STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0564

Ellis Olkon, et al.,
Appellants,

vs.

City of Medina,
Respondent.

Filed December 10, 2018
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CV-17-5890

Thomas W. Wexler, Edina, Minnesota (for appellants)

George C. Hoff, Justin L. Templin, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondent)

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

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

REYES, Judge

Appellants Ellis and Nancy Olkon (the Olkons) contend that the district court erred by granting summary judgment in favor of respondent city of Medina (the city), arguing that (1) the city's zoning ordinance is an invalid exercise of police power; (2) the ordinance

violates their equal-protection rights; (3) the city is in breach of contract; and (4) the district court abused its discretion in its discovery order. We affirm.

FACTS

The Olkons live on an approximately 21-acre parcel in the city. The Olkons want to subdivide their property into two parcels in order to maximize their profit, as Ms. Olkon is a paraplegic and is in need of costly long-term care.

The city is divided into zoning districts, one of which is the rural residential district where the Olkons' property is located. In 1997, the city adopted Ordinance No. 296, which made changes to previous lot area, lot width, and setback requirements in the rural residential zone. The ordinance amended Medina City Code § 826.25, subd. 2(a), to require that lots in the rural residential district have five contiguous acres of suitable septic soil. This furthered the city's goal to obtain a maximum average density in the rural residential district of one unit per ten acres. The city's comprehensive plan provides a goal of protecting the city's rural character and natural development, as it has a large network of wetlands and lakes that affect the developable areas in the city.

In 2016, the Olkons made a request to the city for both a variance and approval to subdivide their property. Their property contains approximately 1.3 contiguous acres of suitable soil on one proposed lot, and 1.5 contiguous acres of suitable soil on the other proposed lot. In making their requests, they argued that the city has granted other variances, the city promised that they could subdivide their property, and financial difficulties justified a deviation. The city first denied the variance request because (1) it involved a substantial deviation from the minimum-lot-size requirement for contiguous

acres of suitable soils; (2) the Olkons did not establish practical difficulties in complying with the ordinance; (3) the Olkons did not establish that a particular hardship exists on the property; and (4) no variance is necessary for the property to be used in a reasonable manner. Next, the city considered and denied the Olkons' request for the proposed subdivision because (1) the proposed lots do not meet minimum-lot-size and setback requirements; (2) the proposed lots are inconsistent with the comprehensive-plan objectives related to density and lot size; and (3) one of the proposed lots does not meet lot-width requirements.

The Olkons sued the city in district court, alleging that the ordinance denied their rights to due process and equal protection, the city was in breach of contract, and the ordinance is an invalid exercise of police powers. The breach-of-contract claim arose from the Olkons' grant of an easement in 1988 to their neighboring landowners, which they claim they granted in exchange for the city's promise to allow them to subdivide their property. Both parties moved for summary judgment. The district court granted summary judgment in favor of the city. This appeal follows.

D E C I S I O N

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P 56.01. "We review the grant of summary judgment de novo to determine 'whether there are genuine issues of material fact and whether the district court erred in its application of the law.'" *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). "On

appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

I. The city did not exceed its statutory land-use powers when it enacted the zoning ordinance.

The Olkons argue that the city violated its police power by establishing a minimum lot size based upon an arbitrary septic-soil requirement that lacks any substantial relationship to public health, safety, or welfare. We are not persuaded.

A municipality has authority to enact ordinances adopting zoning and subdivision regulations through Minn. Stat. §§ 462.357, subd. 1, .358, subd. 1a (2018). A municipality may, by ordinance, adopt subdivision regulations that establish standards, requirements, and procedures for the review and approval or disapproval of subdivisions to protect and promote the public health, safety, and general welfare. Minn. Stat. § 462.358, subd. 1a. The city has the authority to regulate the density and distribution of population and water supply conservation. Minn. Stat. §462.357, subd. 1.

A legislative body such as a city or municipality has broad discretion in legislative matters. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415 (Minn. 1981). Before the exercise of police power can be determined unconstitutional, it must be found that the legislative body has acted arbitrarily or unreasonably and that there is no substantial relationship to public health, safety, morals, or general welfare. *Freeborn County v. Claussen*, 203 N.W.2d 323, 326 (Minn. 1972) (citing *Naegele Outdoor Advertising Co. v. Village of Minnetonka*, 162 N.W.2d 206 (Minn. 1968)). When the reasonableness of a

zoning ordinance is debatable or when opinions may differ as to the desirability of a restriction it imposes, courts are not to interfere with legislative discretion. *Id.*; *accord Kiges v. City of St. Paul*, 62 N.W.2d 363, 374 (Minn. 1953) (stating if question of whether ordinance is an unreasonable or arbitrary exercise of police power is fairly debatable, ordinance must be upheld as valid).

The Olkons contend that five acres of suitable soil is not necessary for a septic mound and that it is possible to safely build a septic mound with the 1.3 and 1.5 acres of suitable septic soil that they have. But the city does not contend that five acres of suitable septic soil is a requirement to safely build a septic system. Rather, it has stated that the suitable septic-soil requirement is related to the public health, safety, morals, or general welfare because it helps the city achieve its average density goal of one unit per ten acres in the rural residential district, preserves open areas, prevents deterioration of wetlands and lakes,[1] and maintains the rural character of the city. The record does not indicate that the city has acted arbitrarily or unreasonably, and therefore, we will not interfere with the city's broad legislative discretion.

[1] The Olkons' reply brief raises a new theory as to why the city is not authorized to enact this ordinance, which is that the Wetland Conservation Act and related Minnesota Department of Natural Resources rules have preempted the area of wetland protection. But a party may not obtain review by raising the same general issue litigated at the district court but under a different theory. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The Olkons did not raise this theory in the district court.

II. The ordinance does not violate the Olkons' right to equal protection.

The Olkons argue that the minimum-lot-size requirement of the ordinance is facially invalid and violates the Equal Protection Clause of the Minnesota Constitution. We are not persuaded.

This court reviews an equal-protection claim de novo. *Thul v. State*, 657 N.W.2d 611, 616 (Minn. App. 2003), *review denied* (Minn. May 28, 2003). "A facial equal-protection challenge alleges that the statute creates at least two classes of individuals, which are treated differently under the statute, and that this difference in treatment cannot be justified." *Matter of Griepentrog*, 888 N.W.2d 478, 491 (Minn. App. 2016) (citing *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980)). The rational-basis standard applies when the constitutional challenge does not involve a suspect class or fundamental right. *Healthstar Home Health, Inc. v. Jesson*, 827 N.W.2d 444, 449 (Minn. App. 2012).

To determine whether a zoning ordinance has a rational basis, we identify whether a legitimate government purpose exists, then ask whether a rational basis exists for the governmental body to believe that the legislation would further the purpose. *Thul*, 657 N.W.2d at 617 (citing *Graham v. Itasca Cty. Planning Comm'n*, 601 N.W.2d 461, 465 (Minn. App. 1999)). "The burden of proof is on the opponent of the ordinance." *Id.* The challenged legislation need only be supported by any set of facts either known or that could reasonably be assumed. *Id.* (citing *Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281, 289 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996)).

In this section of their brief, the Olkons do not specify what classifications are created by the statute, they do not argue how they have been treated differently, and they

fail to analyze how the cases they cite apply to their case. But even assuming the ordinance does create classifications, the Olkons's argument fails on the merits. The city has a legitimate governmental purpose in maintaining the rural character of the community, preventing deterioration of lakes and wetlands, and achieving the city's average-density goal of one unit per ten acres in the rural residential district. The city has chosen to use the five-contiguous-acre requirement as a "zoning tool" to implement its density goal. This metric has a rational basis because "the larger acreages help preserve open areas as well as prevent the deterioration of wetland complexes and lakes." As the city notes, this approach allows for "more dense development on drier and flatter land, and less dense development on wetter or rolling terrain, while still meeting its overall average density goals, and preserving its rural character and more environmentally sensitive areas." The Olkons have not met their burden under the rational-basis test, and therefore, their equal-protection claim fails.

III. The district court properly granted summary judgment on the Olkons' breach-of-contract claim.

The Olkons challenge the district court's grant of summary judgment on their breach-of-contract claim, arguing that there are a number of fact issues to be resolved at trial. We are not persuaded.

A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[T]here is no genuine issue of material fact . . . when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue." *Id.* at

71. For summary judgment, the nonmoving party may not rely upon mere averments in the pleadings or unsupported allegations, but must come forward with specific facts to satisfy its burden. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001).

Contract formation requires an objective manifestation of mutual assent, consideration, and a bargain. *Cederstrand v. Lutheran Brotherhood*, 117 N.W.2d 213, 220-221 (Minn. 1962). Consideration requires that a contractual promise be the product of a bargain, which is a negotiation that results in the voluntary assumption of an obligation by one party upon condition of an act or forbearance by the other. *Id.* at 220. Consideration is essential evidence of the parties' intent to create a legal obligation and must be adopted and regarded by the parties as such. *Id.* at 220.

The only evidence that the Olkons offered of the city's alleged promise to allow them to subdivide their property are affidavits from Mr. Olkon and the neighboring landowner that reference the city's promise and the "declaration of covenants" of the neighbor's subdivision, which references the easement that the Olkons eventually granted in 1988. But the declaration does not reference the promise made by the city, nor does it evidence any authorization on behalf of the city. The Olkons concede that the city-council-meeting minutes are sparse and do not reflect the city's promise to the Olkons. They argue, however, that if there were accurate and complete meeting minutes, they would reflect the city's promise. But the party challenging summary judgment must come forward with specific facts and cannot rely on unsupported allegations. *Bebo*, 632 N.W.2d at 737.

Viewing the record in the light most favorable to the Olkons, even if city had promised that the Olkons could subdivide their property at some time in the future, there

was no consideration given to make this promise legally enforceable. The Olkons contend that consideration existed between the city and the Olkons because the Olkons granted an easement to a third party, and the city benefitted from the third party's subsequent private development for which the easement was used. But there is no evidence that the city was a party to this easement contract or that any benefit the city may have incidentally received was the product of a bargain between the city and the Olkons, nor that it was regarded as such. The easement was granted to the neighboring landowners, on private property, not to the city. The city's alleged promise that the Olkons could subdivide their property at some point in the future is unsupported by consideration and is not legally binding. Therefore, the city was entitled to summary judgment on this claim.

IV. The district court did not abuse its discretion in its discovery rulings.

The Olkons argue that the district court abused its discretion when it terminated discovery prior to the discovery deadline. We disagree.

The district court has broad discretion to issue discovery orders and will be reversed on appeal only upon an abuse of such discretion. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). "It is fundamental that the only objective of the pretrial discovery rules is to allow a party to obtain all the facts relative to a claim or defense." *Garrity v. Kemper Motor Sales*, 159 N.W.2d 103, 107 (Minn. 1968). "[I]nformation subject to discovery must, at least, be likely to lead to relevant admissible evidence." *Shetka*, 454 N.W.2d at 919.

On November 9, 2017, the district court denied the Olkons' motion to compel discovery and closed discovery. On November 13, 2017, the district court ordered that the

city could retain an expert witness, the Olkons could depose the city planner, and that all other discovery was complete. The district court found that there had already been voluminous discovery exchanges and that the Olkons had not pointed to any specific identifiable and crucial omissions in the city's compliance with discovery requests. By this time, the city had responded to the Olkons' discovery requests regarding how the five-acre suitable-soil requirement related to achieving its density objectives by pointing to the ordinance and comprehensive plan.

The Olkons also sought to depose surviving members of the city council who "may" remember the city's promise, but fail to point to any information that city-council members have that is likely to lead to admissible evidence. In light of the voluminous discovery exchanges and our conclusion that the Olkons' breach-of-contract claim fails for lack of consideration, the district court's decision to terminate discovery was not an abuse of its broad discretion.

Affirmed.