STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1637

14 Cherrywood, LLC,
Appellant,

vs.

City of North Oaks,
Respondent.

Filed June 26, 2023
Affirmed
Ross, Judge

Ramsey County District Court
File No. 62-CV-22-1553

Jack Y. Perry, Brayanna J. Bergstrom, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

James J. Thomson, Michelle E. Weinberg, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

SYLLABUS

An alternative writ of mandamus cannot form the basis for awarding mandamus damages under Minnesota Statutes section 586.09 (2022).

OPINION

ROSS, Judge

14 Cherrywood LLC applied to the City of North Oaks for a conditional use permit to construct a nearly 45-foot-tall home and two garages totaling about 2,000 square feet.

The city failed within 60 days to approve the application, deny the application, or notify Cherrywood in writing of its intent to extend the application-consideration period. Cherrywood petitioned the district court seeking an alternative writ of mandamus for the court to order the city to grant Cherrywood's application and award mandamus damages. Cherrywood based the petition on its position that its application had become automatically approved under Minnesota Statutes section 15.99, subdivision 2(a) (2022), by virtue of the city's failure to act on it within the 60-day statutory period. The district court issued an alternative writ, directing the city to show cause. After filing its answer, the city approved Cherrywood's application. The district court therefore dismissed Cherrywood's petition as moot. Cherrywood argues on appeal that the district court erred by failing to award mandamus damages despite having granted Cherrywood's petition for an alternative writ and that its damages claim was not rendered moot by the city's decision to approve Cherrywood's application. Because we hold that granting a petition for an alternative writ of mandamus does not constitute being "given judgment" under Minnesota Statutes section 586.09, and because the district court issued no other judgment in Cherrywood's favor and Cherrywood was not otherwise entitled to receive one after its petition was rendered moot, Cherrywood is not entitled to mandamus damages. We therefore affirm.

FACTS

Appellant 14 Cherrywood LLC applied to respondent City of North Oaks on December 21, 2021, for a conditional use permit (CUP) to construct a home higher than 35 feet and two garages spanning more than 1,500 total square feet. City staff read the application on January 4, 2022, noted concerns about the proposed construction, and

internally recommended that the application-review period be extended to 120 days and that the public hearing on the application be continued. But no one from the city timely informed Cherrywood in writing that the city intended to extend the application-review period. The city administrator wrote to Cherrywood's owner on February 28, stating that he had "inadvertently failed to notify [him] in writing by [the date ending the 60-day period for the city to act on the application as set forth in Minnesota Statutes section 15.99, subdivision 3(f) (2022)] that the City was extending the initial 60-day review period." The administrator purported to "advise" Cherrywood, "[T]he City is extending the period to act on your application until April 20, 2022."

Cherrywood's attorney responded on March 9, demanding that the city "ratify [the] February 20, 2022 'automatic' approval of Cherrywood's CUP application" based on section 15.99, subdivision 2(a). The letter threatened a mandamus action to compel the "City's 'automatic' approval." The city received a building-permit application from Cherrywood's contractor on March 15, but the city deferred any action on it. Cherrywood demanded again on March 16 that the city ratify, in writing, the approval of its CUP application. The city informed Cherrywood on March 24 that the planning commission had recommended approving only the portion of the application relating to the garages' excess area but not the home's excess height unless Cherrywood relocated the planned home. Cherrywood immediately petitioned the district court for an alternative writ of mandamus, seeking an order requiring the city to approve Cherrywood's CUP application, awarding mandamus damages for the city's delay in approving the application, and providing any other appropriate relief.

The district court issued an alternative writ of mandamus on March 25, ordering the city to either explain why it had not approved Cherrywood's CUP application or file an answer and proceed "in the same manner as a civil action" as directed by Minnesota Statutes section 586.08 (2022). The city filed an answer on April 6, contesting Cherrywood's mandamus petition. But the city council then approved Cherrywood's application without qualification, and the city amended its answer to assert that the mandamus petition was therefore moot. The city also issued the building permit.

Cherrywood moved for partial summary judgment to recover damages under the mandamus statute based on the city's delay in approving the CUP application. The city filed a cross-motion for summary judgment. It maintained that, because it had approved Cherrywood's application and issued a building permit, there was no act that the court could compel it to undertake. This, argued the city, rendered Cherrywood's mandamus petition moot, including any claim for damages.

The district court granted summary judgment favoring the city and dismissed the mandamus action. The district court concluded that, because the city could not be compelled "to do what it had a duty to do and has now done," the court could not issue a peremptory writ. And it decided that it therefore could not issue a judgment in favor of Cherrywood or award mandamus damages. Cherrywood appeals the district court's decision not to award mandamus damages.

ISSUE

Did the district court erroneously refuse to consider Cherrywood's claim for mandamus damages?

ANALYSIS

Cherrywood contends that the district court erroneously held that Cherrywood is not entitled to a mandamus judgment, damages, and costs because it is not eligible for a peremptory writ of mandamus. Cherrywood also appears to argue that the fact that its claim for a peremptory writ of mandamus was rendered moot by the city's approval of Cherrywood's application does not consequently render moot its ability to recover damages and that it should have been allowed the opportunity to receive a judgment for damages caused by the city's delay in approving the application.

We review this case in the context of a premise that is arguably questionable but not disputed by the parties. The parties presume that a writ of mandamus compelling a city to approve a property owner's land-use application is the proper avenue to respond to a city's failure to act on the application within the statutory period requiring action even when the city has taken no official action contrary to the automatically approved application. The parties did not convincingly explain why mandamus is the logical avenue to address the city's failure to timely act on Cherrywood's CUP application. "Mandamus is an extraordinary legal remedy." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (quotation omitted); *see also Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995) (requiring petitioners to demonstrate that they possess no other adequate legal remedy before mandamus can issue). By comparison, in declaratory judgment actions, "[c]ourts of record within their respective jurisdictions . . . have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01 (2022).

Although we will resolve this dispute based on the parties' presumption and arguments, we pause to highlight the latent, presently uncontested issue appearing at the intersection of the automatic-approval statute and the mandamus statute. Minnesota law at once imposes a deadline for agency action on a written request related to zoning and establishes the consequence for the agency's failure to meet the deadline. The deadline is plain: every agency, which includes a city, "must approve or deny [the written request] within 60 days." Minn. Stat. § 15.99, subds. 1(b), 2(a) (2022). The consequence likewise is plain: "Failure of an agency to deny a request within 60 days is approval of the request." *Id.*, subd. 2(a). This relationship between the statutory deadline and the consequence for failing to meet it have resulted in the accurate colloquial label—automatic-approval statute.

Minnesota law also authorizes the district court to issue a writ of mandamus "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." Minn. Stat. § 586.01 (2022). Once a party has achieved automatic approval under section 15.99, it need not seek any further approval from the governmental entity that originally retained jurisdiction over the application because approval under section 15.99 strips the entity of jurisdiction and the ability to act on the application. *Breza v. City of Minnetrista*, 706 N.W.2d 512, 519 (Minn. App. 2005), *aff'd*, 725 N.W.2d 106 (Minn. 2006). Applying the plain language of these statutes, it is not apparent why a district court should issue a writ of mandamus only to compel a city to approve a land-use request that the city failed to timely decide and that, consequently, is approved already by operation of law (unless the city has engaged in some official action contrary to the effect of the automatically approved request). Cherrywood's petition for a

writ of mandamus highlights the seeming contradiction between the binding legal effect of the automatic-approval statute and Cherrywood's effort to obtain an order requiring the city's approval. The petition urged the district court to issue an order "grant[ing] Cherrywood's December 21, 2021 Application" after it asserted that "Cherrywood's December 21, 2021 Application was deemed approved upon expiration of the 60-day deadline."

Cherrywood's mandamus petition and district court pleadings did not attempt to explain why the district court should compel the city to approve an application that Cherrywood knew had already been approved by law. Although the city had taken no adverse action on Cherrywood's building-permit application that Cherrywood based on its automatically approved CUP, Cherrywood's petition nowhere mentioned the city's obligation to address the building-permit application as a duty it sought to enforce through the mandamus action. It is true that we once affirmed the district court's decision to issue a writ of mandamus after the local government had failed to timely act and had apparently engaged in no official action that needed to be restrained to avoid interfering with the automatically approved application. In *Kramer v. Otter Tail County*, we affirmed a writ compelling a county to approve a preliminary plat for a new subdivision after we concluded that, because the county failed in its duty "to approve or deny respondents' [subdivision plat] application within 60 days," the "respondents' application was approved by operation of law" based on the automatic-approval statute. 647 N.W.2d 23, 26 (Minn. App. 2002). We did so by reasoning that "[t]he county's refusal to approve the plat was therefore a failure to perform an official duty clearly imposed by law." *Id.* But we too did not attempt

to explain the merit of compelling a local government to approve an application that had already been approved by operation of law although the county had apparently engaged in no official action that was interfering with the approved application. *See id.* We have found no explanation in any precedential Minnesota case, and our other cases that involve this issue are easily distinguished. *See, e.g.*, *Am. Tower, L.P. v. City of Grant*, 621 N.W.2d 37, 39 (Minn. App. 2000) (affirming mandamus after the city had not only failed to act on the applicant's request but also took additional official action "and denied the application"), *aff'd as modified*, 636 N.W.2d 309 (Minn. 2001); *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278 (Minn. App. 2000) (reversing district court's dismissal of mandamus petition after city passed resolution denying special use permit following automatic approval of permit application), *rev. denied* (Minn. July 25, 2000), *overruled by Johnson v. Cook County*, 786 N.W.2d 291 (Minn. 2010). In any event, the parties' presumption on appeal as to the suitability of a mandamus action here leaves the latent issue off our table.[1]

We turn to the limited question raised and the arguments presented. We must decide only whether the district court erred by declining to award Cherrywood a peremptory writ of mandamus and damages when it granted summary judgment in the city's favor. We

[1] The record reveals that the city did unsuccessfully argue to the district court that mandamus is not an appropriate remedy as a matter of law. It argued specifically that, because Cherrywood's mandamus action urges the district court to order the city to approve the CUP application after the deadline foreclosed the city from acting on the application, "there is no longer any official duty for the city to act on the CUP application and therefore no act for the court to compel the city to take." But the city has not presented the argument to us on appeal, and we decline to consider the issue as a potential basis to affirm given the lack of appellate briefing on it.

confidently conclude that the district court did not err because Cherrywood did not receive a judgment in its favor and the district court did not otherwise improperly preclude Cherrywood from seeking damages.

I

A district court must grant a motion for summary judgment "if the movant shows that 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. We review de novo the district court's legal conclusions on summary judgment and, in doing so, we consider the evidence in the light most favorable to the party against whom the motion was granted. *Comm. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). Our de novo analysis begins and ends with the meaning and application of Minnesota Statutes section 586.09.

That statute is unambiguous: "A plaintiff who is given judgment, shall recover the damage sustained, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay." Minn. Stat. § 586.09. We will apply a statute's plain meaning when it is clear and unambiguous on its face. Minn. Stat. § 645.16 (2022); *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A plain reading of section 586.09 informs us that Cherrywood is not entitled to the damages it seeks. The statute establishes that a successful plaintiff will receive a peremptory writ, damages, and costs and disbursements. But it requires that the plaintiff must first obtain a judgment.

Cherrywood did not obtain the prerequisite judgment. The district court denied Cherrywood's motion for summary judgment on its mandamus petition, and Cherrywood does not challenge that decision on appeal. Nor could it; by the time of the district court's

decision, the city had already officially ratified the automatically approved CUP application and issued Cherrywood's requested building permit to begin construction. Cherrywood's mandamus petition had asked the district court to order the city to ratify the automatically approved CUP application and award damages as a result. "Generally, an issue may be dismissed as moot if an event occurs that resolves the issue or renders it impossible to grant effective relief." *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *rev. denied* (Minn. Apr. 4, 2005). No controversy remained, and Cherrywood received no judgment. Because it received no judgment, it could not be awarded damages.

We are not persuaded otherwise by Cherrywood's suggestion that, by granting Cherrywood's petition for an alternative writ of mandamus, the district court satisfied the judgment requirement of section 586.09. Contrary to Cherrywood's contention that there is no difference between an alternative and a peremptory writ of mandamus, receiving an alternative writ—unlike receiving a peremptory writ—is not being "given judgment." A district court may issue either an alternative or peremptory writ of mandamus:

> The alternative writ shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause before the court out of which the writ issued . . . why the defendant has not done so.

Minn. Stat. § 586.03 (2022). It is true that an alternative writ might eventually lead to a peremptory writ if a defendant does nothing in response. Minn. Stat. § 586.07 (2022). But an alternative writ does not finalize the action. It affords the defendant the opportunity to

explain why it should not be compelled to perform the duty it allegedly failed to perform. The defendant may show cause by filing an answer. Minn. Stat. § 586.06 (2022); *Spann v. Minneapolis City Council*, 979 N.W.2d 66, 71 n.4 (Minn. 2022) (outlining steps in a mandamus action). An alternative writ therefore functions essentially like a summons in a typical civil proceeding, allowing a defendant to respond to the mandamus petitioner's allegations. The alternative writ here is not a judgment given to Cherrywood.

We add that our understanding of the term "given judgment" supports our conclusion that an alternative writ is not a judgment. Mandamus damages have been available to successful mandamus petitioners in Minnesota since territorial times. The version of the mandamus statute enacted in 1851, which remained in effect until it was amended to its current language in 1986, contained slightly different wording: "If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained." Minn. Rev. Stat. (Terr.) ch. 83, § 15 (1851). The phrase "judgment be given" has appeared in our caselaw in various contexts but always to finally dispose of a dispute. *See, e.g.*, *Holmes v. Loughren*, 105 N.W. 558, 559 (Minn. 1906) (stating that "judgment be given for the plaintiff" if he prevails on his claim in property dispute); *Valley v. Crookston Lumber Co.*, 151 N.W. 137, 139 (Minn. 1915) (reversing judgment for plaintiff in settlement dispute, ordering that "[j]udgment should be given for defendant"); *Hoidale v. Cooley*, 174 N.W. 413, 414 (Minn. 1919) (using phrase "judgment be given in his favor" to describe what plaintiff should have asked for to resolve dispute over insurance proceeds that were solely awarded to intervenor-insurer). The same is true for the current statute's term, "given judgment." *See, e.g.*, *Shepard v. Alden*, 202 N.W. 71, 72 (Minn. 1925) (stating that a

plaintiff who successfully proves conversion is "given judgment" for the value of converted property); *Wildung v. Sec. Mortg. Co. of Am.*, 173 N.W. 429, 430 (Minn. 1919) (accepting appeal after plaintiff's attorney was "given judgment" for costs and fees). The finality required for a judgment to be "given" does not accompany an alternative writ.

Caselaw confirms our interpretation. In *Nationwide Corp. v. Northwestern National Life Insurance Co.*, the supreme court held that "under [section 586.09], damages are recoverable as a matter of right upon the issuance of a *peremptory writ* of mandamus." 87 N.W.2d 671, 686 (Minn. 1958) (emphasis added). The *Nationwide* court did not suggest that an alternative writ could support the same damages award. We recognize that the supreme court has commented that section 586.09 "permits a plaintiff who successfully petitions for a writ of mandamus also to recover the damage he sustained in procuring it" and that one might read this to broadly suggest that mandamus damages may follow a successful petition for either an alternative or peremptory writ. *City of Thief River Falls v. United Fire & Cas. Co.*, 336 N.W.2d 274, 276 (Minn. 1983). But this comment qualifies only as dicta while deciding a different issue and merely discusses mandamus actions generally. The comment therefore does not control our holding here. *See Brink v. Smith Cos. Constr.*, 703 N.W.2d 871, 877–78 (Minn. App. 2005) (observing that dictum unrelated to the dispositive issue is entitled to little weight). And the other primary cases Cherrywood cites do not address alternative writs and their relation to section 586.09 at all. *See City of Waite Park v. Minn. Off. of Admin. Hearings*, 758 N.W.2d 347, 352–53 (Minn. App. 2008) (resolving procedural question involving claim for damages made by intervenor in mandamus action); *Pigs R Us, LLC v. Compton Township*, 770 N.W.2d 212,

217 (Minn. App. 2009) (resolving questions related to the intersection of the Minnesota Tort Claims Act and mandamus). Cherrywood cites no authority contradicting our holding or rationale. An alternative writ is not a judgment and cannot form the basis for a mandamus damages award.

Cherrywood raises other statutory-interpretation arguments, none convincingly. It references the general canon of statutory construction that remedial statutes should be interpreted liberally. *See Blankholm v. Fearing*, 22 N.W.2d 853, 855 (Minn. 1946). But this canon cannot supplant the primary objective of statutory construction of remedial statutes, which is to determine the intent of the legislature based on the language used. *Id.* The general canon of liberal interpretation does not override the legislature's conditioning of mandamus damages on a judgment favoring the plaintiff.

Cherrywood compares section 586.09 to other statutes that expressly provide for the award of damages as the result of a defendant's actions. *See, e.g.*, Minn. Stat. §§ 8.31, subd. 3a (private attorney general statute), 13.08, subd. 1 (data practices), 117.031 (a), (b) (eminent domain) (2022). But the cited statutes require a party to establish liability before becoming entitled to damages. This liability-then-damages approach aligns with receiving a peremptory writ following a judgment, not embarking on additional litigation after an alternative writ.

Finally, Cherrywood argues that our holding would frustrate the purpose of the mandamus statute. That is, we should not interpret the statute in a way that would allow a defendant to escape damages after a plaintiff successfully petitions for an alternative writ of mandamus by immediately volunteering to perform the duty it allegedly failed to

perform earlier. But the legislature chose to grant landowners automatic approval of their land-use applications, not money damages, as the extreme remedy to prolonged governmental inaction. In this case, Cherrywood received that remedy in the form of the automatic approval of its CUP application with no need to engage in contested proceedings to obtain the city's consent and no need to relocate its planned buildings. We are satisfied that this substantial remedy more fittingly meets the legislature's intent in cases implicating section 15.99.

II

We interpret Cherrywood's brief as also contending that the district court erroneously concluded that Cherrywood could not continue to pursue relief in the form of damages once its underlying claim for a peremptory writ of mandamus was rendered moot by the city's actions. Cherrywood implicitly bases its contention on a theory that its desired forms of relief, a peremptory writ and damages, are themselves severable claims or arise from severable claims. We reject the theory.

A claim for mandamus damages is not severable from the underlying cause of action forming the basis of the mandamus petition. Cherrywood petitioned the district court only for a writ of mandamus, initiating an action that does not encompass any additional, independent cause of action for damages that could conceivably survive the dismissal of the principal mandamus claim. Its desired relief of mandamus damages is inseparably linked to its mandamus action. Again we look to the operative provision, which allows for a mandamus judgment entitling the petitioner to a peremptory writ followed by damages and costs: "A plaintiff who is given judgment, shall recover the damage sustained, together

with costs and disbursements, and a peremptory mandamus shall be awarded without delay." Minn. Stat. § 586.09. The damages are a mere consequence of the judgment that results in the peremptory writ. Cherrywood's arguments do not convince us to treat the request for damages as some sort of separate claim apart from the writ, allowing the former to survive the mootness of the latter. Cherrywood acknowledges in its briefing that "mandamus liability and damages cannot be separated" and cites caselaw supporting the same. *See City of Waite Park*, 758 N.W.2d at 354–55 (stating that damages are "inextricably tied to the mandamus cause of action"). We hold that the mootness of a claim for a peremptory writ of mandamus renders the related damages claim also moot. Cherrywood was therefore not entitled to a judgment for damages after its claim for mandamus relief was rendered moot by the city's actions.

DECISION

Cherrywood successfully petitioned the district court only for an alternative writ of mandamus. An alternative writ of mandamus is not a judgment and therefore cannot form the basis for a mandamus damages award under section 586.09, and Cherrywood was not otherwise entitled to receive mandamus damages after its claim for a peremptory writ of mandamus was rendered moot. The district court did not err by dismissing the mandamus petition without awarding Cherrywood any damages allegedly resulting from the city's failure to timely act on Cherrywood's CUP application.

Affirmed.