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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0555**

EMERGE Community Development,
Respondent,

vs.

Minnesota Department of Employment and Economic Development, et al.,
Appellants.

**Filed December 3, 2018
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge**

Ramsey County District Court
File No. 62-CV-18-1256

Diana Young Morrissey, Paul M. Floyd, Wallen-Friedman & Floyd, P.A., Minneapolis, Minnesota; and Nancy Hylden, Hylden Advocacy & Law, Minneapolis, Minnesota (for respondent)

Lori Swanson, Attorney General, Steven Forrest, Megan McKenzie, Assistant Attorneys General, St. Paul, Minnesota (for appellants Minnesota Department of Employment and Economic Development and Shawntera Hardy)

Considered and decided by Rodenberg, Presiding Judge; Bratvold, Judge; and Stauber, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Department of Employment and Economic Development (DEED) challenges the district court's grant of a writ of mandamus that requires DEED to issue grant-fund reimbursements to respondent EMERGE Community Development (EMERGE). DEED asserts that the writ (1) is unauthorized because EMERGE has an adequate remedy at law; (2) unlawfully controls DEED's discretion; and (3) is procedurally and factually defective. By notice of related appeal, EMERGE challenges the district court's order denying its request for temporary injunctive relief.¹ We reverse and remand the district court's grant of a writ of mandamus, but affirm its denial of injunctive relief to EMERGE.

FACTS

In 2016, the Minnesota State Legislature appropriated \$35 million for services to address economic and employment inequality in Minnesota. 2016 Minn. Laws ch. 189, art. 12, § 2. It allocated \$34.25 million to DEED, of which

\$4,250,000 in fiscal year 2017 is for a grant to EMERGE Community Development, in collaboration with community partners, for services targeting Minnesota communities with the highest concentrations of African and African-American joblessness, based on the most recent census tract data, to provide employment readiness training, credentialed training

¹ The parties and the district court referred to the relief sought as injunctive relief, an injunction, and a temporary restraining order. We use the terms injunctive relief and injunction in this opinion because the district court denied such relief after a hearing on notice to all parties. See Minn. R. Civ. P. 65.02(a) ("No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party."); cf. Minn. R. Civ. P. 65.01.

placement, job placement and retention services, supportive services for hard-to-employ individuals, and a general education development fast track and adult diploma program. For fiscal year 2018 and thereafter, the base amount is \$1,000,000 per year.

Id., subd. 2(e).

On June 20, 2016, DEED and EMERGE entered into a master grant contract. In relevant part, the master grant contract provides:

5 Conditions of Payment

All services provided by [EMERGE] under this grant contract must be performed to [DEED's] satisfaction, as determined at the sole discretion of [DEED's] Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. [EMERGE] will not receive payment for work found by [DEED] to be unsatisfactory or performed in violation of federal, state, or local law.

....

19 Grantee Reports

[EMERGE] agrees to provide [DEED] with such progress reports, including, but not limited to, the following:

19.1 Expenditure and program income including any profit earned must be reported on an accrual basis.

19.2 Monthly Financial Status Reports (FSRs) by the 20th of each month reporting expenditures for the previous month.

19.3 Use of the Management Information System (as described in 27 below).

....

[DEED] shall withhold funding if reporting requirements are not met in a complete, accurate and timely manner.

EMERGE submitted a Project Specific Plan to DEED under the master grant contract. It detailed the designated uses of the funds and identified the nonprofit entities with which

EMERGE planned to enter into subgrant contracts. EMERGE then entered into subgrantee contracts with other nonprofit community organizations.

In July 2017, DEED sent C.N., a compliance monitor who had monitored other EMERGE grants, to conduct a monitoring visit. C.N. noted that “this was the most concerned I had ever been regarding a grantee’s lack of compliance with contractual obligations and inability to substantiate financial submissions.” C.N. immediately contacted her superiors and, due to “the scale of the numerous programmatic and financial concerns,” wrote a monitoring report rather than a corrective action report.² DEED attempted to obtain further information and documentation from EMERGE.

On September 1, 2017, DEED informed EMERGE that DEED had identified multiple “operational, financial, and programmatic issues that are in violation of the general terms and conditions” of the master grant contract. Due to the violations and EMERGE’s alleged failure to provide required information, DEED informed EMERGE that payments to EMERGE, and all grant-funded programming, would be suspended pending resolution of the identified issues. EMERGE claims that it was informed by DEED that it would be reimbursed for acceptable costs during the suspension; DEED claims that it has consistently stated that it would not pay for any costs incurred during the

² C.N. signed an affidavit stating that DEED’s corrective action reports are issued when a “grantee continues to be out of compliance with federal, state and/or local laws and policies and/or legislative or contractual obligations.” A corrective action report “outlines the steps the grantee must take to remain in compliance with the contract.” It appears to us that a monitoring report summarizes the monitor’s review of the grant, grantee, performance measurements, and areas of concern.

suspension. EMERGE additionally claims that a letter sent on September 11, 2017, fully responded to all of DEED's concerns.

The parties exchanged correspondence concerning whether EMERGE had adequately addressed DEED's concerns. On October 16, DEED notified EMERGE that DEED was indefinitely suspending the grant and that it had hired a third-party auditor to conduct a thorough financial and compliance review of EMERGE and its subgrantees. The auditor released a Phase I report on November 22, 2017, which "did not find concrete evidence of malfeasance during the period under review, but uncovered issues emblematic of poor internal controls, undisciplined record keeping, poor understanding of adequate expense documentation, and poor understanding of 'allowable' expense under the terms of this grant agreement." DEED informed EMERGE on November 29, 2017, that DEED would conduct a "Phase II review" to examine all reported expenses under the grant.

EMERGE claimed that it sent all requested documents for the Phase II review to DEED on February 12, 2018. On February 27, 2018, in response to EMERGE's complaints that DEED was slow-walking the Phase II review, DEED replied that, because it had not received all the necessary information from EMERGE or the subgrantees, it could not move forward with the review. On February 28, 2018, EMERGE sued DEED for declaratory judgment, breach of contract, injunctive relief, and a writ of mandamus. EMERGE moved the district court for injunctive relief and petitioned for a writ of mandamus.

The district court denied EMERGE’s motion for an injunction, concluding that the *Dahlberg* factors weighed against such relief. In the same order, the district court granted a writ of mandamus, ordering DEED to

promptly process and issue appropriate grant fund reimbursements for program expenses made up to the time DEED suspended funding, which includes (a) \$233,000 owed EMERGE for activity prior to the initial suspension and (b) \$335,000 for September and October of 2017 for activity up to the point where DEED demanded suspension of activities.

DEED moved for reconsideration or, alternatively, for the court to enter judgment on the writ. The district court denied reconsideration and entered judgment on the writ. DEED appealed, and EMERGE filed a notice of related appeal concerning the district court’s denial of injunctive relief. The judgment was stayed pending appeal.

D E C I S I O N

I. The district court did not abuse its discretion by denying EMERGE injunctive relief.

By notice of related appeal, EMERGE contends that the district court erroneously denied its request for an injunction enjoining DEED “from their ongoing suspension of grant funding and programming activities.” EMERGE argues that “errors of law in [the district court’s] analysis infected [its] decisions on three of the five *Dahlberg* factors.” Specifically, EMERGE contends that the district court erred as a matter of law regarding the *Dahlberg* factors concerning the nature and background of the relationship between the parties, the likelihood that EMERGE will succeed on the merits, and considerations of public policy.

A temporary injunction is an extraordinary equitable remedy, the purpose of which is to preserve the status quo in a case until adjudication on the merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). 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. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). The *Dahlberg* factors consist of:

(1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.

(2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.

(3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

(4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Id. “The district court has broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion.” *U.S. Bank Nat’l Ass’n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). We will not disturb a district court’s findings regarding entitlement to injunctive relief unless they are clearly erroneous. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). On review, we view the facts in the light most favorable to

the party that prevailed at the district court level. *Bud Johnson Constr. Co. v. Metro. Transit Comm’n*, 272 N.W.2d 31, 33 (Minn. 1978).

The district court applied the *Dahlberg* factors and concluded that the factors did not support issuing a temporary injunction.

A. Nature and Background of the Parties

EMERGE first contends that the district court incorrectly analyzed the relationship between the parties. In its order denying injunctive relief, the district court found that EMERGE and DEED were “in a grantor-grantee relationship, which is governed by a contract” and that “their relationship and expectations are clearly set out in the contract.” The court also found that “EMERGE had been awarded similar grants in the past, and had worked with the same grant monitor.”

EMERGE argues that, in this situation, the “Minnesota Legislature is the grantor; DEED is the Legislature’s fiscal agent; EMERGE is the grantee.” It argues that the district court erred by focusing on the contract between DEED and EMERGE. Instead, EMERGE argues, the district court should have focused on the relationship between the legislature and EMERGE. EMERGE argues that, because “EMERGE’s claims . . . were based on DEED’s overstepping the bounds of its legislatively granted authority, the [district] court should not have deferred to DEED’s form contract over the letter [of the law] and intent of the Minnesota Legislature.”

For the grant at issue, 2016 Minn. Laws ch. 189, art. 12, § 1, titled “Appropriations,” states that “[t]he sums shown . . . are appropriated to the agencies and for the purposes specified in this article.” 2016 Minn. Laws ch. 189, art. 12, § 1. Under 2016 Minn. Laws

ch. 189, art. 12, § 2, titled “Department of Employment and Economic Development,” the funds were appropriated to DEED. *Id.*, § 2. DEED was directed to disburse \$4.25 million to EMERGE and its community partners for job training, placement, and education services targeting African and African American communities with high rates of joblessness. *Id.*, subd. 2(e).

Once a grant has been designated by the legislature, a grantor and granting agency are statutorily required to enter into a grant agreement, which is “a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the recipient to support a public purpose authorized by law.” Minn. Stat. § 16B.97, subd. 1 (2016). The “state is not bound by the grant” in the absence of a valid grant agreement, which requires compliance with statutory requirements. Minn. Stat. § 16B.98, subd. 5(a)-(e) (2016).

Despite EMERGE’s argument that the district court incorrectly found that EMERGE and DEED’s relationship was governed by contract, EMERGE sued DEED for breach of contract. The district court did not abuse its discretion in determining that the essence of the relationship between the parties is a contractual one, and its consideration that the nature of the parties’ relationship does not favor granting a temporary injunction is not clearly erroneous.

B. Likelihood of Success on the Merits

EMERGE argues that the district court incorrectly determined that EMERGE made a doubtful showing of success on the merits. EMERGE argues that it is likely to succeed

because of “the clear provisions of the Legislative grant” and the absence of any indication that EMERGE committed fraud with grant funds.

One of the factors a district court must consider in deciding whether to afford injunctive relief is “[t]he likelihood that one party or the other will prevail on the merits when the fact situation is viewed in the light of established precedents fixing the limits of equitable relief.” *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 221 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). Here, the district court noted that “it is not clear whether DEED has acted in good faith in how it has handled reviewing and monitoring EMERGE’s finances.” This disputed issue is central to EMERGE’s breach-of-contract claim and remains for trial. The district court also concluded that “it is clear from the grant contract language that DEED was required to suspend funds upon its determination that EMERGE was not performing its contractual duties, and that DEED’s authorized representative had sole discretion to make that determination.” Because of that contractual language, the district court stated that it “cannot say that EMERGE is likely to succeed on the merits.”

EMERGE argues that the district court should have relied on legislative intent and the absence of any criminal misfeasance to determine whether EMERGE could eventually succeed on the merits. EMERGE seems to be arguing that it should receive the funds appropriated by the legislature regardless of the language of the grant contract that it was required by statute to sign and fulfill. See Minn. Stat. §§ 16B.97-.98 (2016) (requiring a grant agreement before a grantee receives funds and providing statutory requirements

concerning the creation and validity of grant agreements). This is inconsistent with EMERGE's complaint alleging a valid contract between EMERGE and DEED.

The district court concluded that EMERGE had not demonstrated a likelihood that it will ultimately succeed on the merits, because the grant contract gave DEED broad discretion in administering the contract and issues concerning DEED's breach-of-contract claims remain for trial. We see no clear error in that conclusion.

C. Public Policy Considerations

Finally, EMERGE argues that the district court improperly evaluated the public policy interests when it denied injunctive relief. The district court observed that the public interest was weighted evenly between EMERGE's interest in receiving grant money "that was specifically designated to it by the Minnesota Legislature in order to effectuate its purpose under that grant" and DEED's interest in ensuring that "taxpayer funds are being used responsibly." EMERGE cites no caselaw in support of its argument that the district court improperly evaluated the public policy interests. An assignment of error based on "mere assertion" and not supported by authority is forfeited unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). In the absence of a properly briefed argument and clear error, we cannot say that the district court clearly erred in its determination that public policy considerations did not favor the grant of temporary injunctive relief.³

³ We also observe that the district court's consideration of DEED's responsibility to ensure proper use of taxpayer funds is a perfectly reasonable one.

The district court acted within its discretion when it denied EMERGE’s request for temporary injunctive relief.

II. The district court abused its discretion by granting a writ of mandamus.

In its appeal of the district court’s grant of a writ of mandamus, DEED raises several grounds on which it argues that the district court’s grant of mandamus was improper. DEED contends that it was improper for the district court to issue a writ of mandamus “upon a motion with disputed facts and in the absence of a jury trial.” Because we conclude that this issue is dispositive, we do not address DEED’s other arguments.⁴

A writ of mandamus is an extraordinary remedy based on equitable principles, awarded at the district court’s discretion. *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). A district court may issue a writ of mandamus “to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office.” Minn. Stat. § 586.01 (2016). To obtain a writ of mandamus “[a] petitioner must demonstrate: (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). If the mandamus proceeding involves disputed issues of fact, “[e]ither party shall be entitled to

⁴ DEED also argues that the writ of mandamus was improperly granted because EMERGE has an adequate remedy at law through its breach-of-contract claim and because the writ of mandamus improperly interferes with DEED’s discretion under the master grant contract to determine whether to make payments. Because we conclude the district court improperly issued the writ of mandamus despite unresolved issues of disputed fact, we do not address DEED’s remaining arguments.

have any issue of fact tried by a jury, as in a civil action.” Minn. Stat. § 586.12 (2016). A district court may proceed without a trial when material facts are substantially undisputed. *Coyle*, 526 N.W.2d at 208. When a district court’s decision on a writ of mandamus is based solely on legal determinations, appellate courts review that decision de novo. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

Here, the facts are very much in dispute. DEED denies “that EMERGE had \$568,000 in grant expense reimbursements performed to DEED’s satisfaction.” EMERGE claims it is entitled to continued funding under the legislative grant and contends that the “record contains no suggestion, much less actual evidence that EMERGE . . . [was not performing its] duties under the legislative grant.” The district court accurately identified these factual disputes, including that “it is not clear whether DEED has acted in good faith in how it has handled reviewing and monitoring EMERGE’s finances.” Whether or not DEED acted in good faith is a disputed factual question, and one that implicates the pending breach-of-contract claim. Whether DEED’s suspension of the grant was proper is very much in dispute.

By issuing a writ of mandamus in this circumstance, the district court deprived DEED of its jury-trial right under Minn. Stat. § 586.12. It remains to be seen how these factual disputes will be resolved, but those disputes cannot properly be resolved by the summary issuance of a peremptory writ of mandamus. Therefore, we reverse the district court’s grant of a writ of mandamus and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.