STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1817

In re: the Matter of the Removal of that Certain Building owned by Theodore R. Thull, said property known as 124 Fromm Circle, Granite Falls, Minnesota.

Filed April 24, 2017
Affirmed
Reilly, Judge

Chippewa County District Court
File No. 12-CV-15-388

Douglas D. Kluver, Kluver Law Office and Mediation Center, PLLC, Montevideo, Minnesota (for appellant Theodore R. Thull)

Gregory L. Holmstrom, Jeremy R. Blackwelder, Holmstrom & Kvam, PLLP, Granite Falls, Minnesota (for respondent City of Granite Falls)

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

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

REILLY, Judge

Appellant property owner challenges the district court's judgment that a partially completed structure on his property is a nuisance and authorizing respondent-city to remove it. We affirm.

D E C I S I O N

This appeal concerns a designation by respondent City of Granite Falls that a partially completed structure on appellant Theodore R. Thull's property constitutes a public

nuisance under a city ordinance enacted in May 2010. *See* Granite Falls, Minn., Code of Ordinances (GFCO) § 150.09 (2010). The district court granted summary judgment in favor of the city and authorized removal of the structure on appellant's property. Thull challenges that judgment on appeal.

A district court may "dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); Minn. R. Civ. P. 56.03. Where the material facts are undisputed, as they are here, we review de novo the district court's application of the law to those facts. *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010).

At oral argument, Thull clarified that the only issue on appeal is whether the district court retroactively applied the 2010 ordinance in rendering judgment. An ordinance is presumptively not retroactive "unless clearly and manifestly so intended" by the rule-making authority. *Lickteig v. Kolar*, 782 N.W.2d 810, 818 (Minn. 2010) (quotation omitted); Minn. Stat. § 645.21 (2016) ("No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature."). The retroactive application of an ordinance is a legal question, to which we apply a de novo standard of review. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 799 N.W.2d 619, 628 (Minn. App. 2011).

The city ordinance provides in relevant part that:

> [Where] a building permit has initially been used and expires or is revoked and the structure remains in the same condition for a period beyond 90 days and after the expiration or revocation of the permit and the failure to obtain an extension, then in the event a complaint is filed, the structure may be declared . . . a public nuisance and . . . the structure may then be ordered removed or other actions taken.

GFCO § 150.09.

The district court correctly determined that the ordinance "contained no provisions giving it retroactive effect." *See, e.g.*, *Sletto v. Wesley Constr., Inc.*, 733 N.W.2d 838, 842 (Minn. App. 2007) ("The language of the [law] must contain clear evidence of retroactive intent, such as mention of the word 'retroactive.'") (quotation omitted)). But Thull asserts that the district court nevertheless retroactively applied the 2010 ordinance by requiring him to complete construction on the structure within 90 days of the date on which his 2003 building permit expired. This permit expired in 2005, well before the city enacted the ordinance that is at issue here.

Thull misreads the district court's order. The district court expressly found that the city was "not seeking to remove the structure for failure to complete construction before 2010 when the ordinance was enacted." Instead, the district court recognized that the city was seeking to remove "an unfinished structure, which admittedly has been left in an unfinished state for far more than the 90 days required by the ordinance after the ordinance was enacted," independent of the building permit's expiration in 2005.

A municipal ordinance is presumed valid, *see City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225, 228 (Minn. App. 1997), *review* denied (Minn. Nov. 18, 1997), and carries "the force and effect of law," Minn. Stat. § 14.38, subd. 1 (2016). Thus, as the district

court correctly noted, once the 2010 ordinance came into effect, Thull was required to comply with it. Here, it is undisputed that (1) the city granted Thull building permits in 2000 and in 2003, both of which expired without completion of the structure; (2) the structure on Thull's property is currently in the same, unfinished, condition; (3) the structure has remained unfinished for a period beyond 90 days; and (4) Thull failed to obtain an extension of his building permit, or reapply for a new building permit, in a timely manner.

The district court applied the ordinance to these undisputed facts and determined that Thull was not in compliance with its requirements. *See* GFCO § 150.09. The district court based its decision on the status of Thull's property as it existed at the time of the hearing; retroactive application was neither necessary nor employed. We therefore determine, as a matter of law, that the district court did not give retroactive effect to the 2010 ordinance by granting summary judgment in favor of the city and authorizing removal of the structure.

We are not without sympathy for Thull. But the uncontested facts reveal that Thull allowed two building permits to expire without completing his construction project. The city building inspector sent letters to Thull on two separate occasions, recommending that he apply for a new building permit to repair or replace the structure and cautioning that the inspector would have "no other choice but to recommend [removal of] the structure" if Thull failed to take action to come into compliance with the law. Despite these communications, Thull did not apply for another building permit until after the city had

already taken steps to remove the unfinished structure by filing an action for removal in district court. We cannot say that Thull is entitled to relief on these facts.

Affirmed.