STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1375

Park Estates, Inc., on behalf of itself and all others similarly situated,
Appellant,

vs.

City of St. Paul Park,
Respondent.

Filed May 15, 2017
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Washington County District Court
File No. 82-CV-15-2265

John F. Bonner, III, St. Louis Park, Minnesota (for appellant)

Andrew M. Biggerstaff, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

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

SMITH, TRACY M., Judge

Appellant Park Estates, Inc., challenges the imposition of charges for water connection, sanitary-sewer connection, and storm sewer by respondent City of St. Paul Park. The district court granted summary judgment in favor of the city. Park Estates argues that (1) the city exceeded its statutory authority because the charges are not just, equitable,

and proportionate to costs, and (2) the storm-sewer charge is an unlawful tax. We affirm the district court's order to the extent that it concludes that the city did not exceed its statutory authority, but we reverse and remand for consideration of whether the storm-sewer charge is an unlawful tax.

FACTS

Park Estates is a manufactured-home community with approximately 111 residential lots, located within St. Paul Park. Park Estates has its own privately installed and maintained water and sanitary-sewer lines, which connect to the city's water and sanitary-sewer lines. In 1990, Park Estates and the city entered into an agreement whereby Park Estates would install water meters for each unit and the city would bill residents directly for water and sanitary-sewer services, rather than bill Park Estates in the aggregate. The parties agreed that Park Estates would maintain the water and sanitary-sewer lines located on its property.

Additionally, Park Estates asserts that it constructed and maintains a drainage ditch at its own expense to drain storm water from its property into a ditch on neighboring property owned by a railroad, and further asserts that "[n]o water from [Park Estates's] property enters the City's storm water system." For purposes of summary judgment, the city concedes these facts.

Park Estates and its residents are charged a water-connection charge, a sanitary-sewer-connection charge, and a storm-sewer charge quarterly. The rates of the charges are set by ordinance. In 2015, the quarterly charges were:

1. $4.33 for a basic water-connection charge;
2. $4.33 for a basic sanitary-sewer-connection charge; and
3. $8.50 for a storm-sewer charge.

The storm-sewer charge is based on a "runoff equivalent factor," which varies by property type; Park Estates residents are charged a rate identical to that for single-family homes. The city places the money it receives from these charges into separate funds to pay for maintaining the city's water, sanitary-sewer, and storm-sewer infrastructure.

Park Estates sued the city, arguing that the city lacks statutory authority to impose the charges on Park Estates and its residents because Park Estates maintains its own water, sanitary-sewer, and storm-sewer systems on its property. Park Estates also argues that the storm-sewer charge is an unlawful tax. The city moved for summary judgment. The district court granted summary judgment in favor of the city. With respect to the water-connection and sanitary-sewer-connection charges, the district court concluded that the undisputed facts demonstrate that Park Estates benefits from its connection to the city's system and that the charges are reasonable and used solely for maintenance of infrastructure. With respect to the storm-sewer charge, the district court concluded that the undisputed facts demonstrate that the storm-sewer system benefits all residents of the city and that the charge is reasonable. The district court therefore concluded that the city had not exceeded its statutory authority. The district court did not determine whether the storm-sewer charge is a tax or a fee, and therefore did not reach the question of whether the storm-sewer charge—if a tax—is unlawful.

Park Estates appeals.

D E C I S I O N

On appeal from summary judgment, we review the district court's decision de novo. *Riverview Muir Doran, L.L.C. v. JADT Dev. Grp., L.L.C.*, 790 N.W.2d 167, 170 (Minn. 2010). Summary judgment is appropriate when the pleadings and evidence in the record show "that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We review whether the district court properly applied the law and whether there are genuine issues of material fact. *Id.* We view the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). The party moving for summary judgment has the burden to demonstrate that "no genuine issue of material fact exists." *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). Summary judgment is appropriate when the nonmoving party does not present evidence that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

I. No genuine issue of material fact exists with respect to whether the charges are just, equitable, or reasonably proportionate to cost.

Park Estates argues that a genuine issue of material fact exists as to whether the city's water-connection, sanitary-sewer-connection, and storm-sewer charges are just, equitable, and proportionate to the cost of furnishing the services. *See* Minn. Stat. § 444.075 (2016).

Minn. Stat. § 444.075, subd. 3(a), authorizes a municipality to "impose just and equitable charges" to pay for the construction and maintenance of water, sanitary-sewer, and storm-sewer services. *Id.*, subd. 3(a); *see also id.*, subd. 1(f) (defining "facilities" to mean waterworks, sanitary-sewer and storm-sewer systems). The statute allows municipalities "maximum flexibility in financing municipal sewer and water services." *Crown Cork & Seal Co. v. City of Lakeville*, 313 N.W.2d 196, 201 (Minn. 1981). The city may use any combination of "use, availability and/or connection charges." *Id.* at 199. Charges adopted by ordinance in the city's legislative capacity are presumed to be just and reasonable and will be upheld unless shown to be in excess of statutory authority or resulting in unjust, unreasonable, or discriminatory rates by clear and convincing evidence. *See City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984) (discussing judicial review of MPUC utility ratemaking).

Water-Connection and Sanitary-Sewer-Connection Charges

Park Estates argues that the water-connection and sanitary-sewer-connection charges are not just, equitable, and proportionate to the cost of furnishing the services because Park Estates installed and maintains its own water and sanitary-sewer lines and Park Estates residents do not connect directly to the city's water and sanitary-sewer lines. We disagree.

The fact that Park Estates installed and maintains the water and sanitary-sewer lines on its property does not render the connection charges unjust or inequitable. All private property owners are required to maintain water and sanitary-sewer lines on their property. Section 70-35 of the city's ordinances provides that "[t]he cost of the original installation

of all plumbing between the water main in the street and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs and maintenance, shall be borne entirely by the consumer." St. Paul Park, Minn., Code § 70-35 (2016). Section 70-90 similarly provides that "[a]ll costs of repair and maintenance of the sewer line serving any consumer dwelling shall be borne entirely by the consumer." St. Paul Park, Minn., Code § 70-90 (2016). No evidence suggests that the city renders maintenance services on the private property of any resident; all city residents bear equal responsibility for installing and maintaining their property's water and sewer lines. The fact that Park Estates's contract with the city also has provisions requiring Park Estates to maintain its private water and sanitary-sewer lines is immaterial to whether the city's charges are just and equitable under Minn. Stat. § 444.075, subd. 3(a).

As for proportionality, the statute requires that "charges made for service rendered shall be nearly as possible proportionate to the cost of furnishing the service." *Id*., subd. 3(b). The funds the city collects are used solely for maintenance of city-owned water and sanitary-sewer infrastructure. *See id.*, subd. 3(a). All single-family dwellings are charged the same quarterly fee. St. Paul Park, Minn., Code §§ 70-46(a)(5), 70-87(a)(4) (2016). Individuals using the city's water and sanitary-sewer services benefit from continued maintenance of the city-owned water and sanitary-sewer infrastructure to ensure undisrupted service. That Park Estates households connect to the city's water and sewer through Park Estates's single connection rather than through 111 separate connections does not render the charges disproportionate. Like other property owners, Park Estates residents

each place demands on the city's infrastructure and they each benefit from maintenance of that infrastructure. *See* Minn. Stat. § 444.075, subd 3(b); *Moorhead*, 343 N.W.2d at 846.

Park Estates did not present evidence sufficient to create a genuine issue of material fact as to whether the city exceeded its statutory authority in imposing the water-connection and sanitary-sewer-connection charges.

Storm-Sewer Charge

Park Estates also argues that the city's storm-sewer charge exceeds the city's statutory authority as a matter of law, or that there is at least a genuine issue of material fact, because the storm water from its property does not enter the city's storm-sewer system. For purposes of summary judgment, the city concedes that Park Estates's storm water runs into a private drainage ditch on a neighboring property and not into the city's storm sewer. Again, we disagree with Park Estates's contention.

Minn. Stat. § 444.075, subd. 3(a), permits the city to impose "just and equitable charges for the use and for the availability of the [storm-sewer system] and for connections with [it]." *See also* Minn. Stat. § 444.075, subd. 1(e)-(f) (2016) (applying section 444.075 to storm sewers). The Minnesota Supreme Court has interpreted Minn. Stat. § 444.075, subd. 3(a), in the disjunctive, as permitting cities to recoup costs by "imposing use, availability *and/or* connection charges." *Crown Cork*, 313 N.W.2d at 199 (emphasis added). The city's ordinances calculate the charge based on the classification of the parcel, St. Paul Park, Minn., Code § 70-154(a) (2016), which is a permitted method under Minn. Stat. § 444.075, subd. 3b(2). Because the city has made available a storm sewer and has adopted ordinances to charge for the availability of the sewer, Park Estates is subject to the

availability charges regardless of whether it is "connected" to or "uses" the storm sewer. *See* Minn. Stat. § 444.075, subd. 3.

Park Estates argues that we should adopt the reasoning of *Knutson Hotel Corp. v. City of Moorhead* and conclude that, because none of the water from its property enters the city's storm sewer, the city has exceed its statutory authority. 250 Minn. 392, 84 N.W.2d 626 (1957). In that case, the city assessed the appellant hotel under its sanitary-sewer ordinances for water from an air-conditioning unit that discharged into the storm sewer. *Id.* at 394-95, 84 N.W.2d at 628. The Minnesota Supreme Court held that the charge was unlawful because the hotel's discharge of water into the storm sewer was unrelated to the sanitary-sewer charge and the city had "no ordinance authorizing the imposition of a charge for water flowing through the storm sewer." *Id.* at 395-97, 84 N.W.2d at 629. *Knutson Hotel Corp.* is distinguishable from this case because St. Paul Park has an ordinance authorizing the imposition of a storm-sewer charge, and that charge is authorized under Minn. Stat. § 444.075. *See* St. Paul Park, Minn., Code § 70-154. Additionally, the supreme court decided *Knutson Hotel Corp.* under Minn. Stat. § 443.09, the predecessor to Minn. Stat. § 444.075, which did not permit the imposition of availability charges. *See* Minn. Stat. § 443.09, subd. 3 (1953) (permitting cities to charge "for the use of" sewage systems). The same year that the supreme court decided *Knutson Hotel Corp.*, however, the legislature repealed Minn. Stat. § 443.09 and enacted Minn. Stat. § 444.075, which permits the imposition of availability charges. 1957 Minn. Laws ch. 608, § 1, at 763-64 (amending the statute to permit imposition of charges for "the availability" of facilities).

Park Estates did not present evidence sufficient to create a genuine issue of material fact as to whether the city exceeded its statutory authority in imposing the storm-sewer charge.

II. The district court did not consider whether the storm-sewer charge is a tax or a fee.

Park Estates argues that, even if the city imposed the storm-sewer charge pursuant to its statutory authority, the storm-sewer charge is an unlawful tax because Park Estates does not receive a special benefit from the storm sewer. The city argues that the charge is a fee and not a tax because it is (1) not a general revenue-raising measure, (2) earmarked for a particular purpose, and (3) directly tied to the cost of regulation, rather than tied to a specific benefit conferred upon any given property.

The district court did not address whether the storm-sewer charge is a fee or a tax. "[A]n undecided question is not usually amenable to appellate review." *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). Moreover, the district court did not have the benefit of the Minnesota Supreme Court's decision in *First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355 (Minn. 2016), which refined the distinction between taxes and fees for purposes of Minnesota law. We therefore remand the case to the district court to consider (1) whether the city's storm-sewer charge is a tax or a fee and (2) if the charge is a tax, whether it is unlawful. The district court has discretion to reopen the record to assist in addressing these questions.

In sum, we affirm the district court's decision that the city did not exceed its statutory authority in imposing the water-connection, sanitary-sewer-connection, and

storm-sewer charges, but we reverse and remand for consideration of whether the storm-sewer charge is an unlawful tax.

Affirmed in part, reversed in part, and remanded.