This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0504

City of Long Prairie,
Respondent,

vs.

Ronald J. Schneider,
Appellant.

Filed December 13, 2021
Affirmed
Cochran, Judge

Todd County District Court
File No. 77-CV-20-603

Kenneth H. Bayliss, Joseph A. Krueger, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent)

Gregory M. Erickson, Erick G. Kaardal, Mohrman, Kaardal, & Erickson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Kirk, Judge.[*]

NONPRECEDENTIAL OPINION

COCHRAN, Judge

After appellant-homeowner refused to allow respondent-city to install a new water meter at appellant's residence as part of a city-wide upgrade, respondent filed a complaint

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

for injunctive relief and later moved for summary judgment. The district court granted the motion and ordered appellant to allow respondent to install a new water meter at his residence. In this appeal, appellant argues that (1) the district court erred when it concluded that city ordinances authorized replacement of the meter and (2) genuine issues of material fact regarding appellant's affirmative defense preclude summary judgment. Because the district court did not err in its interpretation of the ordinances and appellant did not properly raise his affirmative defense below, we affirm.

FACTS

The following facts are undisputed. Respondent City of Long Prairie (the city) is a municipal corporation that operates a city-wide water system. Appellant Ronald J. Schneider owns a residence in Long Prairie that is served by the city's water system.

Beginning in 2018, the city began a program of replacing all water meters in its system. The city undertook the system-wide upgrade after determining that its existing water meters and data-collection systems were outdated. According to the city, the existing water meters no longer provided a cost-efficient manner by which to gather water-usage data. The city provided new water meters at no cost to residents.

The city was able to replace all the water meters on the city's system except for Schneider's meter. Between June and October 2019, the city sent four notices to Schneider regarding replacement of the water meter at his residence. Schneider did not allow the city to enter his property to install a new water meter.

In December 2019, the city filed a complaint seeking injunctive relief to allow installation of a new water meter at Schneider's residence. The city alleged that Schneider

refused to allow the city to upgrade his water meter as part of the city's system-wide upgrade. The city further alleged that Schneider's refusal would result in the city incurring additional and unnecessary costs in gathering water-usage data from Schneider's property. The city sought an order allowing it to install a new meter at Schneider's residence on the basis that the ordinances governing the operation and maintenance of the city's water system authorized the city to replace Schneider's meter.

Representing himself, Schneider answered the city's complaint with a letter. In the letter, Schneider stated that he wanted to "opt out" of having a new meter installed. Schneider explained that he had a doctor's note "excusing any smart meters in [his] house" because of his "electrosensitivity disability." He wrote that "[t]o force me in harm's way to put this in my house would be discrimination . . . you would have a law suit [and] I would be suing for damages," and the "Americans Disability Act [sic] would definitely be involved." Schneider further asserted that his existing meter "works great" and that he would "pay extra" to keep using it. Schneider's answer also included a note from a doctor. The note indicated that the doctor worked at an urgent-care center. The note, in its entirety, reads as follows: "Please do not install a smart water meter or electric smart meter as Ron is diagnosed with a Electrosensitivity Disorder at this time. He is concerned about his health and safety as a result of these installations."

In May 2020, the city served Schneider with requests for admissions that asked Schneider to admit to a series of factual allegations which were very similar to those included in the complaint. The requests for admissions also asked Schneider to admit that "[e]lectro-sensitivity [d]isorder" is not a disability under the Americans with Disabilities

Act (ADA) or a medical condition recognized by any Minnesota court. Schneider did not respond to any of the requests for admissions within the time required by the rules of civil procedure or at any other time. *See* Minn. R. Civ. P. 36.01.

The city moved for summary judgment. It argued that, because Schneider did not respond to the requests for admissions, he admitted by default each matter for which the city sought an admission under rule 36.01. Given these admissions, the city argued that no issues of material fact existed and that the city was entitled to judgment as a matter of law because it had the right and obligation to replace Schneider's meter under the ordinances governing the city water system.

At the initial hearing on the city's motion, Schneider requested a continuance. He indicated that he had recently retained an attorney but the attorney was not available on the date of the hearing. The district court granted the request.

About a week later, the district court held another hearing on the city's summary-judgment motion. Schneider's attorney argued that the district court should deny the city's motion for summary judgment. He disagreed with the city's interpretation of its ordinances. The attorney cited the language in the city ordinances that requires the city to install new water meters "if necessary" and argued that because Schneider's meter still works, an issue of material fact exists as to whether replacing it is "necessary." In response, the city argued that replacing Schneider's meter is necessary because Schneider's old meter is incompatible with the city's new automated water-usage monitoring and billing system. The city emphasized that city personnel can only read Schneider's existing meter manually with a handheld device in close proximity to the meter.

The parties subsequently submitted letter briefs to the district court addressing whether city ordinances allow the city to replace a water meter that does not connect to the new system but is otherwise in working order. The city argued that the ordinances give it sole authority to operate and maintain its water system, which includes replacing Schneider's meter. It reiterated that effective operation of its new system requires using new water meters. Schneider distinguished between the city's authority to install and maintain water meters and the right to remove otherwise functioning ones. In his letter brief, Schneider did not raise a defense to the city's summary-judgment motion based on the ADA or even discuss the ADA. Nor did he raise such a defense at any other point during the summary-judgment proceedings.

In a written order, the district court granted the city's motion for summary judgment and injunctive relief and enjoined Schneider from interfering with installation of a new meter at his residence. The district court concluded there were no disputed issues of material fact, basing its decision on its legal interpretation of the city's authority under the relevant ordinances. The district court determined that the ordinances "allow [the city] to upgrade the water meters to a newer, more efficient model" and do "not require that the old system be inoperable before being replaced." In closing, the district court acknowledged Schneider's discomfort and noted that it was "not unsympathetic to [Schneider's] medical plight."

Schneider appeals.

DECISION

Schneider argues that the district court erred by granting summary judgment to the city. A district court must grant summary judgment if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. Summary judgment is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019) (quotation omitted). We review a grant of summary judgment de novo, viewing the evidence in the light most favorable to the party against whom summary judgment was granted. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

Schneider raises two issues on appeal, each of which he contends requires reversal of the district court's grant of summary judgment to the city. First, he argues that the district court's decision is based on an erroneous interpretation of the city ordinances governing water-meter installation and maintenance. Second, he argues that, even if the district court properly interpreted the city ordinances, issues of material fact related to Schneider's affirmative ADA defense preclude summary judgment. We address each issue in turn.

I. The district court did not err by interpreting the relevant ordinances as authorizing the city to replace Schneider's meter.

The parties agree that the question of whether the city has authority to replace Schneider's water meter requires interpreting the city's ordinances. Interpretation of an ordinance is a question of law that we review de novo. *Meleyco P'ship No. 2 v. City of W. St. Paul*, 874 N.W.2d 440, 443 (Minn. App. 2016).

To interpret city ordinances, we apply the rules of statutory construction. *Chanhassen Ests. Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984). Our goal is to determine and execute the intent of the city council. *See Hayden v. City of Minneapolis*, 937 N.W.2d 790, 795-96 (Minn. App. 2020), *rev. denied* (Minn. Apr. 14, 2020) (providing that "[t]he court's duty is to interpret the policy that the [l]egislature has already determined in the statutory language at issue" (quotation omitted)). As a first step, we look to whether an ordinance is clear or ambiguous, construing its words and phrases according to the rules of grammar and to their common and approved usage. *See id.* at 795; Minn. Stat. § 645.08(1) (2020); *see also* Long Prairie, Minn., City Code (LPCC) § 1.301(1) (2020) (specifying that words and phrases used in the city ordinances are to be construed according to rules of grammar and according to their common and approved usage). An ordinance is only ambiguous when it is subject to more than one reasonable interpretation. *See Hayden*, 937 N.W.2d at 795. In determining whether an ordinance is clear or ambiguous, we read the ordinance as a whole and "interpret each section in light of the surrounding sections to avoid conflicting interpretations." *See Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (applying this principle to interpret a Minnesota statute). We also interpret ordinances "to avoid absurd results and unjust consequences." *See id.* at 278. If an ordinance is unambiguous, we apply the plain and ordinary meaning of its terms. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

With these principles in mind, we consider the relevant city-ordinance sections relating to the water system. They provide:

> 6.101. City Water System. The City of Long Prairie shall construct, operate, and *maintain a water system* for the benefit of the residents of the city.
>
> . . . .
>
> 6.123. Installation of Meters. The city shall install and maintain all meters subject to the following conditions: . . . [T]he city shall maintain the meter and*, if necessary,* install a new meter at no cost to the consumer.

LPCC §§ 6.101, 6.123 (2020) (emphasis added). The ordinances do not define the key terms used in these two sections.

The district court concluded that these sections, read together, unambiguously allow the city to upgrade its water meters to a more efficient model. Starting with section 6.101, the district court concluded that the term "maintain" as used in that section does "not require that the old system be inoperable before being replaced, or that a new system be exactly the same as the old." The district court further concluded that the city's duty to "maintain" its water system can include improvements to make the system more efficient. The district court next applied the language in section 6.123 to conclude that because the city had implemented an entirely new system, it was "readily *necessary* for [Schneider's] meter to be exchanged to fit the new system used in the rest of the city." Finally, the district court concluded that construing these provisions too narrowly would produce "unreasonable outcomes" like preventing the city from upgrading to new technology

except when meters no longer function at all, a result "antithetical to the intentions of the ordinance authors."

On appeal, Schneider does not dispute the city's authority to operate and maintain the water system under section 6.101. Instead, he argues that because his old meter is fully functional, a new meter is not strictly "necessary" under the plain meaning of section 6.123. He argues that section 6.123 should be narrowly construed to allow the city to install a new meter only when an existing meter is completely nonfunctional and, consequently, the district court erred when it granted summary judgment to the city. We are not persuaded.

Reading section 6.123 in light of its surrounding sections and the city ordinances as a whole, we conclude that the city has broad authority to replace its water meters. Specifically, section 6.101 gives the city its mandate to "operate and maintain" the water system. The word "maintain" means "[t]o keep in a condition of good repair or efficiency." *The American Heritage Dictionary of the English Language* 1058 (5th ed. 2018); *see Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 173 (Minn. 2021) (stating that when interpreting a statute containing undefined terms, courts "may refer to dictionary definitions to discern its plain meaning"). Installing new water meters as part of a city-wide system upgrade to implement automated data collection and billing is consistent with keeping the system efficient and in good repair. Section 6.123 goes on to require the city to "install and maintain" all meters and "if necessary" install new meters. LPCC § 6.123. The word "necessary" means "[n]eeded or required." *American Heritage*, *supra*, at 1177. In this context, installing new meters is necessary because it is needed or required for the efficient functioning of the city's water system. Reading the sections together, the broader

definition of "maintain" in section 6.101 supports a broader definition of "maintain" in section 6.123 and unambiguously authorizes the city to determine whether replacing a water meter is "necessary" for purposes of maintaining the system as a whole.

This interpretation is reinforced by another section of the city's utility ordinances—section 6.201—which defines certain terms used in the ordinances governing the city's public sewer system. Statutory definitions of words used elsewhere in the same chapter can be "authoritative evidence" of intent and meaning. *All Parks All. for Change v. Uniprop Manufactured Hous. Cmtys. Income Fund*, 732 N.W.2d 189, 194 (Minn. 2007). Section 6.201(24) defines "[o]peration and [m]aintenance" as "[a]ctivities required to provide for the dependable and economical functioning of the treatment works." LPCC § 6.201(24) (2020). The definition further provides that "operation and maintenance" includes "replacement." *Id.* This definition of "operation and maintenance" supports interpreting the city's authority to "operate" and "maintain" its water system under sections 6.101 and 6.123 as including replacement of existing water meters when necessary to improve the economical functioning of the city's water system.

Finally, the practical outcome of reading the city's water ordinances too narrowly makes the city's authority clear. Courts presume that drafters do not "intend a result that is absurd, impossible of execution, or unreasonable" and "favor the public interest as against any private interest." Minn. Stat. § 645.17(1), (5) (2020). As the district court concluded, it would be unreasonable to interpret the water ordinances to preclude the city from upgrading its system and to only allow the city to replace a water meter when it breaks down completely as urged by Schneider. We agree that the drafters of the city ordinances

cannot have intended such an unreasonable result. We therefore conclude that the district court did not err in interpreting the city ordinances to give the city the authority to replace Schneider's water meter.

II. Schneider did not properly raise an affirmative ADA defense below.

Schneider also argues that we should reverse the district court's grant of summary judgment because he has an affirmative defense based on the ADA to the city's claim for injunctive relief and a genuine issue of material fact exists regarding that defense. The city counters that Schneider's argument is not properly before this court because Schneider failed to raise this affirmative defense in response to the city's motion for summary judgment. We agree with the city.

We generally consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). A party challenging a district court's grant of summary judgment cannot argue issues on appeal that were not raised *in opposition* to the summary-judgment motion before the district court. *Morton v. Bd. of Comm'rs*, 223 N.W.2d 764, 771 (Minn. 1974); *Woody v. Krueger*, 374 N.W.2d 822, 824 (Minn. App. 1985).

A careful review of the record shows that Schneider did not raise an ADA defense in opposition to the city's motion for summary judgment. On appeal, Schneider relies on the following documents included in the summary-judgment record to contend that he asserted an affirmative defense based on the ADA: his answer to the city's complaint, the two-sentence note from his urgent-care doctor, and the city's requests for admissions.

Schneider's reliance on these documents is misplaced because Schneider did not argue during the summary-judgment proceedings that these documents supported a defense based on the ADA. And Schneider did not actually file these documents in opposition to the city's motion for summary judgment. Rather, the city filed these documents *in support* of its motion for summary judgment as exhibits to an affidavit from its attorney. The only document filed by Schneider in response to the city's motion for summary judgement was a letter brief, which contained no reference to the ADA or to his electrosensitivity diagnosis. And at no point during the summary-judgment hearings did Schneider orally raise a defense based on the ADA. In sum, Schneider did not raise an ADA defense during the summary-judgment proceedings, either orally or in writing.

Nor did the district court address a defense based on the ADA in its order. The district court did acknowledge and express sympathy for Schneider's discomfort and "medical plight." But that thoughtful acknowledgment does not constitute consideration of a legal defense based on the ADA, as evidenced by the lack of any legal analysis or mention of the ADA by the district court in its order. Because Schneider did not raise an ADA defense during the summary-judgment proceedings and the district court did not address the question, the issue is not properly raised on appeal.

Schneider next contends that we should consider whether there exists a genuine issue of material fact regarding his ADA defense even if we conclude the defense was not raised before the district court on summary judgment. He contends that the issue is properly before us because it fits into a "well-established" exception to the general rule against considering issues raised for the first time on appeal. He notes that an appellate

court may choose to consider an issue that was not raised or decided by the district court when the issue is "plainly decisive of the entire controversy on its merits." *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997) (quotation omitted). But the issue that he raises on appeal is *not* plainly decisive of the entire controversy because even if we were to conclude that there was a genuine issue of material fact as to his defense, that conclusion would not resolve the entire controversy on the merits. Instead, it would result in a remand to the district court for a trial.

Finally, even assuming we were to address the issue, we would not reach the result that Schneider seeks. Instead, we would conclude that Schneider did not present sufficient evidence to preclude granting summary judgment to the city. At the summary-judgment phase of a proceeding, the nonmoving party has the burden of alleging specific facts to support an affirmative defense. *Kessel v. Kessel*, 370 N.W.2d 889, 895 (Minn. App. 1985). To establish a genuine issue of material fact, the nonmoving party cannot rely on "mere averments." *Hagen*, 963 N.W.2d at 172 (quotation omitted). And no genuine issue of material fact exists when the nonmoving party presents evidence that creates only a "metaphysical doubt" about a fact issue. *McBee v. Team Indus., Inc.*, 925 N.W.2d 222, 230 (Minn. 2019) (quotation omitted). Rather, the nonmoving party must present evidence that is "sufficiently probative" of an essential element of a claim to allow reasonable persons to reach different conclusions about facts in dispute. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008) (quotation omitted).

As the nonmoving party, Schneider had the burden of presenting evidence sufficient to create a genuine issue of material fact to support the elements of his ADA defense. In

his brief on appeal, Schneider framed his ADA defense as a failure-to-accommodate defense—namely, that the city refused to accommodate Schneider's asserted electrosensitivity condition by allowing him to continue using his existing water meter. Schneider argues that the doctor's note he included with his answer met his evidentiary burden. We are not persuaded.

Title II of the ADA protects qualified individuals with a disability from discrimination by a local government or exclusion from its services, programs, or activities. 42 U.S.C. § 12132 (2018). The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of such individual." *Id.* § 12102(1)(A) (2018).[1] Federal regulations implementing Title II further specify that a public entity must "make *reasonable modifications* in policies, practices, or procedures when the modifications *are necessary to avoid discrimination on the basis of disability*, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i) (2021) (emphasis added). "The failure to provide a reasonable accommodation can constitute discrimination." *Selene v. Legislature of Idaho*, 514 F. Supp. 3d 1243, 1256 (D. Idaho 2021) (quotation omitted). Thus, to raise a failure-to-accommodate defense under Title II of the ADA, Schneider must allege plausible facts indicating that (1) he is a qualified individual with a disability, (2) the city—a public

[1] The ADA also defines "disability" as "a record of such impairment" or "being regarded as having such an impairment." 42 U.S.C. § 12102(1)(B)-(C) (2018). These alternative definitions are not at issue here.

entity—discriminated against him by failing to make a reasonable accommodation regarding his water meter, and (3) such discrimination was based on his disability. *See Folkerts v. City of Waverly*, 707 F.3d 975, 983 (8th Cir. 2013) (describing the elements of a prima facie Title II violation).

The only record evidence relied on by Schneider to support his failure-to-accommodate defense is a two-sentence note from an urgent-care doctor.[2] The note states only that Schneider "is diagnosed with a Electrosensitivity Disorder at this time" and that "[h]e is concerned about his health and safety as a result of these installations."

The doctor's note is insufficient to create a genuine issue of material fact as to the essential elements of Schneider's failure-to-accommodate defense under the ADA. First, the note fails to demonstrate that Schneider has a "disability" within the meaning of the ADA because the note provides no information to demonstrate that Schneider's condition "substantially limits one or more major life activities of such individual." 42 U.S.C. § 12102(1)(A). And, even if the doctor's note were sufficient to demonstrate that Schneider has a disability, the note fails to provide evidence that Schneider has a need for an accommodation by the city. The doctor's note cites only Schneider's *own general concern* about the potential health effects of an electronic meter, stating that "[h]e is concerned about his health and safety as a result of these installations." Schneider's doctor

[2] In his appeal brief, Schneider also cites to a number of websites and articles discussing electronic or electromagnetic hypersensitivity. These materials are not part of the summary-judgment record. Consequently, we do not consider them. *See Thiele*, 425 N.W.2d at 582-83 ("An appellate court may not . . . consider matters not produced and received in evidence below.").

does *not* offer a medical opinion that installing an electronic meter would have any adverse effect on Schneider's health. Because Schneider provided no evidence to demonstrate that he has a "disability" within the meaning of the ADA or that any accommodation by the city is necessary as a result of his condition, Schneider did not present sufficient evidence to create a genuine issue of material fact to preclude summary judgment based on his ADA defense.

In sum, we affirm the district court's grant of summary judgment and injunctive relief to the city. We conclude that the district court did not err in determining that the city has the authority to replace Schneider's water meter, and Schneider forfeited any affirmative defense under the ADA by failing to raise it during summary-judgment proceedings before the district court. Even if he had properly raised such a defense, Schneider failed to meet his burden to present evidence sufficient to preclude granting summary judgment to the city.

Affirmed.