STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1478

Molly Jeanne Monroe McArton
n/k/a Molly Jeanne Monroe Renner, petitioner,
Appellant,

vs.

Ryan Matthew McArton,
Respondent,

Jennifer Taylor,
guardian ad litem.

Filed March 18, 2013
Reversed
Chutich, Judge

Anoka County District Court
File No. 02-FA-10-2064

Kathleen M. Newman, Michael P. Boulette, Kathleen M. Newman & Associates, P.A., Minneapolis, Minnesota (for appellant)

Ryan M. McArton, Golden Valley, Minnesota (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Chutich, Judge.

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

CHUTICH, Judge

In this custody and child-support dispute, the district court enjoined the parties from disclosing medical and financial information regarding themselves or the parties' children to anybody other than counsel, the guardian ad litem, the counselor, or the therapist involved in the court case. Appellant Molly McArton, now known as Molly Renner, argues that the restriction is an invalid injunction that violates her free speech rights under the United States and Minnesota Constitutions. Because the district court issued the injunction without making the necessary findings, we reverse.

FACTS

In early 2010, respondent Ryan McArton filed for divorce from Renner in South Dakota. The South Dakota district court accepted jurisdiction over the divorce proceeding but determined that Minnesota was a more appropriate forum to determine custody of the parties' six minor children. Accordingly, Renner initiated a Minnesota action by petitioning for sole legal and physical custody and spousal maintenance in Anoka County. The Minnesota district court granted Renner temporary sole legal and physical custody over the parties' minor children.

The proceedings have been very contentious, and both parties have made serious allegations against the other. In May 2011, the district court entered a protective order based on the parties' stipulation in the Minnesota action. The protective order prohibited the parties from communicating information to people uninvolved in the litigation about

all records maintained by experts "consulted by either party or the minor children for the purpose of therapy, psychological or medical treatment."

Also in May 2011, the South Dakota district court issued a judgment and decree of divorce. After the divorce decree was entered, Renner initiated a new action in Minnesota to determine child support. Renner asked the district court to assume jurisdiction over the issue of child support and, in the separate custody proceeding, to amend its previous custody order. McArton joined Renner's motion for modification of child support and moved to consolidate the two Minnesota actions. McArton also claimed that Renner was in violation of the May 2011 protective order and requested that the district court prohibit her from releasing any information to her parents or their agents.

At the motion hearing, the district court stated that the parties were prohibited "from releasing any financial, counseling, or therapeutic records involving mother, father or the children to any third-party other than attorneys, for court filings, to the Guardian, or to a counselor or therapist." After the hearing, the district court issued a written order which expanded its ruling during the hearing and contained the following language:

> 10. The parties are absolutely and unqualifiedly prohibited from releasing any financial or counseling records, therapeutic evaluations or assessments, and any expert reports or documents involving either party or the children which are contained in [the support and custody files] to, or discussing the same with, any third-party other than counsel of record, his or her employees, any experts, the Guardian ad Litem, the Parenting Consultant, or any treating counselor or therapist for the minor children.

Renner now appeals.

D E C I S I O N

Renner first challenges the district court's injunction, arguing that there was no showing of great and irreparable injury. "The granting of an injunction generally rests within the sound discretion of the trial 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., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91 (Minn. 1979). The party seeking a permanent injunction must show that legal remedies are inadequate and that the injunction is necessary to prevent great and irreparable harm. *City of Mounds View v. Metro. Airports Comm'n*, 590 N.W.2d 355, 357 (Minn. App. 1999); *see also Allstate Sales & Leasing Co. v. Geis*, 412 N.W.2d 30, 33 (Minn. App. 1987) ("An injunction should only be issued to prevent real and substantial, not imagined, injury." (quotations omitted)). A district court's "failure to give findings of fact and conclusions of law when granting a motion for injunctive relief is an abuse of discretion." *State v. Gartenberg*, 488 N.W.2d 496, 498 (Minn. App. 1992).

McArton did not specifically seek injunctive relief. Nevertheless, paragraph ten of the district court's order operates as an injunction because it prevents Renner and McArton from speaking about medical and financial documents in the court file with parties unassociated with the case. *See Black's Law Dictionary*, 855 (9th ed. 2009) (defining an injunction as "[a] court order commanding or preventing an action"). Accordingly, the district court should have treated McArton's motion as a request for an injunction.

In support of his request to prohibit Renner from releasing information, McArton claimed that Renner's parents had "misused information from this litigation to try to prevent [him] from gaining employment," and to "destroy [McArton's] relationship with [his] kids." While the destruction of McArton's relationship with his children could possibly constitute "great and irreparable harm," the district court made no such finding that it did. Rather, the district court stated that the injunction was necessary to prevent both parties from using the "private information to embarrass or otherwise harm the other party."

Embarrassment and general harm is insufficient to support the granting of an injunction. *See Mounds View*, 590 N.W.2d at 357 (requiring "great and irreparable injury" for an injunction). The district court made no findings that the injunction was necessary to prevent irreparable harm and that other legal remedies were inadequate before issuing the permanent injunction. *Id.* On this record, the district court abused its discretion by issuing the injunction. Accordingly, we reverse paragraph ten of the district court's order as an improper injunction that was issued without necessary findings.

Because we avoid reaching constitutional questions "if there is another basis on which a case can be decided," we do not reach Renner's freedom of speech arguments. *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 732 n.7 (Minn. 2003). In addition, we note that the stipulated May 2011 order is still in effect and limits the ability of the parties to discuss medical information with parties unassociated with the case. By its language, the stipulated order will remain in effect beyond the life of the action.

Reversed.