STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1898
A16-1899
A16-1900
A16-1901
A16-1903
A16-1904
A16-1906
A16-1907

City of Fairmont,
Respondent,

vs.

Thomas D. Unruh,
Appellant.

Filed June 12, 2017
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Martin County District Court
File No. 46-CV-15-1176

Elizabeth W. Bloomquist, Fairmont City Attorney, Fairmont, Minnesota (for respondent)

Patrick V. Johnson, Emily Johnson Streier, Speeter & Johnson, Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

CONNOLLY, Judge

This is a consolidated appeal arising from hazardous-building abatement actions involving eight properties owned by appellant. Appellant argues that, after the district court granted respondent city's motion for summary enforcement, it erred in determining that (1) appellant's answer was untimely and (2) the record contains sufficient evidence to support summary enforcement under Minn. Stat. § 463.19 (2016). We conclude that the district court did not err in determining that appellant's answer was untimely. However, because there is not sufficient evidence to support the conclusion that the properties were hazardous, we reverse. Accordingly, we affirm in part, reverse in part, and remand.

FACTS

Appellant Thomas Unruh operates a business repairing and reselling homes. He owns nine properties that he is repairing for resale. On July 17, 2015, respondent City of Fairmont (the city) sent appellant a package via FedEx containing Orders for the Repair or Removal of Hazardous Conditions for eight properties. Each notice informed appellant that he had 30 days to correct the described building code violations or hazards.[1] The notice also stated:

> If you do not comply with this order within 30 days, the . . . [c]ity [c]ouncil will consider this Order at a public meeting and may adopt a Resolution ordering you to comply with this order. If you do not comply with a Resolution adopted by the . . .

[1] There were 19 listed violations or hazards on the first property, 13 on the second, 16 on the third, 9 on the fourth, 11 on the fifth, 20 on the sixth, 14 on the seventh, and 15 on the eighth, a total of 117 hazards or violations over the eight properties.

> [c]ity [c]ouncil, the [c]ity will bring a motion for Summary Enforcement of this Order.

Appellant did not make all the required repairs, and, on August 24, 2015, the matter was brought before the city council. A motion was passed to issue an order to appellant "to make repairs or raze [eight] properties that are owned by him and to direct staff to bring a motion for summary enforcement . . . if the order is not complied with within 30 days." On September 2, 2015, appellant was personally served with duplicates of the Orders for the Repair or Removal of Hazardous Conditions he had already received in July of 2015. Each order stated, "In the event you are served with this Order and the . . . [c]ity [c]ouncil's Resolution ordering you to comply with this Order you may enter an answer to this order within twenty (20) days, if you believe any of the facts stated herein are incorrect." Appellant was also served with a summons that stated:

> You are hereby ordered to comply with the attached ORDER FOR THE REPAIR OR REMOVAL OF HAZARDOUS CONDITIONS, which was adopted by the . . . [c]ity [c]ouncil on August 24th, 2015 at a regularly scheduled [c]ity [c]ouncil meeting. If you do not comply with this ORDER FOR THE REPAIR OR REMOVAL OF HAZARDOUS CONDITIONS, the [c]ity . . . will bring a motion for summary enforcement of the order. . . . If you plan to dispute this ORDER FOR THE REPAIR OR REMOVAL OF HAZARDOUS CONDITIONS you are required to serve upon [the city's] attorney an answer to the ORDER FOR THE REPAIR OR REMOVAL OF HAZARDOUS CONDITIONS which is . . . served upon you, within 20 days after service . . . .

Appellant did not serve answers to the eight summonses and orders because he believed that "the service of process was ineffective and the [c]ity had failed to comply with the statutory process to bring an order for removal of a hazardous condition."

Appellant's attorney requested an extension of time to serve the answers on October 1, 2015, but the city's attorney denied the request. On October 2, 2015, appellant served the city with answers that contained specific denials, admissions, and counterclaims. The city did not answer the counterclaims.

In December 2015, the city filed with the district court the summonses and orders it had served upon appellant in September. On April 14, 2016, the city filed motions requesting that the district court affirm the orders of the city council to repair or raze and remove the eight hazardous properties. The cases against the eight properties were consolidated. After a hearing, the district court denied appellant's motion to vacate the city council's resolution and granted the city's motion for summary enforcement of the order.

D E C I S I O N

I. Did the district court err in concluding that appellant's answer was untimely?

Appellant argues that he did not receive proper notice and the opportunity to be heard because the city failed to comply with statutory service and notice requirements. "The interpretation of statutes and municipal resolutions involves questions of law we review de novo." *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 529 (Minn. 2010); *Hursh v. Village of Long Lake*, 247 Minn. 1, 4, 75 N.W.2d 602, 605 (1956) (interpreting a municipal resolution to decide if it conformed to statutory requirements).

Minn. Stat. §§ 463.15-.261 (2016) governs hazardous and substandard buildings, and establishes a statutory scheme by which a municipality may seek to abate hazardous buildings. "Within 20 days from the date of service, any person upon whom the order is served may serve an answer in a manner provided for the service of an answer in a civil

action, specifically denying such facts in the order as are in dispute." Minn. Stat. § 463.18. If no answer is served, then the municipality may move for summary enforcement of the order. Minn. Stat. § 463.19. But "[i]f an answer is filed and served as provided in section 463.18, further proceedings in the action shall be governed by the Rules of Civil Procedure." Minn. Stat. § 463.20.

Appellant was personally served on September 2, 2015, and notified that an answer was required to be served on the city within 20 days. Appellant failed to serve his answer until approximately 30 days after personal service of the order.

Appellant argues that his failure to respond is not fatal because he was not served with an "order" as required by statute. Rather, he argues he was served with a "'Summons' which stated that [a]ppellant is ordered to comply with the order for repair or removal of hazardous conditions which were 'adopted' by the . . . [c]ity [c]ouncil"; no complaint or other pleading accompanied the summons; and there was "no statement that the [c]ity [c]ouncil 'ordered' the repairs or removal of hazards."

But a copy of the order to repair or raze and remove the hazardous property given to appellant by respondent in July was attached to the summons and the summons was signed by the city attorney.

Minn. Stat. § 463.17 requires that the order must recite the grounds, specify the necessary repairs, provide a reasonable time for compliance, and state that a motion for summary enforcement of the order will be made to the district court unless corrective action is taken or an answer is filed within 20 days. Minn. Stat. § 463.17, subd. 1. Service must be upon the owner of record in the manner provided for service of a summons in a civil

action. *Id.*, subd. 2. The summons notified appellant that the order was adopted by the city council and that, if appellant planned to dispute the order, he was required to serve an answer within 20 days after service. The orders adopted by the city council in September to repair or raze and remove the properties were attached to the summons, and, although an exact duplicate of the order given to appellant in July, listed the violations and hazards as required and specified the actions appellant was required to take to correct the violations. We conclude that the service of the summons and July orders collectively satisfied Minn. Stat. § 463.17.

Appellant argues that the order and resolution of the city council were not attached to the summons and that an answer was not yet due because the orders were not signed by the mayor, city council, or the city attorney but rather by a "Building Official." We disagree. The city attorney signed the summons, which informed appellant that the orders were adopted by the city council at a meeting on August 24, 2015. While a newly drafted order and resolution by the city council would have also been appropriate, the notification from the city attorney that the order had been adopted by the city council was sufficient.

Appellant also argues that the summons and orders were ineffective because the orders did not provide a "reasonable time for compliance" as required by Minn. Stat. § 463.17, subd. 1. We conclude that this defense could have been raised in a timely answer. *See City of Litchfield v. Schwanke*, 530 N.W.2d 580, 582 (Minn. App. 1995). In *Schwanke*, a property owner was given 20 days to demolish a building and make it safe but argued, in his answer to the summons, that he had not been given a reasonable time within which to comply. *Id.* at 581. The district court modified the municipal order giving the property

owner six months to address the issues and, at the end of the six months, the city concluded that the building was no longer hazardous or substandard. *Id.* at 581-82. An answer to the summons is the correct place to address the issue of whether a property owner was given a reasonable time to correct the hazardous conditions.

In a related context, Minnesota has "repeatedly interpreted the rules regarding the court's acquisition of jurisdiction by summons liberally to avoid defeating an action merely because of technical and formal defects which could not reasonably have misled or prejudiced a defendant." *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 268 (Minn. 2016) (quotation omitted). When a summons contains a defect, but results in an intended defendant being fully informed as to the circumstances of the action, the court acquires sufficient jurisdiction over that defendant, even if an amendment is necessary to correct the defect. *Id.*

Appellant was fully informed as to the circumstance of the action. He received the FedEx package in July 2015 containing all eight orders, and he hired counsel who communicated with the city attorney. After the city council adopted the July 2015 orders, appellant was personally served the summons and orders. While appellant requested more time to serve his answer, the request came after the 20-day deadline had passed and the city denied that request.

Because appellant was properly informed of the action against him under the statute, we conclude that the district court did not err in concluding that appellant's answer was untimely.

II. Did the record contain sufficient evidence to support an enforcement of the order to repair or sell appellant's property?

Appellant next argues that the district court erred when it granted the city's motion for summary enforcement without sufficient evidence that the properties met the definition of hazardous under the relevant Minnesota statute. We agree.

Even in a default judgment, the party moving for default judgment must provide sufficient evidence to support all the elements of the case. *See Wiethoff v. Williams*, 413 N.W.2d 533, 537 (Minn. App. 1987) (concluding that a default judgment should be vacated, in part, because there was not sufficient evidence to support an award of damages).

Minn. Stat. § 463.19 requires that the court affirm or modify the order and enter judgment accordingly, "upon the presentation of such evidence as it may require." We conclude that the district court was not presented with sufficient evidence to conclude that the buildings were hazardous and therefore erred in granting summary enforcement.

The affidavit of the city attorney states that the order of the city council was served upon appellant, that appellant failed to answer the summons and order within 20 days, and that "no corrective action has been taken in compliance with the Order of the [c]ity [c]ouncil." The building inspector did not testify or submit an affidavit attesting to the hazardous conditions of the property. The building inspector's reports were included in the record, but were not verified, and no one testified as to the reports' contents or the conditions of the properties as of the date of the summary enforcement. Because we

conclude that the evidence in the record is not enough to support a conclusion that the conditions on the eight properties were hazardous, we reverse.

Affirmed in part, reversed in part, and remanded.