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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1582**

First Baptist Church of St. Paul, et al.,
Appellants,

vs.

City of Saint Paul,
Respondent.

**Filed May 13, 2013
Remanded
Smith, Judge**

Ramsey County District Court
File No. 62-CV-11-8862

John G. Hoeschler, John G. Hoeschler, P.A., Eagan, Minnesota (for appellants)

Sara R. Grewing, St. Paul City Attorney, Lisa L. Veith, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

Appellants challenge a right-of-way special assessment that assesses downtown churches at the commercial rate and non-downtown churches at the residential rate. Before summary judgment, appellants moved to amend their appeal of the assessment to the district court in order to challenge the validity of the adoption of the assessment. The

district court granted summary judgment in favor of respondent and subsequently declined to rule on the motion to amend. Because consideration of the merits is premature until the district court rules on the motion to amend, we remand for a ruling on the motion.

FACTS

The City of Saint Paul uses its Right-of-Way Maintenance Assessment (ROW) to provide services such as street sweeping, tree trimming, and snow plowing. The main purpose of ROW is to distribute the costs of street maintenance among all properties that benefit, including both tax-exempt and taxable properties. ROW is calculated by multiplying a property's assessable frontage by the appropriate assessable rate. The assessment rate is based on the street class of the property, with downtown properties receiving the highest level of maintenance. Within each class, properties are further categorized by property type. Outside downtown, tax-exempt properties are assessed at the residential rate. However, tax-exempt properties in the downtown class are taxed at the commercial rate.

After the Saint Paul City Council adopted the 2011 special assessment, the downtown churches of First Baptist Church, Church of St. Mary, and Church of the Assumption, filed a combined appeal to the district court. The churches challenged the City's policy of assessing non-downtown churches at the residential rate, but downtown churches at the commercial rate. The churches asserted that such treatment violated equal protection and constituted an improper taking without due process of law.

Additionally, the churches contended that the amount of the special assessment is invalid because the assessment did not confer a special benefit to the churches.

In April 2012, both parties moved for summary judgment. On July 10, 2012, the churches moved to amend their appeal to the district court based on newly discovered evidence that the City did not properly adopt the 2011 assessment roll. Attached to the motion was an appraiser report, which discussed whether and to what extent the assessment provided a special benefit. The district court granted summary judgment in favor of the City three days later but did not address the motion to amend or the appraiser report. The churches then moved for a new trial. At an August 2012 hearing on the new trial motion, the churches also requested reconsideration. The district court refrained from denying the churches' motions but instead declined to rule on them. The district court stated that (1) the motion for reconsideration was not properly before the district court, (2) there was nothing to amend (regarding the motion to amend) because summary judgment had already been granted, and (3) because there had been no trial (regarding the motion for a new trial), it would be inappropriate to grant a new trial. This appeal by the First Baptist Church of St. Paul and the Church of St. Mary (hereinafter "the churches")¹ followed.

D E C I S I O N

The churches challenge the district court's grant of summary judgment in favor of the City. As a preliminary matter, we consider the churches' motion to amend. A party

¹ Although First Baptist Church of St. Paul, Church of St. Mary, and Church of the Assumption filed the original complaint in district court, only First Baptist Church of St. Paul and the Church of St. Mary appealed the district court's grant of summary judgment.

may amend its complaint after a responsive pleading is served only by leave of the district court or by written consent of the adverse party. Minn. R. Civ. P. 15.01. “[A]mendment of pleadings should be liberally allowed unless the adverse party would be prejudiced.” *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 332 (Minn. 2004). Generally, because we do not assume a district court erred by failing to address a motion, we treat silence on a motion as an implicit denial of the motion. *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010); *C & R Stacy, LLC v. Cnty. of Chisago*, 742 N.W.2d 447, 459 (Minn. App. 2007) (treating silence on a motion for amended findings as denial of the motion). Although we will not generally reverse the district court’s decision to permit or deny amendments to pleadings absent an abuse of discretion, there are occasions that require additional considerations. *See Johns v. Harborge I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

Specifically, in *TCF Bank & Sav. F.A. v. Marshall Truss Sys., Inc.*, on the same day that respondent moved for summary judgment, appellant moved to amend its complaint. 466 N.W.2d 49, 54 (Minn. App. 1991), *review denied* (Minn. Apr. 29, 1991), *overruled on other grounds by Lloyd F. Smith Co. v. Den-Tal-Ez, Inc.*, 491 N.W.2d 11 (Minn. 1992). The district court, although aware of the motion to amend, did not rule on that motion. *Id.* On appeal, we held that “[t]he trial court must rule on the motion before we can determine whether it is acting within its discretion. Such a failure to rule was prejudicial error necessitating remand.” *Id.*

Here, the churches moved to amend their appeal to the district court on July 10, 2012. The district court issued summary judgment in favor of the City on July 13, but it failed to address either the motion or the appraiser report in its summary judgment order. At the August 2012 hearing, the district court expressly declined to rule on the motion. When the churches asked if the district court was denying the motion to amend, the district court responded, “No, I’m not denying it; I’m saying it’s not appropriately before the [district court] because there is no complaint pending. The complaint that was brought has been dismissed, so there’s nothing to amend.” When the churches requested reconsideration, the district court said, “If you’re asking for reconsideration on the summary judgment motion, that’s not properly before the [district court]. . . . You can either appeal my decision directly to the Minnesota Court of Appeals or you can do a two-page letter request for reconsideration.”

Although the district court’s grant of summary judgment without otherwise addressing the motion to amend would generally be an implicit denial of that motion, the present instance is closer to *TCF Bank*, where the district court ignored the motion to amend. *See* 466 N.W.2d at 54. Because the district court here expressly declined to rule on the motion, and because our review of the record suggests that the proposed amendments could impact the summary judgment analysis, the district court’s explicit refusal to address that motion constitutes “prejudicial error necessitating [a] remand.” *See id.* Consequently, any consideration of whether summary judgment was proper is

premature because the district court must rule on the motion to amend before we can determine whether it was acting in its discretion.²

Remanded.

² Our remand should not be construed as an expression of opinion regarding how the motion to amend should be decided. Nor is it an expression of opinion regarding whether or how the summary judgment ruling should be altered.