

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0843**

Jay Nygard,
Appellant,

Kendall Nygard,
Plaintiff,

vs.

Penny Rogers, et al.,
Respondents.

**Filed April 7, 2014
Reversed
Peterson, Judge**

Hennepin County District Court
File No. 27-CV-13-3138

Jay T. Nygard, Orono, Minnesota (pro se appellant)

Robert H. Tennant, Stringer & Rohleder, Ltd., St. Paul, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the district court's grant of a temporary restraining order (TRO), pro se appellant argues that the district court failed to make sufficient findings of fact to support the issuance of the TRO. We reverse.

FACTS

Appellant Jay Nygard and plaintiff Kendall Nygard live next door to respondents Penny Rogers and Peter Lanpher on Lake Minnetonka. In November 2012, appellant was cited for criminal trespass on respondents' property. In February 2013, the Nygards brought this adverse-possession action against respondents seeking title to a strip of land that runs along the boundary between the properties.

After the trespass citation was issued, the Nygards placed additional personal property on the disputed land. Respondents also allege that, in December 2012 and April 2013, the Nygards' agent or employee removed branches from a white oak tree on respondents' property. Although respondents assert that the tree was damaged, appellant described the branch removal as normal tree trimming of the sort performed to prevent trees from damaging structures and similar to tree trimming performed by respondents along the property line. On May 1, 2013, respondents filed a motion for a TRO enjoining the Nygards from trespassing on respondents' property, including the disputed land.

The district court held a hearing on respondents' motion on May 2, 2013.¹ At the hearing, the district court analyzed the *Dahlberg*² factors, granted the TRO, and stated that it would sign an order granting the TRO and follow up with a supplemental order with more-detailed findings. The district court filed the order granting the TRO on May

¹ At the hearing, appellant requested a restraining order against respondents. The district court denied appellant's request, but appellant does not object to that denial on appeal.

² See *Dahlberg Bros. Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965) (listing factors to consider when deciding whether to grant temporary injunction).

2, 2013. This appeal from the May 2 order was filed on May 9, 2013. The supplemental order was filed on July 15, 2013.

DECISION

We will reverse a district court's decision to issue a temporary injunction only if it appears that the court clearly abused its discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). We will not disturb the district court's fact findings unless they are clearly erroneous. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). And we view the facts in the light most favorable to the prevailing party. *Queen City Constr., Inc. v. City of Rochester*, 604 N.W.2d 368, 372 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000).

A temporary injunction is an extraordinary equitable remedy meant to maintain the status quo until trial on the merits can resolve the dispute conclusively. *Id.* Among the factors to consider when deciding whether to grant a temporary injunction is “the harm to be suffered by one party if the temporary injunction is denied compared with the harm inflicted on the other party if relief is granted.” *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 666 (Minn. App. 2009) (citing *Dahlberg Bros. Inc.*, 272 Minn. at 274-75, 137 N.W.2d at 321-22). The party seeking the injunction must establish that no adequate remedy at law exists and that the injunction is needed to avoid irreparable harm. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001).

Injunctive relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury. The burden of proof rests upon

the complainant to establish the material allegations entitling him to relief.

Injunctions ought not to be granted in any case except where it is clear that any legal remedy the party may have is inadequate.

An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial.

AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504, 110 N.W.2d 348, 351 (1961) (citations omitted).

In balancing the harms to the parties, the district court did not find that respondents would suffer irreparable harm if the injunction was denied. Rather, the district court stated, “I haven’t heard anything about harm for [respondents], one way or the other, although I will recognize that there’s an intrinsic harm of telling people that they have to stay off property which currently the law recognizes as their own.” The district court did not address the adequacy of legal remedies, and the record does not conclusively establish that asserting a defense in the adverse-possession action would be an inadequate legal remedy for respondents or that any injury suffered by respondents as a result of being deprived of the use of their property could not be compensated with a damages award. The district court abused its discretion by granting the injunction without finding that respondents would suffer irreparable harm and had no adequate remedy at law.³

³ The July 15, 2013 supplemental order contains no finding of irreparable harm and does not address the adequacy of legal remedies; therefore, the July 15 order does not supersede the order on appeal.

Because we are reversing the temporary injunction, we need not address appellant's argument that the district court erred by not requiring respondents to post a security bond.

Reversed.