking its license, the administrative orders are final and non-reviewable by this court or by any other court. Accordingly, [appellant's] collateral attack on the validity of [MDH's] revocation of its license is beyond the scope of the court's jurisdiction and the instant litigation.

The district court's conclusion that it did not have subject-matter jurisdiction to review MDH's decision to revoke the license is correct.

State law sets forth a specific legal process for a food-and-beverage-establishment owner to challenge the revocation of its license by MDH. Under section 144.99, MDH may revoke a license to operate for serious or repeated violations of the requirements of section 157. Minn. Stat. § 144.99, subds. 1, 9(1). Prior to revoking the license, the commissioner "must first notify, in writing, the person against whom the action is proposed to be taken and provide the person an opportunity to request a hearing under the contested case provisions of chapter 14." *Id.*, subd. 10. At the contested case hearing, the licensee can raise legal objections to the proposed license revocation and present evidence in support of its position. *See* Minn. Stat. § 14.02, subd. 3 (2020) (providing that a "contested case" means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are determined after an agency hearing); Minn. Stat. §§ 14.58, 14.60-.61 (2020) (setting the procedures for a contested case hearing conducted by an administrative law judge on behalf of the agency, including an opportunity for parties to present evidence and argument against the proposed action). The administrative law judge, who conducts the contested case hearing on behalf of the agency, has the authority to decide the legal rights of the parties. Minn. Stat. § 14.50 (2020); Minn. R. 1400.5500 (2020). If MDH proceeds to revoke the license after a contested case hearing, the licensee may seek judicial review of the revocation decision by filing a petition for a writ of certiorari with this court within 30 days of the receipt of the final decision. Minn. Stat. § 14.63. But, if a licensee does not request a contested case hearing, MDH may revoke the license without a hearing and the revocation becomes a final agency decision. Minn. Stat. § 144.99, subd. 10.

The process set forth above provides the exclusive means for a food-and-beverage-establishment owner to challenge a decision by MDH to revoke its license to operate. *See* Minn. Stat. §§ 14.63, 144.99. No statute vests judicial review of MDH's decision to revoke a license in the district court. And, absent express statutory language vesting judicial review of an agency decision in the district courts, a petition for a writ of certiorari provides the exclusive means for review of an agency decision. *Mowry v. Young*, 565 N.W.2d 717, 719 (Minn. App. 1997), *rev. denied* (Minn. Sept. 18, 1997); *see also Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 674 (Minn. 1990) (stating that "[c]onstitutional principles of separate governmental powers require that the judiciary refrain from a de novo review of administrative decisions"); Minn. Stat. § 480A.06, subd. 3 (2020) (providing that "[t]he court of appeals shall have jurisdiction to issue writs of certiorari to all agencies").

Here, the district court found, and Iron Waffle does not dispute, that Iron Waffle did not request a contested case hearing challenging MDH's proposed revocation of its license pursuant to Minn. Stat. § 144.99. And it did not seek review of the decision to revoke its license by a writ of certiorari. As a result, MDH's decision to revoke its license is a final agency decision no longer subject to judicial review. Minn. Stat. §§ 14.63, 144.99, subd. 10. Therefore, the district court did not abuse its discretion when it declined to address Iron Waffle's arguments regarding MDH's underlying decision to revoke its license.[3]

[3] Because this case does not come to us on a petition for a writ of certiorari, we decline to address for the first time the merits of Iron Waffle's arguments relating to MDH's decision to revoke its license. Those arguments were forfeited by Iron Waffle when it failed to request a contested case hearing or petition for review by a writ of certiorari.

In sum, we discern no abuse of discretion by the district court in its issuance of the temporary injunction prohibiting Iron Waffle from operating its coffee shop without a valid license from MDH as required by Minn. Stat. § 157.16.

## II. Iron Waffle has not demonstrated that the district court abused its discretion by holding Iron Waffle in civil contempt.

In its statement of the case, Iron Waffle asserts that it appeals from both the district court's temporary-injunction order and the contempt order. The district court's contempt order was based on its finding that Iron Waffle failed to comply with the temporary injunction. In its brief, Iron Waffle makes no argument as to why the contempt order should be reversed. Issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *rev. denied* (Minn. Aug. 5, 1997).

To the extent that Iron Waffle implies that reversal of the contempt order should flow from reversal of the temporary injunction, that argument fails. As discussed above, Iron Waffle has not demonstrated any basis for reversal of the district court's issuance of the temporary injunction. Because we conclude that the district court did not abuse its discretion by issuing the temporary injunction and Iron Waffle has not identified any independent reason for reversal of the contempt order, we discern no basis for reversal of the district court's order holding Iron Waffle in contempt for failing to comply with the district court's temporary-injunction order.

**Affirmed.**