STATE OF MINNESOTA
IN COURT OF APPEALS
A10-720

City of Mankato,
Respondent,

vs.

Richard Dickie,
Appellant.

Filed February 22, 2011
Affirmed
Wright, Judge

Blue Earth County District Court
File No. 07-CV-08-3683

Rebecca L. Wessman, Mankato, Minnesota (for appellant)

George C. Hoff, Shelley M. Ryan, Hoff, Barry & Kozar, Eden Prairie, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Wright, Judge; and Larkin, Judge.

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

WRIGHT, Judge

In this hazardous-building action, appellant challenges the district court's grant of summary judgment in favor of respondent-city, arguing that (1) his home is not hazardous within the meaning of the applicable statute, (2) he was denied due process of law, (3) his challenge to the constitutionality of a city ordinance regulating rental licenses

is justiciable, and (4) his home is protected from demolition by the Minnesota Environmental Rights Act. We affirm.

FACTS

Appellant Richard Dickie owns a home in the city of Mankato that was badly damaged by fire in April 2007. Respondent City of Mankato's subsequent inspection disclosed that there were multiple preexisting structural deficiencies unrelated to the fire and that previous renovations on the home had been performed in violation of municipal building laws. The city secured the property in response to vandalism that had occurred and Dickie's failure to retain a contractor to restore the property.

On November 15, the city issued an order of abatement, which required Dickie to either clear and grade the property within one month or request a hearing within one week. Although Dickie did not timely respond to the order, the city granted him access to the property approximately three months later to allow a structural engineer to inspect the property and provide an estimate of the cost to restore it to habitability. The engineer identified numerous significant structural deficiencies. And two different contractors subsequently began and abandoned work on the home.

In June 2008, the Mankato City Council adopted an ordinance providing, in relevant part, that "[n]ot more than twenty-five (25) percent (rounded up) of the lots on any block shall be eligible to obtain a rental license or to be licensed as a rental property." Mankato City Code § 5.42, subd. 20.000 (2008). Because Dickie's lot is located on a block that already exceeds the 25-percent limit, he would not be eligible to obtain a rental license if he submitted an application.

In its September 2008 order, the Mankato City Council required Dickie to either repair or raze the home within 30 days or challenge the order within 20 days. Once again, Dickie did not respond. The order indicated that the city would move for summary enforcement if Dickie failed to comply. An accompanying resolution declared Dickie's property a "hazardous building" under Minn. Stat. § 463.15, subd. 3 (2008). The resolution stated that "it is the opinion of the structural engineer that the building is in such a dilapidated condition and state of disrepair that it is a hazardous building within the definition of the statute."

At the November 26 summary-enforcement hearing before the district court, Dickie appeared with counsel and obtained leave to file an answer. In his amended answer and counter-claim, Dickie challenged the hazardous-building action as lacking a sufficient factual basis, alleged that he was denied due process of law in the proceedings, raised various constitutional challenges to the rental-licensing ordinance, and claimed that demolition of his home would constitute destruction of a historical resource in violation of the Minnesota Environmental Rights Act (MERA).

The district court rejected each of Dickie's arguments and granted the city's motion for summary judgment. This appeal followed.

D E C I S I O N

On review of a district court's decision to grant summary judgment, we consider whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Mere averments set forth in the pleadings are insufficient to counter a motion for

summary judgment. Minn. R. Civ. P. 56.05. A genuine issue of material fact does not exist when the nonmoving party presents evidence that creates merely a metaphysical doubt as to a factual issue or evidence that is not sufficiently probative as to permit reasonable people to draw different conclusions regarding an essential element of that party's case. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Rather, there must be evidence sufficient to establish an essential element on which the nonmoving party bears the burden of proof. *Id.* Therefore, to oppose a motion for summary judgment successfully, the nonmoving party is required to "extract *specific*, admissible facts from the voluminous record" to establish a genuine issue of material fact. *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). Summary judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03.

I.

Dickie argues that the district court erred by concluding as a matter of law that his property is a "hazardous building" within the meaning of Minn. Stat. § 463.15, subd. 3. The city's designation of Dickie's home as hazardous and its subsequent decision to demolish the structure constitute quasi-judicial administrative decisions. *See City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). Our certiorari review of the merits of a quasi-judicial decision is limited to "whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an

erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). We accord the city's decision a presumption of correctness, *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001), such that, if there is a reasoned basis for the decision, it will not be disturbed, *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984).

This action was brought under Minn. Stat. §§ 463.15-463.261 (2010),[1] which authorize a municipality to abate a hazardous building through summary enforcement of an order requiring repair or removal of the building. A "hazardous building" is defined as "any building or property, which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health." Minn. Stat. § 463.15, subd. 3. A city council may issue an abatement order authorizing the city to "correct or remove the hazardous condition of any hazardous building or property" and charge the associated costs against the real estate. Minn. Stat. § 463.161. Alternately, the city council may "order the owner of any hazardous building or property within the municipality to correct or remove the hazardous condition of the building or property or to raze or remove the building." Minn. Stat. § 463.16. The building owner may then comply with the order or file an answer

[1] Because the 2010 version of the applicable statutes does not change or alter the rights of the parties, the 2010 version of these statutes will be referred to throughout this analysis. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) (indicating that current version of statute will be used unless it changes or alters matured or unconditional right of parties or creates other injustice), *review denied* (Minn. Nov. 17, 1986).

under Minn. Stat. § 463.18. If an answer is filed, the matter is treated as a contested case heard by the district court. Minn. Stat. § 463.20.

Here, the city council issued its order declaring Dickie's property hazardous under the statute in September 2008. The district court found that, at that time, Dickie's home had been completely abandoned since the fire in April 2007 and that repairs had not been performed to correct either the preexisting structural deficiencies or the fire damage. The November 2007 order of abatement, which Dickie ignored, described numerous necessary structural repairs, noted that the property was progressively deteriorating because of vandalism and Dickie's failure to initiate any building-permit process, and plainly stated that the property was a "dangerous hazard to the community." The structural engineer's report prepared in June 2008 and incorporated into the city's September 2008 order lists several serious structural deficiencies that must be corrected before the property can be inhabited. The city council specifically concluded that the house was hazardous within the definition of the statute.

Dickie's primary substantive argument against the city's hazardous-building order is that the structural engineer's report never uses any form of the word "hazard" and that the city, therefore, had no basis to conclude that the property was "hazardous" as the term is used in the statute. We disagree. The city's determination that the property constituted a hazardous condition was a legal conclusion based on the entire record before the city council, and the city was not limited, in reaching its conclusion, to the language of the engineer's report. Dickie also argues that, insofar as the engineer's report fails to distinguish between the property's deficiencies related to habitability and statutory

hazards, the report cannot reasonably support the city's conclusion that the property is hazardous. But Dickie neither establishes how, or whether, these defects are distinguishable nor asserts any facts which, if believed by a jury, would preclude a finding that the property is hazardous. Thus, the district court properly concluded as a matter of law that Dickie's property is a "hazardous building" within the meaning of Minn. Stat. § 463.15, subd. 3.

II.

Dickie next argues that material issues of fact exist as to whether he was afforded due process in the proceedings leading up to and including the district court's grant of summary judgment to the city. "The threshold requirement of any due-process claim is that the government has deprived a person of a constitutionally protected liberty or property interest." *Nexus v. Swift*, 785 N.W.2d 771, 779 (Minn. App. 2010). If this requirement is met, procedural due process guarantees reasonable notice and a meaningful opportunity to be heard. *Id*. Because of the obvious property interests at stake in abatement procedures that may result in demolition, such procedures are subject to two overriding principles that serve to protect the rights of a property owner: (1) abatement and removal should be exercised with caution and (2) notice and the opportunity to be heard should be granted without restraint. *Vill. of Zumbrota v. Johnson*, 280 Minn. 390, 395-96, 161 N.W.2d 626, 630 (1968). The individual alleging denial of due process must establish prejudice resulting from the city's alleged violations. *See Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 321 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005).

Dickie's procedural-due-process claim is deficient for several reasons. The record reflects that, since April 2007, the city has given Dickie many opportunities to address the hazardous condition of his property, including declining to act on its own deadlines at least twice. But Dickie repeatedly has failed to take the required action. The November 15, 2007 order of abatement advised Dickie that his property had been deemed a "dangerous hazard" and offered him a choice of either removing the structure by December 17 or appealing the order within seven days. Although Dickie ignored the order, the city nonetheless allowed him to enter the property three months later to permit a structural engineer to perform inspections in anticipation of repairs and restoration. When work was not commenced thereafter, the city initiated the process set forth in Minn. Stat. §§ 463.17-463.21. The September 8, 2008 city council order to raze or repair the property was served on Dickie with a letter explaining his rights and obligations under the process. These rights include the right to initiate a contested action by answering within 20 days. The city also informed Dickie that his failure to answer would authorize the city to seek summary enforcement of the order in district court. Dickie did not answer the order. Indeed, he did not appear in this matter until the November 26, 2008 hearing on the city's summary-enforcement motion. At this hearing, the district court permitted Dickie to file an answer rather than ordering a default judgment against him, which was well within the district court's authority to order. Dickie filed an answer, an amended answer, and counterclaims. And the parties engaged in discovery. Dickie's counsel submitted filings and appeared repeatedly before the district court, including at the hearing on the city's motion for summary judgment.

Since November 2007, Dickie has been on notice that the city considers his property a nuisance requiring repair, and he has been afforded numerous opportunities to remedy the hazard and contest the city's actions throughout the proceedings leading up to this appeal. On these facts, Dickie's due-process challenge fails.

III.

Dickie argues that the district court erred by concluding that he lacks standing and other indices of justiciability to challenge the constitutionality of the rental-license ordinance. Dickie's various objections to the rental-license ordinance, including that it constitutes a taking, that it violates his right to equal protection, and that it represents an unlawful exercise of municipal authority, all arise from his factual assertion that any individual interested in purchasing and repairing the property would do so only on the condition that the home could be subsequently rented to recoup the cost of repairs. Dickie contends that the ordinance's prohibition on additional rental licenses on his block prevents him from selling the property and realizing its full value.

"Justiciability generally requires (1) a genuine or present controversy (2) presented by persons with truly adverse interests and (3) capable of specific rather than advisory relief by a decree or judgment." *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. App. 1996), *review denied* (Minn. Aug. 20, 1996). To establish standing, a plaintiff must have a sufficient personal stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A goal of the standing requirement is to ensure that the factual and legal issues before the courts will be vigorously and adequately presented. *Channel 10, Inc. v.*

Ind. Sch. Dist. No. 709, St. Louis Cnty., 298 Minn. 306, 314, 215 N.W.2d 814, 821 (1974). Standing is acquired in two ways. Either the plaintiff has suffered some "injury-in-fact" or the plaintiff is the beneficiary of some legislative enactment granting standing. *Philip Morris Inc.*, 551 N.W.2d at 493. To suffer an injury-in-fact, a party must allege "a concrete and particularized invasion of a legally protected interest." *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). We consider de novo the question of standing as an aspect of justiciability. *Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. App. 2002).

It is undisputed that Dickie never applied for, and thus never has been denied, a rental license. The city secured the property in June 2007 and issued an order of abatement deeming the property "a dangerous hazard" and "beyond the realm of repair" over six months prior to enactment of the rental-licensing ordinances. Dickie's argument that he suffered an actual injury is founded on his assertion that one prospective buyer allegedly withdrew a purchase offer when the buyer learned that he would not be able to obtain a rental license after the property is repaired. Dickie contends that any prospective buyer will respond similarly. But the speculative claim that the ordinance will prevent him from selling the property in the future, or that the rights of prospective buyers are being harmed by some contingency that may be triggered by the ordinance, is insufficient to establish standing. *See Irongate Enters., Inc. v. Cnty. of St. Louis*, 736 N.W.2d 326, 333 (Minn. 2007) (observing that it is impermissible "to challenge a statute on the ground that it may conceivably be applied unconstitutionally to others" (quotation omitted)). Insofar as he has never attempted to rent the property, which cannot be rented in its

present condition, Dickie's objections to the ordinance are purely speculative and are not based on any actual injury. We also observe that Dickie's reliance on *Gangemi v. Zoning Bd. of Appeals of Town of Fairfield*, 763 A.2d 1011 (Conn. 2001), a case from a foreign jurisdiction with distinguishable facts, lacks any precedential or persuasive value here.

In addition to precluding his constitutional challenges, Dickie's failure to demonstrate any injury-in-fact resulting from the ordinance also deprives him of standing to challenge the ordinance as an invalid exercise of the city's authority. *See Stansell v. City of Northfield*, 618 N.W.2d 814, 818 (Minn. App. 2000) (stating that city resident lacked standing to challenge an ordinance as an unauthorized exercise of municipal authority when resident could not demonstrate particularized injury resulting from ordinance), *review denied* (Minn. Jan. 26, 2001). Thus, we conclude that Dickie has no justiciable claims related to the rental-license ordinance.

Having correctly concluded that Dickie lacked standing to challenge the ordinance, the district court did not reach the merits of the parties' arguments addressing Dickie's various challenges. As such, any arguments of the merits raised in the parties' appellate briefs are not properly before us, and we decline to consider them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

IV.

Dickie argues that the district court erred by concluding that he failed as a matter of law to demonstrate that his property is entitled to protection from demolition by the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-116B.13 (2010). MERA authorizes an individual to bring a civil action for either declaratory or equitable

relief for the protection of "natural resources," Minn. Stat. § 116B.03, subd. 1, which MERA defines as including "historical resources," Minn. Stat. § 116B.02, subd. 4. "Historical resources" are not defined within MERA, *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 174 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004), but the Minnesota Supreme Court has identified factors that should be considered when determining whether a building falls under MERA's protection, including whether a site has "significance in American history, architecture, archeology, and culture" and whether it possesses "integrity of location, design, setting, materials, workmanship, feeling and association," *State by Powderly v. Erickson*, 285 N.W.2d 84, 88 (Minn. 1979). The first element of a prima facie MERA claim is to show the existence of a protectable resource. *Id.* at 87.

Dickie's MERA claim relies entirely on his assertion that his home is the last remaining rubble-stone house in central Mankato and that the structure, built in the mid-nineteenth century, is "a monument to the craftsmanship of the immigrant pioneer masons." But Dickie failed to present any evidence that might permit a jury to conclude that the property is a protectable resource. His bald assertions are simply insufficient to create a genuine issue of material fact as to whether MERA bars the demolition.[2]

Affirmed.

[2] We observe that, even if Dickie had established a prima facie case under MERA, the city may have been authorized to proceed with the demolition by demonstrating, as "an affirmative defense, that there is no feasible and prudent alternative" to the demolition and that the razing of Dickie's property "is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources." Minn. Stat. § 116B.04.