STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0261

East Phillips Neighborhood Institute, Inc., et al.,
Appellants,

vs.

The City of Minneapolis,
Respondent,

Minnesota Pollution Control Agency, et al.,
Respondents.

Filed June 20, 2023
Affirmed
Hooten, Judge[*]

Hennepin County District Court
File No. 27-CV-20-8414

Miles J. Ringsred, Duluth, Minnesota; and

Elysabeth Royal, St. Paul, Minnesota (for appellants East Phillips Neighborhood Institute, Inc. and Cassandra Holmes)

Kristyn Anderson, Minneapolis City Attorney, Mark Enslin, Rebekah M. Murphy, Assistant City Attorneys, Minneapolis, Minnesota (for respondent City of Minneapolis)

Keith Ellison, Attorney General, Christina Brown, Assistant Attorney General, St. Paul, Minnesota (for respondents Minnesota Pollution Control Agency and Minnesota Environmental Quality Board)

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

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellants East Phillips Neighborhood Institute Inc. and Cassandra Holmes (together, EPNI) challenge a district court order denying a motion for a temporary injunction to prevent respondent City of Minneapolis from demolishing a building known as the Roof Depot during the pendency of this litigation. Appellants assert that the district court erred by not applying *Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 389 (Minn. App. 1992), *rev. denied* (Minn. March 26, 1992), in determining whether to grant temporary injunctive relief for asserted violations of the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2022), and the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-.11 (2022). Because the merits of EPNI's claims have not yet been determined, the district court properly applied *Dahlberg Bros., Inc. v. Ford Motor Co.*, 314 N.W.2d 314, 321-22 (Minn. 1965), to determine the propriety of temporary injunctive relief. We therefore affirm.

FACTS

EPNI is a non-profit organization that opposes the city's Hiawatha Campus Expansion Project (the project), which will involve demolishing the Roof Depot and expanding the city's Hiawatha Maintenance Facility (HMF) in order to consolidate the city's water distribution maintenance functions. In 2016, the city purchased the property in the East Phillips neighborhood of Minneapolis that will house the project. Before the

city purchased the property, EPNI had hoped to purchase it and repurpose the Roof Depot to develop a multi-use facility that would include an urban farm consisting of hydro and aqua culture, a community employment and training center, and low-income housing. In 2020, EPNI took two measures to challenge the project under the state's environmental-protection statutes.

EPNI first submitted a petition under MEPA for the preparation of an environmental-assessment worksheet (EAW). *East Phillips Neighborhood Inst., Inc. v. City of Minneapolis*, No. A21-1297, 2023 WL 1770292, at *1 (Minn. App. Feb. 6, 2023) (*EPNI*), *rev. denied* (Minn. Apr. 18, 2023). The city determined that an EAW was not mandatory but nevertheless elected to prepare one. *Id.* Following completion of the EAW, the city determined that the project did not require an environmental-impact statement. *Id.* We affirmed the city's decision, *id.* at 8, and the supreme court denied EPNI's petition for further review.

EPNI second initiated this action in district court to challenge the project under MEPA and MERA. EPNI moved for a temporary injunction to prevent the city from demolishing the Roof Depot during the pendency of the litigation. The district court denied the motion, reasoning that it was appropriate to consider the *Dahlberg* factors in deciding whether to grant temporary injunctive relief. The court found that the first three *Dahlberg* factors—the relationship of the parties, the relative harms, and the likelihood of success on the merits—weighed against granting an injunction. The court found that the fourth and fifth factors—public policy and administrative burden—were neutral.

In assessing the relative harms, the district court explained that EPNI's inability to build its urban farm concept was not irreparable harm from the Roof Depot demolition because the city owns the property and "it is not certain that the Urban Farm would be realized even if the Court granted an injunction and EPNI prevailed at trial." In relation to environmental harms asserted by EPNI, the district court explained that any increase in vehicular traffic would be attributable to the project as a whole, not to the demolition of the Roof Depot that EPNI sought to enjoin. And the district court found that EPNI had not submitted sufficient evidence to demonstrate that the demolition would cause environmental harm through disturbance of arsenic in soils beneath the Roof Depot.

In considering public policy, the district court recognized MERA's public policy to "preserve the state's natural resources for future generations," but found that it could not "conclusively determine at this stage that the Roof Depot demolition will or will not upend MERA's public policy objective." The district court also recognized the competing interests "in preventing additional pollution in a community that is already disproportionately affected" and "supporting the efficient distribution of drinking water to [c]ity and suburban residents." The court found: "On balance, these considerations do not weigh in favor of one party or the other, and so the fourth *Dahlberg* factor is neutral."[1]

[1] We similarly recognized in reviewing the city's decision not to prepare an environmental-impact statement that EPNI had "come forward in good faith and with legitimate concerns for the health of their neighborhood" and the city "has undertaken the project in good faith and with the legitimate purpose of improving water services for the community." *EPNI*, 2023 WL 1770292, at *7.

The district court contrasted the lack of demonstrable harm to EPNI from demolishing the Roof Depot with the "significant economic harm" that the city would suffer if demolition were delayed, noting that:

> The [c]ity estimates that delays to the [p]roject will cost the city $175,000-250,000 per month as a result of accelerated construction costs, holding costs for the [p]roperty, and costs related to "stop/starts" with multiple [p]roject consultants. Delays will require the [c]ity to continue incurring thousands of dollars per year in fuel, maintenance, and employee time costs due to the current decentralized nature of [Hiawatha Maintenance Facility] functions. Additionally, the [c]ity's East Water Yards Campus building is over 100 years old and deteriorating, and is not compliant with the American[s with] Disabilities Act. The longer the [p]roject is delayed, the longer those employees will work in a building that is not equipped for their needs.

EPNI appealed the denial of injunctive relief and requested an injunction pending appeal, which the district court granted.[2]

DECISION

A district court decision to grant or deny temporary injunctive relief is reviewed for an abuse of discretion. *DSCC v. Simon*, 950 N.W.2d 280, 286 (Minn. 2020). A district court abuses its discretion by acting on an erroneous interpretation of law. *Id.* EPNI's argument in this appeal is discrete: it argues that the district court erred by applying *Dahlberg* instead of *Wadena* to determine the propriety of temporary injunctive relief.

[2] EPNI and the city moved for expedited consideration by this court, and the city moved to dissolve the injunction pending appeal. We granted the motions for expedited consideration and denied the motion to dissolve the injunction pending appeal. Accordingly, the city remains enjoined from demolishing the Roof Depot during the pendency of this appeal.

Minnesota courts generally apply the *Dahlberg* factors in determining whether to grant temporary injunctive relief. *See id.* "Because a temporary injunction is granted before a trial on the merits, 'a showing of irreparable harm is required to prevent undue hardship to the party against whom the injunction is issued, whose liability has not yet been determined.'" *Id.* at 286 (quoting *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979)). In determining whether there is irreparable injury, the district courts must consider five factors, including the moving party's likelihood of success on the merits. *Id.* at 286-87.

A party seeking permanent injunctive relief similarly "must establish that their legal remedy is not adequate[,] and that the injunction is necessary to prevent great and irreparable injury." *Cherne*, 278 N.W.2d at 92. But the irreparable injury analysis for permanent injunctive relief does not encompass the party's likelihood of success on the merits because the party has already succeeded on the merits. *See id.* ("If irreparable harm can be inferred from an alleged breach for purposes of a temporary injunction, it can be inferred from a trial court's actual finding of a breach by the defendant."). "[W]here a trial court has determined that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief." *Id.*

In *Wadena*, this court recognized that a statute may provide a basis for a court to grant injunctive relief without conducting an irreparable-injury analysis. 480 N.W.2d at 389. We held that "where injunctive relief is explicitly authorized by a 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." *Id.*[3] In *Wadena*, the prerequisites for injunctive relief under the applicable statute had been demonstrated because "the court combined the injunction and summary judgment hearings." *Id.*

Three years after *Wadena*, we decided *State by Ulland v. Int'l Ass'n of Entrepreneurs of Amer.*, 527 N.W.2d 133 (Minn. App. 1995), *rev. denied* (Minn. Apr. 18, 1995). In *Ulland*, the issue was what standard applied to the commissioner of commerce's motion for a temporary injunction based on the appellants' alleged violation of insurance laws. *Id.* at 136-37. Because the appellants in *Ulland* disputed the applicability of the insurance laws to them, we held that the district court was required to apply the *Dahlberg* factors before granting temporary injunctive relief. *Id.* at 137. In other words, we concluded that the prerequisites for injunctive relief under the applicable statute had not been demonstrated. *Id.* at 137; *see also Pac. Equip. & Irr., Inc. v. Toro Co.*, 519 N.W.2d 911, 917 (Minn. App. 1994) (reasoning that district court properly considered *Dahlberg* factors because parties disputed the applicability of the Minnesota Franchise Act), *rev. denied* (Minn. Sept. 16, 1994).

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[3] The Minnesota Supreme Court recently reached a similar conclusion in determining that a district court order denying permanent injunctive relief under a statute was appealable under Minn. R. Civ. App. P. 103.03(b). *See State v. Minn. Sch. of Bus.*, 899 N.W.2d 467, 471-72 (Minn. 2017). The court rejected an argument that the district court's order had not denied an injunction because there was no equitable showing or analysis. *Id.* The court explained that "[t]he conditions that must be met to grant a statutory injunction are determined by the text of the statute authorizing the injunction." *Id.* at 472. Like *Wadena*, the *Minn. Sch. of Bus.* case involved a request for permanent injunctive relief under a statute. *See id.* (explaining that "a permanent injunction sought under Minn. Stat. § 8.31, subd. 3, does not, by the terms of the statute, require a showing of irreparable harm, inadequacy of other remedies, consideration of equitable principles, or analysis of the *Dahlberg* factors").

In this case, the district court properly considered the *Dahlberg* factors in determining whether to grant EPNI's motion for temporary injunctive relief.[4] The parties dispute whether the city violated MEPA or MERA, and there has been no determination on the merits. Therefore, the requisites for relief under the statutes have not been demonstrated, and it was necessary for the district court to determine whether appellants would be irreparably injured by applying the *Dahlberg* factors, including the consideration of whether EPNI is likely to succeed on the merits of its claims. In this manner, this case is distinguishable from *Wadena*, where the district court combined the injunction and summary-judgment proceedings and determined liability before imposing permanent injunctive relief under a statute. 480 N.W.2d at 389. We therefore reject EPNI's argument that the district court erred by applying *Dahlberg* instead of *Wadena*.[5]

Because the district court properly considered the *Dahlberg* factors, and because EPNI does not argue any other basis for reversal, we affirm.

Affirmed.

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[4] In determining to apply the *Dahlberg* factors, the district court relied on this court's decision in *Drabik v. Martz*, which affirmed a district court decision that granted temporary injunctive relief under MERA after applying the *Dahlberg* factors. 451 N.W.2d 893, 898 (Minn. App. 1990), *rev. denied* (Minn. Apr. 25, 1990). EPNI correctly asserts that the court did not address an argument in *Drabik* that *Dahlberg* did not apply. However, because *Drabik* involved a temporary injunction before the merits had been determined, it is not inconsistent with the later-decided *Wadena*.

[5] EPNI alternatively argues that, if this court determines *Wadena* does not apply, *Dahlberg* "does not adequately address the legislative intent of MEPA and MERA" and a "modified standard" should apply. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987).