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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1416**

Irv's Boomin' Fireworks, LLC, et al.,
Appellants,

vs.

John J. Muhar, et al.,
Respondents.

**Filed April 9, 2018
Affirmed
Reilly, Judge**

Itasca County District Court
File No. 31-CV-17-1538

Erick G. Kaardal, Vincent J. Fahnlander, Mohrman, Kaardal & Erickson, P.A.,
Minneapolis, Minnesota (for appellants)

John J. Muhar, Itasca County Attorney, Michael J. Haig, Chief Assistant County Attorney,
Grand Rapids, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellants Irving Seelye and Irv's Boomin' Fireworks, LLC, challenge the district court's denial of their motion for temporary injunctive relief to preclude respondent Itasca County Attorney's Office and its officers from enforcing Minnesota's fireworks law,

codified at Minnesota Statutes sections 624.20 to 624.25 (2016), against appellants. Because we discern no abuse of discretion, we affirm.

FACTS

Irving Seelye is a Native American and an enrolled member of the Leech Lake Band of Ojibwe (the Band). Seelye is the managing officer of Irv's Boomin' Fireworks, LLC. In June 2015, the Band issued Irv's Boomin' Fireworks a permit to sell both safe-and-sane¹ and explosive fireworks from its business location inside the Band's territory. The company sold fireworks for approximately ten days. Shortly thereafter, the Itasca County Sheriff's Office investigated Irv's Boomin' Fireworks and held a meeting with representatives of Itasca County, Cass County, and the Band to discuss the fireworks sales. The county attorney's office informed the Band that Seelye would be subject to criminal prosecution if the company did not stop selling explosive fireworks. Irv's Boomin' Fireworks stopped selling explosive fireworks and limited its sales to safe-and-sane fireworks. Two years later, in June 2017, appellants filed a complaint for declaratory and injunctive relief seeking to prevent the county attorney's office from criminally prosecuting them for selling explosive fireworks. Appellants filed a motion for temporary injunctive relief, which the district court denied the following day. This appeal follows.

¹ Safe-and-sane fireworks are non-explosive fireworks such as certain wire or wood sparklers or sparkling items, snakes and glow worms, smoke devices, or trick noisemakers. Minn. Stat. § 624.20, subd. 1(c) (2016).

DECISION

I. The complaint asserts a justiciable controversy.

Appellants sought a declaratory judgment under Chapter 555 of the Minnesota Statutes, which permits “[a]ny person . . . whose rights, status, or other legal relations are affected by a statute” to “have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Minn. Stat. § 555.02 (2016). “Declaratory judgment actions allow parties to be relieved of an uncertainty and insecurity arising out of an actual controversy about their legal rights before those rights actually have been invaded.” *Harstad v. City of Woodbury*, 902 N.W.2d 64, 71 (Minn. App. 2017), *aff’d* (Minn. Nov. 28, 2017) (citation and quotations omitted). However, a district court has no jurisdiction over a declaratory judgment action absent a justiciable controversy. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). Justiciability is an issue of law reviewed de novo. *Id.*

A declaratory judgment claim is ripe if the complaining party “is possessed of a judicially protectible right or status which is placed in jeopardy by the ripe or ripening seeds of an actual controversy with an adversary party. . . .” *Id.* at 339 (quotation omitted). There is no mechanical test to determine whether a justiciable controversy exists and courts must consider the specific facts of each case. *See Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass’n of Minneapolis*, 271 N.W.2d 445, 447-48 (Minn. 1978). A declaratory action is a justiciable controversy if it “(a) involves definite and concrete assertions of right that emanate from a legal source, (b) involves a genuine conflict in tangible interests between parties with adverse interests, and (c) is capable of specific resolution by judgment

rather than presenting hypothetical facts that would form an advisory opinion.” *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273 (Minn. App. 2001) (citations omitted).

The three-factor test for justiciability is satisfied here. First, appellants’ declaratory-judgment action involves a definite and concrete assertion of a right (to sell fireworks) emanating from a legal source (the permit to sell fireworks). Second, the action involves a genuine conflict of interests between appellants, who claim a protectable property interest in the fireworks permit issued by the Band, and respondents, who are authorized to prosecute violators of Minnesota law. Third, this matter is capable of specific resolution by judgment because it involves the interpretation of a Minnesota statute. Because the complaint asserts that appellants’ “rights, status, or other legal relations are affected by a statute,” Minn. Stat. § 555.02, and because each of the justiciable-controversy factors is present, we determine that the complaint asserts a justiciable controversy.

II. The district court did not abuse its discretion by denying appellants’ motion for a temporary injunction.

Appellants argue that the district court abused its discretion by declining to temporarily enjoin respondents from prosecuting appellants for the sale of explosive fireworks in violation of Minnesota Statutes sections 624.20-.25. A temporary injunction is an extraordinary equitable remedy used to preserve the status quo pending adjudication of a case on its merits. *See Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). The party seeking injunctive relief must demonstrate that there is an inadequate 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). We review the denial

of temporary injunctive relief for abuse of discretion and we will not set aside the district court's factual findings unless clearly erroneous. *See Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 665-66 (Minn. App. 2009).

This case centers on whether Minnesota may exercise jurisdiction over the Band's territory to enforce Minnesota's fireworks statute against an enrolled member who has a permit from the Band to sell fireworks. Relevant caselaw in this area is sparse, and there are no cases in which a Minnesota court has addressed a request to enjoin a county attorney's office from enforcing state fireworks laws against a tribal member selling fireworks on tribal land.

The district court began its analysis by determining that the state's fireworks statutes are criminal/prohibitory in nature, such that the state could "enforce [the fireworks law] where violation occurs on the Leech Lake Reservation, pursuant to Public Law 280." Traditionally, native tribes have retained "attributes of sovereignty over both their members and their territory." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987) (quotation omitted). This sovereignty is dependent on, and subordinate to, the federal government. *Id.* And "state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided." *Id.* Public Law 280 grants Minnesota jurisdiction over certain criminal matters on Indian country within the state. 18 U.S.C. § 1162 (2016) (recognizing state criminal jurisdiction over "[a]ll Indian country within the State . . ."); *Cabazon*, 480 U.S. at 207, 107 S. Ct. at 1087. Under Public Law 280, a state has jurisdiction to enforce its laws on Indian land if the intent of the law "is generally to prohibit certain conduct. . . ." *Cabazon*, 480 U.S. at 209, 107 S.

Ct. at 1088 (distinguishing between criminal/prohibitory and civil/regulatory laws). At the hearing, appellants' counsel conceded that Minnesota's fireworks law is criminal/prohibitory in nature because its general effect is to prohibit the sale of fireworks.

Having determined that Minnesota's fireworks law was criminal/prohibitory in nature, the district court reviewed whether appellants were entitled to injunctive relief. Five factors are relevant in considering whether injunctive relief is warranted: (1) the nature of the relationship between the parties preexisting the dispute; (2) the balance of harms; (3) the likelihood of success on the merits; (4) public-policy considerations; and (5) the administrative burden of supervising and enforcing an injunction. *See Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). Of these factors, the most important to the analysis is the likelihood that the moving party will prevail on the merits. *See Minneapolis Fed'n of Teachers v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied* (Minn. Mar. 31, 1994). Failure to establish the likelihood of success on the merits is dispositive of a motion for injunctive relief. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 165 (Minn. App. 1993). Our analysis therefore turns on a consideration of this factor.

The district court declined to grant temporary injunctive relief on the ground that appellants were unlikely to prevail on the merits. This decision was based on the court's interpretation of Minnesota's fireworks law. "Fireworks" are defined as "any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation. . . ." Minn. Stat. § 624.20, subd. 1(a). "Explosive fireworks" are "any fireworks that contain pyrotechnic

or flash powder, gunpowder, black powder, or any other explosive compound constructed to produce detonation or deflagration.” *Id.*, subd. 2. With certain exceptions, Minnesota law criminalizes the sale of explosive fireworks, stating that “it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, possess, advertise, use, or explode any fireworks.” Minn. Stat. § 624.21; *see also* Minn. Stat. §§ 624.23 (articulating exceptions), 624.24 (authorizing law-enforcement officers to remove fireworks offered for sale in violation of these sections), 624.25 (providing criminal penalties for violations).

The district court determined, based upon its interpretation of the statute, that appellants had not established a likelihood of success on the merits because appellants were engaged in the sale of explosive fireworks and did not meet one of the enumerated exceptions. A district court’s denial of an injunction is generally within its discretion, and we will not reverse unless the record as a whole reveals an abuse of discretion. *See Cherne*, 278 N.W.2d at 91. We cannot say, based on the scant record before us,² that the district court abused its discretion by determining that appellants failed to carry their burden of demonstrating the propriety of injunctive relief because they failed to establish a likelihood of success on the merits. *See id.* at 92 (placing burden on party seeking injunction). Because appellants failed to establish a likelihood of success on the merits “and the absence of proof of any one factor is dispositive,” we need not address the remaining four [*Dahlberg*] factors. *In re Commitment of Hand*, 878 N.W.2d 503, 509 n.4 (Minn. App.

² For example, the record does not even contain the permit issued by the Band to Irv’s Boomin’ Fireworks.

2016), *review denied* (June 21, 2016). Accordingly, we conclude that the district court did not abuse its discretion by denying appellants' motion for temporary injunctive relief.³

Affirmed.

³ Appellants also argue that the county attorney's office deprived them of their due-process rights because the fireworks permit issued by the Band is a protected property interest. Appellants do not identify any cases supporting this argument and we decline to recognize such a right at this time on the limited facts of this case.