STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1430

Scott Wintz, et al.,
Respondents,

vs.

Yellow Medicine East, ISD #2190, et al.,
Appellants.

Filed June 10, 2013
Reversed
Halbrooks, Judge

Yellow Medicine County District Court
File No. 87-CV-10-129

Kevin K. Stroup, Stoneberg, Giles & Stroup, P.A., Marshall, Minnesota (for respondents)

Eric J. Quiring, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

HALBROOKS, Judge

In this declaratory-judgment action, appellants school district and school board challenge the district court's determination that two portions of the school district's construction project do not qualify for funding under the Alternative Facilities Bonding

and Levy Program pursuant to Minn. Stat. § 123B.59 (2012). By notice of related appeal, respondent taxpayers challenge the district court's remedies order, arguing that it should be expanded. Because we conclude that the district court's finding that the hot-water-piping portion of the project is not part of the ventilation system is clearly erroneous and because the sprinkler-installation portion is necessary to correct a fire or life-safety hazard, we reverse.

FACTS

Between 2003 and 2008, appellant Yellow Medicine East, IDS #2190 (YME) conducted three independent studies to assess the quality of the facilities at Yellow Medicine High School and Bert Raney Elementary School. The results indicated that the schools' facilities were inefficient, maintenance-intensive, and failed to meet current indoor air-quality standards. The Minnesota Department of Education (MDE) determined that it was "not educationally and economically advisable" to construct a new school and advised YME that "indoor air quality is an issue that the district needs to address throughout the facilities."

In July 2009, YME hired Energy Service Group (ESG) to assess the energy consumption and operational characteristics of YME's facilities. ESG recommended major upgrades to the facilities. Following this assessment, YME decided to replace the ventilation systems in both schools. The original estimated cost of the project was $14 million.

In October 2009, YME entered into two agreements with ESG: an energy-services agreement to complete the project and a professional-services agreement to assist YME

in obtaining approval from MDE to fund the project, in part, through the Alternative Facilities Bonding and Levy Program (AFP). The AFP authorizes a school district to issue bonds to finance certain health and safety projects without submitting the proposal to a referendum election. Minn. Stat. § 123B.59, subd. 3. YME submitted an AFP application to MDE that resulted in a positive review and comment letter from MDE in December 2009.

In February 2010, YME's school board adopted a resolution, stating its intention to issue taxable general obligation alternative-facilities bonds. YME received alternative-facilities bond proceeds of $8.26 million. After receiving favorable bids on the ventilation project, YME expanded the alternative-facilities funded portion of the project to include the installation of sprinkler systems in both schools, based on two "inspection and compliance orders" from the state fire marshal.

Respondents Scott Wintz and Patrick McCoy commenced this taxpayer suit following the school-board resolution.[1] They requested preliminary and permanent injunctive relief barring YME from beginning the project and sought an order declaring that YME was "attempting to improperly use the Alternative Facilities Program" and that the entire amount of project funding allocated to AFP bonds must be submitted to the voters for approval. The district court denied respondents' request for a temporary injunction and ordered a limited-fact trial on the issues of (1) whether YME possessed insufficient funds from capital-facilities revenue to pay for the project, as required by

[1] The taxpayers brought suit against both Yellow Medicine East ISD #2190 and the Yellow Medicine East ISD School Board.

Minn. Stat. § 123B.59, subd. 1(b)(2), and (2) whether the funding "allocated for new hot water pipes[,] sprinkler systems, and recommissioning or modifying the gym, locker rooms, and weight room, [was] properly funded by health and safety revenue."

Following a bench trial, the district court held that YME had insufficient funds to pay for the improvements. It determined that the ventilation portion of the project, totaling $7,261,856, qualified for health and safety revenue under the statutory language allowing funding for "upgrades or replacement of mechanical ventilation systems to meet American Society of Heating, Refrigerating and Air Conditioning Engineers standards." Minn. Stat. § 123B.57, subd. 6(a) (2008).[2] But the district court excluded the cost of the hot-water piping and fire sprinkler systems (totaling $2,807,121), concluding that they did not qualify for health and safety funding.

The district court denied as moot the respondents' request for a permanent injunction because YME had largely completed work on the project. Following a remedy hearing, the district court issued an order prohibiting YME from "(1) seeking issue of the remaining Alternative Facilities Bonding and Levy Program (AFP) Bonds, and (2) from utilizing unused funds from the AFP to pay those portions of the Project which . . . do not qualify for such funds." The final cost of the project allocated to AFP funding was $9,054,536.51. At the time the district court issued its remedy order, YME was

[2] Minn. Stat. § 123B.57, subd. 6(a), was significantly amended during the 2011 special session. *See* 2011 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, § 2. But we apply the 2008 language in effect during the period relevant to this litigation. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) ("[A] court is to apply the law in effect at the time it renders its decision, unless doing so would alter rights that had matured or become unconditional, would impose new and unanticipated obligations on a party, or would work some other injustice."), *review denied* (Minn. Nov. 17, 1986).

authorized for one remaining bond issue of $1.25 million in alternative-facilities bonds and owed $911,217.51 in unpaid bills allocated to the AFP funding. This appeal follows.

D E C I S I O N

"In a declaratory judgment action tried without a jury, the court as the trier of facts must be sustained in its findings unless they are palpably and manifestly contrary to the evidence." *Samuelson v. Farm Bureau Mut. Ins. Co.*, 446 N.W.2d 428, 430 (Minn. App. 1989), *review denied* (Minn. Nov. 22, 1989). But statutory interpretation is a question of law that is reviewed de novo. *In re J.M.T.*, 759 N.W.2d 406, 407 (Minn. 2009). "The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. If a statute is unambiguous, then we must apply the statute's plain meaning." *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) (quotation and citation omitted). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). "Statutory words and phrases must be construed according to the rules of grammar and common usage." *Larson*, 790 N.W.2d at 703.

Before issuing bonds, school districts are typically required to submit a bonding proposal to a voter referendum and obtain "the approval of a majority of the electors voting on the question of issuing the obligations." Minn. Stat. § 475.58 (2012). A number of exceptions exist to this requirement, however, including the AFP. Minn. Stat. § 123B.59, subd. 3(a). This is the first time an appellate court has reviewed a school district's use of the AFP funding.

There are two ways that a school district may qualify for the AFP. At issue here is subdivision 1(b), which requires:

> (1) one or more health and safety projects with an estimated cost of $500,000 or more per site that would qualify for health and safety revenue except for the project size limitation in section 123B.57, subdivision 1, paragraph (b); and
>
> (2) insufficient funds from capital facilities revenue to fund those projects.

Id., subd. 1(b). The only question before this court is whether certain portions of the project "qualify for health and safety revenue." Minn. Stat. § 123B.57, subd. 6(a), defines the approved uses of health and safety revenue as follows:

> Health and safety revenue may be used only for approved expenditures necessary to correct fire and life safety hazards, or for . . . indoor air quality mold abatement, [or] upgrades or replacement of mechanical ventilation systems to meet American Society of Heating, Refrigerating and Air Conditioning Engineers standards . . . .

I.

YME argues that the uncontested evidence establishes that the hot-water piping is part of the ventilation system, and therefore the district court clearly erred by finding otherwise. We will defer to the district court's findings of fact unless those findings are clearly erroneous. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007). But the scope of Minn. Stat. § 123B.57, subd. 6(a), is a question of law, which we review de novo. *See J.M.T.*, 759 N.W.2d at 407.

During the pretrial stage of this proceeding, YME argued that the hot-water piping qualified for health and safety funding under the "indoor air quality mold abatement"

clause of subdivision 6(a). But at trial and now on appeal, YME also argues that the hot-water piping, in addition to the modifications to the gym, locker and weight rooms, are part of the ventilation system.

The district court accepted YME's argument as to the gym, locker and weight-room modifications, stating in a footnote that "[b]ased upon uncontested testimony during [t]rial, these are now considered ventilation improvements." But the district court determined that the hot-water piping is not part of the ventilation system. While the district court found all of YME's witnesses credible, it determined that their testimony was irrelevant to the question of whether a life and safety hazard existed and concluded, without discussion, that the hot-water piping "is unrelated to the other health and safety qualifications of the statute."

But the record contains ample support for YME's argument that the hot-water piping is part of the ventilation system. YME's superintendent testified that the new hot-water piping was part of the project from its inception. A 2009 study by ESG addresses the need for "New Hot Water Piping for Ventilation Equipment" at both schools. And a second report laying out the project's funding sources lists "new hot water piping" under the section labeled "ventilation improvements."

Perry Schmidt, the sales consultant from ESG who worked on the project evaluation and proposals, testified that it is MDE's policy to consider hot-water piping located outside of the mechanical room as part of the ventilation system that is eligible for health and safety funding. He testified that the hot water is used "as the medium for delivering heat to the air handling systems."

On cross-examination, Schmidt explained why ventilation systems require a source of heat, stating that the system consists of:

> [C]entral air handling systems[,] which are fan wheels that blow air. And then the . . . hot water is delivered to them through piping and then there's hot water coils within the air handling units that the air blows across. And that heats up the air, and that gets dispersed to the occupiers.

Schmidt testified that ESG's evaluation of the existing piping indicated that it was too old and corroded to work with the new system. Dan Bosch, ESG's project manager, also testified as to the role of the hot-water piping in the ventilation system:

> [T]he hot water piping has two facets on this project. The first one is delivering of the heating mechanism for the ventilation systems and also in the dehumidification as air is delivered into . . . the areas the . . . cooling system and heating system will lower the temperature, and then increase it, dry it out thereby, reducing the moisture in the air.

Respondents point to no contrary evidence, but argue that subdivision 6(a) should be narrowly construed "or [it] will eviscerate taxpayers' right to a voice by referendum." The voter-referendum statute contains 11 exceptions, including a provision that articulates an exception "under the provisions of a law which permits the issuance of obligations of a municipality without an election." Minn. Stat. § 475.58, subd. 1. Section 123B.59 is one such statute, authorizing funding for projects "that would qualify for health and safety revenue." In the absence of ambiguity, we are bound by the plain language of that statute, even if it results in a sizable exception to section 475.58. *See Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

Based on the uncontested evidence presented at trial, we conclude that the district court's finding that the hot-water pipes are unrelated to the schools' ventilation improvements is clearly erroneous and that the hot-water pipes qualify for health and safety revenue as part of the upgraded ventilation system.

II.

YME argues that sprinkler installation qualifies for funding pursuant to Minn. Stat. § 123B.57, subd. 6(a), as an "approved expenditure[] necessary to correct fire and life safety hazards." The parties disagree as to what evidence is necessary to show the existence of a "fire and life safety hazard." Respondents contend that the statute requires an "actual known problem that needs to be corrected." The district court adopted this reasoning, concluding that there was "no evidence to suggest there have been incidents of 'fire and life safety hazards' which needed correction as part of this Project."

The definition of "fire and life safety hazard" is a question of statutory interpretation that we review de novo. *See J.M.T.*, 759 N.W.2d at 407. Hazard is defined as "[a] chance of being injured or harmed," "[r]isk or danger," or "[a] possible source of danger." *The American Heritage Dictionary* 807 (5th ed. 2011). The words "chance" and "possible" demonstrate that it is not necessary that a harm or danger has already occurred or that the future harm is certain to occur, only that there are circumstances that could lead to the occurrence of a harm or that indicate a possible future harm.

Under the district court's reasoning, installation of sprinklers would only qualify for funding under section 123B.59 if YME could provide evidence of an incident of a fire or life hazard indicating the need for sprinklers. Neither respondents nor the district court

provide an example of what would qualify as an appropriate "incident." But the statutory language does not limit AFP funding to circumstances where a harm or injury has already occurred or is certain to occur. AFP funding is available "to correct fire and life safety hazards," that is, where there is evidence of a chance or possibility of harm or injury. Respondents therefore do not provide a reasonable alternative interpretation of "fire and life safety hazard."

Because we conclude that the statutory language is unambiguous, we apply its plain meaning to determine if YME's installation of sprinkler systems qualifies for funding under subdivision 6(a). The record contains two uncontested pieces of evidence that weigh in favor of the conclusion that a fire or life hazard existed. First, ESG's project manager testified that the elementary school had no sprinkler protection whatsoever and that the high school had fire protection in only one small portion of the building. Second, YME introduced two inspection and compliance orders from the state fire marshal dated May 6, 2009, following an inspection of both schools. With respect to both schools, the orders stated that YME should "[p]rovide one-hour fire related enclosure of the unprotected vertical openings – OR – provide sprinkler protection throughout the building." The orders also stated that "automatic sprinkler protection [should be provided] in basements of the following occupancies that exceed 2,500 square feet in size and lack openings for firefighting purposes."

There was a dispute between the parties at trial as to whether these orders constituted recommendations or requirements. The chairman of the school board testified that it "seemed like every time the fire marshal came through we . . . would be requested

to upgrade fire protection for the school." The school district superintendent testified that "[b]ecause of fire marshal recommendations to add sprinkling systems . . . this could be a time when during construction it could be added to the project."

ESG's project manager testified that "the inspector was mandating [that] the fire protection be installed in the lower levels of the school, and then other improvements on the mechanical system, or a fire protection installed in the rest of the building." He stated that the benefit of having sprinklers throughout the facilities was "[i]mmediate response on a sense of a fire." The orders, themselves, characterize the lack of sprinklers as "violation[s]" of the Minnesota State Fire Code and stated that the district had 90 days to correct the violation.

Whether or not the district was under an obligation to install sprinkler systems, the orders reflect the state fire marshal's opinion that the lack of sprinklers constituted a violation of the Minnesota State Fire Code. The orders placed the school district on notice of a possible fire-safety issue that was serious enough for the fire marshal to either recommend or require that it be corrected within 90 days. Further, common sense dictates that the chance of a fire spreading is greater in the absence of fire-suppression equipment. This conclusion is the most reasonable, given the plain meaning of the statutory language: that a hazard exists where there is the chance or possibility of harm or injury. We conclude that a near-complete lack of sprinkler protection and the state-fire-marshal orders to correct this deficiency are sufficient evidence of a fire or life safety

hazard that the cost of installing such protection falls within the plain meaning of Minn. Stat. § 123B.57, subd. 6(a).[3]

III.

Taxpayers Wintz and McCoy cross-appealed, arguing that the district court's remedy should be broadened to protect the taxpayers from paying the entire amount of the project that is ineligible for health and safety funding. Because we conclude that the district court's order should be reversed, we do not reach this issue.

Reversed.

[3] Subdivision 6(a) was amended in 2011 to include the "design, purchase, installation, maintenance, and inspection of fire protection and alarm equipment" under approved uses of health and safety revenue. *See* 2011 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, § 2. Because we conclude that the language at issue is not ambiguous, our analysis does not reach beyond the plain language of the statute. *Larson*, 790 N.W.2d at 703.