STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0702

Duluth Preservation Alliance,
Appellant,

vs.

North Creek Investors II, LLC, et al.,
Respondents,
City of Duluth,
Respondent.

Filed December 4, 2023
Appeal dismissed
Reyes, Judge

St. Louis County District Court
File No. 69DU-CV-22-2279

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Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges a judgment dismissing claims stemming from the destruction of a historic building, arguing that the district court erred by determining that it lacked

subject-matter jurisdiction over appellant's claims under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-.11 (2022). Because we conclude that an award of effective relief is no longer possible and that neither exception to the mootness doctrine applies in this case, we dismiss this appeal as moot.

FACTS

This appeal concerns a historic building that formerly stood in Duluth, Minnesota. The National Register of Historic Places listed the building as a contributing structure to the Duluth Commercial Historic District. Respondents North Creek Investors II, LLC, and Zac NC Asset Investors, LLC, (owners) own the property on which the building stood.

In May 2022, owners applied to respondent City of Duluth for a certificate of appropriateness for demolition of the building. The city referred the application to the Duluth Heritage Preservation Commission for review. The commission denied owners' application in July. A few days later, owners appealed the decision to the Duluth City Council, which reversed the commission's decision and granted owners' application for a certificate of appropriateness for demolition.

In October, appellant Duluth Preservation Alliance (DPA) filed a complaint and writ of mandamus against owners and the city in district court alleging violations of MEPA and the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2022). DPA also moved for a temporary restraining order (TRO) to preserve the building during the lawsuit, which the district court granted. The district court conditioned the TRO on DPA obtaining a security bond within one week of the TRO being granted. DPA failed to

file the required bond by the deadline, which dissolved the TRO. Owners proceeded with the demolition of the building.

Following the demolition, DPA amended its complaint, seeking declaratory relief against the city and owners under MEPA and MERA. The city moved to dismiss the complaint for lack of jurisdiction and for failure to state a claim upon which relief could be granted, and owners moved for summary judgment. The district court dismissed DPA's MEPA claims against both owners and the city. On the MERA claims, the district court dismissed the claim against the city and granted summary judgment to owners. This appeal follows.

DECISION

As a threshold matter, DPA argues that its MEPA claims against the city and owners are justiciable and not moot because effective relief is still possible, even though the building was demolished. Alternatively, DPA argues that both exceptions to the mootness doctrine apply. We are not persuaded.

Appellate courts dismiss an appeal as moot "when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). "A moot case is nonjusticiable." *Snell v. Walz*, 985 N.W.2d 277, 283 (Minn. 2023). Justiciability is a legal issue that appellate courts review de novo. *Id.*

To demonstrate that effective relief is still possible, DPA cites the definition of "mitigation" in the Environmental Quality Board (EQB) rules at Minn. R. 4410.0200, subp. 51 (2021). It contends that the broad definition of "mitigation" allows the district court to

order improvements to other sites within the Duluth Commercial Historic District to mitigate owners' demolition of the building. DPA also cites the requirement to consider "cumulative impacts" in the decision on whether to prepare an environmental impact statement (EIS) as a form of effective relief under Minn. R. 4410.1700, subp. 7(B) (2021). DPA suggests that the EQB rules permit the district court to order an evaluation of the cumulative impacts of the demolition of the building. We do not agree with any of DPA's contentions.

MEPA contains two primary types of environmental review: an environmental assessment worksheet (EAW) and an EIS. An EAW is "a brief document which is designed to set out the basic facts necessary to determine whether an [EIS] is required for a proposed action." Minn. Stat. § 116D.04, subd. 1a (c) (2022). An EIS is a detailed, analytical document that describes the proposed project, analyzes the potential environmental impacts of the project, and explores alternative options. *Id.* at subd. 2a (a).

EQB rules mandate preparation of EAWs and EISs for different types of projects. Minn. R. 4410.4300-4400 (2021). Unless a project is exempt from review, an EIS must be prepared if there is "potential for significant environmental effects resulting from any major governmental action." Minn. Stat. § 116D.04, subd. 2a (a) (2022). The decision on whether an EIS is required, and thus whether a project has the "potential for significant environmental effects" must be based on "the information gathered during the EAW process and the comments received on the EAW." Minn. R. 4410.1700, subp. 3.

The EQB rules also specify the factors that must be considered to determine if a project has "the potential for significant environmental effects," including "whether the

cumulative potential effect is significant" and "the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect." *Id.* at subp. 7 (B). In short, consideration of cumulative effects and possible mitigation measures are prospective and are weighed to decide whether an EIS must be prepared *before* a project begins.

The project in this case has already been completed; the building was demolished. Furthermore, no EAW was prepared for this project.[1] As a result, there was no occasion for the city to consider mitigation or cumulative effects in determining whether to require an EIS. And DPA provides no authority to applying those concepts to fashion relief outside of the environmental-review context. Because an effective award of relief is no longer possible, we conclude that this case is moot.

DPA argues that, even if we conclude that this case is moot, both exceptions to the mootness doctrine apply in this case. We disagree.

Mootness is a "flexible discretionary doctrine," and Minnesota courts recognize two exceptions to the doctrine. *Snell*, 985 N.W.2d at 284 (quoting *Dean*, 868 N.W.2d at 4). The first mootness exception applies when a case is "'functionally justiciable' and an important matter of 'statewide significance' that requires immediate decision." *Id.* (quoting *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984)). To determine whether a case

[1] The city contends that Minn. R. 4410.4300, subp. 31 (2021), which mandates review by an EAW for the destruction of historic places, contains an exemption from review by an EAW for projects that are reviewed by a local heritage preservation organization. Because we conclude that this case is moot, we do not decide whether Minn. R. 4410.4300, subp. 31, contains such an exemption.

has statewide significance, courts "have relied on the broad impact of leaving the legal question unresolved." *Id.* at 285.

DPA argues that the city's process for reviewing the demolition of historic buildings does not comply with MEPA requirements. DPA does not assert that other Minnesota cities use an identical review process when considering projects that require demolishing historic buildings. DPA also does not assert that the city imminently plans to reuse its demolition review process, necessitating an immediate decision. This case only presents an issue of local significance that does not necessitate an immediate decision. We therefore conclude that the first exception to the mootness doctrine does not apply.

The second exception to the mootness doctrine applies when "the harm to the plaintiff is 'capable of repetition yet evading review.'" *Snell*, 985 N.W.2d at 284 (quoting *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005)). This exception has two elements: "a reasonable expectation that a complaining party would be subjected to the same action again *and* the duration of the challenged action is too short to be fully litigated." *Id.* at 287 (quoting *Dean*, 868 N.W.2d at 5) (emphasis in original).

The duration of this case was not too short to be fully litigated. DPA petitioned for and received a TRO that would have prevented demolition while the case was pending. DPA did not comply with the TRO conditions, which caused the order to expire and allowed owners to demolish the building. This case had the potential to be fully litigated before the building's demolition, and DPA's failure to comply with the TRO conditions was the sole cause of the building's demolition before adjudication on the merits. We conclude that the second exception to the mootness doctrine does not apply.

Because we conclude that this case is moot, we do not reach the merits of DPA's arguments.

Appeal dismissed.