STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1313

City of Cambridge,
Respondent,

vs.

One Love Housing, LLC, et al.,
Appellants.

Filed June 28, 2021
Affirmed
Reilly, Judge

Isanti County District Court
File No. 30-CV-18-778

Michelle A. Christy, Jessica E. Schwie, Kennedy & Graven, Chartered, Minneapolis, Minnesota; and

Elizabeth J. Vieira, Rupp, Anderson, Squires & Waldspurger, P.A., Minneapolis, Minnesota (for respondent)

Scott A. Benson, Joseph A. Pull, Briol & Benson, P.A., Minneapolis, Minnesota; and

Fabian S. Hoffner, Samuel J. Merritt, The Hoffner Firm, Ltd., Minneapolis, Minnesota; and

David L. Lillehaug, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellants)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this zoning-enforcement action, appellant-property-owner and appellant-resident argue that the district court erred by granting summary judgment for respondent-city and by dismissing appellants' counterclaims for violating the Americans with Disabilities Act and the Fair Housing Act. Appellants also argue that the district court erred in its discovery rulings. We affirm.

FACTS

This appeal arises out of a zoning-enforcement action brought by respondent City of Cambridge (the City) against appellant One Love LLC (One Love). One Love and appellant Nate Pearson (Pearson)[1] filed counterclaims against the City for violating the Americans with Disabilities Act (the ADA) and the Fair Housing Act (the FHA).

On December 19, 2017, One Love bought a five-bedroom, single-family house in the City to operate as a sober house. Pearson lives and works at the house as a house manager. The house is in a zoning district classified as an "R-1" district. The City's zoning code prohibits more than four unrelated people from living together in a house in an R-1 zoning district, although it places no limits on the number of family members who may live together in a single house.

In March 2018, One Love contacted the City's development director, Marcia Westover, seeking information about submitting a request to operate a sober house. At that

[1] The term "One Love" refers collectively to both the sober house and Pearson.

time, One Love explained that four residents lived at the house. Westover responded on April 16, 2018, conveying that the City would permit up to six unrelated people to live together as a single housekeeping unit. The City identified this measure as a reasonable accommodation under the ADA and the FHA. Westover requested more information from One Love, including "a plan/layout" of the house showing "where the residents and staff will be sleeping," and a parking plan. On April 24, 2018, One Love provided more information to Westover and revealed that it intended to use the house as a residential sober-living house with up to 14 residents. This was the first time One Love notified the City that it intended to request a reasonable accommodation for this number of people.

On May 1, 2018, One Love's attorney sent a letter to the City requesting a reasonable accommodation under the FHA. One Love requested that the City treat the residents as a family by waiving the number of unrelated persons who can reside together and treat the use of the dwelling as a single-family use. The City rejected One Love's request by letter dated May 16, 2018.

On June 20, 2018, One Love's attorney sent a letter to the City attorney stating that it intended to begin providing housing for up to 13 people at the house beginning on July 1, 2018, despite the City's denial of One Love's request. On August 6, 2018, the City responded to One Love's letter. The City reiterated that it was willing to allow up to six people to reside together as a single housekeeping unit. The City asked One Love "to confirm [by August 14, 2018] the residence has no more than six individuals residing at the dwelling and to schedule a time for staff to conduct a site inspection to confirm compliance." The City advised One Love that if it did not contact the office by August 14,

"further legal action [would] be pursued." The City scheduled the matter for a hearing before the city council on August 20, 2018, at which time "the City Council will determine if the City will seek legal action."

At the August 20 hearing, the City Council considered whether to allow One Love to have 13 unrelated residents living at the house, but "decided not to allow that." The council ultimately resolved to pursue a zoning-enforcement action against One Love for housing 13 unrelated individuals at the house. During this time, six to eleven people resided at the house.

In September 2018, the City filed an enforcement action in district court seeking declaratory judgment that One Love violated the city ordinance by housing up to 14 individuals in the house. The City also requested a permanent injunction prohibiting One Love from housing more than six unrelated individuals at the house. One Love filed an answer raising defenses and asserting three counterclaims. One Love alleged that the City's partial denial of its request violated the ADA and the FHA because it (1) failed to provide reasonable accommodation, (2) led to disparate treatment, and (3) led to disparate impact. Later, One Love and resident Nate Pearson filed a second amended answer and counterclaim alleging, among other things, that the City violated the FHA by declining to grant the requested accommodation.

The parties cross-moved for dispositive relief. The City moved for summary judgment on its enforcement-action claim and sought dismissal of One Love's counterclaims, seeking relief on standing grounds as well as on the merits. One Love cross-moved for summary judgment asking the district court to dismiss the City's claim and grant

relief to One Love on its counterclaims. The district court granted the City's summary-judgment motion, rejecting the City's standing argument, but determining that it was entitled to summary judgment on the merits. The district court denied One Love's motion. This appeal follows.

DECISION

I. One Love has standing to pursue a discrimination claim.

The City challenges One Love's standing to assert claims under the ADA and the FHA. The district court determined that One Love had standing; the City did not appeal this decision. One Love argues that the City forfeited this issue because it didn't appeal the issue. But while the City did not appeal the district court's standing determination, it did raise standing in its responsive brief to this court. "After an appeal has been filed, respondent may obtain review of a judgment or order entered in the same underlying action that may adversely affect respondent by filing a notice of related appeal." Minn. R. Civ. App. P. 106. Generally a respondent is barred from presenting issues not raised by a notice of related appeal. *Arndt v. Am. Family Ins. Co.*, 394 N.W.2d 791, 793 (Minn. 1986). Still, a respondent is not required to file a notice of related appeal to preserve an alternative theory on which the judgment may be affirmed. *Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 332 (Minn. 2010). Here, the district court did not issue a decision adverse to the City. Thus, the City did not need to file a notice of related appeal.

Having determined that the City did not forfeit its argument by failing to file a notice of related appeal, we next turn to the standing issue. Standing is a threshold requirement and parties cannot waive it. *United States v. Hays*, 515 U.S. 737, 742, 115 S. Ct. 2431,

2435 (1995); *In re Horton*, 668 N.W.2d 208, 212 (Minn. App. 2003) (noting that standing may be raised at any time and cannot be waived). The absence of a party's standing "bars consideration of the claim by the court." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011). We may examine standing at any time. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012); *see also Patzner v. Schaefer*, 551 N.W.2d 736, 737 (Minn. App. 1996) (noting that appellate courts "are required to address the issue [of standing] even if the courts below have not passed on it, and even if the parties fail to raise the issue before us" (quotation omitted)). We review the question of standing de novo. *D.T.R.*, 796 N.W.2d at 512.

At the summary-judgment hearing, the City argued that One Love lacked standing to raise discrimination claims on behalf of the residents. The district court rejected this argument:

> [I]t is evident that One Love has standing as a business organization that provides housing environments for persons suffering from various addictions. Addiction has been recognized [as] a form of mental impairment and disability. Therefore, One Love has standing for this suit under [the ADA and the FHA].

The protections of the ADA and the FHA are not limited to individuals who are themselves handicapped. Instead, the ADA and the FHA also prohibit discrimination against persons "associated with" a buyer or renter with a handicap. 42 U.S.C. § 3604(f)(2)(C) (2020) (providing that it is unlawful "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of

services or facilities in connection with such dwelling, because of a handicap of . . . any person associated with that . . . [resident]").

Other jurisdictions have found standing for operators of sober or recovery houses who assert discrimination claims under the ADA and the FHA.[2] *See, e.g.*, *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 574 n.6 (2d Cir. 2003) (stating in context of zoning-related claim under FHA that "it is clear that both [landlord], as owner of the [group home for recovering alcoholics], and [the operating entity], as the parent organization, will incur an injury and have standing in this [ADA and FHA] case"); *Casa Marie, Inc. v. Superior Court of Puerto Rico for Dist. of Arecibo*, 988 F.2d 252, 257 n.6 (1st Cir. 1993) (discussing cases); *Caron Found. of Fla., Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1364 (S.D. Fla. 2012) (acknowledging that a rehabilitation facility for recovering alcoholics and substance abusers had standing based on its status "[a]s a provider of services for these [disabled] individuals"); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 521 (W.D. Pa. 2007) (stating that "agencies, such as [the operator of a group home for disabled individuals], that provide residential services to persons with disabilities, have standing to challenge municipal attempts to preclude them from pursuing their missions"); *Horizon House Dev. Servs., Inc. v. Twp. of Upper Southampton*, 804 F. Supp. 683, 692 (E.D. Pa. 1992) (stating that "[c]ourts have explicitly held that a person who is not himself

[2] While federal caselaw is not binding, we may look to persuasive federal court opinions for guidance, particularly where our own jurisprudence is underdeveloped. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) ("Although not binding, . . . other federal court opinions are persuasive and should be afforded due deference.").

handicapped, but is prevented from providing housing for handicapped persons by a municipality's discriminatory acts, has standing"), *aff'd*, 995 F.2d 217 (3d Cir. 1993).

One Love asserts that it has been harmed by the City's actions as a result of its association with disabled individuals. Based on 42 U.S.C. § 3604(f)(2)(C) and persuasive caselaw from other jurisdictions, we conclude that One Love has standing to assert its discrimination claims.[3] We next turn to the merits of the appeal.

II. The district court did not err by granting the City's motion for summary judgment.

A. Summary Judgment Standard of Review

Summary judgment is proper if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *review denied* (Minn. Sept. 27, 2017). A material fact is one that will affect the outcome or result of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). We review a grant of summary judgment de novo, viewing "the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). The interpretation of a statute or ordinance presents a question of law, which we review de novo. *Eagle Lake of Becker Cty.*

[3] The City also argues that One Love lacks standing because the residents are not substantially impaired in their daily activities. We determine that this argument goes to the merits of the appeal, rather than to standing, and we address it in the following section.

Lake Ass'n v. Becker Cty. Bd. of Comm'rs, 738 N.W.2d 788, 792 (Minn. App. 2007). Typically, "when the material facts are not in dispute, an appellate court will review the district court's grant of summary judgment de novo." *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016).

B. Legal and Statutory Framework

i. The ADA

The ADA prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a) (2020). Prohibited discrimination under the ADA includes:

> (i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered; [and]
>
> (ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations . . . .

Id. § 12182(b)(2)(A)(i)-(iii) (2020).

"Disability," a term of art under the ADA, is defined as: "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C.A. § 12102(1) (2020).[4] Congress amended the ADA in 2008, stating that the term "disability" was to "be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." Pub. L. No. 110–325 § 2(b)(1), 122 Stat. 3553–3554 (2008) (ADA Amendments). Under post-2008 law, the ADA provides that a qualifying disability is any "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A); 28 C.F.R. § 35.108(a)(1)(i) (2020).

ii. The FHA

The FHA prohibits discrimination in housing against persons with handicaps. 42 U.S.C. § 3604(f)(1) (2020). The FHA provides that it is unlawful

> to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—
> (A) that person; or
> (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
> (C) any person associated with that person.

Id. § 3604(f)(2)(A)-(C) (2020). The FHA also prohibits discrimination in the form of "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal

[4] One Love does not make any claim for impairment under sections 12102(1)(B) or (C).

opportunity to use and enjoy a dwelling." *Id*. § 3604(f)(3)(B) (2020). The FHA defines a person with a handicap as one who has a "physical or mental impairment which substantially limits one or more of such person's major life activities," "a record of such impairment," or who is considered to have "such an impairment." 42 U.S.C. § 3602(h)(1)-(3) (2020).

When analyzing disability claims, courts interpret the ADA consistently with the FHA because the definition of disability under the ADA and the definition of handicap under the FHA are the same—a physical or mental impairment that substantially limits one or more major life activities. *See Hinneberg v. Big Stone Cty. Hous. & Redevelopment Auth.*, 706 N.W.2d 220, 225 (Minn. 2005) (stating that "the substantive similarities in the relevant language of the [ADA and the FHA] and the federal precedent interpreting them persuade us that the provisions can be treated as identical"); *see also Developmental Servs. of Neb. v. City of Lincoln*, 504 F. Supp. 2d 714, 723 (D. Neb. 2007) (interchangeably analyzing ADA and FHA cases to determine whether a reasonable accommodation was made). Thus, "[c]ourts generally consider individuals deemed to be 'handicapped' under the FHA to likewise be 'disabled' within the meaning of the . . . ADA." *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803, 821 (W.D. Pa. 2010).

C. One Love Has Failed to Present Evidence to Support its Claim

i. Reasonable Accommodation, Disparate Impact, and Disparate Treatment Claims Require a Showing of Disability

One Love asserted three theories of liability against the City under the ADA and the FHA: (1) reasonable accommodation, (2) disparate impact, and (3) disparate treatment.

The ADA and the FHA require a municipality to make a reasonable accommodation when necessary to give handicapped people equal opportunity to use and enjoy a dwelling. *Citizens for a Balanced City*, 672 N.W.2d at 21 (citing 42 U.S.C. § 3604(f)(1), (3)(B)). To assert a failure-to-reasonably-accommodate claim, a plaintiff must plead four elements, including that the plaintiff is a person with a disability under the ADA or the FHA, or a person associated with that individual. *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1225 (11th Cir. 2016).

A plaintiff alleging discrimination may also assert disparate treatment as a result of their disability. *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539, 135 S. Ct. 2507, 2522 (2015); *Gallagher v. Magner*, 619 F.3d 823, 831-34 (8th Cir. 2010). In a disparate-treatment case, a plaintiff "must establish that the defendant had a discriminatory intent or motive." *Tex. Dep't of Hous. & Cmty. Affairs*, 576 U.S. at 525, 135 S. Ct. at 2513 (quotation omitted). A disparate-treatment claim requires proof of a discriminatory purpose, through either direct or indirect evidence. *Gallagher*, 619 F.3d at 831. Absent direct evidence of discriminatory intent, the burden-shifting test established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973), applies. *See id*. A disparate-impact claim, distinct from a disparate-treatment claim, arises when the plaintiff "challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale." *Texas Dep't of Hous. & Cmty. Affairs*, 576 U.S. at 525, 135 S. Ct. at 2513 (quotation omitted). To prove disparate impact, the plaintiff must plead that a "facially neutral policy had a significant

adverse impact on members of a protected minority group." *Gallagher*, 619 F.3d at 833 (quotation omitted).

Disparate-treatment and disparate-impact claims are both predicated on a disability. *See Budnick v. Town of Carefree*, 518 F.3d 1109, 1114 (9th Cir. 2008) (noting that a plaintiff can establish a disability-discrimination claim under a theory of disparate treatment, disparate impact, or failure to make reasonable accommodations); *Peebles v. Potter*, 354 F.3d 761, 766 (8th Cir. 2004) ("In disparate treatment cases, a similarly situated disabled individual is treated differently because of his disability than less- or non-disabled individuals."); *McGary v. City of Portland*, 386 F.3d 1259, 1265-66 (9th Cir. 2004) (stating that in reasonable-accommodation claim, plaintiff must allege that non-disabled individuals without plaintiff's disability were treated more favorably); *Weinreich v. Los Angeles Cty. Metro. Transp. Auth*., 114 F.3d 976, 978 (9th Cir.1997) (noting that a plaintiff must show that he or she is a qualified individual with a disability to establish a violation of the ADA).

Thus, as a threshold question we must determine whether the residents of the house are "disabled" under the ADA or the FHA. If they are not, then One Love's reasonable-accommodation, disparate-treatment, and disparate-impact claims all necessarily fail.

ii. The Existence of a Handicap is an Individualized Inquiry

The ADA and the FHA recognize that the term "handicap" may include drug addiction and alcoholism. 42 U.S.C. § 3602(h)(1); 24 C.F.R. § 100.201(a)(1), (2) (2020). But alcoholism is not a disability per se. *Burch v. Coca-Cola Co*., 119 F.3d 305, 316 (5th Cir. 1997); *see also Zenor v. El Paso Healthcare Sys., Ltd*., 176 F.3d 847, 859-60 (5th Cir.

1999); *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683, 688 (M.D. La. 2013) (stating, "there is no *per se* rule that categorizes recovering alcoholics . . . as disabled"). "[M]ere status as an alcoholic or substance abuser does not necessarily imply a 'limitation' [for a disability determination]." *Oxford House*, 932 F. Supp. 2d at 689 (quotation omitted). Instead, "[t]he ADA requires an individualized inquiry" to determine whether a particular plaintiff is disabled because of alcoholism. *Burch*, 119 F.3d at 317.

One Love argues that it is entitled to protection under the ADA and the FHA because it houses residents who are recovering from alcoholism or drug addiction. But the cases that One Love relies on are inapposite or distinguishable. First, One Love cites *Lakeside Resort Enters., LP v. Bd. of Sup'rs of Palmyra Twp.*, 455 F.3d 154 (3d Cir. 2006), *as amended* (Aug. 31, 2006). The main issue in that case was whether a proposed drug- and alcohol-treatment facility qualified as a "dwelling" under the FHA, which is not at issue here.[5] *Id*. at 156. One Love also relies on *Innovative Health Sys., Inc. v. City of White Plains*, which states that current users of illegal drugs are not considered handicapped. 117

[5] *Lakeside* stated in a footnote that "two other courts have held that recovering alcoholics and drug addicts are handicapped, so long as they are not currently using illegal drugs," but did not substantively analyze the issue. 455 F.3d at 156 n.5 (2d Cir. 2001) (citing *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 920-23 (4th Cir. 1992); *Conn. Hosp. v. City of New London*, 129 F. Supp. 2d 123, 125 (D. Conn. 2001)). Other courts have cited *Lakeside*'s footnote for this general proposition. That said, such cases are distinguishable from our case. *See, e.g.*, *Cornerstone Residence, Inc. v. City of Clairton, Pa.*, 754 F. App'x 89, 91 (3d Cir. 2018) (citing *Lakeside* and holding that municipal ordinance did not facially discriminate against recovering addicts seeking to live in a treatment center). We note that the issue and the holding in *Lakeside* related to whether a home qualified as a "dwelling" under the FHA. 455 F.3d at 156. Some courts have misstated the holding in *Lakeside* to the extent that they interpret *Lakeside* as supporting the argument that living in a sober home supports a per se disability finding. Because we have not been asked to consider whether One Love's house is a "dwelling," we do not find *Lakeside* instructive.

F.3d 37, 48 (2d Cir. 1997). Because One Love's residents must not currently be using drugs or alcohol, our case does not involve this issue. And we do not consider it instructive. Lastly, One Love cites *United States v. S. Mgmt. Corp.*, 955 F.2d 914 (4th Cir. 1992). That case considered whether a plaintiff who had been drug-free for one year qualified as a current drug user under the FHA. *Id*. at 919-23. Again, this issue is not before us and we do not find this case persuasive. We therefore consider it necessary to conduct an individualized inquiry in this case.

iii. Substantial Impairment with Major Life Activities

To qualify as handicapped or disabled under the ADA and the FHA, a recovering addict or alcoholic must demonstrate that he or she was actually addicted to drugs or alcohol in the past, and also that this addiction substantially limited a major life activity. *See Rodriguez v. Village Green Realty, Inc*., 788 F.3d 31, 41 (2d Cir. 2015) (noting that an individual is considered to have a disability if he or she "(1) suffers from a physical or mental impairment, that (2) affects a major life activity, and (3) the effect is substantial") (quotation omitted); *see also Oxford Invs., L.P. v. City of Philadelphia*, 21 F. Supp. 3d 442, 454 (E.D. Pa. 2014) ("Drug addiction and alcoholism are both recognized as potential handicaps where the addiction substantially limits a major life activity." (citing 24 C.F.R. § 100.201)). To establish a prima facie case of disability discrimination and survive summary judgment, "a plaintiff must prove a substantial limit with specific evidence that his [or her] particular impairment substantially limits his [or her] particular major life activity." *Waldrip v. Gen. Elec. Co*., 325 F.3d 652, 656 (5th Cir. 2003) (noting that an

individual inquiry into a person's disability "centers on substantial limitation of major life activities, not mere impairment").

"Major life activities" include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 24 C.F.R. § 100.201(b) (2020). "'Substantially limits' is not meant to be a demanding standard," 29 C.F.R. § 1630.2(j)(1)(i) (2020), and "Congress has instructed the courts to determine whether a limitation is substantial in light of its command to interpret disability broadly," *Rinehart v. Weitzell*, 964 F.3d 684, 688 (8th Cir. 2020) (quoting *Oehmke v. Medtronic, Inc*., 844 F.3d 748, 756 (8th Cir. 2016)). Before the ADA Amendments, temporary impairments with little or no long-term impact were not disabilities. *See Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 198, 122 S. Ct. 681, 691 (2002) (stating that limitation on one's major life activities "must also be permanent or long term"); *Samuels v. Kansas City Mo. Sch. Dist.*, 437 F.3d 797, 802 (8th Cir. 2006) (stating that "temporary impairments with little or no long-term impact are not disabilities"). But the 2008 ADA Amendments "broadened the definition of what constitutes a disability," and courts now construe "disability" more broadly. *Nyrop v. Indep. Sch. Dist. No. 11*, 616 F.3d 728, 734 n.4 (8th Cir. 2010) (recognizing that ADA Amendments broadened definition of disability); *see also* 42 U.S.C. § 12102(4)(A) (2020) (instructing that "[t]he definition of disability in this chapter shall be construed in favor of broad coverage"); *Gardea v. JBS USA, LLC*, 915 F.3d 537, 541 (8th Cir. 2019); *Oehmke*, 844 F.3d at 756.

Even with this broadened definition, however, federal courts in many jurisdictions have repeatedly recognized in various contexts that alcoholism is not a per se disability

under the ADA. *Burch*, 119 F.3d at 316-17 (declining to classify alcoholism as a per se disability under the ADA and requiring plaintiff to present evidence that addiction interferes with a major life activity); *see also Neely v. PSEG Tex., Ltd. P'ship*, 735 F.3d 242, 245 (5th Cir. 2013) (stating in context of employment action for plaintiff alleging anxiety and depression that while ADA Amendment "makes it *easier* to prove a disability, it does not *absolve* a party from proving one"). This principle remains good law.[6]

One Love did not present evidence of a substantial limitation on major life activities of residents who wish to live in the house.[7] *See Oxford Invs., L.P.*, 21 F. Supp. 3d at 454 (granting summary judgment in city's favor where property owner "presented voluminous record evidence that establishes that a large majority of potential residents of the Property

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[6] Even before the amendments, courts held the aggrieved party to its burden of proof. *See Wallin v. Minn. Dep't. of Corr.*, 153 F.3d 681, 686 n.4 (8th Cir. 1998) (expressing "doubt" that employee could sustain discrimination case when he "presented no evidence showing that his major life activities were impaired"); *Bailey v. Ga.-Pac. Corp.*, 306 F.3d 1162, 1167-68 (1st Cir. 2002) (noting that ADA plaintiff "must offer evidence demonstrating that the limitation caused by the impairment is substantial in terms of his or her own experience" and determining that plaintiff's "summary judgment evidence is not up to this ambitious a task").

[7] One Love claims the City forfeited consideration of this issue by failing to raise it below. The City raised this issue in its summary-judgment brief to the district court in its discussion of standing. The district court treated this issue as one of standing and, citing *Scheffler v. Dohman*, 785 F.3d 1260, 1261 (8th Cir. 2015), recognized in a footnote that "persons in recovery, whose major life activities have been substantially impaired, may be deemed to have a protected 'handicap.'" The district court did not analyze this issue on the merits. As stated, we determine that this question goes to the merits of the case rather than to standing. And we may "affirm a grant of summary judgment if it can be sustained on any grounds." *Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 163 (Minn. 2012). A reviewing court "can, if it needs to, affirm summary judgment on alternative theories presented but not ruled on at the district court level." *Nelson v. Short-Elliot-Hendrickson, Inc.*, 716 N.W.2d 394, 402 (Minn. App. 2006), *review denied* (Minn. Sept. 19, 2006).

suffer from physical or mental impairments in the form of addiction to drugs and alcohol," yet "offer[ed] no record evidence, however, to support a finding that these impairments substantially limit a major life activity, as is required to find the existence of a handicap" (quotation omitted)). Instead, One Love emphasized that prospective residents must be self-sufficient to qualify to live in the house, explained below.

iv. One Love's Evidence Is Insufficient to Withstand Summary Judgment

One Love argues that because all the residents are recovering drug or alcohol addicts "they are 'disabled' within the meaning of the FHA." One Love conflates "alcoholism" with "substantial impairment" and argues that the residents' status as recovering alcoholics, standing alone, is enough to establish disability. This contention is not supported by caselaw or by the plain language of the ADA and the FHA, and One Love's cases are distinguishable, as discussed above. Moreover, One Love's assertion ignores settled caselaw that courts must decide disability case-by-case and only where the cited disability "substantially limited the major life activity." *Bragdon v. Abbott*, 524 U.S. 624, 631, 118 S. Ct. 2196, 2202 (1998); *see also* 45 C.F.R. § 84.3; *Scheffler*, 785 F.3d at 1261-62 (affirming dismissal of ADA discrimination claim where plaintiff failed to present evidence that alcoholism limited major life activities).

One Love's own submissions defeat its claim. One Love alleged in its answer that "Neither One Love Housing nor the House is a substance abuse treatment center, halfway house, shelter, or a residential facility. There [is] no treatment, counseling, therapy, or any type of health care services provided at the House or by One Love Housing." One Love does not claim to be a supervised drug rehabilitation center, and the cases cited by One

Love—which *do* relate to treatment facilities—are distinguishable and not dispositive of the issues before us in this case.

Nor did One Love provide evidence supporting a disability-finding based on the nature of the house itself. "In the context of a zoning application affecting yet-unidentified prospective tenants, the court's determination of 'handicap' is sometimes examined based on 'the criteria for admission to the facility at issue.'" *Yates Real Est., Inc. v. Plainfield Zoning Bd. of Adjustment*, 404 F. Supp. 3d 889, 915 (D.N.J. 2019) (considering disabled status of residents in a "three-quarter" recovery house where township did not contest disability throughout course of administrative proceedings); *see also Reg'l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 47-48 (2d Cir. 2002) (stating that residents of halfway house for recovering alcoholics qualified as handicapped and disabled based on state-specific regulations prescribing admission criteria for such facilities).[8]

One Love—unlike the cases cited here—failed to present evidence showing that the ADA or the FHA apply, based on the criteria for admission to the house.[9] One Love cited no evidence in the record about its admission criteria for the house in Cambridge. Instead, One Love emphasized the living environment once people were admitted. For example, in

[8] Courts have used a facilities-based approach in other circumstances, as well. *See, e.g.*, *Wagner v. Fair Acres Geriatric Ctr*., 49 F.3d 1002, 1010 (3d Cir. 1995) (observing that "no one would be able to meet a nursing home's admissions requirements in the absence of some handicapping condition necessitating nursing home care").

[9] One Love did not direct this court's attention to particular admission requirements and the court has no duty to search the record for that support. *See generally Manning v. Jones*, 875 F.3d 408, 410 (8th Cir. 2017) (noting that reviewing court will only consider "contentions that include appropriate citations"); *ASARCO, LLC v. Union Pac. R.R. Co*., 762 F.3d 744, 753 (8th Cir. 2014).

its answer, One Love describes the house as "provid[ing] a supportive atmosphere that is designed to increase self-responsibility and support for persons in recovery." One Love acknowledges that it is not a substance-abuse-treatment center, halfway house, shelter, or residential facility, and it also acknowledges that it does not offer treatment, counseling, therapy, or other healthcare-related services. Instead, One Love requires potential residents to be self-sufficient as a *precondition* to living in the house. Residents willingly choose to live in the house and no evidence suggests that potential residents are ordered or recommended to live in the house as a condition of recovery.

One Love requires its residents to "contribute to the operation of the house," "attend weekly house meetings," and comply with "rules regarding cleanliness and upkeep" of the house. Residents must "share in performing house duties, chores, and home-related responsibilities." Each resident has "rotating responsibilities for keeping the common areas both inside and outside clean and orderly," and "[e]ach resident is also responsible for keeping his bedroom neat, clean, and orderly," doing his own laundry, and completing daily chores. "Each resident is responsible for purchasing and the cooking of his own food," and must be "accountable for cleaning up after themselves in both the cooking and eating areas."

One Love attached an exhibit to its answer entitled "Statement of Proposed Use and Description of the Project," which also included its mission statement. The mission statement does not explain how One Love identifies or otherwise recruits potential residents to the house. Once they enter the house, however, One Love requires its residents to "work a full-time job (minimum 32 hours) or part-time job in addition to school hours

and or volunteer service (totaling minimum of 32 hours)." One Love's mission includes "provid[ing] job placement for those in recovery to support the employment needs of the community giving independence to those in recovery." The statement of proposed use also requires the residents to sign a contract stipulating that they will, among other things, "maintain at least 32 hours of employment per week" or be a "full time student." One Love does not assert that its residents or potential residents are unable to live on their own or maintain independent living outside One Love. *Cf. Oxford House*, 932 F. Supp. 2d at 689 (finding recovery home residents were handicapped based on specific testimony of residents' inability to live independently outside home).

One Love's own expert, Chris Edrington, toured the house and reported that "[t]he residents in this house are generally working men who have real jobs of at least 40 hours per week." Edrington also reported that the residents "shop for meals together at a grocery store nearby" and "ride their bicycles, take local transportation and are able to live together as a family."

One Love deposed appellant Nathan Pearson, its employee, who lives and works at the house. Pearson testified that he lives at the house to save money and to pay off his debts. He does not claim that he is otherwise unable to live on his own. Pearson testified that the residents have to do their own grocery shopping, cook their meals, clean up after meals, do their laundry, and wash their personal bedding. Pearson uses a "chore list" that rotates every two weeks and includes such activities as mowing the lawn and cleaning the house. Pearson agreed that part of One Love's mission is to encourage the residents to engage in self-care and self-management, "to grow as healthy men" and to "be self-

sufficient." Residents also participate in weekly book studies and may host their friends and family members at holiday functions at the house. One Love did not present evidence or testimony from any other residents suggesting that they could not live independently outside the house.

In the context of summary-judgment proceedings, "conclusory declarations [of impairment] are insufficient to raise a question of material fact" under the ADA and the FHA. *Mazzocchi v. Windsor Owners Corp*., 204 F. Supp. 3d 583, 609 (S.D.N.Y. 2016) (quotation omitted) ("non-medical evidence that conveys, in detail, the substantially limiting nature of an impairment may be sufficient to survive summary judgment," but granting summary judgment because tenant failed to present evidence she was disabled under the FHA) (quotation omitted); *Oxford Invs., L.P.*, 21 F. Supp. 3d at 454 (granting summary judgment for city because "[w]ith no direct or circumstantial evidence to demonstrate a substantial limitation of the potential residents' major life activities, [plaintiff-property-owner's] claim requires the Court to assume that all recovering addicts are handicapped. Such an analysis clearly conflicts with the Supreme Court's directive to conduct individualized disability assessments and is fatal to all of [plaintiff's] FHA claims.").

One Love failed to offer proof that the ADA or the FHA apply based on the nature of the facility itself. A reasonable juror, reviewing the general facility requirements, would not conclude that every hypothetical resident *must* be disabled. The house does not hold itself out as a treatment center or halfway house. The requirements outlined in One Love's answer and mission statement are broad enough to include persons with or without a

disability. And as Pearson stated, he chose to live in the house for financial reasons and did not claim he could not live on his own elsewhere.

To the extent that One Love urges this court to look at the facility requirements without regard to actual residents, we would reach the same conclusion. The requirements are broad enough to include persons without disabilities and we cannot therefore say that One Love is entitled to a disability finding based solely on the nature of the facility.

One Love also failed to prove that residents, once they enter the house, have a substantial limitation on a major life activity. The record is devoid of evidence that the residents suffer from an impairment that affects a major life activity, or that the effect is substantial. Residents are required to work, study, volunteer, complete their own chores, cook their own meals, and find their own transportation. None of these facts—even construed in the light most favorable to One Love—suggest that the residents are unable to live independently, care for themselves, perform manual tasks, walk, see, hear, breathe, learn, or work. 24 C.F.R. § 100.201(b) (defining "[m]ajor life activities"). One Love has not alleged facts or offered evidence sufficient to prove that the residents are limited in their ability to perform major life activities. "Whether an impairment substantially limits a major life activity is a threshold question." *Samuels*, 437 F.3d at 801 (quoting *Snow v. Ridgeview Med. Ctr.*, 128 F.3d 1201, 1206 (8th Cir. 1997)). In this case, One Love's own pleadings and evidence defeat its discrimination claims. Given One Love's own evidence, a jury would be unable to find that the residents had a substantial impairment based on their past addictions. Thus, the district court did not err in granting summary judgment. *See, e.g.*, *Dovenmuehler v. St. Cloud Hosp.*, 509 F.3d 435, 441 (8th Cir. 2007) (affirming grant

of summary judgment when recovering addict could work and was therefore not handicapped within meaning of ADA); *Mazzocchi*, 204 F. Supp. 3d at 612 (determining summary judgment was appropriate because there was not a genuine dispute of material fact that individual was impaired under the FHA when she could care for herself, interact with others, and work).

Because One Love cannot sustain its cause of action for discrimination, and because One Love relies on a disability for its claims for reasonable accommodation, disparate treatment, and disparate impact, we determine that One Love's counterclaims fail.

One Love makes no other arguments challenging the district court's ruling on the city's declaratory-judgment action. For the reasons articulated above, and after a careful review of the record, we conclude that One Love failed to present sufficient evidence to withstand summary judgment. As a result, the district court did not err by granting summary judgment to the City on its zoning-enforcement claim, or by denying summary judgment to One Love on its counterclaims.

D. We do not consider the district court's discovery rulings.

One Love also challenges the district court's discovery rulings. One Love argues that the district court erred by (1) limiting written discovery, (2) denying One Love's motion to discover complaints from members of the public about the potential use of the house, and (3) denying One Love's request to depose city council members and the city attorney. A district court may limit discovery "if the discovery would not assist the district court or change the result of the summary judgment motion." *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 400 (Minn. App. 2010)

(declining to grant continuance to allow for more discovery where newly discovered materials would not change summary-judgment decision). As for One Love's discovery arguments, those discovery requests would not have uncovered evidence about whether the residents were substantially impaired in their major life activities. Because more discovery would not change the result of the summary judgment decision, we need not address these arguments.

Affirmed.