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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1573

James Stengrim,
Appellant,

vs.

Middle-Snake-Tamarac Rivers Watershed District,
Respondent,

Doug Sorenson, et al.,
Respondents,

Loren Zutz,
Respondent,

Elden Elseth,
Defendant.

Filed June 10, 2013
Affirmed
Johnson, Chief Judge

Marshall County District Court
File No. 45-CV-09-120

Christopher K. Wachtler, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for appellant)

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Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Hooten, Judge.

U N P U B L I S H E D   O P I N I O N

JOHNSON, Chief Judge

James Stengrim brought this lawsuit to establish that the board of managers of the Middle-Snake-Tamarac Rivers Watershed District did not provide proper notice of the subjects discussed during a portion of a board meeting that was closed to the public. After a two-day trial, the district court found that the board of managers gave proper notice. We conclude that the district court's findings of fact are not clearly erroneous and, therefore, affirm.

FACTS

Three years ago, the Minnesota Supreme Court wrote, "The parties to the present litigation have a long history of conflict, both in district court and otherwise, culminating in the current action . . . ." *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 836 (Minn. 2010). In fact, the case before the supreme court three years ago was not the culmination of the parties' conflict. The conflict has continued.

The Middle-Snake-Tamarac Rivers Watershed District has been established to "conserve the natural resources of the state by land use planning, flood control, and other conservation projects," in parts of Marshall and Polk counties in northwestern Minnesota. Minn. Stat. § 103D.201, subd. 1 (2012); *Zutz v. Nelson*, 788 N.W.2d 58, 60 (Minn. 2010). The district is governed by a seven-member board of managers. *Zutz*, 788 N.W.2d at 60.

James Stengrim owns real property within the boundaries of the watershed district and takes an interest in its operations and governance.

Stengrim commenced the present action to establish that the watershed district's board of managers violated the Minnesota Open Meeting Law at one of its regular monthly meetings. Specifically, Stengrim alleged and sought to prove that, at its February 26, 2007 meeting, the board of managers failed to give proper notice of the subjects that were to be discussed during the portion of the meeting that was closed to the public. During the closed session, the board discussed a then-simmering dispute with Stengrim, among other things. Stengrim does not assert that he should have been present during the closed session or that he had any right of access to the discussion that occurred during the closed session. Rather, he seeks to hold the watershed district's managers accountable under the Open Meeting Law by obtaining an order requiring them to pay a civil penalty of $300 for an intentional violation. *See* Minn. Stat. § 13D.06, subd. 1 (2012).

The minutes of the February 26, 2007 meeting describe the disputed portion of the meeting as follows:

> Mr. Jeff Hane [the watershed district's attorney] requested that the meeting be closed pursuant to Minnesota Statutes 13D.05 (subd. 3c) to develop or consider offers or counteroffers for the purchase or sale of real or personal property in section 19 of Brandt Township; and pursuant to Minnesota Statutes 13D.05 (subd. 3b) for purposes of discussing legal theories and strategies regarding the PL-566 litigation, Agassiz Valley Water Resources Management Project settlement agreement, and conflict of interest issues.

The "Agassiz Valley Water Resources Management Project settlement agreement" is of interest to Stengrim because he was a party to that agreement. In August 2007, the watershed district commenced an action in which it alleged that Stengrim breached the settlement agreement, and that action was litigated for more than four years thereafter. *See Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, No. A08-825, 2009 WL 367286 (Minn. App. Feb. 17, 2009), *rev'd*, 784 N.W.2d 834, 842 (Minn. 2010); *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, No. A11-1265, 2012 WL 118424 (Minn. App. Jan. 17, 2012), *review denied* (Minn. Mar. 20, 2012).

In December 2008, Stengrim commenced this action against the watershed district and each member of its board of managers. Stengrim's action challenges the notice given by the board of managers before it closed the February 26, 2007 meeting to the public. Stengrim voluntarily dismissed one of the seven managers, Elden Elseth, who had voted against the adoption of the minutes quoted above. In March 2010, the district court granted the motion for summary judgment filed by another manager, Loren Zutz, who also had voted against the adoption of the minutes. In February 2011, the district court granted the motion for summary judgment filed by the watershed district.

The district court conducted a two-day bench trial in March 2012 on the claims against the five remaining managers. In June 2012, the district court issued its findings of fact, conclusions of law, and an order for judgment. In a detailed 41-page order and memorandum, the district court found that the board of managers did not violate the Open Meeting Law because the watershed district's attorney gave notice of the subjects described in the minutes of the meeting. The district court also found, in the alternative,

that if there was a violation, it was not intentional. The district court entered judgment for the five remaining district managers. Stengrim appeals from the district court's judgment in favor of the five managers.

D E C I S I O N

Stengrim argues that the district court erred by finding that respondents did not violate the Open Meeting Law and by finding that any violation was not intentional.

In a civil case tried without a jury, the district court must "find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." Minn. R. Civ. P. 52.01. This court applies a clearly erroneous standard of review to a district court's findings of fact. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). We will not reverse a district court's findings "due to mere disagreement," *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 102 (Minn. 1999), or because we might have made different findings, *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 780 (Minn. 1989). We also will defer to a district court's credibility determinations because district courts are in a better position to evaluate witnesses. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We will conclude that a district court's findings of fact are clearly erroneous only if we are "left with the definite and firm conviction that a mistake has been made." *Goldman*, 748 N.W.2d at 284 (quotation omitted).

The Open Meeting Law requires that, with limited exceptions, all meetings of the governing body of a watershed district must be open to the public. *See* Minn. Stat. § 13D.01, subd. 1 (2012). One of the statutory exceptions provides, "Meetings may be

closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege." Minn. Stat. § 13D.05, subd. 3(b) (2012). The Open Meeting Law provides further guidance concerning the notice that must be given before a public body closes a meeting to discuss matters protected by the attorney-client privilege: "Before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed." Minn. Stat. § 13D.01, subd. 3 (2012). The statement concerning the grounds for closure "must be made with particularity." *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 442 (Minn. App. 2005), *review denied* (Minn. June 14, 2005). Furthermore, the public body must provide "a particularized statement describing the 'subject to be discussed.'" *Free Press v. County of Blue Earth*, 677 N.W.2d 471, 477 (Minn. App. 2004) (quoting Minn. Stat. § 13D.01, subd. 3).

Stengrim contends that the notice given by the watershed district's board of managers during the February 26, 2007 meeting did not comply with the requirements of the Open Meeting Law. Stengrim does not contend that the notice reflected in the minutes is inadequate; rather, he contends that the notice reflected in the minutes was not actually given, at least with respect to the Agassiz Valley Water Resources Management Project settlement agreement. He asserts that the minutes are essentially an after-the-fact embellishment of a shorter, less-detailed notice that was given orally by the watershed district's attorney.

To support his contention, Stengrim relies on an audio-recording reflecting an oral statement of the watershed district's attorney. The board of managers did not record the

meeting because it does not do so as a matter of course. But one of the managers, Elseth, undertook a personal responsibility to record the meeting for Stengrim's benefit. Elseth's audio-recording reflects that the watershed district's attorney, Hane, made the following statement after the meeting had been underway for approximately four and one-half hours:

> The closed meeting now – uh – pursuant to the statute – we are going to close it now for litigation, discuss litigation strategies and theories – uh – actually before we do that we are going to close it – for the purpose of discussing offers or counteroffers for the purchase or sale of land. . . . I'll get to the language [indiscernible] – and it's with regard to Section 19 of Brandt Township, Polk County.

Elseth's audio-recording then stops. As Stengrim points out, Hane did not mention the Agassiz Valley Water Resources Management Project settlement agreement while Elseth's recorder was recording.

The district court found that, after making the statement that Elseth recorded, Hane made a further statement, which was not recorded but which provided the additional information that is reflected in the meeting minutes. The district court did not rely on Hane's testimony because he testified that he does not remember exactly what he said at that point in the meeting, which occurred five years before trial. Rather, the district court relied on circumstantial evidence in finding that Hane provided the notice reflected in the meeting minutes.

The district court noted evidence that the watershed district's board of managers typically took a break immediately before a meeting was closed to the public, which allowed non-members to leave the meeting room. The district court also noted the part of

Hane's recorded statement in which he said, "I'll get to the language." The district court reasoned, "There would have been no other logical reason for Attorney Hane to make such a statement but to later provide such language on the record." The district court inferred that a break was taken after Hane's recorded statement, that Elseth's audio-recording device was not turned back on again after the break (because it would have been inappropriate for him to record the closed portion of the meeting), and that Hane completed the required notice after the break by describing the subjects that were protected by the attorney-client privilege.

The district court also relied on the notes and comments of the board's recording secretary, Connie Kujawa, which are consistent with the minutes and inconsistent with Stengrim's contentions. Kujawa's handwritten notes indicate that a formal motion to close the meeting was made by Arlyn Nybladh and seconded by John Nelson, even though the motion and second were not captured by Elseth's audio-recording. The district court reasoned that this evidence "supports the conclusion that there was a portion of the regular meeting that was not electronically recorded." The district court also noted that Kujawa's handwritten notes refer to "13D.05," the statute that sets forth grounds for closing a public meeting, which indicates that section 13D.05 of the Open Meeting Law was mentioned aloud by Hane during the portion of the proceedings that were not recorded. In addition, the district court relied on a comment Kujawa made at the following meeting, in March 2007, when the board discussed the accuracy of the proposed minutes. At that meeting, which also was audio-recorded by Elseth, Kujawa

defended her draft of the minutes by stating, "I don't know where I would write that stuff down if it wasn't said. Because it is not something that I can just pick out of thin air."

The district court resolved the parties' dispute by finding that Hane provided notice of the closed meeting in two parts. The district court found that the first part was audio-recorded, that the second part was not audio-recorded, and that the totality of the notice was accurately summarized in the meeting minutes. The evidence discussed above supports the district court's finding that Hane provided proper notice of the subjects to be discussed during the closed portion of the meeting, as reflected in the minutes of the meeting. Stengrim's contention is essentially a challenge to the credibility of the witnesses on whom the district court relied. Stengrim argues in his brief that the respondent managers' position "is simply not credible" and "cannot be believed." Stengrim's argument ignores the abundant caselaw providing that an appellate court does not second-guess a district court's credibility determinations. *See*, *e.g.*, *Fletcher*, 589 N.W.2d at 101.

In sum, the district court did not clearly err by finding that the watershed district's attorney gave notice of the subjects to be discussed during the closed portion of the board's February 27, 2007 meeting, including a description of the Agassiz Valley Water Resources Management Project settlement agreement. The district court's findings of fact are supported by circumstantial evidence that is sufficient to allow the district court to draw the inference that the notice required by law actually was given. Accordingly, we uphold the district court's conclusion that the five respondent managers did not

violate the Open Meeting Law. In light of that conclusion, we need not consider whether any violation of the Open Meeting Law was intentional.

Affirmed.