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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0273**

Vernice Wessman, et al.,
Appellants,

vs.

City of Mankato,
Respondent.

**Filed December 2, 2008
Reversed
Larkin, Judge**

Blue Earth County District Court
File No. 07-CV-07-3327

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Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellants claim that the district court erred as a matter of law when it denied appellants' motion for summary judgment and issued a sua sponte injunctive order, which both parties challenge on appeal. The district court's orders were based on its

determination that the State Building Code does not preempt Mankato, Minn., City Code § 12.03. We conclude that Mankato, Minn., City Code § 12.03 is preempted by the State Building Code and therefore reverse.

FACTS

Appellants Vernice, Rebecca, and Daniel Wessman own real property located at 415 Glenwood Avenue in Mankato. Respondent, City of Mankato, issued appellants a Building & Development Permit on October 12, 2005. Appellants planned to move a house onto the property and add an addition to the house. The Mankato, Minn., City Code (hereinafter Mankato City Code) requires all exterior work authorized by a building permit to be completed within 18 months from the date of issuance unless the permit holder requests an extension. Mankato, Minn., City Code § 12.03, subd. 1 (2005). Appellants continued construction beyond the 18-month period but did not request an extension. On July 9, 2007, respondent sent appellants a letter notifying them that their building permit had expired on April 12, 2007. At that time, appellants requested an extension. Respondent denied appellants' request and instead informed appellants that they had to apply for a new building permit which also meant paying another permit fee. Appellants did not obtain a new permit. Respondent issued a Stop Work Order because appellants were in violation of Mankato City Code § 12.03.

Appellants sought a judgment declaring that the Stop Work Order was null and void. Appellant did not dispute that they were in violation of Mankato City Code § 12.03 but claimed that the city code is preempted by the State Building Code. Appellants also sought an order permanently enjoining the respondent from enforcing the Stop Work

Order. The district court ordered a temporary injunction that enjoined respondents from enforcing the Stop Work Order but only to the extent necessary for appellants to “winterize” the property. Appellants then moved for summary judgment on the issue of preemption. Respondent opposed appellants’ motion but did not bring a cross-motion for summary judgment.

The district court denied appellants’ motion for summary judgment holding that the State Building Code does not preempt Mankato City Code § 12.03. The district court also, sua sponte, ordered that (1) the parties negotiate a timeline for construction, (2) respondent issue a renewed building permit to appellants, (3) the parties meet to establish a timeline and detailed plan of construction, and (4) a special master be appointed if the parties could not agree. Appellants challenge the district court’s denial of summary judgment and its sua sponte order. We consider whether the district court erred in holding that Mankato City Code § 12.03 is not preempted by the State Building Code.

DECISION

“On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law.” *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990); *see also* Minn. R. Civ. P. 56.03. Where, as in this case, there are no genuine issues as to any material facts, the application of statutes and local ordinances to the undisputed facts is a legal question reviewed de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5

(Minn. 2008) (citations omitted). This court must decide whether the district court erred as a matter of law when it concluded that the State Building Code does not preempt Mankato City Code § 12.03.

The state code “governs the construction, reconstruction, alteration, and repair of buildings.” Minn. Stat. § 16B.59 (2006). The state code’s purpose is to “provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs.” *Id.* “The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.” Minn. Stat. § 16B.59.

Respondent has adopted the State Building Code and must comply with state statutes regarding “components and systems.” Mankato City Code § 12.01, subd. 1 (“The Minnesota State Building Code . . . is hereby adopted by reference with the exception of the optional chapters . . . [and] hereby incorporated in this section as if fully set out herein. (Ord. of 4-28-2003)”). Chapter 12 of Mankato’s City Code governs construction, housing, and building codes as well as regulations and permits. *See generally id.* Mankato City Code § 12.03, subds. 1 and 2, entitled “Time Limits for Construction Authorized by a Building Permit,” provides:

Subd. 1. When a building permit is issued for the construction of a new structure or for the exterior alteration of an existing structure, all exterior work authorized by the building permit shall be completed within eighteen (18) months of the date the building permit was issued, and all

exterior surfaces of the building addressed by the building permit shall comply with the Uniform Building Code and Uniform Housing Code as adopted in this chapter.

Subd. 2. The Building Official may grant an extension, not to exceed 12 months, to the time limit contained in subdivision 1; provided the Building Official's findings for the extension are related to a unique circumstance and the activities authorized by the building permit have been engaged in a timely manner. A unique circumstance may include, but is not limited to, product shortages, inclement weather, labor disputes, project complexity and size, governmental actions, and financial difficulties.

If the Building Official does not grant an extension, the City of Mankato requires the builder to obtain a new permit. The practical effect is that the original permit becomes invalid or expires if exterior work is not completed within the established time limit.

“[M]unicipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.” *City of Morris*, 749 N.W.2d at 6 (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 357, 143 N.W.2d 813, 820 (1966)). While cities have broad power to legislate municipal affairs pursuant to Minn. Stat. § 412.221, subd. 32 (2006),¹ state law may limit this power in a particular area. *City of Morris*, 749 N.W.2d at 6 (citing *Mangold Midwest Co.*, 274 Minn. at 357, 143 N.W.2d at 819-20). A municipality cannot enact local regulations which conflict with a state law and “state law may fully occupy a particular field of legislation so that there is no room for local

¹ Section 412.221, subdivision 32 provides a city council with the power to enact ordinances for “the promotion of health, safety, order, convenience, and the general welfare” so long as they are not inconsistent with the Constitution and federal and state law.

regulation.” *City of Morris*, 749 N.W.2d at 6 (citation and quotation omitted). When the legislature’s intent to limit municipal regulation in a particular area is stated in statute, we focus on the statutory language when determining whether a challenged regulation is preempted by state law. *Id.* at 7 (citing *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007)).

Minn. Stat. § 16B.62, subd. 1 (2006) states that “[t]he State Building Code applies statewide and supersedes the building code of any municipality. A municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code.” This statutory language clearly expresses legislative intent to supersede municipal building codes. “By its express terms, . . . [Minn. Stat. § 16B.62, subd. 1] prohibits a municipal ordinance if (1) the ordinance is a building code provision; (2) it regulates a component or system of a residential structure; and (3) it is different from a provision of the State Building Code.” *City of Morris*, 749 N.W.2d at 7. Therefore, our analysis turns to these three elements.²

² The legislature has recently amended Minn. Stat. § 16B.62, subd. 1 (2006). The new statutory language reads “[t]he State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality.” 2008 Minn. Laws ch. 322, § 3, at 944-45 (to be codified as Minn. Stat. § 16B.62, subd. 1a (2008)). The law, as amended, does not change our analysis; the three elements identifying prohibited municipal ordinances from the 2006 version of the statute (i.e., “building code provisions,” “components or systems,” and “different from” the state code) remain intact under the 2008 version of the statute. 2008 Minn. Laws ch. 322, § 3, at 944-45 (to be codified as 16B.62, subd. 1b(c) (2008)). “A municipality must not by ordinance, or through development agreement,

Section 12.03 is a building code provision

City of Morris recently defined the term “building code provision” as the term is used in Minn. Stat. § 16B.62, subd. 1. *Id.* at 7-8. The supreme court concluded that “the term ‘building code provision’ means at least those subjects specifically regulated by the State Building Code.” *Id.* at 8 (explaining that the Minnesota Supreme Court has not limited preemption to only those regulations that govern an “integral part” of the design or construction of buildings). *City of Morris* adopted the reasoning in *City of Minnetonka v. Mark Z. Jones Assocs., Inc.*, that even though a particular ordinance or regulation may not affect the construction and design of buildings, “if the subject of the regulation is included within the State Building Code, it is a ‘building code’ regulation.” *Id.* (clarifying *Mark Z. Jones*, 306 Minn. 217, 222, 236 N.W.2d 163, 167 (1975)).

Given the definition of “building code provision,” we consider whether the State Building Code specifically regulates time limits for construction authorized by a building permit. It does. Pursuant to the state code, Minnesota Rule 1300.0120, subp. 11 (2007) provides:

Every permit issued shall become invalid unless the work authorized by the permit is commenced within 180 days after its issuance, or if the work authorized by the permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official may grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code.” *Id.*

While the state code does not include an explicit deadline for completion of work, the code regulates construction time limits related to commencement and suspension of work.

Respondent argues that the city and state codes do not regulate the same subject matter. Respondent draws a distinction between deadlines related to commencement and suspension of work (contained in the state code) and deadlines related to completion of exterior work (contained in Mankato's code, but not the state code). We decline to adopt the distinction suggested by respondent because the distinction is inconsistent with the policy underlying the State Building Code.

The purpose of the state code is, in part, to lower construction costs through basic and uniform performance standards. Minn. Stat. § 16B.59 (explaining that the purpose is to “provide basic and uniform performance standards . . . which will in part tend to lower construction costs”). “In enacting a statewide building code, the legislature recognized that a single, uniform set of building standards was necessary to lower costs and make housing more affordable.” *City of Morris*, 749 N.W.2d at 7.

Contrary to the purpose of the state code, the imposition of a completion deadline for exterior work may actually increase costs by limiting a homeowner's ability to choose the order of construction tasks based on costs. In addition, the suggestion that individual municipalities may enact performance standards in the form of construction deadlines unique to each municipality, which may exceed the “basic” standards enumerated in the state code, is inconsistent with the State Building Code's purpose of providing “uniform” performance standards. Accordingly, we conclude that the proper focus is on the timing

provisions in general, without regard to nuanced distinctions between events governed by the provisions.

Both the city and state codes establish deadlines related to the timing of construction. *See* Minn. R. 1300.0120, subp. 11; Mankato City Code § 12.03, subd. 1. A permit expires or becomes invalid if a permit holder fails to comply with the deadlines. *See* Minn. R. 1300.120, subp. 11; Mankato City Code § 12.03, subd. 1. Both code provisions therefore regulate the same subject matter, to wit, time limits for construction authorized by building permits and the expiration of permits based on failure to comply with the timelines. Because Mankato City Code § 12.03 regulates a subject that is included in the State Building Code (time limits related to construction), it qualifies as a “building code provision.”

Section 12.03 regulates components or systems

Our analysis next turns to the second element of the express prohibition on municipal ordinances, whether or not section 12.03 regulates a component or system of a residential structure. The second element requires an examination of the meaning of “components” and “systems.” *City of Morris*, 749 N.W.2d at 7 (citing Minn. Stat. § 16B.62, subd. 1). The Minnesota Supreme Court relied on Merriam-Webster Collegiate Dictionary to define “component” as “a constituent part” and “system” as “a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose.” *City of Morris*, 749 N.W.2d at 9 (noting that Minn. R. 1300.0070, subp. 1 (2007) and 1309.020 (2007) accept Merriam-Webster Collegiate Dictionary as a source of ordinarily accepted meanings).

A home's exterior includes windows, doors, siding, and trim. These are clearly components. *City of Morris*, 749 N.W.2d at 11 (noting that “by requiring the creation of an opening in the exterior shell of a building and the installation of a window or mechanical ventilation system in a bathroom, the provision regulates the components of a residential structure”). The city code regulates these components by imposing a deadline for their installation. Respondent argues that because the city code does not address the type of components, the quality of components, or the method of installation, the city code does not regulate components. Respondent relies on an interpretation of “building code regulation” that was rejected in *City of Morris*. 749 N.W.2d at 7-8. Regulations are not limited to requirements affecting the construction and design of buildings. *Id.* at 8. We conclude that a deadline for completion of exterior work, which necessarily includes a deadline for installation of exterior components, is a regulation of exterior components.

Section 12.03 is different from a provision of the State Building Code

Our analysis now turns to the third and final element of the express prohibition on municipal ordinances, whether the city code is “different from” any provision of the State Building Code. *City of Morris*, 749 N.W.2d at 7 (citing Minn. Stat. § 16B.62, subd. 1). “[D]ifferent from’ does not mean ‘in conflict with.’” *City of Morris*, 749 N.W.2d at 9. The city code is different from the state code because it imposes a deadline for completion of exterior work and an additional restriction on the validity and duration of building permits. The state code contains no deadline for construction completion. As long as construction commences within 180 days after the permit’s issuance and is not

suspended or abandoned for more than 180 days after work is commenced, the permit remains in effect. Minn. R. 1300.0120, subp. 11.

Respondent relies on the supreme court's reasoning in *State v. Kuhlman*, to argue that Mankato's city code is not in conflict with the State Building Code but merely complementary to state law. *See Kuhlman*, 729 N.W.2d at 580-81 (examining uniformity requirements of the Minnesota Traffic Regulations and explaining that while the legislature prohibits ordinances in conflict with state law, there is no conflict if the ordinance aids or is in furtherance of state law). Respondent's reliance on *Kuhlman* is misplaced. In *City of Morris*, the supreme court distinguished its interpretation of the uniformity requirement of the Minnesota Traffic Regulations at issue in *State v. Kuhlman* from its interpretation of Minn. Stat. § 16B.62, subd. 1, noting that under the State Building Code, any difference from the state code is prohibited. *City of Morris*, 749 N.W.2d at 10. The supreme court concluded, "even a provision that is merely additional and complimentary to a provision in the State Building Code is prohibited." *Id.*

Because Mankato City Code § 12.03 is a building code provision that regulates components or systems of a residential structure, and the ordinance is different from a provision of the State Building Code, the ordinance is prohibited. Minn. Stat. § 16B.62, subd. 1. Our conclusion regarding preemption is consistent with the holding in *Mark Z. Jones*. 306 Minn. at 223, 236 N.W.2d at 167. In *Mark Z. Jones*, the supreme court would not allow the City of Minnetonka to impose additional burdens on builders in the name of fire prevention, which clearly involves safety concerns. *Id.* (noting the supreme court is "of the opinion that to allow individual municipalities to impose additional

burdens on builders in the name of fire prevention, sanitation, or security would totally emasculate the explicitly stated purpose of the statute authorizing the State Building Code.”). If fire prevention does not justify additional burdens on builders, we fail to see how respondent’s stated concern, avoiding blight associated with unfinished construction, justifies additional burdens. We do not doubt that blight, as well as safety concerns, may arise in relation to uncompleted construction. However, at oral argument on appeal respondent conceded that the city has lawful means of dealing with these legitimate concerns other than by revoking building permits based on construction deadlines that are not contained in the State Building Code. We also note that respondent may propose amendments to the State Building Code in an effort to address its concerns. Minn. Stat. § 16B.64, subd. 5 (2006).

The district court erred in determining that Mankato City Code § 12.03 is not preempted by the State Building Code. Appellants are entitled to summary judgment as a matter of law. Accordingly, we reverse the district court’s denial of summary judgment for appellant. Because the district court’s February 7, 2008 order was based on the district court’s erroneous conclusion regarding preemption, the order is reversed as well, without need for further analysis.

Reversed.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals