

No. A09-1961

STATE OF MINNESOTA
IN SUPREME COURT

City of North Oaks,

Appellant,

vs.

Rajbir S. and Carol L. Sarpal,

Respondents.

**BRIEF OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES**

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LEGAL ISSUE

Minnesota law provides that equitable estoppel can only apply against the government while acting in its sovereign capacity when it has engaged in “affirmative misconduct” that does not include “simple inadvertence, mistake, or imperfect conduct,” but instead, requires “some degree of malfeasance.” Can a government employee’s good-faith, but erroneous, representation of fact ever rise to the level of affirmative misconduct?

The court of appeals ruled in the affirmative.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The League of Minnesota Cities (“League”) has a voluntary membership of 830 out of 854 Minnesota cities including the city of North Oaks (“City”). The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management, and advocacy services. The League’s mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities. The League has a public interest¹ in this case as a representative of hundreds of cities throughout the state that will be negatively affected if the court of appeals’ erroneous expansion of the doctrine of equitable estoppel against the government is not reversed.

STATEMENT OF THE CASE AND THE FACTS

The League concurs with the City’s statement of the case and the facts.

STANDARD OF REVIEW

The League concurs with the City’s statement of the standard of review.

INTRODUCTION AND SUMMARY OF LEGAL ARGUMENT

In this case, the court of appeals held in a published decision that the City was equitably estopped from enforcing the setback regulations in its zoning ordinance against the Sarpals’ noncompliant pool shed. In doing so, the court of appeals went beyond its

¹ The League certifies pursuant to Minn. R. Civ. App. P. 129.03 that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity besides the League made a monetary contribution to its preparation or submission.

error-correcting role and adopted a new principle of law that has erroneously expanded the doctrine of equitable estoppel against the government.

The court of appeals created new law when it held that a government employee's good-faith, but erroneous, representation of fact can satisfy the wrongful-conduct element of an equitable-estoppel claim against the government. This is an issue with statewide significance that is likely to recur because under the court of appeals' new law, it will be significantly easier to make equitable-estoppel claims against the thousands of governmental entities throughout our state.

The court of appeals' decision should be reversed because it conflicts with this Court's precedent that holds that to satisfy the wrongful-conduct element of an equitable-estoppel claim against the government, a claimant must satisfy a heavy burden of proof and demonstrate that the government has engaged in "affirmative misconduct" that does not include "simple inadvertence, mistake, or imperfect conduct," but instead, requires "some degree of malfeasance." Under this precedent, a government employee's good-faith, but erroneous, representation of fact can never rise to the level of affirmative misconduct as a matter of law.

In addition, there are several reasons why it would be bad public policy to expand the doctrine of equitable estoppel against the government. First, it would create separation-of-powers conflicts. Second, it would require governmental entities to spend their increasingly limited public resources to defend against new equitable-estoppel claims. And third, it would chill government employees' willingness to provide information to the public.

LEGAL ARGUMENT

I. A government employee’s good-faith, but erroneous, representation of fact can never rise to the level of affirmative misconduct.

The League concurs with the City’s legal arguments and will not repeat them here. Instead, this brief focuses on the extremely narrow doctrine of equitable estoppel against the government that this Court has adopted and on why the expansion of this doctrine would be bad public policy.

A. The doctrine of equitable estoppel against the government is extremely narrow under this Court’s precedent.

This Court has acknowledged—in theory—that equitable estoppel can apply against the government while acting in its sovereign capacity. But in practice, this Court has repeatedly rejected this type of equitable-estoppel claim against the government.² See, e.g., *Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. County of Itasca*, 258 N.W.2d 877 (Minn. 1977); *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980); *Jasaka Co. v. City of St. Paul*, 309 N.W.2d 40 (Minn. 1981); *Brown v. Minn. Dep’t of Public Welfare*, 368 N.W.2d 906 (Minn. 1985); *Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566 (Minn. 2000); *Northwest Airlines, Inc. v. Office of Appellate Courts County of Hennepin*, 632 N.W.2d 216 (Minn. 2001); *Bond v. Comm’r of Revenue*, 691 N.W.2d 831 (Minn. 2005); *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761 (Minn. 2006). And when this Court has considered these cases, it has

² The U.S. Supreme Court has likewise been reluctant to apply the doctrine of equitable estoppel against the federal government. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, 421 (1990) (noting that “we have reversed every finding of estoppel that we have reviewed”).

repeatedly cautioned lower courts to narrowly apply the doctrine of equitable estoppel against the government.

For example, when this Court first recognized that equitable estoppel could theoretically apply against the government while acting in its sovereign capacity, it cautioned that “[w]e do not envision that estoppel will be freely applied against the government.” *Mesaba Aviation*, 258 N.W.2d at 880. A few years later, this Court again cautioned that “under our reasoning in *Mesaba Aviation*, a plaintiff, to prevail against a government entity, has a heavy burden of proof” and noted that courts should be “more reluctant to estop the government when it is acting in this [sovereign] capacity.” *Ridgewood*, 294 N.W.2d at 292-293 (quoting *United States v. Lazy FC Ranch*, 481 F.2d 985, 989 (9th Cir. 1973)); *See also*, *Bond v. Comm’r of Revenue*, 691 N.W.2d 831 (Minn. 2005) (noting that “[w]e have repeatedly held that a party seeking to apply equitable estoppel against a government agency acting in its sovereign capacity has a heavy burden of proof”).

The most significant limitation that this Court has placed on the doctrine of equitable estoppel against the government, however, has been its narrow interpretation of the threshold and “most important element” of wrongful conduct. *Ridgewood*, 294 N.W.2d at 293. Indeed, this Court recently confirmed in 2005 that the wrongful-conduct element requires proof of “affirmative misconduct”³ on the government’s part and went on to provide examples of conduct that does not satisfy this requirement.

³ The term “affirmative misconduct” originated from a court of appeals’ decision interpreting this Court’s holding in *Ridgewood*. *In re Westling Mfg., Inc.*, 442 N.W.2d

“Affirmative misconduct is not simple inadvertence, mistake, or imperfect conduct.”

Bond, 691 N.W.2d at 838.

In 2006, this Court again confirmed the narrow nature of the wrongful-conduct element by noting that it requires proof of malfeasance on the government’s part. “This ‘wrongful conduct’ element has since been interpreted to require some degree of malfeasance.” *Kmart Corp.*, 710 N.W.2d at 771. And this Court even went on to confirm that a government employee’s good-faith provision of erroneous legal advice cannot satisfy the wrongful-conduct element as a matter of law.⁴ A “good-faith interpretation of a statute, even if erroneous, would not rise to the level of malfeasance.” *Id.* at 772.

B. It would be bad public policy to expand the doctrine of equitable estoppel against the government.

This Court’s reluctance to apply equitable estoppel against the government while acting in its sovereign capacity is based on sound reasoning. Indeed, there are several reasons why it would be bad public policy to expand the doctrine of equitable estoppel against the government. First, it would create separation-of-powers conflicts. Second, it would require governmental entities to spend their increasingly limited public resources to defend against new claims equitable-estoppel. And third, it would chill government employees’ willingness to provide information to the public.

328, 332 (Minn. Ct. App. 1989), *pet. for rev. denied* (Aug. 25, 1989) (noting that “the *Ridgewood* court’s emphasis leads to a proper inference that affirmative misconduct is required to estop the government”).

⁴ As demonstrated by the City’s brief, the conduct alleged to have occurred in this case was a simple erroneous representation of fact and did not even rise to the level of government advice.

1. An expansion of the doctrine of equitable estoppel against the government would create separation-of-powers conflicts.

This Court has repeatedly noted that its reluctance to apply equitable estoppel against the government while acting in its sovereign capacity is based in large part on separation-of-powers concerns. A “court’s attempt to negate the application of legislation on other than constitutional grounds creates serious separation of powers problems.” *Ridgewood*, 294 N.W.2d at 293.

In this case, for example, the court of appeals ignored a valid setback zoning ordinance adopted by the elected representatives of the citizens of North Oaks even though there were no facts to suggest that the City did anything to intentionally mislead the Sarpals during the permitting process. The court of appeals overstepped the bounds of its judicial power by ignoring a constitutionally valid law under these circumstances.

Such judicial overstepping has several negative consequences. First, it is a bad use of limited judicial resources to allow lower courts to overstep their authority and become entangled in second-guessing legislative policy decisions. Second, this judicial overstepping frustrates the will of the citizen voters who elected city councilmembers and not judges to make zoning decisions for the City. And third, this judicial overstepping frustrates the important public purposes and policies underlying the legislation that is judicially ignored. In this case, for example, the court of appeals’ overstepping frustrates the purposes and policies underlying the City’s setback ordinance, and it also frustrates the purposes and policies underlying the state variance statute. *See* Minn. Stat. §

462.357, subd. 6.⁵ In short, this Court summarized the separation-of-powers concern the best.

We should think that a court of law and equity would hesitate to interfere in the performance by a legislative body of its political and policy decisions which, in the absence of evidence of taint or fraud, have as their primary, if not sole, objective, the general well-being of the community they are selected to represent. In our view, only the most compelling reasons and the clear necessity to avoid the most unconscionable results could, if at all, sustain the substitution by the court of its judgment for that which is committed to the discretion of the legislative organ.

Ridgewood, 294 N.W.2d at 293 (quoting *Huntt v. Gov't of Virgin Islands*, 382 F.2d 38, 44 (3d Cir. 1967)).

2. An expansion of the doctrine of equitable estoppel against the government would require governmental entities to spend their increasingly limited public resources to defend against new equitable-estoppel claims.

The court of appeals erroneously expanded the wrongful-conduct element to include situations where a government employee has in good faith simply provided erroneous information to the public. It will be significantly easier to make equitable-estoppel claims against the thousands of governmental entities throughout our state under this expansive interpretation of the wrongful-conduct element. Indeed, government employees respond to numerous questions from the public on a daily basis. It is likely that some of this information that is being provided in good faith is erroneous. It will be chaotic if good-faith mistakes like these can estop the government from enforcing valid legislation. In addition, it would be bad public policy to require governmental entities to

⁵ The court of appeals essentially granted the Sarpals a variance from the setback requirements in violation of state statute. *See Krummenacher v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010) (holding that under the city variance statute, a property owner is only entitled to a variance if the property owner cannot put his or her property to a reasonable use without the variance).

spend their increasingly limited public resources to defend against the new equitable-estoppel claims that would be brought under the court of appeals' erroneously expanded doctrine.

And if some of these new equitable-estoppel claims were successful, it could require additional payment of public funds. For example, it is possible that the state could be required to return tax payments if a government employee provided erroneous information to a taxpayer. Or the government could be required to provide governmental benefits if a government employee provided erroneous information to an applicant for those benefits. Indeed, the U.S. Supreme Court was so concerned about the negative consequences that equitable-estoppel claims could have on the "public fisc" that it has held that equitable estoppel may never be granted against the United States when it would require payment of money in violation of a federal statute. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990). In fact, some have interpreted the *Richmond* Court's ruling to preclude the possibility that even affirmative misconduct could ever give rise to estoppel in a claim for money from the federal government. *Equitable Estoppel Against the Federal Government*, 104 Harv. L. Rev. 286, 293-94 (Nov. 1990). The same concerns about preserving the public fisc are equally applicable in Minnesota.

3. An expansion of the doctrine of equitable estoppel against the government would chill government employees' willingness to provide information to the public.

In this case, the court of appeals concluded that a counter clerk's simple act of mistakenly providing a permit applicant with an incorrect survey for a non-city purpose

was sufficient to bind the city and prevent it from enforcing its valid setback ordinance.⁶

This conclusion conflicts with this Court’s “authorized agent” precedent, and it is bad public policy. *See, e.g., Jasaka Co.*, 309 N.W.2d at 44 (holding that a city was not estopped from enforcing its zoning ordinance even though a building official had erroneously issued a building permit noting that “with rare exception a city is not estopped from denying the unlawful functions of its own officials”).

If the court of appeals’ decision is not reversed, it will chill government employees’ willingness to provide information to the public. Government employees will be reluctant to say anything that might impose liability on their employers. And concerns about liability will likely cause government employers to instruct their employees to be guarded in their interactions with the public. This will not promote good governance, and it will be frustrating to the public. It will also make government less accessible to those members of the public who need assistance to successfully interact with the government.

⁶ The court of appeals reasoned that the counter clerk’s act of providing the survey—when viewed in the context of the city’s act of approving the building permit—was sufficient to give rise to an equitable-estoppel claim. Appellant’s Appendix at AA-222. As demonstrated by the City’s Brief, this reasoning is erroneous and went beyond the issue presented to the trial court. *See* Appellant’s Brief at 17.

CONCLUSION

The court of appeals allowed its sympathy for the Sarpals to give rise to a result-oriented decision that created new law that is inconsistent with Minnesota precedent and that will negatively affect thousands of Minnesota governmental entities. It will be significantly easier to make equitable-estoppel claims against the government under the court of appeals' new law because the wrongful-conduct element has been expanded to encompass any government employee's good-faith, but erroneous, representation of fact.

The court of appeals' decision should be reversed because it conflicts with this Court's precedent that holds that the wrongful-conduct element of an equitable-estoppel claim against the government requires proof that the government has engaged in "affirmative misconduct" that does not include "simple inadvertence, mistake, or imperfect conduct," but instead, requires "some degree of malfeasance." Under this precedent, a government employee's good-faith, but erroneous, representation of fact can never rise to the level of affirmative misconduct as a matter of law.

In addition, there are several reasons why it would be bad public policy to expand the doctrine of equitable estoppel against the government. First, it would create separation-of-powers conflicts. Second, it would require governmental entities to spend their increasingly limited public resources to defend against new equitable-estoppel claims. And third, it would chill government employees' willingness to provide information to the public.

For all of these reasons, the League respectfully requests that this Court reverse the court of appeals' decision and confirm that a government employee's good-faith, but

erroneous, representation of fact can never be sufficient to satisfy the wrongful-conduct element of an equitable-estoppel claim against the government.

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Respectfully submitted,

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