

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0058**

Pilot Air Freight, LLC,
Respondent,

vs.

Adam Trenberth, et al.,
Appellants.

**Filed September 7, 2021
Reversed and remanded
Reilly, Judge**

Dakota County District Court
File No. 19HA-CV-20-2664

Jonathan P. Norrie, Bryce D. Riddle, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

V. John Ella, Nicholas N. Sperling, Anna M. Koch, Trepanier MacGillis Battina P.A., Minneapolis, Minnesota; and

Samuel W. Diehl, Crosscastle, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this interlocutory appeal, appellants argue that the district court abused its discretion by issuing a temporary injunction. Because the district court failed to consider security as required by Minn. R. Civ. P. 65.03(a) and because its order granting the

temporary injunction failed to satisfy the specificity requirements of Minn. R. Civ. P. 65.04, we reverse and remand.

FACTS

After graduating from college, appellant Adam Trenberth accepted a position as a salesperson for Manna Freight Systems Inc. (Manna). He worked for Manna from 2005 until 2014 when he left to pursue a personal business opportunity. A year later, Trenberth rejoined Manna as a salesperson and signed an employment agreement with an effective date of December 15, 2015. The employment agreement included a noncompete clause providing that, for one calendar year after separating from Manna, Trenberth was prohibited from calling on Manna customers or working for Manna's competitors within a 150-mile radius. The employment agreement also provided that if another company acquired Manna, the agreement "shall continue in full force and effect with regard to the surviving entity."

On July 17, 2018, respondent Pilot Air Freight LLC (Pilot), a full-service shipping and logistics company, acquired Manna. The day before Pilot acquired Manna, Pilot offered Trenberth a position as a sales representative. Trenberth accepted, began working for Pilot the next day, and signed Pilot's employment offer within days. During Trenberth's employment with Pilot, he was one of the top salespeople. Beginning in January 2019, Trenberth became Pilot's e-commerce sales manager. His job responsibilities included selling and promoting Pilot's transportation and logistics services to new and existing customers.

In June 2020, Trenberth resigned from Pilot and accepted a position as the vice president of sales with appellant Anderson Cargo Services LLC (Anderson), a competitor of Pilot. As Anderson's vice president of sales, Trenberth hired, trained, and managed employees who sold Anderson's freight services.

On July 8, 2020, Pilot sent letters to Trenberth and Anderson (collectively appellants) stating that Trenberth violated the noncompete clause under his employment agreement that survived Pilot's acquisition of Manna. Appellants sent Pilot letters in response that stated they did not believe Trenberth violated any of his obligations. Pilot then sued appellants alleging breach of contract, tortious interference with contract, threatened misappropriation under the Minnesota Uniform Trade Secrets Act, and unjust enrichment. In August 2020, Pilot sought injunctive relief against Trenberth to temporarily restrain him from continuing his employment with Anderson as vice president of sales. The district court held a hearing on August 17, 2020, and took the matter under advisement. Many weeks later, on November 16, 2020, the district court issued an order granting Pilot's motion. And on December 2, 2020, the district court filed a memorandum of law explaining the basis for its November order and then filed an amended memorandum of law the next day.

This appeal followed.

DECISION

I. This appeal is not moot.

This court heard oral argument on this matter on May 27, 2021. During oral argument, a question arose as to whether this appeal would become moot because the

injunction would expire on July 2, 2021, during the pendency of this appeal. The parties did not address the issue of mootness in their briefs, and we ordered supplemental briefing on whether this appeal would remain justiciable after the injunction expired.

We consider the question of mootness, “[a]s a constitutional prerequisite to the exercise of jurisdiction.” *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). The mootness doctrine demands that appellate courts hear only live controversies and prohibits appellate courts from issuing advisory opinions or deciding cases merely to establish precedent. *Id.*; *Chaney v. Minneapolis Cmty. Dev. Agency*, 641 N.W.2d 328, 331 (Minn. App. 2002), *rev. denied* (Minn. May 28, 2002). An issue is moot if “an event occurs pending appeal that makes a decision on the merits unnecessary or an award of effective relief impossible.” *Hous. & Redev. Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002). When we cannot grant effectual relief, we consider the issue raised moot and dismiss the appeal. *Schmidt*, 443 N.W.2d at 826.

Generally, an appeal from the grant of an injunction becomes moot when the injunction expires. *See Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 314 (1999) (stating that “an appeal from the grant of a preliminary injunction becomes moot when the trial court enters a permanent injunction, because the former merges into the latter”); *see also Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391-92 (Minn. App. 2004) (concluding that an appeal about a non-solicitation provision in an employment contract and an injunction were moot because they would expire while the

appeal was pending).¹ But an exception exists when the enjoined party seeks money from the posted bond. *Grupo Mexicano de Desarrollo, S.A.*, 527 U.S. at 315-17; *Medtronic, Inc. v. Janss*, 729 F.2d 1395, 1398-99 (11th Cir. 1984). When a court wrongfully enjoins a party, the injunction bond can be used to compensate the wrongfully enjoined party “for the payment of such costs and damages as may be incurred.” Minn. R. Civ. P. 65.03; *Hubbard Broad., Inc. v. Loescher*, 291 N.W.2d 216, 219-20 (Minn. 1980). As a result, the validity of an expired injunction can continue to affect the parties through the enjoined party’s effort to seek recovery on the bond. Thus, when the disposition of issues raised under the expired injunction dictates the proper treatment of the bond, the bond preserves appellate jurisdiction over the appeal. *Grupo Mexicano de Desarrollo, S.A.*, 527 U.S. at 314; *see also Medtronic, Inc.*, 729 F.2d at 1398-99.

Here, the parties agree that the temporary injunction expired on July 2, 2021, and that the noncompete agreement expired on July 6, 2021, under Trenberth’s employment agreement. In their supplemental brief, appellants assert that Trenberth intends to seek recovery under the \$25,000 injunction bond that Pilot posted in February 2021, and thus this appeal is not moot. We agree. Because Trenberth intends to seek recovery from the bond, the validity of the temporary injunction remains in dispute between the parties. We conclude that this appeal is not moot.

¹ In *Farm Bureau*, the district court did not require an injunction bond. 687 N.W.2d at 392.

II. Temporary injunction

Having concluded that this appeal remains justiciable, we turn to the merits of the appeal. Appellants argue that we must reverse the district court's order granting the temporary injunction.²

A temporary injunction is an extraordinary equitable remedy used to preserve the status quo between parties until adjudication of the case on its merits. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). In determining whether to grant temporary injunctive relief, the district court must first consider whether the party seeking the injunction showed that the applicable legal remedy is inadequate and the temporary injunction is necessary to prevent irreparable harm. *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979); *City of Mounds View v. Metro. Airports Comm'n*, 590 N.W.2d 355, 357 (Minn. App. 1999). If the threshold showing of irreparable harm is satisfied, the district court then considers the five *Dahlberg* factors: (1) the relationship between the parties, (2) the relative harm to the parties if the injunctive relief is granted or denied, (3) the party's likelihood of success on the merits, (4) any public interest or policy that may be involved, and (5) the administrative burdens on the judicial system in the supervision and

² Respondent urges us to consider the district court's analysis in its May 10, 2021 order ruling on appellants' motion for a stay pending this appeal. "On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken." Minn. R. Civ. App. P. 103.04. But "[a]n appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received into evidence below." *LaChapelle v. Mitten*, 607 N.W.2d 151, 168 (Minn. App. 2000) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988)), *rev. denied* (Minn. May 16, 2000). The May 10, 2021 order was issued after the entry of the district court's order granting an injunction, from which appellants appeal. The May 10, 2021 order is thus outside the record on appeal and we decline to consider it.

enforcement of the temporary injunction. *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

When a district court finds that a temporary injunction is necessary, it generally may not issue a temporary injunction unless the party seeking the injunction gives security “in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Minn. R. Civ. P. 65.03(a). And the district court’s order granting the injunction “shall be specific in terms” and “shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Minn. R. Civ. P. 65.04.

“The granting of an injunction generally rests within the sound discretion of the [district] court, and its action will not be disturbed on appeal unless, based upon the whole record, it appears that there has been an abuse of such discretion.” *Cherne Indus.*, 278 N.W.2d at 91. Our review of the district court’s decision on whether to grant an injunction is deferential and we consider the facts in the light most favorable to the prevailing party. *Bud Johnson Constr. Co. v. Metro. Transit Comm’n*, 272 N.W.2d 31, 33 (Minn. 1978). We will not set aside a district court’s findings about entitlement to injunctive relief unless they are clearly erroneous. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). Here, although the district court cursorily considered the *Dahlberg* factors, it ignored the requirements of Minn. R. Civ. P. 65.03 and 65.04.

A. The district court abused its discretion by failing to require a security bond in accordance with Minn. R. Civ. P. 65.03(a).

Appellants argue that the district court abused its discretion by issuing an order granting an injunction without requiring Pilot to provide security. We agree. Minn. R. Civ. P. 65.03(a) prohibits the district court from issuing a temporary injunction before the party seeking the injunction provides security, in the sum deemed proper by the district court, for payment of damages that may be suffered by any party later found to have been wrongfully enjoined. A district court may waive the security requirement, but it must note and explain its decision to waive security and cannot simply fail to address the issue. *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 297 (Minn. App. 1995).

Here, the district court neither required Pilot to provide security nor noted its decision to waive the security requirement. In February, months after the district court granted injunctive relief, and one month after appellants filed this appeal, Pilot voluntarily posted a \$25,000 bond as required by the parties' employment agreement. But it is the district court that must consider whether security is proper and, if so, in what amount. We thus conclude that the district court abused its discretion by failing to require Pilot to provide security as required by Minn. R. Civ. P. 65.03(a) or to explicitly waive the security requirement.

B. The district court abused its discretion by issuing an order granting an injunction that did not satisfy the requirements of Minn. R. Civ. P. 65.04.

Appellants also argue that the district court violated Minn. R. Civ. P. 65.04 because its order granting the injunction lacked specificity, was inconsistent, and improperly directed the parties to rely on their employment agreement. We agree. An order granting

an injunction “shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Minn. R. Civ. P. 65.04. The district court’s order granting the injunction stated in full:

Plaintiff’s Motion for Temporary Restraining Order is
GRANTED.

Defendants are enjoined and restrained from continuing Trenberth’s employment with [Anderson] as Vice President of Sales and from further violating or participating in the violation of the non-competition term in paragraph 5(e) of [] Trenberth’s December 15, 2015 Employment Agreement.

This Order shall remain in effect until further order of this Court, and is intended to apply during the pendency of this case, and during the pendency of any arbitration between the parties pursuant to paragraph 1 of [] Trenberth’s December 15, 2015 Employment Agreement.

The attached memorandum is incorporated herein.

The order granting the injunction failed to comply with any of the requirements of Minn. R. Civ. P. 65.04. First, although an injunction order must “set forth the reasons for its issuance,” the order is void of any reason for the injunction’s issuance. Minn. R. Civ. P. 65.04. And the incorporated memorandum makes conclusory statements that lack substantive analysis about the reasons for issuing the injunction.

Second, the order lacks specificity. The order directs Trenberth to refrain from continuing his employment at Anderson as the vice president of sales, but it does not clarify whether Trenberth can continue his employment with Anderson in a different capacity. And the memorandum magnifies the lack of specificity about whether, or in what capacity,

Trenberth may continue to work at Anderson. The memorandum states, “Trenberth is not restricted from performing work in other capacities. He is simply barred from performing the role of Vice President of Sales, or acting in a manner in consistent [sic] with his non-compete terms of his employment contract with [Pilot].” But the order and memorandum do not prescribe what actions would conflict with his noncompete. For example, can Trenberth call on customers who were not Pilot customers? Further, how does the role of vice president of sales preclude him from making those calls? Similarly, the memorandum states that an injunction would protect Pilot’s confidential information but fails to define what information is confidential. For example, is it pricing information? Customer lists?

Finally, the order and memorandum unequivocally reference the employment agreement when discussing the acts to be restrained. The memorandum states that Trenberth is “barred from . . . acting in a manner in consistent [sic] with his non-compete terms of his employment contract with [Pilot].” We thus conclude that the district court abused its discretion by issuing a temporary injunction that failed to set forth the reasons for its issuance, was not specific, and referred to the employment agreement in violation of Minn. R. Civ. P. 65.04. We therefore reverse and remand for proceedings consistent with this opinion.³

Reversed and remanded.

³ Appellants also argue that the district court abused its discretion by concluding that Pilot would suffer irreparable harm without an injunction and in its application of the *Dahlberg* factors. Because we are reversing the temporary injunction based on the district court’s failure to comply with rules 65.03 and 65.04, we need not reach these issues.