STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0557

Gust G. Johanson, et al.,
Appellants,

vs.

City of Moorhead,
Respondent.

Filed December 18, 2017
Reversed and remanded
Jesson, Judge

Clay County District Court
File No. 14-CV-15-3832

Patrick B. Steinhoff, Bruce D. Malkerson, Malkerson Gunn Martin LLP, Minneapolis, Minnesota (for appellants)

James J. Thomson, David T. Anderson, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Smith, John P., Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

JESSON, Judge

Gust and Brenda Johanson brought a declaratory judgment action challenging the City of Moorhead's proposed special assessments on land they farm outside the city. The district court held the Johansons could not challenge the assessments until they were actually levied, at which time a statutory appeals process would be available to them. Because we hold that the statutory appeals process does not provide the exclusive means by which the Johansons can challenge a proposed special assessment, we reverse and remand.

FACTS

Gust and Brenda Johanson, the appellants in this case, owned and farmed two parcels of land close to Moorhead. Starting in 2003, the City of Moorhead, respondent in this case, undertook improvement projects near the Johansons' land. Those projects related to water, drainage ditches, storm sewers, and water retention ponds. The Johansons' property could utilize these improvements, if the land was ever developed.

Based on these projects, in 2005 and 2007 the city filed a proposed special assessment roll, which identified proposed special assessments for both of the Johansons' parcels. The principal assessment of each project, as well as the interest rate, was determined at the time of proposal. The first parcel had a principal balance of $132,531.06 over multiple projects, with interest rates ranging from 4.07 to 4.56 percent, calculated based on the bond interest rate for each project. The second parcel had a principal balance of $337,975.27 over multiple projects, with a similar interest-rate range. Interest began to

accrue as soon as the assessments were proposed. The latest financial statements in the record show one parcel had interest totaling $46,528.82. The second parcel had interest totaling $133,139.23.

The Johansons started looking for a buyer for the two parcels in 2012, but struggled to find one. In late 2014 or early 2015, the Johansons found a buyer, Ace Brandt. As a part of the negotiation process with Brandt, the Johansons had the property appraised to determine the sale price. An appraiser determined that the most profitable use of the property was for tillable farmland and that the value of the land with that use was $2,080,000.

But the appraisal also listed and discussed the proposed special assessments and the interest accruing on those assessments up until the time of appraisal, a total of approximately $650,000. The appraisal highlighted that the interest would continue to accrue "until the land is annexed into the city." Brandt reviewed the appraisal and, based on the proposed assessments, he was unwilling to pay the full appraised value, and instead paid $1,252,000. In an affidavit, Brandt stated that, but for the proposed special assessments on the property, he would have paid the full $2,080,000. In the land sale contract, the Johansons reserved an option to buy the land back from Brandt on two specific dates, if they chose to do so.[1]

[1] The Johansons plan to make their decision whether to buy back the property based on the court's conclusions regarding the interest on proposed special assessments.

After the sale, the Johansons leased the land from Brandt and continued to farm it. Neither Brandt nor the Johansons have any intention to use the land for any other purpose in the foreseeable future.

The City recovers its costs through special assessments, such as those in this case, from property owners who benefit from public improvements the City undertakes. The City has a manual that lays out procedures for these assessments and allows for proposed special assessments, even on land outside the City's municipal boundaries. When such assessments are proposed outside of the municipal boundaries, the manual allows for the application of interest "annually to the unpaid balance [of the assessment] at a rate equal to the bond rate for that project." The principal and interest on proposed special assessments is posted on the City's website. The City cannot adopt those proposed assessments, including the interest, until the City annexes the land.

City officials asserted to the district court that the City would only annex the property at the land owner's request and only if there were plans to develop the land, but there is no documented rule or policy in the record to that effect. The city further asserted the soonest there would be any chance of annexing the land would be in ten years.

Contending that the proposed special assessments negatively impact the value of their property, the Johansons sought a declaratory judgment that the City lacked power to propose special assessments that include pre-levy interest accruing annually.[2] The district

[2] At the district court level, the Johansons also argued: (1) the City has no authority to levy special assessments upon the property because it is outside of the city limits; (2) the City has no authority to levy special assessments upon the property, even if it was within the city limits because the projects do not abut the property; (3) the City slandered the title to

court granted the City summary judgment, holding that the only avenue to challenge a proposed special assessment is via the appeals process set forth in Minnesota Statutes section 429.081 (2016), not through a declaratory judgment action. But despite ruling that declaratory relief was unavailable, the court addressed the Johansons' attacks on the proposed assessment, specifically the imposition and accrual of interest. The district court, in dicta, called the interest "capitalized" and stated that the proposed special assessments on the "subject real property may also include pre-levy, capitalized interest."

The Johansons appeal.

D E C I S I O N

We review de novo whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). Because the exclusivity bar in the appeals provision in Minnesota Statutes section 429.081 does not apply to challenges against proposed assessments, we reverse and remand for consideration of whether the Johansons meet the requirements of a declaratory judgment action, which allows the court "to declare rights, status, and other legal relations." Minn. Stat. § 555.01 (2016). If the district court determines a declaratory judgment is appropriate and moves to consider the Johansons' challenge to the pre-levy interest, the court should newly consider whether the imposition of pre-levy interest on proposed assessments is authorized by law.

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the property by making false public statements about the proposed special assessments; and (4) the Johansons requested a permanent injunction to stop the City from publishing proposed special assessments in its public records.

The appeals provision contained in Minnesota Statutes section 429.081 does not apply to proposed special assessments.

A special assessment is "a tax, intended to offset the cost of local improvements such as sewer, water and streets, which is selectively imposed on the beneficiaries of such products." *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 201 (Minn. 1979). The procedure to challenge a levied assessment is contained in Minnesota Statutes section 429.081. That statute reads, in relevant part:

> Within 30 days *after the adoption of the assessment*, any person aggrieved . . . may appeal to the district court . . . . The court shall either affirm the assessment or set it aside and order a reassessment . . . . All objections to the assessment shall be deemed waived unless presented on such appeal. *This section provides the exclusive method of appeal from a special assessment levied* pursuant to this chapter.

Id. (emphasis added).

The district court determined this statute provided the exclusive method to challenge the proposed assessment at issue in this case, holding that the statute establishes "how the issue of the proposed special assessments will be addressed if the assessments are ever levied." The district court determined that the Johansons, and any future landowners, will be able to utilize this statutory method to challenge the assessments at a later date, if the property is ever annexed and the assessments ever levied. The court determined that the Johansons' attempt to bring an action for a declaratory judgment was therefore invalid. We disagree.

"When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277

(Minn. 2000) (citation omitted). When a statute's language is unambiguous, this court interprets the statute based on its plain language. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010). Section 429.081 is unambiguous, as the plain language provides an appeals process only "*after the adoption of the assessment*." Minn. Stat. § 429.081 (emphasis added). The assessment at issue in this case is proposed; it has not been adopted. The statute makes no mention of proposed assessments. The plain language of the statute shows it does not provide the exclusive remedy for a proposed special assessment.

The City points to other cases where courts have denied actions for declaratory relief from special assessments. *See, e.g., Krahl v. Nine Mile Creek Watershed Dist.*, 283 N.W.2d 538, 545 ("The availability of those appeal procedures [in Minn. Stat. § 429.081] precludes Krahl from [challenging the special assessments] as a part of [a] declaratory judgment action."); *Sievert v. City of Lakefield*, 319 N.W.2d 43, 44 (Minn. 1982) (holding that the legislature intended that section 429.081 be the only avenue for contesting special assessments); *Gadey v. City of Minneapolis*, 517 N.W.2d 344, 349 (Minn. App. 1994) (refusing to grant declaratory relief because the exclusive remedy for a defective, levied special assessment is an order setting aside the assessment and ordering reassessment), *review denied* (Minn. Aug. 24, 1994). The City further compares the Johansons' action for declaratory judgment to one where a party attempted to bring an action alleging fraud, misrepresentation, and unjust enrichment on a levied special assessment, arguing that the claims were independent of the special assessment appeals process. *DRB No. 24, LLC v. City of Minneapolis*, 774 F.3d 1185, 1190 (8th Cir. 2014).

But in each of these cases, courts looked at *levied* special assessments and not proposed ones. Therefore the statutory appeals process was available to those parties, and the cases differ from this one.[3]

This case concerns a proposed assessment, and the appeals process is not available to the Johansons; Minnesota Statutes section 429.081 does not provide the exclusive remedy. We reverse the district court's decision that this statute exclusively applies and remand for further consideration of whether this case is an appropriate one for declaratory relief.

On remand, the district court should weigh whether a declaration of rights for property owners regarding the City's imposition of pre-levy interest is proper.

On remand, the district court must consider whether a declaratory judgment is appropriate in this case. In its previous order, the district court stated a declaratory judgment is an equitable remedy, and an invalid one, citing to *Village of Edina v. Joseph*, which held "relief against erroneous or illegal assessments will not be granted by a court of equity, if the property owner has an adequate remedy at law." 264 Minn. 84, 100, 119 N.W.2d 809, 819 (1962). The court considered the appeals process in Minnesota Statutes section 429.081 to be that remedy at law. Since that appeals process is unavailable to the

[3] The City also compares the Johansons' predicament with the situation of landowners who face a public improvement project for which special assessments will be imposed, but prior to the project's completion and the assessment's adoption. Those individuals would face the same type of challenges as the Johansons, if they attempted to sell their property during that period of time, but the City asserts those individuals could not bring a declaratory judgment action to challenge assessments. But this circumstance is not at issue here, and the City did not provide caselaw to support its assertion.

Johansons, the district court needs to engage in further analysis as to whether a declaratory judgment is appropriate.

In doing so, the court should consider that a declaratory judgement action allows for courts "to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. Generally, whether a declaratory judgment is appropriate turns on "(1) whether the judgment will serve a useful purpose in clarifying and settling legal relations and (2) whether the judgment will terminate and afford relief from uncertainty, insecurity, and controversy." 2 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 57.3 (5th ed. 2017). But a declaratory judgment action further requires a justiciable controversy. *See McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011) ("A declaratory judgment action must present an actual, justiciable controversy."). There is no mechanical test to determine whether such a controversy exists; one must look at the specific facts of a case. *Holiday Acres No. 3 v. Midwest Federal Sav. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447-48 (Minn. 1978). Given the need for a fact-specific analysis, that undertaking is appropriately performed by the district court on remand.[4]

If the district court finds declaratory relief appropriate, it must then engage in an analysis of the pre-levy interest on assessments imposed by the City. Minnesota Statutes

[4] In considering the question of whether a declaratory judgment is appropriate in this case, the district court may consider reopening the record in the case to establish any needed facts.

section 429.061, subdivision 2 (2016), spells out the application of interest to special assessments and reads, in relevant part:

> All assessments shall bear interest at such rate as the resolution determines. To the first installment of each assessment shall be added interest on the entire assessment *from a date specified in the resolution levying the assessment, not earlier than the date of the resolution*.

(Emphasis added.) While this statute prohibits periodic pre-levy interest, in an unpublished decision by this court in *Gaumer v. City of Edina*, pre-levy capitalized interest was allowed. No. A10-1959, 2011 WL 2623418, at *5 (Minn. App. July 5, 2011), *review denied* (Minn. Sept. 20, 2011). Capitalized interest is the interest paid in acquiring a capital asset.[5] *C.I.R. v. Idaho Power Co.*, 418 U.S. 1, 12, 94 S. Ct. 2757, 2764 (1974). In *Gaumer*, this was interest actually paid to complete a project, which was then added to the special assessment principal balance. 2011 WL 2623418, at *4. It did not accrue over time.

While the district court calls the pre-levy interest imposed by the City in this case "capitalized" and cites *Gaumer* for support, this likely requires a more fact-intensive analysis, particularly in light of the acknowledgement at oral argument by counsel for the City that the facts of this case "may not technically meet an accounting definition of capitalized interest." Because of this acknowledgment and the scant record regarding the interest imposed by the City, the district court is encouraged to reopen the record if it reaches this question.

[5] As noted in *Gaumer*, the United States Supreme Court stated that capitalized interest was an "[a]ccepted accounting practice." *C.I.R.*, 418 U.S. at 12, 94 S. Ct. at 2764. "The general proposition that good accounting practice requires capitalization of the cost of acquiring a capital asset is not seriously open to question." *Id*. at 12, n.8, 94 S. Ct. at 2764, n.8

In sum, we hold that Minnesota Statutes section 429.081 does not provide the Johansons the exclusive remedy to challenge proposed special assessments and the accrual of interest. On remand, the district court must consider whether the Johansons can pursue a declaratory judgment. If a declaratory judgment is appropriate, the district court must determine whether the City's imposition of pre-levy interest on proposed special assessments is authorized by law.

Reversed and remanded.