STATE OF MINNESOTA
IN COURT OF APPEALS
A10-332

Robert McCaughtry, et al.,
Appellants,

vs.

City of Red Wing,
Respondent.

Filed September 28, 2010
Affirmed
Collins, Judge[*]

Goodhue County District Court
File No. 25-CV-08-1104

Jason A. Adkins, Lee U. McGrath, Institute for Justice Minnesota Chapter, Minneapolis, Minnesota; and

Dana Berliner (pro hac vice), Institute for Justice, Arlington, Virginia (for appellants)

John M. Baker, Kathryn M.N. Hibbard, Greene Espel P.L.L.P., Minneapolis, Minnesota (for respondent)

Teresa Nelson, American Civil Liberties Union of Minnesota, St. Paul, Minnesota (for amicus curiae American Civil Liberties Union)

Jarod M. Bona, DLA Piper LLP (US), Minneapolis, Minnesota (for amicus curiae St. Paul Association of Responsible Landlords)

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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.

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Collins, Judge.

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

COLLINS, Judge

Appellants challenge the summary judgment dismissing their claims based on lack of standing, contending that (1) they have standing to challenge the constitutionality of respondent's ordinance that permits nonconsensual rental-housing inspections upon the issuance of an administrative search warrant and (2) this court should interpret Minn. Const. art. I, § 10, to require that respondent must obtain an administrative search warrant supported by individualized probable cause to believe that a code violation has occurred before it may perform a constitutional inspection under the code. Because appellants do not have standing, we affirm.

FACTS

In February 2005, respondent City of Red Wing adopted a rental inspection and licensing ordinance as part of its revised housing-maintenance code and rental-dwelling licensing code. Red Wing., Minn., City Code §§ 4.30-.31 (2005). After some landlords failed to respond to requests for inspections or refused to allow them, in November 2006 respondent applied to the district court for administrative search warrants to conduct the inspections. In November 2006, landlords and tenants who opposed the inspections brought a separate action challenging the constitutionality of the ordinance, which respondent removed to federal court. In August 2007, the district court denied the

warrant application on the ground that the proposed inspections were not authorized under the plain language of the ordinance.

In October 2007, respondent amended the code, and in March 2008, respondent filed a second application for administrative search warrants. Several months later, certain plaintiffs filed another action in district court, this time raising state constitutional challenges to the code. The district court consolidated these two matters and denied respondent's second application for administrative warrants, ruling that the inspection program did not have reasonable legislative or administrative standards to control the use and dissemination of information that might be gained through the rental-property inspections in the future.

In May 2008, the federal court dismissed the removed action for lack of Article III standing. The plaintiffs in that action then moved to amend the order and to remand the matter back to state district court, and in August 2008, the federal court did so. The action was then consolidated with the other two pending matters.

In July and October 2008, respondent further amended the code. In April and May 2009, the parties filed summary-judgment motions, and in May 2009, respondent filed a third application for administrative search warrants. After a hearing, the district court denied respondent's application for administrative search warrants, ruling that the application was not supported by administrative probable cause. The district court also ruled that appellants did not have standing to bring the constitutional claims and that, in any event, it lacked authority to resolve the state constitutional issue in the manner

appellants had requested. The district court granted summary judgment to respondent and dismissed appellants' claims "without prejudice." This appeal followed.

D E C I S I O N

"When the facts relevant to standing are undisputed, the standing inquiry raises a question of law subject to de novo review." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). "Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). "The primary goal of the standing requirement is to ensure that the factual and legal issues before the courts will be vigorously and adequately presented." *Id.*

The district court ruled that appellants did not have standing to challenge the constitutionality of the inspection process under the code because they had not suffered an injury that was actual or imminent. It declined to conclude that the mere presence of an application for administrative search warrants created an imminent injury, finding such claimed injury to be fatally hypothetical, and advising that it would only issue warrants supported by probable cause.

Appellants assert that they have shown injury, initially referencing the personal and financial resources that they expended in defending themselves against the three warrant applications. They cite *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913-14 (Minn. App. 2003), for the proposition that injury to support standing exists when plaintiffs must divert and expend resources from their normal activities to protect themselves against allegedly illegal actions. However, first, the

diverted resources referred to in *Alliance* were not used for litigation costs, but instead were redirected to counter the challenged policies of the defendant that allegedly impeded appellants' activities and mission. *Alliance*, 671 N.W.2d at 913-14. Second, *Alliance* addressed organizational standing, for which the supreme court has adopted a liberal standard. *Id.* at 913. Moreover, the contention that litigation costs constitute injury for purposes of a standing determination is counterintuitive; otherwise, the standing requirement could easily be met in virtually any court proceeding.

Further, appellants reference the time they spent addressing tenants' anxieties about the warrants, and the stress and, in some cases, exacerbated health problems they experienced from the proceedings to show they suffered injuries giving them standing. Appellants, however, have not provided caselaw directly supporting the proposition that these constitute injuries for purposes of standing.

Appellants next contend that an "imminent injury" is present when, as here, the case presents the "ripening seeds of a controversy" sufficient for a declaratory-judgment action to be justiciable. *See Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. App. 1996) (citing "ripening seeds" standard for justiciability in declaratory-judgment actions), *review denied* (Minn. Aug. 20, 1996). The declaratory-judgment action is a procedural device that "allows for earlier adjudication of a justiciable controversy, but it does not dispense with the necessary elements of justiciability." *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 274 (Minn. App. 2001) "The declaratory judgment statute itself . . . does not provide a separate test for standing. Rather, the statute is directed towards the 'ripeness' of a dispute, i.e., 'when' it may be

brought; standing, on the other hand, is concerned with 'who' may bring a suit." *McKee v. Likins*, 261 N.W.2d 566, 570 n.1 (Minn. 1977). It requires "a direct and imminent injury rather than a merely possible or hypothetical injury." *Edina Cmty. Lutheran Church v. State*, 673 N.W.2d 517, 522 (Minn. App. 2004) (quotation omitted).

Appellants assert that this court has equated the "imminent injury" requirement for standing with the requirement that justiciable cases present the "ripening seeds" of a controversy. *See id.* at 521-22. They contend that the same should be done in the present case. But in *Edina Lutheran* appellants posted signs on the church property that directly conflicted with the challenged statute, the church's property rights were directly affected by the statute, and the statute arguably infringed appellants' free exercise of religion. *Id.* at 522. Nothing comparable to such factors is present here.

Appellants contend that courts routinely hear challenges to housing-inspection ordinances before a warrant is issued authorizing such an inspection, although they acknowledge in their reply brief that the cases they cite for this proposition are distinguishable. Nonetheless, they assert that these cases show that courts are presented with and decide challenges to inspections in a variety of circumstances. We have reviewed the numerous cases cited, and they do not demonstrate that appellants have shown standing in the present case.

Next, appellants raise several additional arguments that we briefly address. First, they assert that even if the issue of standing is a close one, because they have raised issues of unusual public concern, and the issues were exhaustively and vigorously litigated, "it would be a great disservice to the public to decline jurisdiction because the

plaintiffs' standing is somewhat doubtful." *See Vill. of Burnsville v. Onischuk*, 301 Minn. 137, 143, 222 N.W.2d 523, 527 (1974). In *Onischuk*, the court "recognized the standing of public officials who attack the constitutionality of legislation where the public interest is great" and, although close, held that the plaintiff's status as a taxpayer and village official was sufficient to give him standing. *Id.* Appellants do not demonstrate that they have a sufficiently similar status that would provide them with standing.

Appellants also contend that the district court's decision makes "no practical sense," noting that they have already successfully defeated three warrant applications of respondent, and asserting that most landlords and tenants do not have the funds to litigate the issue. These arguments are not relevant to the issue of standing.

Appellants go on to explain that they are challenging whether administrative search warrants may ever be used in Minnesota, independent of any particular warrant application. Further, they assert again that they have already been injured in relation to the three preceding administrative-warrant applications. They argue that even if this court were to conclude that they lack standing to bring this claim, we should exercise our discretion under Minn. R. Civ. App. P. 103.04 and consider the merits of the appeal. Under that rule, we may review "any order involving the merits or affecting the judgment" and decide the claim "as the interest of justice may require." Appellants assert that this court has on occasion addressed a constitutional challenge in the interests of justice despite a lack of standing. But having reviewed the cited cases and the record

before us, we see no significant interest of justice compelling us to consider the merits despite appellants' lack of standing.

Affirmed.