**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-0277**

RKL Landholding, LLC,
Appellant,

vs.

Shirley LeVau,
Respondent.

**Filed October 28, 2013**
**Affirmed**
**Bjorkman, Judge**

Anoka County District Court
File No. 02-CV-13-208

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

William Keyes, Nash Law Firm, PLLC, Coon Rapids, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Stoneburner, Judge.

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

**BJORKMAN**, Judge

Appellant challenges the district court's denial of a temporary injunction, arguing that the district court erred by assessing conflicting affidavits, and that the *Dahlberg* factors weigh in favor of granting an injunction. We affirm.

## FACTS

On June 24, 2008, appellant RKL Landholding, LLC entered into an agreement with respondent Shirley LeVau to purchase her home in Coon Rapids. The purchase agreement gave RKL 90 days to close on the sale. From 2008 to 2012, the parties agreed to amend the purchase agreement on four different occasions, each time signing a written addendum extending the closing date. Each extension was facilitated by LeVau's real estate agent, and provided monetary consideration to LeVau. The fourth addendum extended the closing to September 30, 2012. RKL did not close by that date.

RKL intended to buy LeVau's property as part of a condominium project. The project required RKL to also purchase the adjoining property owned by Gaughan Land Incorporated. RKL and Gaughan had a purchase agreement, but Gaughan cancelled it when RKL did not close after repeated extensions of the closing date.[1]

On December 13, 2012, LeVau took steps to formally cancel any existing agreement with RKL. In response, RKL sued LeVau for breach of contract, alleging that a valid purchase agreement was in place in December 2012, which LeVau breached by her unsuccessful effort to serve a notice of cancellation under Minn. Stat. § 559.21, subd.

[1] RKL litigated its dispute with Gaughan. The district court concluded that Gaughan's cancellation of the purchase agreement within the statutory period defeats RKL's breach-of-contract claim. This court affirmed. *RKL Landholding, LLC v. Gaughan Land, Inc.*, No. A11-1434 (Minn. App. July 9, 2012).

2a (2012). RKL also moved for a temporary injunction[2] to stay cancellation of the purchase agreement.

In support of its motion, RKL alleged that the parties signed a fifth addendum extending the closing to September 30, 2013. But unlike the first four extensions, LeVau's real estate agent was not involved in negotiating a fifth extension of the closing date, LeVau received no consideration, and the fifth addendum was undated. LeVau denies signing a fifth addendum, contending that there was no purchase agreement in effect after September 2012.

The parties submitted conflicting affidavits regarding LeVau's effort to serve a statutory notice of cancellation on RKL. LeVau offered the affidavit of process server Justin Longstrom, who states that he went to the home of RKL's chief manager, Emad Abed, at about noon on December 13, 2012. Longstrom knocked on the door, a man inside the residence asked for identification, and Longstrom explained that he was there to serve a cancellation notice on RKL. The man refused to open the door and Longstrom slipped the papers under the door. The man inside the residence yelled for Longstrom to leave and pushed the papers back into the hall. Longstrom pushed the papers back under the door and left.

RKL offered two affidavits. The first is from Tesfai Tekle who identifies himself as the man inside the residence when Longstrom attempted to serve the cancellation notice. Tekle states that he is a cleaning person and advised Longstrom that he has no

[2] RKL initially sought an ex parte temporary restraining order. The district court ordered a hearing and treated the motion as seeking a temporary injunction under Minn. R. Civ. P. 65.02.

authority to handle Abed's business affairs. He also denies that Longstrom slipped the papers under Abed's door. In the second affidavit, Abed denies receiving service of the cancellation notice and states that the notice was simply left in the hall.

The district court denied RKL's motion, expressly crediting the affidavits of LeVau and Longstrom and finding Abed's affidavit insufficient to overcome the evidence that Longstrom properly served the cancellation notice. This appeal follows.

**D E C I S I O N**

A district court has "broad discretion to grant or deny a temporary injunction, and we will reverse only for abuse of that discretion." *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). A district court abuses its discretion when its decision goes against logic and facts on the record. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). We consider the evidence 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), *review denied* (Minn. Feb. 4, 2002), and do not set aside a district court's findings on the injunctive-relief factors unless clearly erroneous, *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

RKL argues that the district court erred in weighing the evidence presented in affidavits and that the *Dahlberg* factors favor injunctive relief. We address each argument in turn.

## I. The district court did not err in assessing competing affidavits when deciding RKL's motion for injunctive relief.

When district courts are required to make legal determinations involving disputed facts, the court may weigh competing documentary evidence and assess affidavits. *See Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (affirming denial of application for a receiver and deferring to district court's findings based on conflicting affidavits); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (deferring to the district court's determinations as to affidavits submitted on motion to vacate dissolution judgment based on allegedly coerced stipulation). We defer to a district court's determinations and will not disturb its findings of fact unless they are clearly erroneous. *Hestekin*, 587 N.W.2d at 310; *see also* Minn. R. Civ. P. 52.01. Where the district court bases its findings and conclusions on detailed affidavits and its factual findings are supported by the record, the court does not abuse its discretion by declining to hold an evidentiary hearing. *Buller v. A.O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 538, 543 (Minn. 1994) (holding district court did not abuse its discretion by determining costs and disbursements based on affidavits).[3]

Here, the district court was required to assess the affidavits and other evidence the parties presented in order to determine whether a temporary injunction is warranted. As

[3] RKL did not request an evidentiary hearing. The district court did not abuse its discretion by not holding a hearing that was not requested. *See* Minn. R. Gen. Pract. 115.01 (stating, with two exceptions not relevant to the opinion, that "[t]his rule shall govern all civil motions"); 115.08 (stating that "[n]o testimony will be taken at motion hearings except under unusual circumstances" and that parties "seeking to present witnesses at a motion hearing shall obtain prior consent of the court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses which that party intends to call at the motion.").

noted below, this assessment includes the relative merits of the parties' factual and legal assertions. Because the district court was required to make decisions about evidence presented in conflicting affidavits, we defer to its determinations.

## II. The district court did not abuse its discretion by denying RKL's motion for a temporary injunction.

A temporary injunction "is an extraordinary equitable remedy" meant to preserve the status quo until an adjudication of the case on the merits. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 220. Courts consider five factors to determine whether a temporary injunction is warranted: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Id.* at 220-21 (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)). Failure to show irreparable harm is generally, by itself, a sufficient ground for denying a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). And even if a party can show irreparable harm, if the party has not demonstrated likely success on the merits, the district court need not grant temporary injunctive relief. *Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 164-65 (Minn. App. 1993).

### A. The relationship between the parties

The first *Dahlberg* factor is the nature and relationship between the parties in the dispute. 272 Minn. at 274, 137 N.W.2d at 321. This factor favors injunctive relief when

the parties had a satisfactory or long-standing relationship prior to the dispute. *See id.* at 276, 137 N.W.2d at 322 (discussing 40-year prior history between the parties and its impact on parties' expectations about doing business together). RKL argues the four-year contracting process creates a special relationship. We disagree. The only connection between the parties is reflected in the succession of purchase agreements that RKL could not honor. We discern no clear error in the district court's finding that the relationship between the parties does not favor an injunction.

**B. Balance of the harms**

The party seeking an injunction must next establish that legal remedies are inadequate and that an injunction is necessary "to prevent great and irreparable injury." *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 222. The district court concluded that RKL failed to show irreparable harm occasioned by cancellation of the purchase agreement because RKL did not close on LeVau's property during the preceding four years and did not purchase the Gaughan property necessary to complete the condominium project.

RKL argues that the district court's failure to stay enforcement of the statutory cancellation notice will cause irreparable harm because RKL will be unable to purchase LeVau's property. But the undisputed record evidence shows denial of an injunction does not, in and of itself, deprive RKL of the right to purchase the property. RKL had four years to close on the property and was never able to do so. LeVau agreed to extend the purchase agreement four times to permit RKL additional time to obtain financing or take other steps necessary to close the sale. And it is undisputed that RKL is unable to

purchase the adjoining property that was a necessary part of the planned condominium project.

While the district court did not expressly consider the impact of a temporary injunction on LeVau, she would have suffered harm pending trial. RKL had not purchased her property during the preceding four years, and LeVau would not have been able to sell to a different party while the case was pending. On this record, the district court did not clearly err in finding that the balance of the harms favors denial of temporary injunctive relief.

**C. Likelihood of success on the merits**

The next *Dahlberg* factor requires the party seeking an injunction to establish that it is likely to prevail on the merits in the underlying action. *Minneapolis Fed'n of Teachers, Local 59 v. Minneapolis Pub. Sch.*, 512 N.W.2d 107, 110 (Minn. App. 1994), *review denied* (Minn. Mar. 31, 1994). We have held that the likelihood of success on the merits is a "primary factor" in determining whether temporary injunctive relief is warranted. *Id.*

The district court found that RKL is not likely to succeed on the merits of its underlying claim because it did not establish that the parties entered into a fifth addendum to further extend the purchase agreement, and LeVau effectively served the notice of cancellation. RKL's challenge focuses on the fact that the district court weighed conflicting affidavits. As we stated above, the district court was authorized to do so and we defer to the district court's assessment. And our careful review of the record reveals evidentiary support for the court's findings of fact.

First, RKL does not appear to challenge the district court's finding that no purchase agreement was in effect after September 2012. But even if it did, the argument would fail because the finding is not clearly erroneous. The district court found LeVau's affidavit testimony to be very credible. LeVau denies extending the purchase agreement past September 2012 and avers that the purported fifth addendum document was a forgery. Her affidavit also enumerates distinct differences between the four validly executed addenda and RKL's purported fifth addendum. In the absence of a valid purchase agreement, RKL's breach-of-contract claim is unlikely to succeed.

Second, the record supports the district court's finding that the notice of cancellation was properly served. Longstrom's affidavit describes in detail the steps he took to execute service at Abed's residence. RKL only submitted Tekle's affidavit testimony that no papers were served at all while he was inside the residence, and Abed's self-serving affidavit in which he asserts that he was not properly served. And RKL acknowledged that Abed contacted LeVau's attorney within minutes after Longstrom left the residence.

Once statutory notice of cancellation of a purchase agreement has been served, all contract rights based on the agreement are terminated. *See Hollywood Dairy, Inc. v. Timmer*, 411 N.W.2d 258, 259 (Minn. App. 1987) (stating that service of the notice of cancellation actually cancels a real estate purchase agreement and extinguishes all causes of action based on the agreement). A party may only obtain relief from a statutory cancellation if they cure the default, bring an action alleging affirmative defenses to

termination, or seek injunctive relief before the statutory period expires.[4] *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008); *see also* Minn. Stat. § 559.211 (2012) (discussing proceedings to oppose cancellation). RKL took none of these steps and its breach-of-contract claim fails.

Because the district court's findings with respect to the primary *Dahlberg* factors—balance of harms and likelihood of success on the merits—support the district court's determination, we do not need to address the remaining *Dahlberg* factors.

**Affirmed.**

[4] In addition to the other reasons why RKL is unlikely to succeed on the merits, RKL likely did not take action within the statutory-cancellation period, because its only filings within the period were ineffective due to lack of notice to the opposing party.