STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0162

Eric Ringsred,
Respondent,

Respect Starts Here,
Respondent,

State of Minnesota,
Plaintiff,

vs.

Duluth Economic Development Authority, et al.,
Appellants.

Filed July 26, 2021
Affirmed in part, reversed in part, and remanded
Frisch, Judge

St. Louis County District Court
File No. 69DU-CV-18-953

William D. Paul, Duluth, Minnesota (for respondent Eric Ringsred)

Miles Ringsred, Duluth, Minnesota (for respondent Respect Starts Here)

Rebecca St. George, Duluth City Attorney, Elizabeth A. Sellers, Assistant City Attorney, Duluth, Minnesota (for appellants)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellants argue that the district court abused its discretion by denying their motion to dissolve a temporary injunction and by ordering additional temporary injunctive relief without addressing the issue of security or requiring respondents to post a bond. We affirm in part, reverse in part, and remand.

FACTS

The MERA Action and the First Temporary Injunction

The Pastoret Terrace, the Robeson Ballroom, and the Kozy bar (together, the property) are located in Duluth's Commercial Historic District. In April 2006, the Minnesota State Historical Society certified an application to list the property for inclusion on the National Register of Historic Places as structures contributing to the historic district. In May 2006, the historic district was entered on the national register. In 2010, the property was damaged by a fire and condemned. In October 2016, appellant Duluth Economic Development Authority (DEDA) purchased the property. DEDA listed the property for sale and requested proposals to either rehabilitate or demolish the property. DEDA received and rejected three proposals, and it then directed its staff to seek additional proposals.

In April 2018, respondents Eric Ringsred and Respect Starts Here sued DEDA and appellant City of Duluth, alleging in relevant part that the property is a historical resource subject to protection under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2020), and that DEDA's neglect of the property and plans for its

demolition constituted a material impairment of a protected resource. After DEDA passed a final resolution to pursue demolition of the property, respondents moved for a temporary injunction to prohibit the demolition. The district court granted the temporary injunction and prohibited appellants "from destroying, demolishing, or impairing the aesthetic of" the buildings and "from engaging in any activities which would alter the structures or contents of the" buildings, subject to respondents posting a $50,000 bond.

Trial, Findings, Conclusions & Order

The parties stipulated to various facts and the district court conducted a court trial in April 2019. Former DEDA director Michael Conlan testified that the Pastoret was the work of Oliver B. Traphagen, a noted architect who designed numerous historically significant buildings in the Midwest and Hawaii. Conlan detailed the two-part process through which properties qualify for historic tax credits. First, a property must be certified as historic by the Minnesota State Historic Preservation Office (SHPO) and the United States National Park Service. In the second part, a detailed rehabilitation plan must be proposed. Eligibility for the tax credits in the Pastoret's case required preservation of certain structural components, including the interior brick dividing walls and the exterior façade.

The district court questioned Conlan directly regarding the historical nature of the Pastoret and posed a hypothetical in which the Pastoret would be demolished and rebuilt with salvaged bricks in a recreation of the original design. Conlan explained:

> Ah. No, Your Honor, that you can't do. That's something that the City of Duluth did . . . with the Pastoret-Stenson building . . . . There were efforts made to

> save that building, or at least do what's called façadectomy and save the historic storefront of that property, but it was found that after couple of very significant fires in that building and the fact that the number of stories were reduced from six to three . . . , and SHPO determined that because the building had changed so much, it was not eligible.
>
> In the case of [the] Pastoret, no, you're not allowed to tear down most of it and then put, you know, some ornamental features back on. The intent is to restore the building envelope. National Park Service is not much concerned with interiors because those tend to change so often. They don't even require archival photos of interiors, but the exterior has to be preserved.
>
> . . . .
>
> You cannot build new construction and make it look old.

Other trial witnesses testified generally regarding DEDA's objectives for the project and the reasons for rejecting the previous proposals. DEDA's director claimed that DEDA lacked the resources to rehabilitate the property and that there were no reasonable alternatives to demolishing the property given its blighted condition. With the parties' consent, the district court conducted an onsite inspection of the property.

The district court found that, pursuant to Minn. Stat. § 116B.04(b), respondents had made a prima facie showing that appellants' conduct was likely to cause impairment or destruction of a historical resource. The district court then considered whether appellants had proven the statutory affirmative defense "that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its" natural resources. Minn. Stat. § 116B.04(b). In relevant part, the

district court determined that there were no feasible and prudent alternatives to demolition, relying on the funding, job-creation, and housing issues as unusual factors supporting the defense. The district court dissolved the temporary injunction and denied respondents' request for a permanent injunction. Respondents moved to stay the district court's order and to restore the temporary injunction pending appeal. The district court granted the stay.

The First Appeal and Instructions on Remand

Respondents appealed, challenging the district court's findings of fact and its interpretation of the legal standard governing the affirmative defense. *Ringsred v. Duluth Econ. Dev. Auth.*, No. A19-2031, 2020 WL 5104885, at *4 (Minn. App. Aug. 31, 2020). We concluded that the district court erred in construing the standard governing the affirmative defense because all of its cited reasons were economic considerations insufficient to support the defense. *Id.*; *see also* Minn. Stat. § 116B.04(b) ("Economic considerations alone shall not constitute a defense hereunder."). We reversed and remanded the case for further consideration of the affirmative defense and gave the following instruction:

> On remand, the district court shall restore the temporary injunction against [DEDA and the city's] demolition of the property during the pendency of this action and shall require [DEDA and the city] to perform all maintenance and repairs necessary to prevent the property's further deterioration.

2020 WL 5104885, at *5.

The Second Fire and Proceedings on Remand

In September 2020, respondents moved to enforce our remand instructions to reinstate the temporary injunction and order appellants to perform all maintenance and

repairs necessary to prevent further deterioration. On October 6, 2020, the district court reinstated the temporary injunction prohibiting appellants from demolishing the property.

On November 1, 2020, the property suffered a second fire. On November 6, 2020, appellants filed correspondence with the court indicating that structural engineers were assessing the fire damage to the property and the buildings' structural integrity. The letter also stated, in relevant part:

> The Court's November 5, 2020 correspondence also noted a question regarding an injunction bond order. . . . The amount of a bond securing the temporary injunction against demolition during the pendency of the proceedings on remand remains to be set. An appropriate amount of that security depends on the scope of any repairs or maintenance required while that temporary injunction remains in place.

Motion to Lift Temporary Injunction and Motion to Enforce Remand Instructions

In December 2020, the parties filed competing motions—appellants moved to dissolve the temporary injunction prohibiting demolition and respondents moved again to enforce this court's remand instructions. Appellants argued that the temporary injunction should be dissolved because preservation of the property was no longer possible and partial demolition of two of the Pastoret's street-facing townhomes was necessary for public safety and health. Appellants argued alternatively that, if they were required to conduct additional repairs and maintenance, respondents should be required to post a bond reflecting the necessary costs, which appellants estimated at $220,615.

Appellants supported their request to dissolve the temporary injunction with a report prepared by LHB, Inc., whose structural engineers inspected the property after the second fire. The report indicated that the Robeson Ballroom suffered fire damage on the second

story at the building's rear, as well as "extensive water damage and water saturation." The Kozy bar meanwhile had "fire damage within the westerly regions and extensive water damage and water saturation" on its interior. The Pastoret was damaged most severely. The report indicated that the roof of the southern Pastoret modules had "entirely failed" and was in a "collapsed state." The modules' interiors were left open to the elements from the roof and unbarricaded windows. LHB explained that the structural stability of both modules was impaired by the roof failure, its collapse onto the underlying structure, and "extensive structural damage to the westerly module timber wall and floor framing." The report indicated that access into the modules was unsafe because the stability of floors and exterior walls was unpredictable. LHB also expressed concerns with portions of exterior masonry walls. The report recommended that access within or near the building be controlled, with exterior regions "cordoned off to ensure the public is not within areas which could be jeopardized in the event of [a] sudden collapse of a wall."

Respondents argued that appellants misrepresented the nature of LHB's report, emphasizing that the report did not indicate that the property was beyond salvaging and that the damage to the Robeson building was minimal relative to the Pastoret. In support of their motion to enforce our remand instructions, respondents provided an affidavit from James Berry, a structural engineer who agreed with LHB's assessment that portions of the Pastoret's front exterior were structurally compromised. Berry opined that restoration of the Pastoret's structural integrity was "very possible," albeit "challenging" and "potentially expensive." He proposed that repair could be accomplished by bracing the exterior wall from the outside, removing burned debris, and bracing the brick wall from the interior.

Appellants argued that our remand instructions were not dispositive and urged the district court to take a nuanced approach accounting for the change in circumstances and MERA's "forward-looking" directive regarding the protection of natural resources. And they repeated their alternative argument that "based on the requirements in Minn. R. Civ. P. 65.03, if the Court does not allow demolition to proceed in full, the Court must require [respondents] to post a security that will adequately protect [appellants]."

Hearing and Supplemental Submissions

On January 4, 2021, the district court held a hearing on the parties' motions, and after hearing their arguments, directed appellants to supplement the record with an estimate of the cost of bracing one of the Pastoret's exterior walls and providing temporary weatherproofing. Appellants produced cost estimates for three scenarios. In the first scenario, complete demolition and removal of the Pastoret's front two units was estimated to cost $109,842. In the second scenario, selective demolition of the roof structure, removal of debris, and bracing of the exterior wall was estimated to cost $231,273. In the third scenario, selective demolition, removal of debris, bracing, and weatherproofing was estimated to cost $345,663.

Respondents countered that a "phase-based approach" would be appropriate given that the condition of lower portions of the property remained unknown. They outlined suggested phases as follows: (1) bracing the Pastoret's exterior wall; (2) removing debris and conducting further assessment regarding bracing and roofing; and finally (3) restoring the structural integrity of the Pastoret.

Order Denying Motion to Dissolve and Granting Temporary Relief

The district court found respondents' phase-based approach preferable because it would "allow the Court and the parties to evaluate the building in stages" and would "be beneficial to any additional evidentiary hearing that takes place regarding the Court of Appeals['s] remand." It ordered appellants to (1) undertake the phase-one work of placing lateral bracing on the exterior portion of the Pastoret and (2) "secure detailed estimates for phase two work." The district court indicated that it would schedule a status conference after the completion of phase one "to discuss progress, both parties' ideas regarding what should happen next, and what further court orders are necessary." The district court did not address appellants' repeated requests to impose a security requirement.

This appeal follows.

DECISION

Appellants argue that the district court abused its discretion either by (I) declining to dissolve the temporary injunction or (II) ordering additional injunctive relief without requiring respondents to post a bond and without addressing the request for bond at all. Respondents contend that the district court properly denied the motion to dissolve, that the bond issue was not timely appealed, that no bond was required, and (III) that the doctrine of unclean hands precludes reversal.

I. The district court did not abuse its discretion by denying the motion to dissolve the temporary injunction.

Appellants argue that the district court's denial of their motion to dissolve the temporary injunction is contrary to logic and the facts in the record because the property's

hazardous condition compelled at least partial demolition and historic preservation is no longer possible. Respondents doubt the sincerity of appellants' safety concerns, argue that restoration is possible, and emphasize that the district court's decision comports with our remand instructions.

A person may initiate an action under MERA seeking equitable relief in order to protect natural resources—including historical resources—from impairment or destruction. Minn. Stat. §§ 116B.02, subd. 4, .03, subd. 1. A plaintiff must make a prima facie showing that: (1) the defendant's conduct has caused, or is likely to cause, the pollution, impairment, or destruction of; (2) a historical resource. Minn. Stat. § 116B.04(b). If the plaintiff makes that showing, the defendant must either rebut the prima facie showing or prove "that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its" natural resources. *Id.*

Before the action is resolved on its merits, a district court may order temporary injunctive relief. *See* Minn. Stat. § 116B.07; Minn. R. Civ. P. 65.02(b). Once a temporary injunction has been granted, "[a district] court's refusal to dissolve a temporary injunction will be reversed where there is a clear abuse of discretion." *In re Amitad, Inc.*, 397 N.W.2d 594, 596 (Minn. App. 1986); *see also Upper Midwest Sales Co. v. Ecolab, Inc.*, 577 N.W.2d 236, 240, 245 (Minn. App. 1998). "A district court abuses its discretion if its decision is against the facts in the record or if its ruling is based on an erroneous view of the law." *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (quotation omitted). A district court's

findings will not be set aside unless they are clearly erroneous, and on appeal, we view the facts in the light most favorable to the parties who prevailed below. *Ecolab*, 577 N.W.2d at 240.

A. The district court addressed immediate risks to health and safety.

Appellants first argue that the district court abused its discretion because the second fire rendered the property a risk to health and safety, thereby necessitating at least partial demolition. But on this record, appellants fail to demonstrate any abuse of discretion.

"Public health, safety, and welfare" are relevant considerations pursuant to Minn. Stat. § 116B.04(b). But "[t]he purpose and object of a temporary injunction is to maintain the status quo *until the action can be heard and determined on the merits*." *Minneapolis Elec. Lamp Co. v. Fed. Holding Co.*, 201 N.W. 324, 325 (Minn. 1924) (emphasis added). Nonetheless, appellants contend that the risk to public safety was great enough to compel partial demolition as "a required first step." Appellants cite to LHB's report and other affidavits, which emphasized structural compromise, a risk of unpredictable collapse, and a need to accomplish some demolition regardless of bracing.

The argument fails to recognize the context and contents of the district court's order. Respondents proposed bracing as a phase-one solution "to prevent the Façade from failing outward" and suggested that bracing "would secure the Façade until any of the subsequent phases of work are to take place." The district court found the phased approach sensible and, by the clear terms of its order, directed appellants to secure estimates for the phase-two removal of debris. The district court did not ignore the risk posed by the façade; it addressed the risk by ordering relief intended to mitigate it.

Appellants also suggest that the district court abused its discretion because it did not immediately order the partial demolition of the failed roof and burned interior. But appellants do not demonstrate how public safety necessitated such immediate action given the district court's decision to instead order the phase-one work of bracing. The removal of debris was the next step in the multi-phase approach. And we note that, by appellants' representation to this court, "[t]he perimeter of the property remains cordoned off to protect the public from risks posed by the property's unpredictability." Thus, risks to public health and safety have been further mitigated.

On this record, appellants fail to demonstrate any abuse of discretion. The district court's decision was both logical and supported by the record because it recognized the risk to health and safety and implemented relief aimed at mitigating that risk.

B. The record did not compel the district court to conclude that preservation is impossible.

Appellants argue next that the second fire "compel[led] the conclusion that preservation is unattainable here." They contend that "the only alternatives for the structures short of full demolition—*i.e.*, targeted demolition and rebuilding, potentially to include salvaging the façade—do not meet the standards of preservation advanced by [r]espondents at trial." And they insist the district court failed to consider "the import of the changed facts" in its order. Again, we discern no abuse of discretion.

Appellants suggest that the repairs necessary to rehabilitate the Pastoret will diminish its historical nature. Although historical resources are not defined by statute, the supreme court has indicated that the following non-exclusive list of criterion used for the

National Register of Historic Places is relevant in determining whether a property is a historical resource for MERA's purposes:

> The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling and association and:
>
> (1) That are associated with events that have made a significant contribution to the broad patterns of our history; or
>
> (2) That are associated with the lives of persons significant in the past; or
>
> (3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
>
> (4) That have yielded, or may be likely to yield, information important in history or prehistory.

State by Archabal v. County of Hennepin, 495 N.W.2d 416, 421 (Minn. 1993) (quoting *State by Powderly v. Erickson*, 285 N.W.2d 84, 88 (Minn. 1979)).

Appellants' argument ignores evidence favorable to respondents and rests on a selective reading of the record. Appellants suggest that the only plausible repair to the Pastoret is a "façadectomy," which would not preserve the façade in its historically significant state. But the degree of restorative work necessary to repair the façade was, at a minimum, disputed. LHB's report indicated that the Pastoret's masonry was in "varied condition," with the most "advanced deteriorated state" visible on "the upper limits of the west, south[,] and east parapet/[]upper wall regions." LHB's report specified:

> Because of the noted displaced bricks within this region, loose bricks noted and heavily compromised condition of the pointing mortar[,] it is believed that these upper wall regions (estimate upper 4 feet to 6 feet) would require full disassembly and reassembly in order to effect an acceptable structural reconstruction. Because of the extent of mortar deterioration (which makes dis-assembly and brick salvaging easier) it is believed that most of the brick would be re-useable but is estimated that up to 20% of the brick in this region would require replacement since currently missing, or due to fire damage, cracking or losses during disassembly and cleaning.

This portion of LHB's report does not indicate that a complete façadectomy was required. It instead indicated that "*up to* 20% of the brick *in this region*" (emphasis added) would require replacement. That is, up to 20% of the brick in the upper wall regions, which were estimated as comprising the "upper 4 feet to 6 feet." Further, respondents also supplied the district court with Berry's affidavit, which indicated that "restoring the structural integrity of the Pastoret Terrace is very possible."

Appellants' reliance on Conlan's testimony during the first trial is equally unconvincing. They cite Conlan's testimony for the proposition that a "façadectomy" does not qualify as historical preservation and that "[r]educing a building to remove fire-damaged portions . . . removes a structure from eligibility for historic designation." But Conlan was testifying specifically about the SHPO's eligibility determination regarding a *different* building—the Pastoret-Stenson building—and the explanation cited various circumstances relevant to *that* structure which were not present here:

> There were efforts made to save that building, or at least do what's called a façadectomy and save the historic storefront of that property, but . . . after a couple of very significant fires *. . . and the fact that the number of stories were reduced from*

> *six to three* . . . SHPO determined that *because the building had changed so much*, it was not eligible.

(Emphasis added.) Appellants fail to present Conlan's testimony in the proper context or to analogize the Pastoret's damage to that of the Pastoret-Stenson building discussed by Conlan.

Appellants also rely on Conlan's testimony that "you're not allowed to tear down most of [the Pastoret] and then put . . . some ornamental features back on" and that building new construction to look old does not satisfy the purpose of historical preservation. But Conlan did not testify that it was necessary or proper to "tear down most of" the façade and then put "some ornamental features back on." He instead responded to a hypothetical question posed by the district court suggesting that the Pastoret might be demolished and built anew with salvaged stones.

On this record, the district court was not compelled to conclude that historical preservation was no longer possible, especially when the case had not yet reached a final resolution on the merits. There was evidence suggesting that repairs could be limited and that restoration was possible. Appellants fail to demonstrate any abuse of discretion on this basis.

C. The district court's decision complied with our remand instructions.

We add that the district court's decision is further supported because it complied with our instructions on remand. We directed the district court to "restore the temporary injunction against [DEDA and the city's] demolition of the property during the pendency of this action" and to require appellants "to perform all maintenance and repairs necessary

to prevent the property's further deterioration." *Ringsred*, 2020 WL 5104885, at *5. On remand, a district court must "execute the mandate of the remanding court strictly according to its terms." *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988). Although the second fire presented a change in circumstances, we discern no abuse of discretion in the district court's decision to order phase-one work (a step consistent with our remand instructions) rather than dissolving the injunction outright and allowing demolition to proceed.

D. Conclusion

On this record, appellants fail to demonstrate that the district court abused its discretion by denying the motion to dissolve the temporary injunction. The district court addressed public-safety risks, accounted for disputes as to the viability of the overall restoration project, and complied with our remand instructions pending a final determination on the merits.

II. The district court abused its discretion by failing to address the request for security.

Appellants argue that the district court abused its discretion by failing to address their request for security and by failing to require that respondents post a bond. Respondents contend that the district court's failure to address the security issue was not an abuse of discretion and that no bond was required.[1]

[1] Respondents also argue as a threshold issue that appellants failed to timely appeal the security decision. But respondents conflate the district court's October 6, 2020 order reinstating the temporary injunction prohibiting demolition with the January 26, 2021 order granting *additional* injunctive relief without requiring any security. Appellants' challenge relates to the latter order, and so the appeal of the issue was timely.

Minn. Stat. § 116B.07 and Minn. R. Civ. P. 65.03 separately address bonds in the context of temporary injunctive relief. Minn. Stat. § 116B.07 provides, "When the court grants temporary equitable relief, it may require the plaintiff to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted." Minn. R. Civ. P. 65.03(a) meanwhile provides:

> No . . . temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

We review the district court's decision regarding bond in this context for an abuse of discretion. *See Bio-Line, Inc. v. Burman*, 404 N.W.2d 318, 321-22 (Minn. App. 1987).

Appellants cite *Bio-Line* for the proposition that the district court's failure to address the security issue at all was an abuse of discretion. In *Bio-Line*, we concluded that a district court's failure to address security was an abuse of discretion as follows:

> In this case, the TRO does not mention the security requirement, and respondent was not required to post security. . . . It is impossible to determine from the record before us whether the trial court waived the security requirement or simply failed to address it. Consequently, we are unable to determine whether the trial court acted within its discretion by deciding that security was unnecessary in this action. We must conclude that the trial court abused its discretion either in failing to address the security issue or in waiving the requirement without any indication of the basis for its decision.

Id. at 322. Respondents contend that *Bio-Line* is distinguishable because (1) the case was in its early stages, whereas the parties here have already had one trial; and (2) the lack of a record necessitated reversal in *Bio-Line*, whereas the record in this case is developed.

Respondents' arguments do little to address the underlying principle that a district court must make findings and conclusions adequate to enable meaningful appellate review. *See Edina Cmty. Lutheran Church v. State*, 673 N.W.2d 517, 523 (Minn. App. 2004) (explaining necessity of findings enabling appellate review in context of temporary injunction). This principle holds true regardless of the procedural stage of a case or the amount of record evidence in existence. Here, the question is not whether a particular decision regarding security was supported by the facts or the law; the district court's silence on the issue of security precludes us from concluding that *any* decision was made, let alone whether it was or was not proper.[2] Respondents essentially urge us to decide the security issue de novo. We decline to do so.

We conclude that the district court abused its discretion by failing to address the security issue. We therefore reverse in part and remand for the district court to explicitly address the security issue.[3]

---

[2] During oral argument, respondents' counsel suggested for the first time that the district court *did* address the security issue. Issues cannot be raised for the first time at oral argument, and so we deem the argument forfeited. *See Monaghen v. Simon*, 888 N.W.2d 324, 334 n.6 (Minn. 2016) (declining to address an issue raised for the first time at oral argument). Even so, counsel could not identify when the district court addressed the issue; he instead paraphrased the court as stating its "hands were tied" given our remand instructions. The closest the transcript comes to supporting the contention is the district court's question, "How would I . . . explain myself to the court of appeals if I just dissolve this injunction and let you tear down the whole building?" The question refers to the injunction against demolition, not the ordering of *additional* injunctive relief encompassed in the phase-based approach. And the question relates in no way to the security issue.

[3] Apart from the district court's failure to address the security issue, the parties dispute whether security is required or whether it may be waived at the district court's discretion. The district court did not reach the issue and, because we reverse and remand with instructions to the district court to address the issue in the first instance, we need not decide

III. We decline to address the issue of unclean hands.

Respondents also ask us to affirm because "[t]he doctrine of unclean hands prevents this Court from lifting the injunction or requiring [appellants to] post a bond." They emphasize that appellants neglected the property, failed to act, and now "seek to use the recent fire which was a direct result of their own hostility and negligence as [a] mechanism to effectively void the entire cause of action." Under the doctrine of unclean hands, "he who seeks equity must do equity, and he who comes into equity must come with clean hands." *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 715 (Minn. 1985) (quotation omitted). Application of the doctrine is discretionary with the district court, and we review its application for an abuse of discretion. *See Brown v. Lee*, 859 N.W.2d 836, 843-44 (Minn. App. 2015), *review denied* (Minn. May 19, 2015). Here, the district court made no findings and conclusions regarding the doctrine's applicability, and so we decline to reach the issue. *See Thiele*, 425 N.W.2d at 582.

Affirmed in part, reversed in part, and remanded.

---

the question. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (indicating that courts need not address questions raised but "not passed on by the [district] court" (quotation omitted)).