STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1140

State of Minnesota,
Respondent,

vs.

Joel Orvin Torgerson,
Appellant.

Filed August 23, 2021
Reversed
Slieter, Judge

Fillmore County District Court
File No. 23-CR-19-604

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brett Allyn Corson, Fillmore County Attorney, Preston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction for two counts of public-nuisance-ordinance violations, appellant argues that the district court erred by concluding that the state provided adequate proof that the ordinances were valid. Because the record

demonstrates that the ordinances appellant was found to have violated require that they be published prior to implementation, and no evidence of publication exists, the ordinances were not validly enacted and we, therefore, reverse.

FACTS

This appeal stems from appellant Joel Orvin Torgerson's convictions of two counts of misdemeanor public nuisance pursuant to the City of Canton's nuisance ordinances. Appellant was first notified in July 2019 of the existence of a number of "nuisance conditions" on his property in the City of Canton via a letter from the Canton city clerk and treasurer. The letter informed appellant that, following an inspection, his property was found to be in violation of a number of the city's nuisance ordinances. The letter informed appellant that he had to remedy all the violations by August 2, 2019.

Following an August 6, 2019 inspection, a second letter informed appellant that his property remained in violation of multiple nuisance ordinances due to the presence of "unregistered vehicles," "debris scattered around [the] yard," and "overgrown trees and [] dead branches." Ultimately, the city charged appellant pursuant to Canton, Minn., Code of Ordinances § 92.99 (2015) with four counts of misdemeanor nuisance violations.[1]

In a pretrial motion, appellant argued that the nuisance ordinances of which he was formally alleged to have violated were invalid because they had not been properly enacted. The district court denied appellant's motion to dismiss, but concluded that it would "be

[1] Canton, Minn., Code of Ordinances §§ 92.01-92.71 (2015) set forth conditions deemed to be public nuisances. Canton, Minn., Code of Ordinances § 92.99 indicates that violation of any of the preceding nuisance provisions is considered a misdemeanor.

[respondent]'s obligation to provide the Court the necessary information in order for the Court to accept the ordinance as evidence," including "that there [was] an ordinance that's in place."

During trial, the district court received copies of ordinances the city claimed had been enacted and also heard testimony from city council members, including the city's mayor, and the city clerk. The district court concluded that the ordinances were validly enacted pursuant to Minn. Stat. § 599.13 (2020), which allows for "conclusive proof of the regularity of their adoption and publication," and issued a written order finding guilt and convicting appellant of two of the four counts. This appeal follows.

DECISION

Appellant argues that the district court erred in its conclusion that the city's nuisance ordinances were validly enacted.[2] "The interpretation of an ordinance is a question of law for the court, which we review de novo." *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

To interpret ordinances, we apply "recognized principles of statutory construction." *Eagle Lake*, 738 N.W.2d at 792 (quotation omitted). In doing so we begin with the plain

[2] Appellant also argues that the ordinances were invalid because they conflict with state nuisance law or, alternatively, that even if the ordinances were valid and enforceable, he was given insufficient notice. Because we conclude that the city's nuisance ordinances were not validly enacted, we need not address these arguments.

language of the ordinance: "[W]hen the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous and [appellate courts] must apply its plain meaning." *See State v. Altepeter*, 946 N.W.2d 871, 874 (Minn. 2020) (quotation omitted).

The plain and unambiguous language of the City of Canton ordinance, which purports to adopt the Minnesota Basic Code of Ordinances and within which is chapter 92 identifying nuisances, states that it will "take effect upon publication . . . in the city's official newspaper."[3] Therefore, the ordinance does not become effective until it is published. *See Union Public Service Co. v. Village of Minneota*, 2 N.W.2d 555, 560 (Minn. 1942) ("By the terms . . . of ordinance No. 165, [the statute in question] did not become operative or go into effect until publication.").

The city clerk testified that, though it was standard procedure for the city to publish ordinances in the newspaper after they had been passed by the council and signed by the mayor, he had been unable to find any notice of publication of the ordinances in question despite searching the city's own records as well as contacting the city's official newspaper. All of the council members who testified agreed that no such notice or other evidence of publication could be found.

The record is devoid of any evidence of publication, as required by the language of the ordinance itself. All of the evidence presented supports the conclusion that they had not been published. Absent any evidence of publication, the city's ordinances were never

[3] Canton, Minn., Code of Ordinances No. 101-2015 § 8.

validly enacted and are ineffective. *Id.* The district court's conclusion that the ordinance had been validly enacted was therefore in error and an abuse of discretion.

Despite no evidence that the ordinance had been published, respondent argues that the district court was correct in concluding that, pursuant to Minn. Stat. § 599.13, there existed "conclusive proof" of the ordinances' "adoption and publication." We disagree.

First, as we explained above, no evidence exists that the ordinance was published. We therefore need not consider section 599.13 to reach our conclusion that the ordinance was not validly enacted and that, therefore, appellant's nuisance convictions must be reversed. *See Union Public Service Co.*, 2 N.W.2d at 560 ("[B]y the terms of [the ordinance in question] it did not become operative or go into effect until published."). Second, even if we consider section 599.13, it supports our conclusion that the district court erred by concluding that the ordinances were validly enacted.

We review the district court's interpretation and application of a statute *de novo*. *State v. Perez*, 779 N.W.2d 105, 108 (Minn. App. 2010). Section 599.13 states:

> [c]opies of the ordinances . . . of any city . . . certified by the mayor or president of the council, and the city clerk under its seal in the case of a city . . . and copies of the same printed in any newspaper, book, pamphlet, or other form, and which *purport to be published by authority of the council* of such city . . . shall be prima facie evidence thereof and, after three years from the *compilation and publication of any such book or pamphlet,* shall be conclusive proof of the regularity of their adoption and publication.

Minn. Stat. § 599.13 (emphasis added). As such, the plain language of section 599.13 unambiguously allows for two levels of proof—"prima facie proof" and "conclusive proof," with conclusive proof requiring a progressively higher evidentiary burden." *Id.*

Prima facie proof requires "[c]opies of the ordinances . . . certified by the mayor . . . and city clerk" as well as "copies of the same printed in any newspaper, book, pamphlet, or other form, and which purport to be published by authority of the council of such city." Conclusive proof requires that such ordinances be "compil[ed] and publi[shed]" in a "book or pamphlet" for a period of three years. *Id.*

In its interpretation of this language, the district court concluded that, "a copy of the ordinance, which was certified by the mayor . . . and the city clerk," was sufficient to meet the burdens for both *prima facie* as well as conclusive proof. We conclude this record is insufficient to establish any evidence of publication, enactment, or adoption of the city's nuisance ordinance pursuant to section 599.13.

During trial, the city clerk testified that the city maintained a copy of the ordinances in a "large binder" kept in Canton City Hall, into which the city would insert copies of all enacted ordinances. A long-standing city council member testified that this same "book" of ordinances had been used for at least the previous 22 years—since she had become a council member—and that they would "keep updating" the binder as ordinances were passed or repealed.

During trial, in an attempt to establish "conclusive proof" of the "adoption and publication" of the ordinances contained within this binder, respondent submitted as an exhibit a copy of its purported ordinance. This exhibit stated that it was a "CERTIFIED TRUE COPY OF AN ORIGINAL DOCUMENT." However, this document was signed by both the mayor and city clerk and dated July 29, 2020—the day before the trial commenced.

As noted above, "conclusive proof" requires that the ordinances in question be "compil[ed] and publi[shed]" in a "book or pamphlet" for a period of three years. The district court concluded that the city's "large binder" was sufficient under this standard. This was an error. The district court's reasoning fails primarily because the format of the ordinances—in a "large binder"—does not satisfy the plain and unambiguous requirement the ordinances be kept in a "book or pamphlet." The "book or pamphlet" requirement was examined by the supreme court in *Pilgrim v. City of Winona*, 256 N.W.2d 266 (Minn. 1977), in which it held that "[t]he underlying purpose of this rule is to prevent the conclusive effect until the ordinance is available in *permanent form* for public circulation." *Id.* at 269 (emphasis added). A regularly-updated binder does not satisfy either the language or purpose of section 599.13, which is, as stated in *Pilgrim,* to allow the public access to the ordinances "in *permanent form*." 256 N.W.2d at 269 (emphasis added). The district court's conclusion that the city's binder of ordinances established conclusive proof under section 599.13 was error.

As noted by the supreme court in *Pilgrim*, the "underlying purpose of this rule is to prevent the conclusive effect until the ordinance is available [to the public] in permanent form. *Id.* The requirement that ordinances be published and kept in permanent book or pamphlet form has the obvious benefit of providing all citizens with actual notice of their municipality's ordinances. This requirement also provides citizens an easy and reliable opportunity to obtain a copy of the ordinances so as to review them in complete form and to ensure compliance with them by all public officials.

Respondent provided the district court with no evidence of the valid enactment of the ordinances and we, therefore, reverse appellant's convictions.

Reversed.