This opinion is nonprecedential except as provided by Minn.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
A22-1054

Douglas J. Malark,
Appellant,

Malark Family Trust,
Appellant,

vs.

Sheryl F. Malark,
Respondent.

Filed January 9, 2023
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CV-22-8621

David Bradley Olsen, Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota; and

Nicholas Vivianm Eckberg Lammers, P.C., Stillwater, Minnesota (for appellants)

Kristine M. Boylan, Philip R. Schenkenberg, James M. Jorissen, O. Joseph Balthazor, Jr., Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this business litigation dispute, appellant challenges a district court order denying his motion for a temporary injunction to reinstate him to his corporate position. Appellant asserts that the district court abused its discretion in applying the *Dalhberg* factors. We affirm.

FACTS

Appellant Douglas Malark and respondent Sheryl Malark were married in 1986. In the 1990s, Sheryl Malark founded MEI, a holding company comprised of several wholly-owned operating entities providing logistics services. Two years later, Douglas Malark became an employee of MEI. Douglas Malark and Sheryl Malark worked together in the operation, management, and growth of the company. In 2015, the parties created appellant Malark Family Trust, an irrevocable trust for estate planning purposes. Douglas Malark serves as trustee of the trust. The beneficiaries of the trust are the couple's two sons.

In 2017, the district court approved a stipulated judgment and decree dissolving the parties' marriage. Around the same time, Douglas Malark and Sheryl Malark executed these documents for MEI: (1) a shareholder agreement; (2) an employment agreement; and (3) a buy-sell agreement. The shareholder agreement provided that "[s]o long as willing and able," Douglas Malark and Sheryl Malark would serve as the sole members of the board of directors for the company. The employment agreement set forth Douglas Malark's authority as vice president of MEI. Douglas Malark's role as vice president was to "share primary responsibility for the management of the [company] with the President," Sheryl Malark. The employment agreement also stated that Douglas Malark's employment "shall be guaranteed for 30 years," unless he was terminated for cause. The buy-sell agreement prohibited the parties from transferring stock in the company, except as expressly permitted by the buy-sell agreement. The buy-sell agreement included a mechanism that allowed either party to start a forced sale process. At any time, the offeror could provide written notice to the other party offering the option to either purchase all the offeree's stock, or to sell all the offeror's stock to the offeree. The offer notice needed to state the price per share that the offeror was willing to either accept for their stock or pay for the stock of the offeree, and the offeror's "intent to irrevocably bind itself to such offer to either buy the [o]fferee's [s]tock or sell its [s]tock to the [o]fferee." For a period of 30 days from the offeree's receipt of the offer, known as the "exercise period," the offeree would have the right to either require the offeror to purchase all of the offeree's stock at the option price, or to purchase all of the offeror's stock at the option price. The offeree could exercise this option by giving written notice to the offeror, known as the "exercise notice." The transaction would then be required to be consummated within 60 days of the exercise notice.

Following their divorce, Douglas Malark and Sheryl Malark worked together for a few years. But acrimony between the parties led to a deadlock in MEI's management board, which consisted only of Douglas Malark and Sheryl Malark. In April 2022, Douglas Malark issued an offer notice under the buy-sell agreement giving Sheryl Malark the right to choose to either sell her interests to Douglas Malark, or to buy his interests at the price he identified. Sheryl Malark exercised the option to purchase Douglas Malark's shares.

In May 2022, soon after the buy-sell process began, Sheryl Malark determined that it was in the company's best interest to suspend with pay Douglas Malark as vice president, based on allegations of wrongdoing. Sheryl Malark hired an attorney to advise the company in an investigation of Douglas Malark's conduct. After consulting counsel, Sheryl Malark believed it was in the company's best interest to continue Douglas Malark's suspension during the investigation.

In June 2022, Douglas Malark filed a complaint for declaratory judgment, injunctive relief, and breach of fiduciary duty against Sheryl Malark. Douglas Malark filed an amended complaint seeking additional equitable relief. Douglas Malark asserted that Sheryl Malark suspended him without legal authority, in violation of his rights under the employment agreement and his rights as a minority shareholder. Douglas Malark also filed a motion for temporary injunctive relief, seeking an order reinstating him as vice president of the company and stopping the investigation. Following a hearing, the district court denied Douglas Malark's motion for a temporary injunction.

Douglas Malark appeals.

DECISION

"[A] temporary injunction is an extraordinary equitable remedy to preserve the status quo pending adjudication of a case on its merits." *In re Estate of Nelson*, 936 N.W.2d 897, 909 (Minn. App. 2019). Appellate courts review the district court's decision on a temporary injunction for an abuse of discretion. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 163 (Minn. App. 1993). "A district court abuses its discretion if its decision is against the facts in the record or if its ruling is based on an erroneous view of the law." *State ex* *rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (quotation omitted). The district court's decision is viewed in the light most favorable to the prevailing party. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev. denied* (Minn. Feb. 4, 2002).

"The party seeking the injunction must demonstrate that there is an inadequate legal remedy and that the injunction is necessary to prevent great and irreparable injury." *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *rev. denied* (Minn. Oct. 25, 2000). Appellate courts consider the five factors first enunciated in *Dahlberg* when determining whether the district court's grant of a temporary injunction was proper: (1) the nature of the parties' preexisting relationship, (2) the comparative harms of granting or denying the injunction pending final adjudication on the merits, (3) the likelihood that one party will prevail on the merits, (4) public-policy interests, and (5) the administrative burdens of supervision and enforcement. *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

"The burden of proof is on the party seeking an injunction to establish that . . . the injunction is necessary to prevent great and irreparable injury." *St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018). "The burden is not insignificant: the party must show that irreparable injury is *likely*, not just possible." *Id.* Douglas Malark failed to show irreparable injury. *See Matter of Minneapolis Cmty. Dev. Agency of Certain Lands in City of Minneapolis*, 403 N.W.2d 310, 313 (Minn. App. 1987). Without such a showing, the district court did not abuse its discretion in declining to issue an injunction.

Douglas Malark claims he has suffered irreparable harm because he has been removed from his corporate position and deprived of his right to have an equal say in how the company is run. He also claims he lost the trust and goodwill he built up over the years with the company's employees, customers, and vendors. Yet he has not presented evidence supporting this claim. And "[a]n injunction will not be granted to prevent a mere assumption of a possible result; rather, some irremediable damage must be shown." *Hideaway, Inc. v. Gambit Invs. Inc.*, 386 N.W.2d 822, 824 (Minn. App. 1986) (citation omitted).

Further, the irremediable damage "must be of such a nature that money alone could not suffice." *Morse v. City of Waterville*, 458 N.W.2d 728, 729-30 (Minn. App. 1990), *rev. denied* (Minn. Sept. 28, 1990). The prospect of money damages ordinarily provides adequate relief. *See Haley v. Forcelle*, 669 N.W.2d 48, 57 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). Douglas Malark was getting paid his salary while he was suspended pending the investigation. And it is undisputed that Douglas Malark was in the process of selling his ownership shares. As the district court noted, Douglas Malark "himself initiated the process" of selling his ownership in the company. Douglas Malark issued the offer to sell his shares before the suspension occurred. Any injury to Douglas Malark is fully compensable with money damages, making injunctive relief inappropriate. Ultimately, Douglas Malark has not satisfied his burden of showing that an injunction is necessary "to prevent great and irreparable injury." *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 222.

In sum, based on the record before us, we conclude that the district court did not abuse its discretion by denying a temporary injunction because Douglas Malark failed to show irreparable harm. "The failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction." *Morse*, 458 N.W.2d at 729. Thus, we need not address the remaining *Dahlberg* factors.[1] *In re Commitment of Hand*, 878 N.W.2d 503, 509 n.4 (Minn. App. 2016), *rev. denied* (Minn. June 21, 2016). We conclude that the district court did not abuse its discretion by denying Douglas Malark's motion for temporary injunctive relief.[2]

Affirmed.

[1] Based on our review, we discern no abuse of discretion in the district court's analysis of the remaining *Dahlberg* factors.

[2] Sheryl Malark also argues that the district court lacked jurisdiction to enter an injunction order against MEI because Douglas Malark did not name MEI as a defendant in his complaint. The district court did not rule on this issue. Because we affirm the district court order denying injunctive relief on other grounds, we do not reach this issue.