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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2316**

City of Danube,
Appellant,

vs.

Kelly Sean Mahoney, et al.,
Respondents,

Minnesota Housing Finance Agency,
Defendant,

Tristam O. Hage,
Respondent.

**Filed December 16, 2008
Reversed and remanded
Connolly, Judge**

Renville County District Court
File No. 65-CV-06-206

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges (1) the district court's decision denying its request for an injunction requiring respondents to bring their garage into compliance with local building ordinances, and (2) the district court's finding that respondents' property line had not been affirmatively established. Because the district court abused its discretion in declining to issue the injunction, and because the finding that respondents' property line had not been affirmatively established is clearly erroneous, we reverse and remand.

FACTS

This case centers around a dispute between appellant, City of Danube, and respondents, Kelly and Charlotte Mahoney, regarding a garage they constructed which fails to comply with appellant's city ordinances.¹

On August 26, 2002, Charlotte Mahoney submitted an application for a building permit to a city clerk. The application was initially for a garage, but was quickly amended to include a breezeway and a deck. Jim Mason, an owner of property

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

¹ Respondent Tristam Hage holds a mortgage on the property. His only interest in the case is the respective priority of liens between his lien and the lien claimed by appellant. He takes no position on the issues presented for decision before this court. The Minnesota Housing Finance Agency was originally a party to this case. It has since been dismissed as a party.

immediately to the west of respondents' property, also signed the application under the handwritten sentence "permission for Variance to build 2ft off back property line."

The following day, two members of the city's planning commission inspected respondents' property to consider its suitability for the proposed garage. They determined that there was "plenty of room" to build the proposed garage in compliance with city ordinances. They approved the application and returned it to the city council for its approval. On August 28, 2002, the city council approved the application. On August 29, 2002, a city clerk issued a building permit to respondents. The permit expressly incorporated the terms of the application. Specifically, the permit allowed respondents to build a garage, breezeway, and deck. For the garage, it specified a front length of 30 feet, a side width of 24 feet, and a height of 16 feet. The garage was to be located on the northwest corner of respondents' property. The permit provided that the garage should be setback 6 feet from the northern property line, 2 feet from the western property line, and 43 feet from the eastern property line. Finally, the permit specified an August 28, 2003, deadline for the project.²

In August 2003, a city councilman began receiving complaints from Mr. Mason and other individuals about the possibility that respondents' garage violated the restrictions contained in the building permit. In response to the complaints, on March 24, 2004, the city council requested an inspection of the property. On March 31, 2004, the inspector returned his report. In his report, the inspector expressed concern about

² While it is unclear from the record when construction on the project was completed, neither party disputes that it was completed by the end of a three-month extension granted by the city council.

whether the garage met the ordinances' requirements regarding its height and its setback from the western property line. On April 28, 2004, the city attorney wrote a letter to respondents informing them that the garage was in violation of the city's ordinances, including those relating to height and setback requirements. The letter demanded that the garage be brought in compliance with the city ordinances under threat of "criminal proceedings" and "civil proceedings." In September 2004, respondents were incarcerated out of state on an unrelated manner. Their expected release date was October 2007. The garage was never adjusted to meet the city attorney's demands. On April 12, 2006, the city council passed resolution #01-2006 which required respondents to comply or take substantial steps to comply with the city ordinances. Prior to passage of this resolution, the city council apparently had at least one public meeting to address this matter.

On January 3, 2007, a land survey of respondents' property was completed. The surveyor concluded that the garage's northwest corner was setback 1.5 feet from the western property line and that the garage's southwest corner was setback 1.4 feet from the western property line. The surveyor, after completing a dimensional inspection on the property, determined that the total height of the garage from peak to grade was 28 feet, 5.5 inches, that the total height of the house was 26 feet, that the height of the garage from the foundation to the top of the sidewalls was 16 feet, 6 inches, and that the west roof overhang extended 10 inches out from the garage's sidewall.

On September 27, 2006, appellant filed suit against respondents to obtain an injunction requiring them to bring their garage into compliance with the city's ordinances. On July 5, 2007, the district court ruled in respondents' favor, concluding

that: “[Appellant] has failed to demonstrate by a preponderance of the evidence that there exists an inadequate remedy at law.” And that: “[Appellant] has failed to demonstrate by a preponderance of the evidence that failure to grant the injunction will result in great and irreparable injury to the City of Danube.” Appellant’s motion for a new trial was denied on November 16, 2007. A district court’s order denying a request for injunctive relief is reviewable as a matter of right. Minn. R. Civ. App. P. 103.03(b). This appeal follows.

D E C I S I O N

I. The district court abused its discretion by denying appellant an injunction.

A district court’s decision on whether to issue an injunction will not be overturned absent a clear abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A party seeking an injunction must establish that its legal remedy is inadequate, and that the injunction is necessary to prevent great and irreparable injury. *Cherne Indus., Inc. v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). The remedy available at law in civil actions is money damages. *City of Mahtomedi v. Spsychalla*, 308 Minn. 428, 432, 243 N.W.2d 31, 33 (1976) (stating that the words “at law” refer to “an action at law for damages”). The remedy available at law in criminal proceedings is, presumably, the imposition of fines and jail terms. *But see City of Minneapolis v. F & R, Inc.*, 300 N.W.2d 2, 2-3 (Minn. 1980) (discussing how the repeated impositions of fines and jail terms is not an adequate remedy at law).

A. The statutory argument.

“[W]hen injunctive relief is explicitly authorized by statute, proper exercise of discretion requires the issuance of an injunction if the prerequisites for the remedy have

been demonstrated and the injunction would fulfill the legislative purposes behind the statute's enactment.” *State, ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 572 (Minn. App. 2005) (quotation omitted). Respondent argues that *Hatch* is distinguishable from the present case because the statute at issue in *Hatch* required a district court to issue an injunction when it found that there had been a violation of a zoning ordinance whereas the statute at issue here is discretionary. While the statutes at issue in *Hatch* and this case are not identical, the holding and reasoning of this court in *Hatch* focused on whether the statutes authorized the district court to use an injunction rather than on whether the use of an authorized injunction is mandatory or discretionary. Thus, *Hatch* should not be read to apply only to those statutes that make it mandatory for a district court to issue an injunction when it finds there has been a zoning violation.

The statute at issue in this case is the “enforcement and penalty” provision of the housing, redevelopment, planning, and zoning chapter of the Minnesota Statutes. It provides:

A municipality may by ordinance provide for the enforcement of ordinances or regulations adopted under sections 462.351 to 462.364 and provide penalties for violation thereof. A municipality may also enforce any provision of sections 462.351 to 462.364 or of any ordinance adopted thereunder by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction.

Minn. Stat. § 462.362 (2006). Minn. Stat. § 462.357 (2006), which falls into the range of statutes referenced above, allows municipalities to adopt zoning and building ordinances

[f]or the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the

surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces

Minn. Stat. § 462.357, subd. 1. The city ordinances that respondents have violated regulate, among other things, the location, height, and width of buildings located within the city. Neither party argues that these regulations do not promote the public health, safety, morals, or general welfare of the community.

Appellant argues that under *Hatch*, the district court abused its discretion by not issuing an injunction. First, appellant argues that an injunction is authorized by statute. This is correct. Minn. Stat. § 462.362 states that municipalities “may enforce” any ordinance adopted pursuant to Minn. Stat. §§ 462.351-462.364 (2006) by an injunction. *See* Minn. Stat. § 645.44, subd. 15 (2006) (stating that “[m]ay” is permissive). The ordinance violated was adopted pursuant to Minn. Stat. 462.357, subd. 1. Thus, as the term “may enforce” combined with the explicit use of the term “injunction” establish, injunctive relief was explicitly authorized by statute for violations of the zoning ordinances at issue in this case.

Second, appellant argues that under *City of Minneapolis v. F & R, Inc.*, the prerequisites for injunctive relief have been met in this case. 300 N.W.2d 2 (Minn. 1981). In *F & R*, when discussing ordinances adopted pursuant to Minn. Stat. § 462.362, the Minnesota Supreme Court wrote that:

The general rule in other jurisdictions is that where a statute authorizes a local governmental unit to enforce zoning restrictions through injunction, as in Minnesota, the legislature intended to afford such governmental units a

choice of methods of enforcement of zoning regulations. The implication is that, where such a statute exists, the prerequisite to obtaining an injunction of proving inadequate remedy at law is met automatically.

F & R, 300 N.W.2d at 3-4. Thus, under *F & R*, the prerequisite for injunctive relief under Minn. Stat. § 462.362 have been demonstrated in the present case because the statute itself authorizes injunctive relief.

Third, appellant argues that the injunction would fulfill the legislative purposes behind the statute's enactment. Here, the stated purpose of Minn. Stat. § 462.362, is the enforcement of ordinances promulgated under Minn. Stat. §§ 462.351–462.364. Minn. Stat. § 462.351, subd. 1 allows, for promoting public health, safety, morals and general welfare, the use of ordinances that regulate the location, height, and width of buildings. Neither party contends that the ordinances were not valid under Minn. Stat. § 462.351, subd. 1. As a result, we are presented with an ordinance that was validly issued pursuant to statute, and a statute whose presumable purpose is to authorize the enforcement of those ordinances through the use of injunctions. In this case, an injunction fulfills the legislative purpose behind Minn. Stat. § 462.362 because its issuance would enforce compliance with ordinances validly issued under Minn. Stat. § 462.351, subd. 1 that have been violated.

We agree with appellant that the district court abused its discretion by denying the request for an injunction. In this instance, injunctive relief was authorized by statute. Moreover, the statutory prerequisite for such a remedy have been met, and the granting of an injunction fulfills the legislative purpose behind Minn. Stat. § 462.362.

B. The equity argument.

As stated previously, a party seeking an injunction must establish that its legal remedy is inadequate, and that the injunction is necessary to prevent great and irreparable injury. *Cherne Indus., Inc.*, 278 N.W.2d at 92.

Here, there is no adequate remedy at law for respondents' continuing violation of the city's ordinances. First, civil money damages are an inadequate remedy at law. Respondents' violation is continuous in nature. Money damages will not directly remedy the harm because the garage will still be in violation of the ordinance even if damages are paid. At most, damages would compensate the city for the violation rather than remedy the actual violation itself. Further, it would be difficult to even calculate what the appropriate money damages should be in a case like this where the harm to the city is the continuing violation.

Second, criminal sanctions would also appear to be an inadequate remedy at law. *See F & R*, 300 N.W.2d at 4 (stating that repeated prosecutions for violations of a zoning ordinance constitute an inadequate remedy at law). But even assuming criminal sanctions could be an adequate remedy at law for the type of ordinance violation at issue in this case, there was scant evidence indicating that they would be adequate if applied to respondents at the time of the hearing. As noted in the district court's findings, respondents were incarcerated out of state in September 2004 with an expected release date of October 2007. This would have all but eliminated the chance that the respondents could have been brought back to Renville County to face prosecution. Even if they were brought back, as appellant points out, any conviction would have been essentially

meaningless because it would have been absorbed by the sentences they were serving at that time.

Next, in order to issue an injunction, the party seeking the injunction must establish that the injunction will prevent a great and irreparable harm. That requirement has been met here. *See Itasca County v. Rodenz*, 268 N.W.2d 423 (Minn. 1978). In *Rodenz*, the Minnesota Supreme Court upheld a district court's decision to grant an injunction in a case involving a continuous violation of a zoning ordinance. *Id.* at 424. Appellant challenged the district court's decision, arguing that the city failed to show great and irreparable injury. *Id.* The court held that "[t]he trial court's judgment and order are in accordance with the evidence [establishing the ordinance violation]. Defendant erected an addition to his boathouse contrary to the ordinance. *Because of the continuous nature of the violation*, the injunctive relief granted to the county is most appropriate." *Id.* (emphasis added). We read *Rodenz* to imply that when there is a zoning ordinance violation that is continuous in nature, like the ones at issue in this case, such a violation causes a great and irreparable injury to the municipality whose ordinances are being violated.

Thus, because there is not an adequate remedy at law, and because there is a threat of great and irreparable harm if the ordinance violations are not remedied, the district court abused its discretion by not granting appellant's request for an injunction.

II. The district court's finding that respondents' property line had not been affirmatively established is clearly erroneous.

“It is not the province of this court to reconcile conflicting evidence. On appeal, a trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. . . . If there is reasonable evidence to support the trial court's findings of fact,” a reviewing court should not disturb those findings. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

In the disputed finding, the district court stated that, because it admitted the survey into evidence as evidence of where the city believed the property line was located and not as conclusive proof as to whether the property line in the survey was the actual property line, “[n]either party has affirmatively established the actual western property line on the property.”

The parties stipulated on the record that the survey, along with a number of other exhibits, would be admitted into evidence. There was no limitation placed on the purpose for which the survey was being admitted. The survey was conducted by a professionally-licensed surveyor. The only evidence contradicting this survey is the testimony of the property's caretaker who stated, in essence, that over the years, the property's landowner had lost track of the property line. When this testimony is compared with the report of the surveyor, it is apparent that the district court did not have reasonable evidence to support its finding. Therefore, this finding is clearly erroneous.

In conclusion, we reverse the district court's decision not to issue an injunction, and its finding that respondents' property line had not been affirmatively established.

Upon remand, the district court shall issue an injunction ordering respondents to bring their garage in compliance with appellant's zoning ordinances, and it shall amend its findings to reflect that the surveyor's measurements are affirmative proof of respondents' property line.

Reversed and remanded.