STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0131

Minnesota Chamber of Commerce, et al.,
Appellants,

vs.

City of Minneapolis,
Respondent.

Filed September 18, 2017
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-16-15051

Christopher K. Larus, Anne M. Lockner, Katherine S. Barrett Wiik, Anthony F. Schlehuber, George B. Ashenmacher, Robins Kaplan LLP, Minneapolis, Minnesota (for appellants)

Susan L. Segal, Minneapolis City Attorney, Sara J. Lathrop, Sarah C.S. McLaren, Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

This is an appeal and related appeal from the district court's ruling on the motion for a temporary injunction against enforcement of an employee-leave ordinance adopted by respondent City of Minneapolis brought by appellants Minnesota Chamber of Commerce, together with other employers and business associations (collectively, the chamber). The chamber argues that the district court abused its discretion by declining to enjoin enforcement of the ordinance in its entirety. By notice of related appeal, the city argues that the district court abused its discretion by granting the temporary injunction with respect to any "employer resident outside the geographic boundaries" of Minneapolis. We affirm.

FACTS

On May 31, 2016, the city adopted the Minneapolis Sick and Safe Time Ordinance (the ordinance). *See* Minneapolis, Minn., Code of Ordinances (MCO) §§ 40.10-.310 (2017). The ordinance requires employers to provide employees with one hour of leave for every 30 hours worked, with annual caps on accrual and carryover. MCO § 40.210. Employers with six or more full-time, part-time, or temporary employees must provide paid leave. MCO §§ 40.200(c), .220(g). Leave time may be used for the employee's or a family member's needs related to physical or mental health, domestic abuse, sexual assault, stalking, and school and workplace closings. MCO § 40.220(b).

The ordinance defines employees as those "who perform work within the geographic boundaries of the city for at least eighty (80) hours in a year" for a particular employer. MCO § 40.40. An employer is a private person or entity that employs one or more employees. *Id.* Employers must maintain three years of records for each employee showing hours worked, leave accrued, and leave used. MCO § 40.270(a), (b). If an employer's records are inadequate, and a violation is alleged, a violation shall be presumed. MCO § 40.270(e). The ordinance took effect on July 1, 2017, but provides for limited enforcement in the first 12 months for most first violations. MCO § 40.90(a), (b).

On October 13, 2016, the chamber commenced an action in district court challenging the ordinance. The chamber's complaint seeks a declaration that the ordinance is invalid because the city lacks authority to enact it, the ordinance conflicts with or is impliedly preempted by state law, and the ordinance "extends the City's power beyond its boundaries." The complaint also seeks temporary and permanent injunctive relief. The chamber requested emergency assignment of a judge and moved for a temporary injunction and consolidation with a hearing on the merits.

The district court held a hearing on December 8, 2016, ordered supplemental briefing on the reach of the ordinance beyond the city's borders, and on January 19, 2017, filed an order granting in part and denying in part the chamber's motion for temporary injunctive relief. The district court enjoined enforcement of the ordinance "against any employer resident outside the geographic boundaries of the City of Minneapolis until after the hearing on the merits of the case, or further order of the Court." It denied the balance

of injunctive relief requested and denied the request to consolidate the temporary injunction hearing with a hearing on the merits, determining that additional discovery was necessary before trial.

The chamber appealed and the city filed a related appeal. The parties stipulated to, and the district court ordered, a stay of further proceedings in the district court. Thereafter, we denied the chamber's motion to expedite the processing of the appeal, and the supreme court denied the chamber's petition for accelerated review.

D E C I S I O N

The district court has broad discretion in ruling on a motion for a temporary injunction, and appellate courts will reverse only for clear abuse of that discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A district court's ruling on a motion for a temporary injunction "neither establishes the law of the case nor constitutes an adjudication of the issues on the merits." *Indep. Sch. Dist. No. 35 v. Engelstad*, 274 Minn. 366, 370, 144 N.W.2d 245, 248 (1966); *see also Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003) (same), *review denied* (Minn. Nov. 25, 2003).

A showing of irreparable harm is a threshold requirement for a grant of injunctive relief prior to a complete trial on the merits. *Cherne Indus., Inc. v. Grounds & Assocs.*, 278 N.W.2d 81, 92 (Minn. 1979); *see also U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000) ("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."), *review denied* (Minn. Oct. 25, 2000). When irreparable harm is

found, a district court should consider five factors to determine whether a temporary injunction is warranted under Minn. R. Civ. P. 65.02: (1) the nature and relationship of the parties, (2) the balance of relative harm to the parties, (3) the likelihood of success on the merits, (4) public-policy considerations, and (5) any administrative burden involving judicial supervision and enforcement. *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

Here, the district court found that the chamber demonstrated irreparable harm based on the time and resources required to comply with the ordinance and the city's position that damages would not be recoverable, due to various immunity defenses, in the event that the ordinance is ultimately invalidated. The district court further found that the nature-and-relationship-of-the-parties and administrative-burden factors are neutral, the balance of harms favors the chamber, and public-policy considerations favor the city. With respect to the likelihood of success on the merits, the district court found that this factor favors the city with respect to preemption and the chamber with respect to extraterritoriality.

I. The district court did not abuse its discretion by declining to temporarily enjoin the ordinance in its entirety.

The chamber challenges the district court's *Dahlberg* findings on the likelihood of success on the merits (with respect to preemption) and on the public-policy considerations. We first consider whether the district court erred in its assessment of the likelihood of success on the merits. The district court concluded that the chamber is unlikely to succeed on its claims that the ordinance conflicts with, or in the alternative is impliedly preempted by, state law. *Cf. Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313 n.8 (Minn. 2017)

(identifying various preemption theories, including conflict, express, and implied (field) preemption).

"A conflict exists between state law and a municipal regulation when the law and the regulation 'contain express or implied terms that are irreconcilable with each other,' when 'the ordinance permits what the statute forbids,' or when 'the ordinance forbids what the statute *expressly* permits.'" *Id.* at 313 (quoting *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816 (1966)). The chamber contends that the ordinance conflicts with Minn. Stat. § 181.9413 (2016), which requires employers with 21 or more employees to allow the use of personal sick-leave benefits for safety leave and to care for defined relatives. Minn. Stat. §§ 181.940, subd. 3, .9413 (2016). "Safety leave" is defined as leave used for needs relating to domestic abuse, sexual assault, or stalking. Minn. Stat. § 181.9413(b).

The chamber contends that section 181.9413 impliedly permits employers to decline to provide leave benefits to employees and that the ordinance is irreconcilable with this implied provision. The chamber asserts that the district court improperly disregarded caselaw analyzing conflicts involving implied statutory provisions. But whether the relevant statutory terms are express or implied, a conflict only exists if the ordinance and statutory provision are irreconcilable. Two laws are not irreconcilable if "the ordinance does not permit, authorize, or encourage violation of the statute." *Mangold*, 274 Minn. at 355, 143 N.W.2d at 819. Similarly, under state-federal conflict analysis, two laws are not in conflict if a party can comply with both provisions. *See Sanchez v. Dahlke Trailer Sales*,

Inc., 897 N.W.2d 267, 276 (Minn. 2017) ("[A] state law conflicts with a federal law when it is impossible for a private party to comply with both state and federal requirements.") (quotation omitted)).

The chamber does not argue that an employer would necessarily run afoul of section 181.9413 by complying with the ordinance. Even if the statute impliedly permits an employer to decline to offer leave benefits, an employer would not violate the statute by providing the leave benefits required by the ordinance. Nor does the chamber argue that an employer must violate the ordinance to comply with the statute. It may be that the ordinance and the statute simply address separate and distinct aspects of employer-provided leave benefits. *See Canadian Connection v. New Prairie Township*, 581 N.W.2d 391, 396 (Minn. App. 1998) (finding no conflict when a pollution-control agency's odor-management plan and township ordinance addressed different aspects of feedlot odor), *review denied* (Minn. Sept. 30, 1998).

In the alternative, the chamber sought temporary injunctive relief premised on its theory of field, or implied, preemption. "Although some cases have confused the two and even used them interchangeably, it is [the supreme court's] opinion that [field] preemption and conflict are separate concepts and should be governed by separate doctrines." *Mangold*, 274 Minn. at 356, 143 N.W.2d at 819. Field preemption "is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *In re Appeal of Rocheleau*, 686 N.W.2d 882, 890 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). When field

preemption applies, "a local law purporting to govern, regulate, or control an aspect of the preempted field will be void, even if the local law is not in conflict with the state law." *Id.*

Minnesota courts consider four factors in determining whether field preemption applies. *Mangold*, 274 Minn. at 358, 143 N.W.2d at 820. Applying the first factor, the district court defined the subject matter being regulated as "private-employer provided sick and safe leave." *See id.* (identifying first factor as subject matter to be regulated). The chamber argues that the district court erred in declining to characterize the subject matter as "employer-provided leave," but the district court noted that it would have reached the same result on the second and third *Mangold* factors if it had adopted the chamber's characterization.

The second and third *Mangold* factors consider whether the state's full or partial regulation of the subject matter indicates that the subject matter is solely of state concern. *See id.* The chamber argues that the legislature has extensively regulated the field of employer-provided leave, citing section 181.9413 and provisions in chapter 181 relating to pregnancy and parenting leave; blood, organ, and bone-marrow donation; and military-related leave. The district court concluded that the chamber had not shown that the subject matter, whether defined as employer-provided leave or private-employer-provided sick and safe leave, is regulated by state law to an extent or in a manner that indicates it is a matter solely of state concern. Given the sparsity and narrowness of statutory provisions on the subject matter, the district court reasonably concluded that the legislature has not indicated an intent to occupy the field.

Applying the fourth *Mangold* factor, the district court concluded that the ordinance would not "have unreasonably adverse effects upon the general populace of the state." *See id.* (identifying fourth factor as whether "subject matter itself is of such nature that local regulation would have unreasonably adverse effects upon the general populace of the state"). As the district court noted, the supreme court has not found the presence of "a checkerboard of conflicting regulations" to be dispositive. *See G.E.M. of St. Louis, Inc. v. City of Bloomington*, 274 Minn. 471, 473, 144 N.W.2d 552, 554 (1966).

> We recognize that variances between municipal regulations affecting commercial activity, particularly in a metropolitan area, create serious problems. The absence of preemption by the state legislature may lead in the end to the "uninhibited commercial warfare, . . . disparate degrees of peace, repose and comfort in different communities and, in the metropolitan areas, . . . a checkerboard of conflicting regulations" envisioned by the trial judge. Nevertheless, for the reasons outlined in the *Mangold* case, we feel that the ordinance, if properly adopted, was within the corporate power of the city . . . .

Id. The chamber also contends that the district court failed to consider the impact of the ordinance on employers across the state. We are satisfied that the district court gave due consideration to affected individuals and entities in applying the fourth *Mangold* factor.

In view of an employer's ability to comply simultaneously with the ordinance and section 181.9413, the narrow and scattered statutory provisions regulating employer-provided leave, and the policy implications inherent in the chamber's arguments on the statewide effects of municipal regulation, the district court's preliminary analysis of the chamber's likelihood of success on conflict and field preemption was reasonable.

The chamber also challenges the district court's public-policy findings under *Dahlberg*, questioning the city's claim that the ordinance will positively impact public health. The chamber's argument overlooks another public-policy consideration identified by the district court: deference to the city in matters of municipal governance. The district court weighed the "strong public policy towards permitting the City to govern in ways that it believes best promotes the public health of its residents" against the chamber's interest in not being "unlawfully burdened." We find no fault with the district court giving greater weight to respecting the city's legislative role than to the regulatory burdens affecting private employers. *See White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982) ("The court's authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.").

The district court found that the chamber established irreparable harm and that the balance of harms favors the chamber, but the likelihood of success and public-policy considerations favor the city. It found the remaining *Dahlberg* factors to be neutral. We are satisfied that the district court properly exercised its discretion by determining that, overall, the balance with respect to preemption tips in favor of the city, and therefore declining to temporarily enjoin the ordinance in its entirety.

II. The district court did not abuse its discretion by temporarily enjoining enforcement of the ordinance against nonresident employers.

In its related appeal, the city first argues that the district court erred in reaching the question of the geographic reach of the ordinance because the issue is not justiciable. The city contends that the extraterritoriality challenge is not ripe for adjudication because it is

not a proper facial challenge to the ordinance. We are not convinced that a facial-challenge construct applies to this dispute. The chamber challenges the city's territorial authority; it does not claim that the ordinance interferes with the exercise of constitutional rights. *See, e.g., Minn. Voters All. v. City of Minneapolis*, 766 N.W.2d 683, 685, 688-89 (Minn. 2009) (addressing facial challenge to instant-runoff-voting election methodology on grounds that ordinance violated rights to vote, to associate for political purposes, and to equal protection). In any event, it is not clear that factual development is necessary to determine whether the ordinance, as enacted, improperly extends the city's regulatory authority. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 339-40 (Minn. 2011) (declining to delay resolution because facial challenge presents "a purely legal question that does not require the development of a factual record").

The city also argues that the challenge is not justiciable because it has not yet enforced the ordinance against employers physically located outside of the city. The city asserts that because it may not fully enforce the ordinance, and could adopt rules limiting the reach of enforcement activities, the challenge is premature. The supreme court rejected a similar argument in *McCaughtry*, concluding that a challenge to an ordinance was justiciable although a district court, in issuing an administrative warrant authorized by ordinance, could impose limits not required by the ordinance itself. 808 N.W.2d at 341 ("The possibility that a judge might in the future limit the City's administrative warrant application to ensure that the warrant comports with the Minnesota Constitution does not make the challenge here premature.").

The district court here concluded that the issue of the ordinance's territorial reach is justiciable because a declaratory-judgment action is proper to test the validity of an ordinance, and an actual controversy exists between the parties because the impact on employers is not merely hypothetical and the city's stated plans for enforcement do not alter the plain language of the ordinance. We agree.

In *Bicking*, the supreme court reiterated that

> a justiciable controversy exists when a claim presents "definite and concrete assertions of right that emanate from a legal source," "a genuine conflict in tangible interests between parties with adverse interests," and a controversy capable of "resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion."

891 N.W.2d at 308 (quoting *Onvoy, Inc. v. Allete, Inc.*, 736 N.W.2d 611, 617-18 (Minn. 2007)). In considering whether a proposed city-charter amendment would be preempted by state law, the supreme court stated that a justiciable controversy requires

> "only a right on the part of the complainant to be relieved of an uncertainty and insecurity arising out of an actual controversy with respect to his rights, status, and other legal relations with an adversary," even though "the *status quo* between the parties has not yet been destroyed or impaired."

Id. at 309 (quoting *Minneapolis Fed'n of Men Teachers, Local 238 v. Bd. of Educ.*, 238 Minn. 154, 157, 56 N.W.2d 203, 205 (1952)). And this court has held that, "if a declaratory judgment claimant possesses a bon[a] fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner, jurisdiction exists." *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549

N.W.2d 96, 99 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Aug. 20, 1996).

Here, the ordinance was adopted in May 2016 and took effect in July 2017. In addition to requiring employers to provide leave benefits, the ordinance requires employers to maintain three years of records with respect to any employee who works 80 hours within the city in a given year. MCO §§ 40.40, .270. Inadequate recordkeeping results in a presumption of a violation. MCO § 40.270(e). The chamber submitted multiple affidavits showing that existing recordkeeping systems are not adequate to track and maintain the required information. In particular, it appears that recording the whereabouts of employees relative to municipal boundaries is not a standard part of existing time-tracking systems. Under these circumstances, the district court did not err in determining that, even before the ordinance took effect, the rights of employers were in jeopardy from the ripening seeds of an actual controversy. Thus, the district court did not err in determining that the issue of the extraterritorial effect of the ordinance is justiciable and that a ruling on the chamber's motion for temporary injunctive relief was warranted.

The city next argues that the district court abused its discretion in granting temporary injunctive relief with respect to nonresident employers. The city contends that the district court erred in its determination of the likelihood of success on the merits, and that this error necessitates reversal of the temporary injunction.

A district court errs by granting temporary injunctive relief "[i]f a plaintiff can show no likelihood of prevailing on the merits." *Metro. Sports Facilities Comm'n v. Minn. Twins*

P'ship, 638 N.W.2d 214, 226 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). "But if a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits." *Id.*; *see also Sanborn Mfg. v. Currie*, 500 N.W.2d 161, 164-65 (Minn. App. 1993) ("Trial courts have the discretion to balance the factors of irreparable harm and likelihood of success on the merits. Where plaintiffs make a strong showing of irreparable harm, but a doubtful showing that they are likely to win the case, trial courts may properly decide to grant an injunction to preserve the status quo until trial." (citing *Dahlberg*, 272 Minn. at 275 n.13, 137 N.W.2d at 321 n.13)). In *Dahlberg*, the supreme court affirmed a temporary injunction, despite noting "serious obstacles" and a "foreseeable barrier" to the movant's ultimate success on the merits. 272 Minn. at 277-78, 283, 137 N.W.2d at 323, 326.

"The general rule, applicable to municipalities as well as to states, is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *City of Duluth v. Orr*, 115 Minn. 267, 270, 132 N.W. 265, 265 (1911). A city has no authority to "legislate as to matters outside the municipality in the guise of municipal concern." *Almquist v. City of Biwabik*, 224 Minn. 503, 507, 28 N.W.2d 744, 746 (1947) (quotation omitted) (holding that city had no authority to determine that city and adjacent town constituted a single election and assessment district).

In *State v. Nelson*, the city passed an ordinance requiring inspection of "every animal producing milk for sale within the city," wherever located. 66 Minn. 166, 168, 68

N.W. 1066, 1067 (1896). The inspection was a prerequisite to the issuance of a license to sell milk within the city. *Id.* On appeal from his conviction of selling milk in the city without a license, the defendant argued that the ordinance exceeded the authority granted by the statute because it operated extraterritorially. *Id.* at 169, 68 N.W. at 1068. The supreme court rejected the argument, concluding that "[t]he manifest purpose of the statute under which this ordinance was passed" was to prevent unwholesome milk from being sold in the city, which could not be accomplished without inspections beyond the city's borders. *Id.* It concluded that the "ordinance has no extraterritorial operation, and there has been no attempt to give it any such effect. The only subject on which it operates is the sale of milk within the city." *Id.* at 170, 68 N.W. at 1068. The city argues that the ordinance echoes the dairy-inspection ordinance at issue in *Nelson*. We agree that the parallel is strong. We note that, unlike here, the ordinance in *Nelson* used a licensing program to effect its regulation of commerce conducted in the city, although the distinction may not be significant. *See id.* at 168, 68 N.W. at 1067.

In *Orr*, the Duluth city council passed an ordinance prohibiting the storage of specified explosives within one mile of the city limits without a permit, which the defendant was found guilty of violating. 115 Minn. at 268-69, 132 N.W. at 265. The supreme court concluded that Duluth had the authority to regulate or prohibit the storage of explosives within the city limits, but not beyond its borders. *Id.* at 269, 132 N.W. at 265. The chamber urges that the ordinance echoes the explosives-storage ordinance in *Orr*.

But here, employers are only subject to the ordinance if their employees work within the city limits at least 80 hours per year.

In *City of Plymouth v. Simonson*, we upheld a city ordinance prohibiting the delivery of harassing materials within the city. 404 N.W.2d 907, 908-09 (Minn. App. 1987), *review denied* (Minn. June 26, 1987). The crux of the issue was whether the ordinance had extraterritorial effect when applied to harassing letters placed into the U.S. Mail outside of the city. *Id.* at 908. We concluded that the act of harassment was complete upon receipt, not upon mailing, and upheld the ordinance. *Id.* at 909. Because in *Simonson*, all relevant activity occurred within the city borders, this case is less instructive.

The district court found that the chamber established irreparable harm and that the balance of harms favored the chamber. Specifically, the district court determined that the chamber would be harmed in the absence of temporary relief by "expend[ing] substantial time and resources in advance of the Ordinance's effective date in order to comply with its mandates," while the city was unlikely to be subjected to substantial harm from a temporary injunction because "the Ordinance itself does not permit rigorous enforcement until one year following its effective date." The district court likewise found that the likelihood of success on the merits (with respect to extraterritoriality) favored the chamber.

The city challenges only the district court's conclusion regarding the likelihood of success on the merits. The chamber's likelihood of success on the extraterritoriality issue must be determined by analogy to and analysis of the caselaw; there is no unambiguous statute or lack of crucial evidence that definitely answers the question. *Cf. Sanborn Mfg.*

Co. v. Currie, 500 N.W.2d 161, 165 (Minn. App. 1993) (reversing temporary injunction when moving party lacked evidence necessary to succeed on the merits). Under the caselaw summarized above, we cannot conclude that the chamber has not made "a doubtful showing as to the likelihood of prevailing on the merits." *See Metro. Sports Facilities Comm'n*, 638 N.W.2d at 226. Even if we were to conclude that "serious obstacles" and "foreseeable barrier[s]" stood between the chamber and permanent injunctive relief, *see Dahlberg*, 272 Minn. at 283, 137 N.W.2d at 323, in view of the district court's unchallenged findings on irreparable harm and the balance of harms, which favor the chamber, reversal would not be warranted. We therefore conclude that the district court properly exercised its discretion by temporarily enjoining enforcement of the ordinance against nonresident employers.[1]

Affirmed.

[1] The city also argues that the district court erred by temporarily enjoining enforcement against any "employer resident outside the" city because it is unclear what employers are affected. "Every order granting an injunction . . . shall be specific in terms; shall describe in reasonable detail . . . the act or acts sought to be restrained." Minn. R. Civ. P. 65.04. We conclude that the order is sufficiently specific in view of the temporary nature of the injunction and the limited enforcement permitted by the ordinance in its first year.