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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0218**

Anoka County Record, LLC,
Appellant,

vs.

City of Fridley, Minnesota,
Respondent.

**Filed August 29, 2016
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02CV153537

Carl A. Blondin, Oakdale, Minnesota (for appellant)

Ryan M. Zipf, League of Minnesota Cities, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the district court's rule-12.02(e) dismissal of its claims arising out of respondent's rejection of appellant's bid to be respondent's official newspaper for 2013 and 2015. Because no facts would support granting the relief demanded by appellant, we affirm.

FACTS

On December 19, 2012, appellant Anoka County Record, LLC submitted a bid to respondent City of Fridley to be the city's official newspaper for 2013. The city concluded that Anoka County Record's bid for 2013 did not include sufficient information for the city to determine whether Anoka County Record satisfied the statutory requirements for a qualified newspaper. The city selected the Columbia Heights Fridley Sun Focus as its 2013 official newspaper. On December 26, 2014, Anoka County Record submitted a bid to be the city's official newspaper for 2015. Anoka County Record's bid for 2015 contained little information about the paper and whether it was a qualified newspaper and only stated that the city was required to select Anoka County Record as its official newspaper for 2015. The city selected the Sun Focus to be its 2015 official newspaper.

In June 2015, Anoka County Record served a complaint on the city. The complaint alleged that Anoka County Record is a qualified newspaper pursuant to Minn. Stat. § 331A.02 (2014) and that the city had selected the Sun Focus in violation of Minn. Stat. § 331A.04 (2014). Anoka County Record sought (1) a writ of mandamus requiring the city to select an official newspaper in accordance with Minnesota law and (2) \$7,000 in damages.

The city filed a motion to dismiss for failure to state a claim upon which relief can be granted, contending that Anoka County Record failed to establish that it was a qualified newspaper under Minn. Stat. § 331A.02, subd. 1. Anoka County Record opposed the motion and, in the alternative, sought leave to file an amended complaint.

Anoka County Record included its proposed amended complaint with this motion. The amended complaint mirrors the original complaint but also includes ten paragraphs containing factual allegations corresponding to the ten statutory requirements for a qualified newspaper under Minn. Stat. § 331A.02, subd. 1. Following a hearing, the district court dismissed Anoka County Record’s complaint with prejudice. This appeal follows.

D E C I S I O N

Under Minn. R. Civ. P. 8.01, a pleading must “contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.”¹ A pleading should be dismissed under Minn. R. Civ. P. 12.02(e) “only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010); *see also N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963) (stating that a claim is sufficient to survive a motion to dismiss “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded”). Appellate courts “review de novo the district court’s grant of a motion to dismiss under Minn. R. Civ. P. 12.02(e).”

¹ Anoka County Record argues that the district court erred by failing to consider its amended complaint. We agree that the district court should have considered the amended complaint, which was served and filed before any responsive pleading. *See* Minn. R. Civ. P. 15.01 (providing that party may amend pleading as a matter of course at any time before a responsive pleading is served); *Sharkey v. City of Shoreview*, 853 N.W.2d 832, 836 (Minn. App. 2014) (holding that motion to dismiss is not responsive pleading). We consider the amended complaint in our de novo review.

Sipe v. STS Mfg., 834 N.W.2d 683, 686 (Minn. 2013). In addition, because Anoka County Record referenced its 2013 and 2015 bids in its amended complaint, we may consider them in addressing the city’s motion to dismiss. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).

Minnesota Statutes sections 331A.01-.12 (2014) govern the designation, by Minnesota political subdivisions,² of “qualified newspapers” for publication of official notices. The statutes provide various requirements, including minimum circulation requirements, that must be met in order for a publication to be considered a “qualified newspaper” for a particular political subdivision, and the applicable statutes generally require that political subdivisions publish public notices in a qualified newspaper. Minn. Stat. §§ 331A.02, subd. 1, 331A.03, subds. 1, 2. The statutes also provide rules of priority for political subdivisions designating an official newspaper for public notices. Minn. Stat. § 331A.04, subds. 1-6. In particular, if there is a qualified newspaper located within a political subdivision, the political subdivision must select that newspaper over one located outside the political subdivision. *Id.*, subd. 2. In the event of a dispute over qualification, “[a] person interested in a newspaper’s qualification . . . may petition the district court . . . for a declaratory judgment to determine whether the newspaper is qualified.” Minn. Stat. § 331A.02, subd. 4.

² A political subdivision under the statute means “a county, municipality, school district, or any other local political subdivision or local or area district, commission, board, or authority.” Minn. Stat. § 331A.01, subd. 3.

Anoka County Record’s amended complaint asserts that the city violated Minn. Stat. § 331A.04 by failing to give Anoka County Record priority when designating an official newspaper for public notices for 2013 and 2015. Anoka County Record alleges that it is the only qualified newspaper located in the city, and, as a result, the city was required to designate it for publication of public notices. The amended complaint seeks a writ of mandamus compelling the city to designate Anoka County Record as its official newspaper and also seeks \$7,000 in monetary damages, plus costs, expenses, disbursements, interest, and attorney fees as allowed by law. Notably, Anoka County Record has not sought a declaratory judgment that it is a “qualified newspaper” for the city.³

“A writ of mandamus is a remedy to compel any person, corporation, public functionary, or tribunal, to perform some duty required by law, where the party seeking relief has no other legal remedy, and the duty sought to be enforced is clear and indisputable.” *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 561 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003); *see also* Minn. Stat. § 586.01 (2014). Mandamus is an “extraordinary remedy,” *Chanhassen Chiropractic Ctr.*, 663 N.W.2d at 562, and “shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02 (2014); *see also Pole v. Trudeau*, 516 N.W.2d 217, 219 (Minn. App. 1994).

³ For this reason, we do not engage in the analysis, undertaken by the district court, of whether Anoka County Record is a qualified newspaper for the city. Our focus, instead, is on whether the amended complaint stated a valid claim for relief.

Anoka County Record has not pleaded facts sufficient to support issuance of a writ of mandamus, even if the facts asserted in the amended complaint are taken as true. Anoka County Record alleges that the city has a duty to designate a qualified newspaper located in the city for publication of public notices under the priority granted by Minn. Stat. § 331A.04, subd. 2.⁴ We agree that a political subdivision is required to designate a qualified newspaper within its boundaries, if there is one. However, although Anoka County Record alleged in its amended complaint that it is a qualified newspaper and pleaded facts in relation to each of the statutory elements, Anoka County Record did not allege that it disclosed these facts to the city in its 2013 and 2015 bids to be the city's newspaper for public notices. For example, as the city notes, Anoka County Record failed to provide information sufficient for the city to determine whether Anoka County Record met the circulation requirement. *See* Minn. Stat. § 331A.02, subd. 1(d). Because Anoka County Record failed to provide the necessary information to the city, the city selected a qualified newspaper from outside its boundaries. The amended complaint thus does not allege facts sufficient to support a conclusion that the city violated a “clear and indisputable” duty to designate Anoka County Record for public notices. Rather, because Anoka County Record failed to demonstrate to the city that it was a “qualified newspaper,” the city was not presented with a choice between a qualified newspaper

⁴ For reasons that are not entirely clear, Anoka County Record requests that the city be required not to designate Anoka County Record, but rather to designate a qualified newspaper located within city boundaries. Anoka County Record asserts that it is the only qualified newspaper located in Fridley.

located in the city and one that was not. Accordingly, the duty imposed by Minn. Stat. § 331A.04, subd. 2 was not triggered, and mandamus relief is not available.

Anoka County Record's claim for monetary damages is premised on its assertion that the city violated Minn. Stat. § 331A.04, subd. 2, and thus fails for the same reasons as the mandamus claim. In addition, we note that the statutes at issue do not provide for a private right of action, and we discern no basis for inferring such a right. *See Buck v. Freeman*, 619 N.W.2d 793, 797 (Minn. App. 2000) (noting our reluctance to imply a private right of action), *review denied* (Minn. Feb. 21, 2001).

Our decision here is limited to the facts pleaded and the relief sought by Anoka County Record's amended complaint relative to the denial of its 2013 and 2015 bid for designation as the city's newspaper for public notices. Nothing in this decision should be read to preclude Anoka County Record from seeking such designation in the future.

Affirmed.