

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF PINE

TENTH JUDICIAL DISTRICT

Case Type: Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 58-CV-20-175

Plaintiff,

vs.

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND TEMPORARY RESTRAINING
ORDER**

Howard W. Mostad,

Defendant.

The above-titled matter came before the undersigned Judge of the District Court on April 3, 2020, upon the *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction brought by the State of Minnesota, by its Attorney General Keith Ellison (“the State”), against Defendant Howard W. Mostad.

The Court has considered the pleading, exhibits, files, records, arguments, submissions of the State, and the two affidavits the State submitted to the Court.¹ The Court accordingly makes the following findings of fact, conclusions of law, and enters the following Order:

FINDINGS OF FACT

1. [REDACTED] (“tenants”) rent a home located at 9679 Grindstone Lake Road in Sandstone Minnesota from Howard W. Mostad.

¹ The Court considered the affidavits of: Katherine Kelly, Assistant Attorney General, at the Minnesota Attorney General’s Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101; and Affidavit of [REDACTED].

2. Defendant Mostad turned off tenants electricity on April 2, 2020, such that they have no heat, electricity, or hot water.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and the parties hereto and makes the following Conclusions of Law.

2. On March 23, 2020, Governor Tim Walz issued Emergency Executive Order 20-14 which prohibits property owners from filing eviction actions or in any other way terminating a residential lease during the pendency of the COVID-19 peacetime emergency with only limited exceptions.

3. The Minnesota Attorney General may enforce Order 20-14 by seeking any relief available to him pursuant to Minnesota Statutes 2019, section 8.31, which includes injunctive relief, civil penalties, restitution, the State's costs and fees, and other equitable relief available under the law.

I. The State is Entitled to a Temporary Restraining Order Pursuant to Minnesota Rule of Civil Procedure 65.01.

4. The State has filed an emergency consumer-protection action to enforce Governor Walz's Emergency Executive Order 20-14 ("Order 20-14"), which permits all households to remain in a rental property and forbids all property owners from taking actions to remove the tenants during the pendency of the peacetime emergency. The express purpose of the Order is to allow households to remain sheltered during the COVID-19 pandemic that necessitates a peacetime emergency. The State has also moved the Court for a temporary restraining order (TRO) pursuant to Minn. R. Civ. P. 65.01. Requests for TROs and temporary injunctions are generally evaluated under the same standards. *Compare Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 303 (D. Minn. 1986) (Reviewing TRO request), with *Metro.*

Sports Facilities Comm'n v. Minn. Twins P'ship, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev'w denied* (Minn. Feb. 4, 2002) (reviewing temporary injunction request).

5. The State seeks temporary injunctive relief as authorized by statute pursuant to section 8.31 as well as Order 20-14; accordingly there is no need to make findings on the *Dahlberg* factors and instead the Court can grant temporary injunctive relief upon a showing that Defendants “violated or were about to violate the statutes involved” and that “injunctive relief would fulfill the legislative purpose of the statutes.” *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 572 (Minn. Ct. App. 2005) (quoting *Wadena Implement Co. v. Deere & Co., Inc.*, 480 N.W.2d 383, 389 (Minn. App. 1992)); *accord State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017).

6. There is good cause to believe that the State will likely prevail on the merits of its claims that Mostad has violated and is violating Order 20-14.² The State has submitted evidence showing that Mostad is the landlord of the residence at 9679 Grindstone Lake Road in Sandstone, where [REDACTED] and their four-year old daughter (“tenants”) are currently residing. The State has also submitted evidence showing that Mostad turned off the electricity at the property so that the tenants do not have electricity, heat, or hot water. The State further submitted evidence that when told that such actions are a violation of Order 20-14 Mostad continued refusing to restore electricity to the property.

7. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purposes of the Order 20-14. The purpose of Order 20-14 is to secure housing for tenants so that they do not lose their shelter during the COVID-19 pandemic. Order 20-14

² In addition to violating Order 20-14, Mr. Mosberg has violated Minnesota Statutes section 504B.221.

not only protects tenants from losing their shelter but preserves public health by allowing families to stay quarantined.

8. The temporary injunctive relief ordered by the Court will help protect the public as well as the tenants from further harm by Mostad during the pendency of this litigation by ceasing his actions that prevent electricity to reach the tenants' home. It also protects this Court's ability to grant full and effective relief among the parties.

9. Furthermore, the State has established that it is entitled to not only temporary injunctive relief but to a TRO, before Mostad can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It is clear from the facts shown by the State by affidavit that the tenants will suffer irreparable harm unless Mostad is enjoined from stopping the electricity supply to their home. *See, e.g.*, Affidavit of [REDACTED] ¶¶ 3-4 (“We are sitting in our home with no electricity, heat, or running water. We cannot cook food or even flush the toilet.” “My daughter is telling me that she is cold. We have nowhere else to go and cannot risk exposing my daughter to other people.”); Affidavit of Katherine T. Kelly ¶¶ 2-4 (Mostad refusing to restore electricity).

10. No security is required of the State of Minnesota for issuance of a temporary restraining order. *See* Minn. Stat. § 574.18; *State v. Nelson*, 189 Minn. 87, 89-90 (1933).

ORDER

I. Temporary Restraining Order

WHEREFORE, IT IS HEREBY FURTHER ORDERED THAT:

1. The State's motion for a temporary restraining order pursuant to Minnesota Rule of Civil Procedure 65.01 is **GRANTED**.

2. Effective from the date of this Order, Defendant Mostad is enjoined and prohibited from preventing any utility service, including, but not limited to, electricity service, to be received by the tenants at the residence at 9679 Grindstone Lake Road in Sandstone.

3. Within 24 hours from the date of this Order, Defendant Mostad is required to ensure that all utility services, including, but not limited to, electricity service is restored to 9679 Grindstone Lake Road in Sandstone.

4. Effective from the date of this Order, Defendant Mostad is enjoined and prohibited from taking any further actions that interfere with the tenants' ability to live at 9679 Grindstone Lake Road in Sandstone during the peacetime emergency as required by Order 20-14, including, but not limited to, interrupting or causing to interrupt the electricity, heat, gas, or water services to the tenants.

5. Within one hour of restoring electricity to 9679 Grindstone Lake Road in Sandstone Defendant Mostad is required to provide notice to the State that electricity has been restored to the property.

II. Correspondence and Service on Plaintiff

6. IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of notices on the Plaintiff shall be addressed to:

Assistant Attorney General Katherine Kelly
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
katherine.kelly@ag.state.mn.us

III. Temporary Injunction Hearing

7. IT IS FURTHER ORDERED that, pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendants shall appear before this Court on April 13, 2020, at 9:00 am, at ~~[the Pine County Courthouse at 635 Northridge Drive NW, Suite 320, Pine City, MN~~ **Via Teleconference]** for a hearing on Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendant and imposing such additional relief as may be appropriate.

8. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes and this Order shall remain in effect until further order of the Court.

Dated:

Martin, Krista
(Judge)
Digitally signed by Martin, Krista (Judge)
Date: 2020.04.06 13:16:05 -05'00'

The Honorable Judge Krista K. Martin
Judge of District Court

**Filed in District Court
State of Minnesota**

Apr 7 2020 7:55 AM