STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1489

Joel R. Helgeson, et al.,
Respondents,

vs.

Ronnie C. Franklin,
Appellant,

Argent Mortgage Company, LLC,
Defendant.

Filed July 29, 2008
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-06-17176

George Alan Letendre, 3900 Northwoods Drive, Suite 250, Arden Hills, MN 55112 (for respondents)

Ronnie C. Franklin, P.O. Box 50556, Minneapolis, MN 55405 (pro se appellant)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

KALITOWSKI, Judge

Appellant Ronnie C. Franklin challenges the district court's issuance of a temporary injunction that prevents him from canceling the contract for deed he entered into with respondents Joel R. Helgeson and Dezra Allen Helgeson, trustees of the Joel R. Helgeson Living Trust. Appellant also requests that the district court judge be removed from this case because he claims the judge is biased against him. We affirm and deny appellant's removal request.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion by issuing the temporary injunction. We disagree.

"A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). When exercising its discretion to grant injunctive relief, a district court weighs: (1) the nature and history of the parties' relationship; (2) the harm that would result from the grant of an injunction compared to that resulting from the denial of such relief; (3) the likelihood of success on the merits; (4) public-policy considerations; and (5) the administrative burdens to supervise and enforce the injunctive relief. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

A district court's findings regarding entitlement to injunctive relief will not be set aside unless clearly erroneous. *LaValle v. Kulkay*, 277 N.W.2d 400, 402 (Minn. 1979).

We conclude that the district court properly considered the *Dahlberg* factors and its findings are not clearly erroneous. The court found that: (1) the parties have had a long and litigious relationship; (2) an injunction would not harm appellant, but respondents would be harmed if one did not issue; (3) respondents established their likely success on the merits; (4) public policy, expressed in Minn. Stat. § 559.211 (2006) and supported by the unique nature of real property, supported an injunction; and (5) no administrative burdens would be created by issuing the injunction.

Appellant challenges only the district court's second and third findings. He argues that he would be harmed by the injunction because respondents' nonpayment under the contract has ruined his credit and forced the property into foreclosure. But appellant's claims of ruined credit and foreclosure are not part of the record. *See* Minn. R. Civ. App. P. 110.01 (stating the record on appeal consists of "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings"). Although it can be inferred that appellant's credit is not in good standing, it would be improper for this court to make that inference. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (stating that the role of the court of appeals is to correct errors, not find facts). And there is no evidence in the record that foreclosure proceedings have been completed. Moreover, even if appellant's claims are valid, appellant has not established how he would be harmed by the issuance of an injunction because respondents seek the right to prepay the contract. In contrast, the record supports the district court's conclusion that respondents

would be irreparably harmed if appellant was allowed to cancel their contract for deed. *See* Minn. Stat. § 559.211 (providing a contract-for-deed vendee with the right to cure a default *until* the contract is terminated).

Appellant also argues that respondents would not succeed on the merits because respondents defaulted on the contract. But even assuming appellant's assertion that respondents have defaulted is correct, this does not establish that respondents will be unsuccessful. Respondents have demonstrated the likelihood of their success on the merits under the statutory right to cure because they claim that they can fully satisfy their obligation under the contract for deed. *See* Minn. Stat. § 559.211.

We thus conclude that issuing a temporary injunction was within the district court's discretion.

II.

Appellant argues that he should be assigned a new district court judge because the current judge is biased. We disagree.

As an initial matter, the district court's August 3, 2007 order denying appellant's recusal motion is not appealable. *See* Minn. R. Civ. App. P. 103.03 (listing appealable judgments and orders). The proper procedure for challenging this order is to file a petition for prohibition, which appellant did in August 2007, and which this court denied on October 2, 2007. *See McClelland v. Pierce*, 376 N.W.2d 217, 219 (Minn. 1985); Minn. R. Civ. App. P. 120.01 (explaining how to petition for extraordinary writ). And because this court denied appellant's petition and found that his arguments lacked merit, we will not reconsider that determination here. *See* Minn. R. Civ. App. P. 140.01 ("No

petition for rehearing shall be allowed in the Court of Appeals."). Moreover, even though this court may address any issue involving the merits or affecting the judgment, because the recusal denial was made after the temporary injunction appealed here, the denial could not have affected the court's injunction. *See* Minn. R. Civ. App. P. 103.04 (stating that "on appeal from a judgment [this court] may review any order involving the merits or affecting the judgment").

Finally, we reject appellant's argument of bias on the merits. Generally, a party who fails to remove a judge before the start of the proceedings has waived the opportunity to do so unless there is prejudice or "implied or actual bias." *Uselman v. Uselman*, 464 N.W.2d 130, 139 (Minn. 1990). Judges must be sensitive to the appearance of partiality and should take measures necessary "to assure that litigants have no cause to think their case is not being fairly judged." *McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn. 1984). But adverse rulings, standing alone, are insufficient to prove bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986) (citation omitted).

Appellant claims that the district court judge made statements in a chamber meeting, a summary-judgment motion hearing, and to his former attorney that suggested she was biased against him. But there is no record of the alleged out-of-court statements and appellant failed to order a transcript of the motion hearing. *See Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964) (stating that the party seeking review must ensure that the appellate record is "sufficient to show the alleged errors and all matters necessary for consideration of the questions presented").

Appellant also claims that the district court's bias is demonstrated by the fact he was only given a two-day continuance to respond pro se to respondents' summary-judgment motion. But the record does not support appellant's claim. Respondents filed their summary-judgment motion on July 13, 2007. Approximately five days later, appellant's attorney withdrew from the case. Appellant was given until August 3 to file his response. The record does not indicate when appellant sought a continuance or how much time he requested. Moreover, because appellant was able to timely file his response, he cannot demonstrate prejudice.

Affirmed.