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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0668

James Michael McConnell, et al.,
Appellants,

vs.

Blue Earth County, et al.,
Respondents.

Filed December 26, 2017
Affirmed
Halbrooks, Judge
Dissenting, Reyes, Judge

Blue Earth County District Court
File No. 07-CV-16-4559

Richard D. Snyder, Cynthia A. Moyer, Anupama D. Sreekanth, Fredrickson & Byron, P.A., Minneapolis, Minnesota (for appellants)

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Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

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

HALBROOKS, Judge

Appellants challenge the district court's denial of their petition for a writ of mandamus and request for injunctive relief directing Blue Earth County to record their marriage-license certificate and issue certified copies. We affirm.

FACTS

Appellants James Michael McConnell and Pat Lyn McConnell a/k/a Richard John Baker[1] have been together as a couple for almost 50 years. Appellants first applied for a marriage license in Hennepin County on May 18, 1970. A Hennepin County clerk refused to issue them a marriage license because appellants are the same sex. Appellants petitioned for a writ of mandamus in Hennepin County District Court, requesting that the district court order the clerk to issue the license. The district court denied appellants' petition, and appellants moved the district court for relief from the order, a new trial, and a stay of entry of judgment. The district court denied the motion. Appellants appealed to the Minnesota Supreme Court. The supreme court affirmed the district court's denial on October 15, 1971, holding that "Minn. [Stat. §] 517 [did] not authorize marriage between persons of the same sex and that such marriages [were] accordingly prohibited." *Baker v. Nelson*, 291 Minn. 310, 312, 191 N.W.2d 185, 186 (1971), *overruled by Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).[2]

On August 9, 1971, while their appeal to the Minnesota Supreme Court was pending, McConnell submitted a second marriage-license application in respondent Blue

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[1] Appellant Richard John Baker changed his name to Pat Lyn McConnell before appellants applied in respondent Blue Earth County for a marriage license but subsequently changed it back to Richard John Baker. We refer to him as Richard John Baker to avoid confusion.

[2] We recognize that *Obergefell* holds that same-sex couples may now exercise their fundamental right to marry in the United States. 135 S. Ct. at 2599. But this case is not about appellants' constitutional right to marry in 2017. Instead, this case is about whether the district court abused its discretion by denying appellants mandamus relief for conduct that occurred in 1971.

Earth County. The marriage application referred to Baker as a female. Baker's address was listed in Blue Earth County. McConnell's address was listed in Hennepin County.

Blue Earth County issued the marriage license on August 16. Sometime before August 31, the Blue Earth County attorney's office determined that the marriage license was defective and invalid, and the clerk of district court sent both appellants a letter to the addresses that they provided on their marriage-license application, advising them of their defective and invalid license. Both letters were returned as undeliverable. On September 3, after the county mailed the letters informing appellants that the marriage license was defective and invalid, an ordained minister performed appellants' marriage ceremony. On September 7, Baker mailed the bottom portion of the marriage license to Blue Earth County, but the county never recorded the license.

Forty-three years later, on September 29, 2014, McConnell mailed a letter to the Blue Earth County clerk requesting certified copies of the recorded marriage certificate. Blue Earth County responded by informing appellants that it could not locate the license. After appellants' counsel sought clarification, the county attorney informed him that

> [b]ecause the Blue Earth County Attorney's Office determined that the marriage license issued on August 31, 1971, was legally defective and that a lawful marriage did not arise from that license, the marriage was not considered valid and has not been recorded. We cannot, therefore, provide you with certified copies of the marriage record.

On November 18, 2016, appellants petitioned the district court for a writ of mandamus and filed a complaint for declaratory judgment and injunctive relief, requesting that it order Blue Earth County to record their 1971 marriage license. The district court

denied the petition for a writ of mandamus and request for injunctive relief because it determined that it needed a more fully developed factual and legal record to properly analyze the case. The district court determined that appellants could proceed with the declaratory-judgment action. This appeal follows.

DECISION

This court will affirm a district court's order denying mandamus relief unless "there is no evidence reasonably tending to sustain the [district] court's findings." *Popp v. County of Winona*, 430 N.W.2d 19, 22 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). When the district court's decision on a writ of mandamus is based on a legal determination, we review that decision de novo. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006). A district court may issue a writ of mandamus "to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office." Minn. Stat. § 586.01 (2016). Mandamus is an extraordinary remedy based on equitable principles and is awarded at the district court's discretion. *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. App. 2003).

For the district court to issue a writ of mandamus, a petitioner must demonstrate that "(1) the official has failed to exercise a duty imposed by law; (2) due to this failure, [appellants are] specifically injured by a public wrong; and (3) there is no adequate alternative legal remedy." *Id.* A petitioner may only satisfy the first requirement by demonstrating that "the existence of a legal right to the act demanded . . . is so clear and complete as not to admit any reasonable controversy." *Houck v. E. Carver Cty. Schs.*, 787

N.W.2d 227, 233 (Minn. App. 2010) (quotations omitted). As to the third factor, the existence of an adequate alternative legal remedy that is "equally as convenient, complete, beneficial, and effective . . . and . . . sufficiently speedy to prevent material injury," precludes granting a writ of mandamus. *Kramer v. Otter Tail Cty. Bd. of Comm'rs*, 647 N.W.2d 23, 26-27 (Minn. App. 2002) (quotation omitted).

Both appellants and the dissent assert that the district court found that appellants satisfied all three requirements of mandamus but nevertheless refused to issue the writ. We disagree with this interpretation of the district court's order. As to the first factor, the district court stated that "the *recording* of a properly and timely completed and returned Certificate is not discretionary, and should be seen as a ministerial duty, clearly imposed by law." But the district court also stated:

> [T]his Court is troubled by information contained in the record that the Application itself may have contained incorrect information, which led to the issuance of the License. . . . Indeed, the *issuance* of the License does not appear to be simply a ministerial duty: it appears to be quasi-judicial in the sense that the individual issuing the license had five days to determine if some legal impediment existed to the marriage. Quasi-judicial decisions are characterized by their effect on the rights of individuals, investigation into a disputed claim and weighing of evidentiary facts, application of those facts to a prescribed standard, and a binding decision regarding the disputed claim.
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> In the present case, or in any case, if the issuance of a license was based upon inaccurate or false information, then it can be argued that the license was not legitimately issued if it was not legitimately applied for. Accordingly, on the record presently before it, this Court is skeptical that the *issuance* of marriage licenses is purely ministerial. *Whether or not the [respondents] had the authority to refuse or decline to record the Certificate in the circumstances presented by this case*

> *requires a more fully developed record, both factually and legally.*

(Emphasis added.) (Citation omitted.) This language demonstrates that the district court concluded that the existing record is insufficient to determine whether appellants demonstrated that Blue Earth County failed to exercise a duty clearly imposed by law. And as to the third factor, the district court stated that "it is an open question as to whether getting married now is an adequate alternative legal remedy." Thus, the district court did not find that all three factors were satisfied. Instead, the district court concluded that it required a more fully developed factual and legal record to determine whether the county had the authority to refuse to record appellants' marriage license.

We agree with the district court that the record is insufficient to support a proper analysis of this case. Because the factual record is insufficient to conclude that a legal right "which is so clear and complete as not to admit any reasonable controversy" exists here, appellants have not established that the county failed to exercise a duty imposed by law. *Houck*, 787 N.W.2d at 233. A duty is ministerial if it is absolute or certain and involves the execution arising from fixed or designated facts. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 506 (Minn. 2006). A duty is quasi-judicial if it involves investigating a disputed claim and weighing evidentiary facts, applying those facts to a prescribed standard, and making a binding decision of a disputed claim. *W. Circle Props. L.L.C. v. Hall*, 634 N.W.2d 238, 241 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001).

Although the *recording* of a properly applied-for marriage license is ministerial, the county has authority to determine whether a legal impediment to *issuing* a license exists.

Compare Minn. Stat. § 517.08 (1969) (stating "clerk shall examine upon oath the party applying for license relative to the legality of such contemplated marriage"), *with* Minn. Stat. § 517.10 (1969) (stating "clerk shall record such certificate"). Here, appellants' marriage-license application stated that "*her* post office address is" and "*she* is a resident of the City of Mankato," in reference to Baker, who is male. (Emphasis added.) And the district court noted that "James McConnell apparently swore upon oath to the accuracy of the information in the form and that 'there [was] no legal impediment to said contemplated marriage.'"

The district court stated that "[i]t is not clear from the exhibit whether it was McConnell, the Court Clerk, or some other person who actually filled out the Application," and therefore it is unclear who made the false statements. It is also unclear from the record whether Baker was a resident of Blue Earth County at that time, as required for the marriage-license application. Blue Earth County issued the marriage license on August 16, 1971, and the marriage ceremony occurred on September 3. Sometime before August 31, the Blue Earth County attorney's office determined that the license was defective and therefore invalid. Before appellants had their marriage ceremony, the Blue Earth County clerk mailed two letters, one to Baker at his Mankato address and one to McConnell at his Minneapolis address, advising them of the invalid and defective license. Both letters were returned to the county as undeliverable. Because there is insufficient evidence in the record, the district court was unable to properly determine whether "the existence of a legal right [to have their marriage license recorded] . . . [was] so clear and complete as not to admit any reasonable controversy." *See Houck*, 787 N.W.2d at 233. Based on the facts of

this case, we agree with the district court that the record is insufficient to determine whether the clerk had a duty imposed by law to record appellants' marriage license.[3]

The district court also found that the record is insufficient to properly determine if appellants have an adequate alternative legal remedy. The county asserts that appellants have an available alternative legal remedy because they may now legally marry. *Obergefell*, 135 S. Ct. at 2604-05. Appellants and the dissent assert that marrying now is an inadequate legal remedy because they are seeking recognition that they have been married for the past 46 years and getting married now will not be as complete, beneficial, or effective.

But appellants bear the burden of establishing each factor, and they have not demonstrated the particular harm that they would suffer. Other than appellants' unsupported assertion that a 46-year marriage would convey more rights and benefits than

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[3] The dissent contends that even if appellants provided the false statements in the marriage license application, the marriage would only be voidable, and not void. *See In re Kinkead's Estate*, 239 Minn. 27, 31, 57 N.W.2d 628, 631 (1953) (stating that "the validity of a marriage is not affected by the fact that the marriage license was obtained by fraud or perjury"); *see also Appeal of O'Rourke*, 310 Minn. 373, 375, 246 N.W.2d 461, 462-63 (1976) (concluding that a husband's failure to divorce first wife from a "limited purpose marriage" before getting married to another woman made the marriage voidable, but not void). The dissent asserts that because appellants are not seeking to void the marriage, the county had a duty to record the license regardless of who made the false statements. We do not find the distinction between void and voidable marriages to be relevant here. The district court was not required to determine whether appellants' marriage was valid, but instead, was required to analyze whether appellants met their burden of establishing that appellants' legal right to have their marriage license recorded is so clear and complete as not to admit *any* reasonable controversy. *See Houck*, 787 N.W.2d at 233. The district court determined that the recording of a "properly and timely completed" marriage license is ministerial. But here, the record does not establish whether appellants' marriage license was properly completed. Thus, we agree with the district court that the false statements "may or may not be of import."

a marriage of just a few months and their citation to sources discussing that the length of a marriage *may* impact Social Security benefits, appellants provided no other evidence to support the assertion that their benefits or legal rights would be detrimentally impacted if they were to marry now. We agree with the district court's conclusion. Therefore, the district court did not abuse its discretion by denying appellants' petition for writ of mandamus.

Appellants also argue the district court abused its discretion by denying appellants' request for injunctive relief. We will not reverse a district court's denial of an injunction unless, based upon the whole record, the district court abused its discretion. *Medtronic, Inc. v Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001). Appellants must demonstrate that there is no adequate legal remedy and that "the injunction is necessary to prevent great and irreparable harm." *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Because we are not persuaded by the record before us that appellants have no adequate alternative legal remedy if Blue Earth County does not record the 1971 marriage license, we conclude that the district court did not abuse its discretion by denying appellants' request for injunctive relief.

Affirmed.

REYES, Judge (dissenting)

I respectfully dissent. Appellants petitioned the district court for, inter alia, a writ of mandamus to direct Blue Earth County to record their 1971 marriage license and issue certified copies. A district court may issue a writ of mandamus when (1) a person or entity has failed to perform an official duty clearly imposed by law; (2) the petitioner has suffered a "public wrong" and was specifically injured by the failure to act; and (3) the petitioner has no other adequate legal remedy. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 109-110 (Minn. 2006). The district court concluded that appellants had suffered a public wrong and had no other adequate legal remedy.[1] The district court stated that it did not "necessarily agree that a marriage now is an adequate legal remedy when compared to a marriage of 46 years," and acknowledged that "the status of being legally married (or not legally married) is critical to many aspects of public and private life." More importantly, on appeal, respondents challenge only the first element. "[F]ailure to address an issue in [a] brief constitutes waiver of that issue." *Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006).

The district court also determined that the recording of a marriage certificate is a ministerial duty clearly imposed by law, not a quasi-judicial decision. "[A] duty is

[1]Although the majority suggests that appellants have an adequate legal remedy because they can now legally marry, an alternative remedy must be "equally as convenient, complete, beneficial, and effective as would be mandamus and be sufficiently speedy to prevent material injury." *Kramer v. Otter Tail Cty. Bd. of Comm'rs*, 647 N.W.2d 23, 26-27 (Minn. App. 2002) (quotation omitted). But appellants may not be able to marry again while the current litigation is pending; appellants take pride in the length of their 46-year relationship; and appellants allege that there are possible legal consequences if they marry now but one of the parties dies within one year. Both appellants are over 70 years old.

ministerial if it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Schroeder v. St. Louis Cty.,* 708 N.W. 497, 506 (Minn. 2006) (quotation omitted). The 1971 statute was clear: once a marriage certificate is submitted, "[t]he clerk *shall record* such certificate in a book kept for that purpose." Minn. Stat. § 517.10 (1971) (emphasis added). Therefore, the recording of a marriage certificate is a ministerial duty clearly imposed by law.

Both respondents and the majority appear to believe that the issue is whether a marriage license should have been issued, asserting that this is a quasi-judicial act that cannot be decided without further factfinding. But that is not the issue before this court. The only issue is whether the district court should issue a writ of mandamus to compel respondents to *record* appellants' marriage certificate and issue certified copies.

The clerk of district court had a duty to examine the marriage-license application to determine the legality of the contemplated marriage. Minn. Stat. § 517.08, subd. 1 (1971). However, if no legal impediment was found within five days after the application was made, the clerk had an obligation to issue the license. *Id.* (stating that clerk "shall" issue a license at the expiration of the five-day period). Nothing in this statute enlarges this five-day period or grants the clerk the power to continue investigating an application. Having found no legal impediment, the clerk issued a marriage license to appellants.

Once issued, the statute does not empower the clerk to continue to investigate or to retroactively determine that a license should not have been issued, and respondents have cited no authority or legal support for that proposition. Respondents argue that the statute does not prohibit the clerk from continuing to investigate or subsequently revoking or

invalidating a license, and, therefore, this power is implicit. But this is not how courts interpret a law. If a statute is clear and unambiguous, we look no further than the plain meaning of the statute. *State v. Caldwell*, 803 N.W.2d 373, 382 (Minn. 2011). "We will not supply words that the Legislature either purposely omitted or inadvertently left out." *Id.* The 1971 statute is unambiguous and provides no authority to the county to revoke or invalidate an issued marriage license.

Here, appellants complied in all respects with the statutory requirements that follow issuance of a marriage license: they were married by a clergyman, Minn. Stat. § 517.04 (1971), in the presence of two witnesses, Minn. Stat. § 517.09 (1971), and they submitted the completed certificate to the clerk within five days after the marriage ceremony. Minn. Stat. § 517.10 (1971). Once submitted, the clerk was required to record the marriage certificate. *Id.*

Respondents argue that this marriage should be set aside because of allegations of fraud in the marriage-license application. Even assuming that all of these allegations are true, any fraud in a marriage-license application would not void a marriage, but could only make it voidable.[2] In *In re Kinkead's Estate*, 239 Minn. 27, 57 N.W.2d 628 (1953), the

[2] Minn. Stat. § 518.01 (1971) defined which marriages were void, including marriages when one party was still lawfully married to another person, ones violating the rules of consanguinity, and underage marriages. None of these apply here. Minn. Stat. § 518.02 (1971) described "voidable marriages" to include those in which one party was incapable of consenting because of "want of age or understanding," or one in which consent was obtained by "force or fraud." A voidable marriage could only be annulled by suit filed by the injured party. *Id.* Neither of these chapters explicitly prohibited same-sex marriage or described a procedure in which a clerk of district court could sua sponte declare a marriage void.

Minnesota Supreme Court considered the question of whether a marriage in Iowa was void because the decedent husband had procured an Iowa marriage license by falsely declaring that he had not been divorced within the past year. *Id.* at 30, 57 N.W.2d at 631. He married in Iowa within five months of his divorce, and returned to Minnesota, where he and his new wife were residents. *Id.* at 29, 57 N.W.2d at 630. Construing Iowa law on whether the marriage was void because of the false statement, the supreme court stated, "It is generally held that, in the absence of legislative declaration to the contrary, the validity of a marriage is not affected by the fact that the marriage license was obtained by fraud or perjury." *Id.* at 31, 57 N.W.2d at 631.

In *Appeal of O'Rourke*, 310 Minn. 373, 246 N.W.2d 461 (1976), decedent had entered into a "limited purpose marriage" to facilitate his wife's immigration from Canada. *Id*. at 374, 246 N.W.2d at 462. Without divorcing the immigrant wife, he married another woman. *Id.* Despite questions about the validity of a "limited purpose marriage," the Minnesota Supreme Court concluded that the first marriage was voidable, not void. *Id.* A voidable marriage may be ended by request of the injured party, but "may not be collaterally attacked." Minn. Stat. § 518.02 (1971); *Appeal of O'Rourke*, 310 Minn. at 375, 246 N.W.2d at 463. Here, neither appellant seeks to void the marriage. More importantly, the county was not an injured party and cannot collaterally attack appellants' marriage.

Respondents also raise statute-of-limitations and laches arguments. But according to their own assertions, respondents took no legal action to revoke or invalidate the marriage certificate, instead burying it in a file where it has languished for 46 years. In a letter sent out by the clerk on August 31, 1971, but returned as undeliverable, the county

attorney had unilaterally "ruled that this marriage license is defective and therefore invalid," but did not take any steps to seek a formal ruling from the courts. After sending in their marriage certificate on September 7, 1971, the county failed to record the marriage certificate. Instead, on the county attorney's advice, the clerk placed it in a file without notifying appellants that she would not record it. These arguments weigh as heavily against respondents as they do against appellants, particularly when appellants have asserted they were married for 46 years. By concealing the completed marriage certificate while taking no legal action to revoke or invalidate it, the district attorney issued a "ruling" that appellants had no opportunity to contest.

Finally, this court should acknowledge that in the intervening 46 years, the law has changed. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015), the United States Supreme Court overruled *Baker v. Nelson*, 409 U.S. 810, 93 S. Ct. 37 (Mem) (1972)[3] and stated, "The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. . . . An individual can invoke a right to constitutional protections when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act." 135 S. Ct. at 2605.

I would reverse and issue a writ of mandamus directing Blue Earth County and its clerk of district court to record appellants' marriage certificate and issue certified copies.

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[3]In this decision, the Supreme Court refused to review, for want of a federal question, the Minnesota Supreme Court's decision in *Baker v. Nelson*, 291 Minn. 310, 310, 191 N.W.2d 185, 185 (1971), in which the supreme court affirmed the denial of a petition for a writ of mandamus to direct Hennepin County to issue appellants a marriage license. However, this decision was released after appellants were married pursuant to the license issued by Blue Earth County.