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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0465

Kati Ann Berg,
Appellant,

Marilyn Gerene Pitera, et al.,
Plaintiffs,

vs.

City of Saint Paul,
Respondent.

Filed December 14, 2020
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CV-18-5872

Kati Ann Berg, St. Paul, Minnesota (pro se appellant)

Lyndsey M. Olson, St. Paul City Attorney, Anthony G. Edwards, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

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

WORKE, Judge

Appellant argues that the district court incorrectly granted summary judgment in favor of respondent because there are genuine issues of material fact. We affirm.

FACTS

This dispute involves the Public Safety Annex property (PSA), which is located at 100 East 10th Street in Saint Paul. Three pro se plaintiffs, including appellant Kati Ann Berg, sued respondent City of St. Paul (the city) in an attempt to prevent the city from using the PSA land for anything other than parkland.

In October 2009, the Pedro family gifted the city a piece of property immediately adjacent to the PSA for parkland. The agreement states that the city must use the space for a park, and it gave the city five years to secure funding to expand the park size beyond the Pedro donation. But if the city did not obtain the funding for the entire plan, "it [would] convert the donated parcel to a parkland consistent with th[e] [a]greement."

In August 2010, the city council adopted the amended Fitzgerald Park Precinct Plan. The plan states:

> For planning purposes only, the preferred future land use on Block 10 is a full-block City park. Until such time as the City is able to take the necessary actions to assemble land and build a park, parcels on the block may be used for any legal use permitted under their current zoning classification, provided that the proposed use meets all applicable conditions and/or standards.

In April 2014, the director of parks and recreation sent a letter to the Pedro family confirming the city's plan to honor the park agreement with attached plans for the garden and seating space that the city would install that year.

On January 7, 2015, the city council passed resolution 14-1861, titled "Authorizing the naming of the downtown city park, on the half block on the north bounded by Robert Street, Tenth Street East, and Minnesota Street, as Pedro Park." The resolution states:

WHEREAS, Pedro Park, envisioned on the full block bounded by Robert Street, 10th Street East, Minnesota Street, and 9th Street East, has been in the City of Saint Paul comprehensive plan since 2008, identified by the Planning Commission as Fitzgerald Park at that time (Fitzgerald Precinct Plan); and

WHEREAS, the family of Carl Pedro, Sr., who started Pedro Luggage business in 1914, owned Pedro Luggage at 104, 114 and 124 East 10th Street since the 1960s, and employed . . . hundreds of Saint Paul residents at livable wages, donated the site of their business in November of 2009 to the City of Saint Paul with the provision that it become a park by November 2014; and

WHEREAS, the Saint Paul City Council accepted this grant of land under the City's "no net loss of parkland" provisions, and entered into a Donation Agreement with Carl Pedro Jr., Eugene Pedro, Marilyn Pitera, and Josephine Pedro on November 18, 2009, Resolution 09-1271; and

WHEREAS, said Donation Agreement included a provision that the Pedro family name would be included in the name of the park which resulted from their donation, to honor their long tradition of doing business in Saint Paul, and further included a provision that "if Donee has not obtained the financing within a period of five years for the entire Park plan, it will convert the donated land to parkland consistent with this Agreement;" and

WHEREAS, the City of Saint Paul currently owns the remainder of the north half of this entire park envisioned in the City's 2008 comprehensive plan; and

WHEREAS, the City of Saint Paul budgeted capital investment funds to complete a design of Fitzgerald [Pedro] Park in 2010, and formed a community design committee to work with the Department of Parks and Recreation; and

WHEREAS, the Saint Paul Parks Commission was requested to take up the issue of naming the park to Pedro Park in September of 2010; now therefore,

> BE IT RESOLVED, that the City Council hereby authorizes naming downtown's newest park located on the north half block bounded by Robert Street, 10th Street East, and Minnesota Street as Pedro Park.

During this timeframe, the St. Paul Police Department (SPPD) was using the PSA as a training facility. In May 2015, the city council passed a resolution authorizing the SPPD to purchase and equip a new public safety training facility on a different site. It also stated that the city will pay for "the demolition of the existing [PSA] and stabilization of the [PSA] site after demolition."

In November 2017, St. Paul Housing and Redevelopment Authority and the city council approved a tentative developer to turn the PSA into renovated office space. This prompted the plaintiffs to sue the city.

The city moved for dismissal under rule 12.03 and 12.02(e), which the district court converted to a summary-judgment motion and granted on every count but one—violation of the "no net loss of parkland" provision in the St. Paul charter. The district court concluded that fact issues existed because, when viewing the facts in the light most favorable to the plaintiffs, resolution 14-1861 could have incorporated the PSA property into Pedro Park.

After further discovery, the district court granted summary judgment in favor of the city. The district court concluded that two revealed facts resolved the fact issue relating to resolution 14-1861: the city did not own a parcel in the northwest corner of the block at the time of the resolution, and the SPPD continued to use the PSA for several years after the resolution. The district court stated, "The first fact makes evident the suggestion in

Resolution 14-1861 that the City 'currently owns the remainder of the north half of this entire park envisioned in the City's 2008 comprehensive plan' was untrue at the time of its passage and is untrue today." And, "The second fact makes evident that the continued use of the PSA by the SPPD is contradictory to its use as parkland. The record clearly establishes that the PSA Property has never been treated by the City as parkland." The district court concluded, "A detailed examination of Resolution 14-1861 reveals that it would be unreasonable to construe it as advocated by Plaintiffs." This appeal followed.

D E C I S I O N

Berg argues that the district court erred in granting summary judgment because a genuine issue of material fact remains regarding resolution 14-1861. Summary judgment is "appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Warren v. Dinter*, 926 N.W.2d 370, 374 (Minn. 2019) (quotation omitted). Appellate courts review the district court's decision de novo and "view the evidence in the light most favorable to the nonmoving party . . . and resolve all doubts and factual inferences against the moving parties." *Fenrich v. The Blake Sch.*, 920 N.W.2d 195, 201 (Minn. 2018) (quotation omitted). "Summary judgment is a blunt instrument that should not be granted when reasonable persons might draw different conclusions from the evidence presented." *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (quotation omitted). Appellate courts "must not weigh facts." *Id.* (quotation omitted).

Under the relevant charter provision, "[l]ands . . . acquired by any means or which may hereafter be acquired by any means for park purposes shall not be diverted to other

uses or disposed of by the city." St. Paul, Minn., Code of Ordinances § 13.01.1 (2018). Berg claims that there is an unresolved question of fact regarding whether the PSA was "acquired by any means for park purposes." We disagree.

The PSA was owned and used by the city for public-safety-training purposes at the time resolution 14-1861 was adopted. The question here is whether, by adopting resolution 14-1861, the city "acquired" for "park purposes" land it already owned and was using for non-park purposes. We agree with the district court that the purpose of the resolution was to name the park and that no reasonable jury could find that the resolution resulted in an acquisition of the PSA for park purposes.

The resolution states that the park is "envisioned on the full block," observes that the city "currently owns the remainder of the north half of this entire park envisioned in the City's 2008 comprehensive plan," and authorizes naming the "newest park located on the north half block" as Pedro Park. As the district court noted, the entire "north half block" was not then owned by the city. And the parkland generously donated by the Pedro family is in fact located on the north half of the block.

The only reasonable interpretation of the resolution as a whole is that the city's original vision was for the park to encompass the entire block, and that the dedicated parkland donated by the Pedro family—as well as any the city land later added to it for park purposes—would be named Pedro Park. It is not reasonable to interpret the resolution as causing the PSA to be "acquired" for "park purposes." Because there is no genuine

issue of material fact as to whether section 13.01.01 applied, the district court did not err in granting the city's motion for summary judgment.

Affirmed.