

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1265**

Middle-Snake-Tamarac Rivers  
Watershed District,  
Respondent,

vs.

James Stengrim,  
Appellant.

**Filed January 17, 2012  
Affirmed  
Klaphake, Judge**

Marshall County District Court  
File No. 45-CV-07-428

Gerald W. Von Korff, Keri A. Phillips, Rinke Noonan, St. Cloud, Minnesota (for respondent)

Kelly S. Hadac, Murnane Brandt, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

Appellant James Stengrim challenges the district court's order dismissing respondent Middle-Snake-Tamarac Rivers Watershed District's lawsuit against him pursuant to Minn. R. Civ. P. 41.01(b), arguing that the district court abused its discretion

by granting dismissal because respondent was attempting to avoid appellant's motion to dismiss on the merits and for attorney fees and damages.

Because the district court carefully weighed the reasons for and against dismissal and because respondent's motion to dismiss preceded appellant's anti-SLAPP<sup>1</sup> motion, we affirm.

## **FACTS**

This appeal is the latest round in a protracted dispute between the parties over the Agassiz Valley Water Management Project (the project), an attempt to reduce flooding in the watershed area. After the project was authorized in 2002, local landowners brought suit to stop the project and filed two interlocutory appeals. Finally, in 2007, respondent and several of the landowners, including appellant, participated in mediation, resulting in settlement of the litigation.

Under the settlement agreement, respondent agreed to immediately pay the landowners a total of \$1.7 million to acquire the land for the project. In return, the landowners, including appellant, would "release and forever discharge [respondent] from any and all claims, legal and equitable that were or could have been raised in the [l]itigation, including, but not limited to, challenges to the establishment of the Project and damages awarded." Respondent likewise relinquished all claims against the landowners. The agreement also provided:

---

<sup>1</sup> Minn. Stat. §§ 544.01-.05 (2010) permits a party to seek dismissal of an action that seeks to limit the party's public participation in "speech or lawful conduct" aimed at procuring favorable government action. Such dismissal motions are called anti-SLAPP motions (Strategic Lawsuits Against Public Participation).

Landowners agree that, by accepting this settlement, their challenges to the establishment of the Project are being dismissed with prejudice and that the Landowners will address no further challenges in litigation or otherwise against the establishment of the Project, which Landowners now understand will be going forward. Nothing in this Paragraph prohibits Landowners from meaningfully attending meetings or participating in Project team meetings regarding the Project and any modifications of the Project. Landowners acknowledge that the operation of the Project will be governed by an approved plan.

Finally, the parties to the settlement agreement agreed that “they will endeavor to establish a positive and collaborative relationship between the Landowners and [respondent].”

After signing the agreement, appellant and two others, apparently collaborating, submitted 21 data practices requests to respondent. Respondent alleged that the number of requests overwhelmed the ability of its office to reply to the requests. Appellant approached the Office of the Legislative Auditor and reported that respondent was improperly enlarging the drainage area, misrepresenting the project to the Department of Natural Resources, and getting money under false pretenses. He reportedly told a Minneapolis Star Tribune reporter that he was attempting to save his land from the flood-control project.

Because of these actions, respondent sued appellant, alleging violations of the settlement agreement that “have caused delay of construction and implementation of the project” and asking for return of the settlement proceeds paid to appellant. Appellant denied the allegations of the complaint and moved to dismiss the complaint, asserting that he was immune from suit because of Minn. Stat. § 554.03 (2006), the anti-SLAPP statute.

Respondent moved for partial summary judgment, asking the district court to construe the settlement agreement and to refer the parties back to mediation.

The district court denied both motions, concluding that there were issues of material fact that precluded application of the anti-SLAPP statute; the district court further concluded that summary judgment was inappropriate because appellant's actions alone were not sufficient to violate the agreement "as they are not a challenge to the establishment of the project." The district court also opined that the anti-SLAPP statute did not apply to breach of settlement agreements.

Appellant sought review in this court; we reversed and remanded the district court's order refusing to dismiss the action based on the anti-SLAPP statute. *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, No. A08-825 (Minn. App. Feb. 17, 2009), *review granted* (Minn. Apr. 29, 2009). The supreme court concluded that the anti-SLAPP statute applies to a "contractual claim for damages based on an alleged breach of a settlement agreement." *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 841 (Minn. 2010). But the supreme court further concluded that the moving party has a preliminary burden of "showing that the underlying claim materially relates to an act of the moving party that involves public participation" before the nonmoving party must show by clear and convincing evidence that the moving party's actions are not immune under the statute. *Id.* at 841. In addition, the supreme court stated that a preexisting legal relationship, such as one established by a settlement agreement, can "legitimately limit a party's public participation." *Id.* at 842. Thus, a district court can deny an anti-SLAPP motion when there are "genuine issues of material fact about the

settlement agreement's effect on the [moving party's] public participation rights." *Id.* The supreme court reversed the court of appeals, affirmed the district court's denial of appellant's anti-SLAPP motion, and remanded the matter to the district court.

Shortly after this decision was released, respondent moved under Minn. R. Civ. P. 41.01(b) for voluntary dismissal of the action and included in this motion the term that the complaint would be dismissed with prejudice as to any future claim based on a breach of the settlement agreement that occurred prior to the date of the dismissal. In response, appellant submitted a new motion for dismissal under the anti-SLAPP statute. The district court granted respondent's motion for voluntary dismissal and denied appellant's new anti-SLAPP motion. This appeal followed.

## **D E C I S I O N**

Appellant argues that the district court abused its discretion by granting respondent's motion for voluntary dismissal despite his anti-SLAPP motion. We review the district court's decision on a motion for voluntary dismissal for an abuse of discretion. *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 411 (Minn. App. 1998).

A party may voluntarily dismiss an action without order of the court if the notice of dismissal is filed before an answer is served or if the parties to the action stipulate to the dismissal. Minn. R. Civ. P. 41.01(a). Otherwise, a plaintiff may not voluntarily dismiss an action without a court order, which may include conditions that have to be met before the dismissal is granted. Minn. R. Civ. P. 41.01(b).

Because dismissal is discretionary, the district court weighs a number of diverse factors, including the extent and expense of the defendant's trial preparation, whether the

plaintiff delayed the matter or showed a lack of diligence, the sufficiency of plaintiff's explanation of the need for dismissal, and whether the defendant had moved for summary judgment or interposed a claim-ending defense. *Altimus*, 578 N.W.2d at 411. These are non-exclusive factors. *See id.* (citing *Ferguson v. Eakle*, 492 F.2d 26, 29 (3rd Cir. 1974) (relying on “emotional and psychological trauma associated with removing action to state court and uncertainty over title to land.”)). Recently, we affirmed that “voluntary dismissal that strips a defendant of a defense that would otherwise be available may be sufficiently prejudicial to justify denial [of a Rule 41.01(b) motion].” *Butts ex rel. Iverson v. Evan. Lutheran Good Samaritan Soc’y*, 802 N.W.2d 839, 842 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011); *see also Metro. Fed. Bank of Iowa v. W.R. Grace Co.*, 999 F.2d 1257, 1263 (8th Cir. 1993) (“We would consider it an abuse of discretion for a district court to find no legal prejudice, and thus grant voluntary dismissal, where the nonmoving party has demonstrated a valid statute of limitations defense to the claims sought to be dismissed.”).

In *Butts*, plaintiffs brought a personal injury action alleging physical abuse by employees of the defendant nursing home. 802 N.W.2d at 840. One action, on behalf of four victims, was initiated in Minnesota, and a second action, involving four different victims, was filed in South Dakota federal court. *Id.* Three of the four Minnesota plaintiffs died before the Minnesota action could be tried; defendants moved for summary judgment based on Minnesota's survival statute, Minn. Stat. § 573.01 (2010), which states that a personal injury action, subject to certain exceptions, dies with the individual victim. *Id.* The families of the deceased victims moved for voluntary dismissal so that

they could pursue an action in South Dakota federal court, which does not have a similar bar. *Id.* This court concluded that the district court abused its discretion by granting the plaintiffs' request for a voluntary dismissal without prejudice while denying defendants' motion for a summary judgment, because it "deprived [defendants] of an existing defense." *Id.* at 843.

The present case differs from *Butts*: in *Butts*, the defendant's motion for summary judgment preceded the plaintiff's motion for voluntary dismissal; here, respondent moved for voluntary dismissal following the supreme court's remand to the district court, filing the motion with the district court on September 9, 2010; appellant filed his second anti-SLAPP motion on September 30, 2010. Thus, no anti-SLAPP motion was pending at the time of respondent's motion because the supreme court affirmed the district court's denial of appellant's first anti-SLAPP motion. Second, in *Butts* the plaintiffs intended to bring a second suit; here, respondent agreed that the voluntary dismissal would be with prejudice as to all claims arising before the date of dismissal.

Using the factors set forth in *Altimus*, the litigation in this action has not advanced beyond the most preliminary stages; only limited discovery had been made; and the district court in its order found that "[appellant] has incurred expense in this litigation primarily voluntarily, by virtue of bringing an interlocutory appeal before the Court-ordered mediation could be complete." Second, respondent has acted diligently and has not delayed the pending action. Third, respondent explained that it wanted to dismiss with prejudice because the project was completed and it saw no reason to continue the lawsuit. Respondent initiated the lawsuit in order to clarify the settlement agreement, in

the hope that the matter would be referred back to a mediator; instead, because of appellant's interlocutory appeal, the case was delayed for two-and-one-half years, during which time the project was completed. Fourth, appellant's second anti-SLAPP motion was brought after respondent's motion for voluntary dismissal. In addition, the district court noted that

[d]ismissal of this matter under the proposed terms will further public interest by removing one of the controversies that has divided the parties [and] [d]ismissal of this matter under the proposed terms will cause no prejudice to [appellant] in the event that [respondent] brings a second suit, because the proposed terms explicitly bar [respondent] from bringing an affirmative future claim arising out of any alleged breach of the Agreement prior to the date of dismissal.

An abuse of discretion occurs when the district court bases its decision on an erroneous view of the law or when its decision is against logic and the facts in the record. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011). Based on the particular facts here, the district court did not abuse its discretion by permitting respondent to voluntarily dismiss its complaint with prejudice.

**Affirmed.**