

STATE OF MINNESOTA
IN COURT OF APPEALS



Center for Biological Diversity,
Howling for Wolves,

Petitioners,

ORDER

vs.

A12-1680

Minnesota Department of Natural
Resources, and Tom Landwehr, in his
official capacity as the Commissioner of
the Minnesota Department of Natural
Resources,

Respondents.

Considered and decided by Johnson, Chief Judge; Stoneburner, Judge; and Cleary,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This motion for preliminary injunctive relief arises out of an action invoking this court's jurisdiction under Minn. Stat § 14.44 (2010) to declare agency rules invalid. *See also* Minn. R. Civ. App. P. 114.01-.05 (providing procedure for petition for declaratory judgment to determine validity of agency rule). Petitioners Center for Biological Diversity and Howling for Wolves seek a declaratory judgment that rules adopted by

respondent Minnesota Department of Natural Resources (DNR) to govern the state's upcoming wolf hunting and trapping season were not properly promulgated and thus are invalid. Together with their petition for declaratory judgment, petitioners filed a motion for a preliminary injunction, asking this court to preserve the status quo until it rules on the validity of the DNR's rules.

This court has jurisdiction to issue all writs and orders necessary in aid of its jurisdiction with respect to cases pending before it and for the enforcement of its judgments or orders.” Minn. Stat. § 480A.06 subd. 5 (2010). We assume without deciding that this grant of authority is broad enough to encompass the grant of preliminary injunctive relief in connection with our exercise of jurisdiction under Minn. Stat. § 14.44, but we deny petitioners' motion for injunctive relief because petitioners have not demonstrated that they will suffer irreparable harm attributable to the rules that they challenge.

Minnesota courts evaluate requests for injunctive relief in relation to five factors articulated in *Dahlberg Bros. Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (1965). The factors are: “1) the nature of the relationship between the parties preexisting the dispute giving rise to the request for relief, 2) 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, 3) the likelihood that one party or the other will prevail on the merits, 4) public policy, and 5) the administrative burdens in supervising and enforcing the injunction.” *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 666 (Minn. App. 2009) (citing *Dahlberg*, 272 Minn. at 274-75, 137 N.W.2d at 321-22). The party requesting a

temporary injunction must demonstrate that there is no adequate legal remedy and that an injunction is necessary to prevent irreparable injury. *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). The failure to demonstrate irreparable harm is, by itself, a sufficient ground to deny an injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

In legislation effective August 1, 2012, the legislature provided that “[w]olves may be taken with legal firearms, with bow and arrow, and by trapping” and that “[t]he open season to take wolves with firearms begins each year on the same day as the opening of the firearms deer hunting season.” 2012 Minn. Laws ch. 277, art. 1, § 65. The DNR rules that petitioners challenge govern the duration of the hunting and trapping seasons, the zones and permit areas in which wolves may be taken, the application, permit drawing, and license purchase requirements, the number of licenses available, tagging and registration, target harvest numbers, and bag limits. But the statute, rather than the DNR rules, mandates that there be a firearms season that begins on November 3. Petitioners assert that they “will suffer irreparable injury to their ability to observe wolves and to their aesthetic interests in wolves” if this court does not enjoin enforcement of the DNR’s rules. But petitioners fail to identify any claimed irreparable harm attributable to the DNR rules, rather than the legislature’s decision to authorize wolf hunting and trapping and to determine when the firearms season will open. Accordingly, because petitioners failed to demonstrate the existence of irreparable harm, they are not entitled to injunctive relief.

IT IS HEREBY ORDERED: The motion for preliminary injunction is denied.

Dated: October 9, 2012

BY THE COURT

/s/ _____
Matthew E. Johnson
Chief Judge