STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1768

Bruce E. Bucknell, et al.,
Respondents,

vs.

County of Fillmore,
Defendant,

Sumner Township,
Appellant.

Filed July 1, 2008
Reversed and remanded
Lansing, Judge

Fillmore County District Court
File No. 23-C2-04-000695

Thomas M. Manion Jr., Manion & Wheelock, PLLP, 204 Parkway Avenue North, P.O. Box 420, Lanesboro, MN 55949 (for respondents)

Paul D. Reuvers, Jason J. Kuboushek, Iverson Reuvers, 9321 Ensign Avenue South, Bloomington, MN 55438 (for appellant)

Daniel J. Greensweig, Minnesota Association of Townships, Edgewood Professional Building, P.O. Box 267, St. Michael, MN 55376 (for amicus curiae Minnesota Association of Townships)

Scott R. Simmons, 125 Charles Avenue, St. Paul, MN 55103-2108 (for amicus curiae Association of Minnesota Counties)

Considered and decided by Lansing, Presiding Judge; Worke, Judge; and Collins, Judge.*

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

LANSING, Judge

This protracted litigation grew out of Bruce and Linda Bucknell's 2002 application for a conditional-use permit for a proposed subdivision project on land that the Bucknells own in Sumner Township in Fillmore County. The district court granted the Bucknells summary judgment on their claims against the county under Minn. Stat. § 15.99 (2006), and the county has not appealed that determination. The district court denied the Bucknells' and the township's cross-motions for summary judgment based on its conclusion that the Bucknells' attempts to amend their claims against the township operated as a dismissal and the township is, therefore, no longer a party to the action. The township appealed the district court determination, and the Bucknells filed a notice of review. Because the Bucknells' claims against the township were neither voluntarily nor involuntarily dismissed, we reverse and remand.

F A C T S

The course of this litigation thus far has been determined by procedural defaults rather than substantive resolutions. Therefore a summary of the procedures leading up to the litigation and the mechanics of the litigation is necessary to understand the current issues.

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* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

In October 2002 Bruce and Linda Bucknell applied for a conditional-use permit (CUP) from Fillmore County to create a twelve-lot subdivision on their Sumner Township property. Because the county's land-use regulations did not permit a house to be constructed within 1000 feet of a feedlot, the Bucknells, in November 2002, also applied for a zoning variance that would allow them to build within 600 feet of a neighboring feedlot. The county denied the Bucknells' variance application in December 2002, and the Bucknells withdrew their CUP application.

The Bucknells submitted a second CUP application to the county in January 2003. This second application requested a CUP for an eight-lot subdivision with no setback variance. The county planning commission voted to recommend that the county board grant the application.

Before the county board acted on the recommendation, the township, in April 2003, voted to implement an interim zoning ordinance. The interim ordinance, which was filed with the county recorder's office on April 17, 2003, provided, in part, that "no zoning permit, or building permit, shall be issued for any new residential building construction or use on parcels of land smaller than 80 acres within the township . . . ." The township extended the interim land-use ordinance three times before implementing a final ordinance in May 2005. The final ordinance provides, "[n]o subdivisions shall be allowed in the [t]ownship."

Two months after the township implemented its interim zoning ordinance, the county board voted, on June 10, 2003, to grant the Bucknells' CUP and, on June 18, 2003, the county board issued the permit subject to several conditions. One of the

conditions provided that the county board would not approve a final plat without the approval of the township board and that the township must approve all land-use permits before any homeowner could build on the property.

The Bucknells, in August 2004, sued the county and the township. The complaint's first and second counts are against the county, and the third count is against the township. The allegations against the county include a claim that the county violated Minn. Stat. § 15.99 by failing to act on the Bucknells' CUP application within sixty days and therefore the application for an eight-unit subdivision was approved as a matter of law.

The third count, against the township, is entitled "CLAIM AGAINST SUMNER TOWNSHIP DISCRIMINATORY ENFORCEMENT OF ITS INTERIM ORDINANCE AND FOR A REAL ESTATE TAKING." Under that heading the Bucknells allege that the township passed an interim ordinance in April 2003, that the Bucknells' subdivision application was the only application pending, that the interim zoning ordinance was improperly extended, that the township's obstruction of the Bucknells' subdivision constitutes an illegal taking, and that the illegal taking resulted in damages. The complaint also requests a writ of mandamus against both the county and the township, "requiring them to issue the necessary land use permits for [the Bucknells'] subdivision as originally proposed in [the Bucknells'] initial application."

In March 2005 the Bucknells moved to amend their complaint against both the county and the township. The proposed amendment to the allegations against the county refined the Bucknells' claim under Minn. Stat. § 15.99 and alleged that the conditions in

the county's CUP were unlawful. The proposed amendment to the claims against the township divided the original count three into three separate counts, one for "UNCONSTITUTIONAL TAKING," one for "IMPROPER OR ILLEGAL MORATORIUM ORDINANCE CLAIM," and one for "INADEQUATE STUDY" to support the interim zoning ordinance. Under the second of the three counts, the Bucknells alleged that the moratorium ordinance was enacted without proper procedures and also violated the open-meeting law.

The district court issued an order in August 2005 that denied the Bucknells' motion to add new claims against the township. The order permitted the Bucknells to amend, in part, their claims against the county and ordered that, because the county failed to act on the Bucknells' CUP application for an eight-lot subdivision within sixty days of the Bucknells' application, the CUP was "approved by operation of law."

In April 2006 the district court issued an order vacating that part of the August 2005 order that deemed the CUP granted by operation of law. The district court apparently recognized that the March 2005 motion was to amend the complaint, not to grant judgment. In the same order the district court stated that Bucknells' attorney could serve an amended complaint on the county and the township within ten days. No amended complaint was served, but within a month the Bucknells brought a second motion to amend the complaint. This proposed amendment included several claims against the township based on alleged legal infirmities in the first and second interim ordinance and also in the final ordinance.

In October 2006 the district court issued an order denying the second motion for an amended complaint. In that order the district court stated that the sole remaining claim was the Bucknells' claim against the county for violation of Minn. Stat. § 15.99. The district court denied the Bucknells' motion to amend their complaint against the township. The district court grounded its denial on mootness, concluding that because the interim ordinances were superseded by the final ordinance, any claims based on those ordinances would be moot.

Both the county and the township then moved for summary judgment against the Bucknells, and the Bucknells moved for summary judgment against both the county and the township. The district court, in a twenty-three page order, denied the county's motion for summary judgment against the Bucknells, but granted the Bucknells' motion for summary judgment against the county under Minn. Stat. § 15.99, thus reinstating the previously vacated summary judgment. On the Bucknells' claims against the township, the district court denied both the Bucknells' and the township's motions for summary judgment. The district court's primary basis for the denial was that the township was no longer a party to the action and thus neither the township nor the Bucknells had standing to bring a summary-judgment motion.

The memorandum stated that the township was no longer a party to the action because the Bucknells' motion for leave to amend the complaint "expressed their intent that the proposed [a]mended [c]omplaint filed with the [c]ourt would replace the original [c]omplaint." The district court further concluded that, because of the denial of the amendments, no claims remained against the township.

The Bucknells, the township, and the amici curiae point to two additional parts of the district court's memorandum that provide further reasons for the denial of the cross-motions. These reasons relate to the district court's conclusion that the claim against the interim ordinances was moot and to the district court's conclusion that it had not been established "how Sumner Township can pass a moratorium which would preclude the actual zoning authority by statute, in this case the [c]ounty, from issuing a permit which was pending before it."

The county has not appealed the district court's determination that the county failed to act on the Bucknells' CUP application and therefore, under Minn. Stat. § 15.99, the CUP was approved unconditionally as a matter of law. The remaining claims in this litigation have thus been narrowed to the issues between the Bucknells and the township. The township appeals the district court's denial of its motion for summary-judgment against the Bucknells; and the Bucknells, by notice of review, challenge the district court's denial of their motion for summary judgment against the township.

D E C I S I O N

Three issues are raised by the district court's determination that the Bucknells' and Sumner Township's cross-motions for summary judgment were not properly before the court for determination: first, the issue of the relationship between the county and the township in exercising zoning authority; second, the issue of whether the Bucknells and the township lack standing because the township is no longer a party to this action; and, third, whether the claims that the Bucknells raised in their complaint are moot because

the township's interim zoning ordinances have been replaced by the final zoning ordinance.

Under Minnesota law, counties and townships have independent zoning authority. The county derives its zoning authority from Minn. Stat. ch. 394, which governs county planning, development, and zoning. The township derives its zoning authority from Minn. Stat. ch. 462, Minnesota's Municipal Planning Act. A county and a township each has the power to write its own comprehensive plan. *See* Minn. Stat. § 394.23 (Supp. 2007) (authorizing county comprehensive plans); Minn. Stat. § 462.355, subd. 1 (2006) (authorizing township and city comprehensive plans). Each also has the authority to establish a planning commission. *See* Minn. Stat. § 394.30, subd. 1 (2006) (authorizing county planning commissions); Minn. Stat. § 462.354, subd. 1 (2006) (authorizing township and city planning commission). And each has the power to adopt its own zoning regulations. *See* Minn. Stat. § 394.24, subd. 1 (2006) (county may enact "official controls"); Minn. Stat. § 462.357, subd. 1 (2006) (township and cities may enact "official controls"); *see also* Minn. Stat. §§ 394.22, subd. 6 (2006), 462.352, subd. 15 (2006) (defining "official controls" as zoning regulations).

Because the township has zoning authority independent from the county, it may adopt and enforce its own, more restrictive regulations. Minn. Stat. § 394.33, subd. 1 (2006); *see also Altenburg v. Bd. of Supervisors of Pleasant Mound Twp.*, 615 N.W.2d 874, 880-81 (Minn. App. 2000) (applying Minn. Stat. § 394.33 and holding that township ordinance was valid although it was more restrictive than county ordinances relating to same subject matter), *review denied* (Minn. Nov. 21, 2000). In addition, interim

ordinances are expressly authorized under Minnesota's Municipal Planning Act. Minn. Stat. § 462.355, subd. 4 (2006); *see also* Minn. Stat. § 394.34 (2006) (authorizing county interim ordinances). Before enactment of this authorizing statute, the Minnesota Supreme Court recognized the inherent authority of a town to adopt a moratorium in response to a permit application. *Almquist v. Town of Marshan*, 308 Minn. 52, 63, 245 N.W.2d 819, 825 (1976). Because the county and the township have independent zoning authority, we reject the Bucknells' argument that once their application to the county was granted as a matter of law, the township had no power to act.

The second issue—the district court's primary basis for declining to address the Bucknells' and the township's cross-motions for summary judgment—is the district court's conclusion that the movants lacked standing because the Bucknells' attempts to amend their complaint operated as a dismissal of their allegations in the original complaint. The original complaint included allegations of the impropriety of the township's interim zoning ordinances, the improper extension of the interim ordinances, the allegation of inverse condemnation, and the request for a writ of mandamus against the township to issue the necessary land-use permits. We are unable to find a basis for the district court's determination that the township was dismissed from the lawsuit.

It is undisputed that the district court denied both of the Bucknells' motions to amend its complaint to modify its claims against the township. It is also undisputed that, except for the proposed complaints included in the motion, no complaint other than the original complaint was ever served on any of the parties. The Bucknells did not voluntarily dismiss their original claims against the township, and we find no order for an

involuntary dismissal of the complaint or these specific claims. Under Minn. R. Civ. P. 15.01, a court may deny a party leave to amend a complaint if it determines that justice does not require the amendment. But when a motion to amend is denied, the original complaint remains in effect. The rule does not authorize a court, when denying leave to amend a complaint, to dismiss unilaterally the claims in the original complaint. The district court cannot sua sponte and retrospectively determine that claims in the original complaint were dismissed and conclude that "[t]his is an issue for another day." The township is a party in this action and the Bucknells' and the township's cross-motions for summary judgment must be addressed.

Third and finally, the district court apparently believes that the claims that the Bucknells raised against the township in their initial complaint are moot. The district court observed that, when the complaint was filed, the township had enacted its interim zoning ordinances but had not yet enacted its final zoning ordinance. The district court therefore concluded that, because the interim zoning ordinances had been replaced by the final zoning ordinance, the Bucknells' challenge to the interim zoning ordinances is moot.

If the district court had a basis for concluding that the claims against the interim zoning ordinances were moot, it would have had no basis for denying the Bucknells leave to amend their complaint to include challenges to the ordinance that became final during the litigation. *See* Minn. R. Civ. P. 15.01 (noting that leave to amend "shall be freely given when justice so requires"). The district court suggested in its order memorandum that the township would be prejudiced if the court allowed the Bucknells to challenge the

final ordinance. But the township has been on notice since the filing of the original complaint that the Bucknells seek a legal declaration that they may proceed on their subdivision and that such a declaration would necessarily implicate the township's ordinances. Furthermore, the township—through its appeal, in its brief, and at oral argument—similarly seeks a conclusive resolution of whether its final ordinance lawfully prohibits the Bucknells' proposed subdivision.

We therefore reverse and remand for consideration of the Bucknells' claims against the township. We recognize that in Minnesota, these types of issues are generally resolved through actions for a declaratory judgment in which a party is permitted to raise all of its arguments on whether an ordinance lawfully prohibits a desired land use. *See Wheeler v. City of Wayzata*, 533 N.W.2d 405, 405 (Minn. 1995) (reviewing case in which plaintiffs sought declaration of invalidity of city's zoning ordinances and permanent injunction against their enforcement or, alternatively, for mandamus to compel proceedings in eminent domain); *see also Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006) (stating that "the proper procedure for reviewing a city's decision in a zoning matter generally will be a declaratory judgment action, possibly including a request for injunctive relief").

We also recognize, however, that courts have exercised flexibility in not requiring a litigant to expressly "restate its claims in a declaratory judgment action," in order to address the substance of the controversy. *See Mendota Golf, LLP*, 708 N.W.2d at 179; *see also Scherger v. N. Natural Gas Co.*, 575 N.W.2d 578, 579 n.1 (Minn. 1998) (stating that despite request for mandamus, "[t]he essence of this action was [a] request for a

judicial declaration as to the scope and validity," and the court "need not correct the procedure" to address issue as declaratory judgment). The more flexible approach of addressing the actual controversy is particularly appropriate in light of the Bucknells and the township's common goal to conclusively resolve whether the township may lawfully enforce its ordinance and to provide some certainty to the Bucknells on whether they are legally authorized to proceed on their subdivision.

Reversed and remanded.