

No. A10-1628

**State of Minnesota
In Court of Appeals**

City of East Bethel, a Minnesota municipal corporation, East Bethel Housing and
Redevelopment Authority, a public body, corporate and politic, and Jill Teetzel,
a resident and taxpayer of the City of East Bethel,

Plaintiffs-Respondents,

vs.

Anoka County Housing and Redevelopment Authority,
a public body, corporate and politic,

Defendant-Appellant

and

Larry Dalien, Division Manager, Anoka County Property Records & Taxation,

Defendant-Respondent

ON APPEAL FROM THE TENTH JUDICIAL DISTRICT COURT, JUDGE JAMES A. CUNNINGHAM, JR.

**ANOKA COUNTY HOUSING AND REDEVELOPMENT AUTHORITY'S
REPLY BRIEF**

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INTRODUCTION

On the merits of the taxation question before the Court, East Bethel agrees with Anoka on the first three points of the analysis. It agrees that:

- the general HRA statute gives Anoka a county-wide taxing district (Resp. Br. 11);
- Anoka's taxing power must be exercised uniformly across its district (*id.* at 21 n. 8); and
- Anoka's county-wide district can be altered only by an express limitation in its special law (*id.* at 12).

The single point of disagreement between the parties is whether Anoka's special law contains an express limitation. It does not. The original version of Anoka's bill did contain an express limitation, but it was deleted before passage, and the remaining sections unambiguously use the term of art "area of operation" to give Anoka a county-wide taxing district. East Bethel does not address the legislative term "area of operation" in its brief or make any attempt to reconcile its position with that term.

East Bethel argues instead that this Court should not decide the case on the merits because Anoka's appeal is untimely and it did not preserve its arguments below. That is not correct. Anoka filed proper, substantive post-trial motions that tolled the time to appeal. The District Court did not reject those motions as improper, but instead considered them. The important issue of taxing authority that Anoka raises is therefore fully preserved for this Court. The Court should reverse the District Court's erroneous interpretation and direct the entry of judgment for Anoka.

ARGUMENT

I. Anoka's proper post-trial motions tolled the time to appeal and preserved all relevant issues for review in this Court.

At the hearing on Anoka's post-trial motions, the district court addressed the parties on the record and stated that it had taken "all of your arguments into account." Sept. 14, 2010 Tr. 42. Anoka fully presented its arguments, and the district court considered them. The arguments are thus preserved for appeal.

A. Anoka's motions tolled the time to file its notice of appeal.

Under Minn. R. Civ. App. P. 104.01, if any party files a "proper and timely motion" "to alter or amend the judgment under Minn. R. Civ. P. 52.02" or "for a new trial under Minn. R. Civ. P. 59", the time to appeal does not begin to run until after decision of the motion. East Bethel does not dispute that Anoka filed timely post-trial motions to amend the judgment or, in the alternative, for a new trial. It takes the extreme position, however, that the contents of the motions were so deficient that the motions were not "proper" under Rule 104.01. This argument is wholly unfounded.

Anoka's Rule 52.02 motion to amend the judgment met all the requirements of the rule. Anoka sought amendment of several specific factual and legal findings, based on pinpoint record citations and controlling legal authority, exactly as Rule 52.02 provides. *See* Anoka [Redlined Proposed] Amended Order at 2-9; Anoka Mem. at 9-10; *see also Lewis v. Lewis*, 572 N.W.2d 313, 315-16 (Minn. App. 1997); *Otte v. Otte*, 368 N.W.2d 293, 299 (Minn. App. 1985) (stating that a motion to amend findings "must be based upon the files, exhibits and minutes of the court"). East

Bethel is simply wrong when it claims that Anoka “did not ask the District Court to clean up particular findings or address an omission in the findings or conform certain findings to undisputed evidence as an actual motion to amend findings would have.”

Resp. Br. 10. Anoka did all of those things. Indeed, Anoka’s presentation was so persuasive that East Bethel has adopted some of Anoka’s proposed findings in its own brief on appeal, abandoning the District Court’s incorrect contrary findings. *Compare* Anoka [Redlined Proposed] Amended Order at 3-4 (replacing “1987” and citing “1971” as date of amendment allowing county HRAs) *with* Resp. Br. 4 (citing 1971 as the date of amendment allowing county HRAs). Because Anoka’s Rule 52.02 motion was proper, its notice of appeal was timely.

East Bethel is also wrong in arguing that Anoka did not adequately articulate the bases for its new-trial motion because it did not include them in the formal motion. Resp. Br. 8. Under governing precedent, as long as the grounds for a new trial are described in a party’s memorandum, the motion is sufficiently preserved, regardless of whether the grounds are also listed in the motion itself. *See GN Danavox, Inc. v. Starkey Labs., Inc.*, 476 N.W.2d 172, 176 (Minn. App. 1991); *see also Lowis v. Park Nicollet Clinic*, No. A06-619, 2007 Minn. App. Unpub. LEXIS 55, at *9 (Minn. App. Jan. 16, 2007). Anoka’s sixteen-page memorandum presented detailed argument in support of its motion and is readily distinguishable from the precedent cited by East Bethel, where the appellant did not provide reasons for a new trial in any document. *See, e.g., Swartwoudt v. Swartwoudt*, 349 N.W.2d 600, 602 (Minn. App. 1984).

Because Anoka's post-trial motions were proper, its appeal was timely under Minn. R. Civ. App. P. 104.01.

B. The pure issue of statutory interpretation before the Court was fully preserved in the District Court.

As East Bethel properly concedes, "the outcome in this case . . . turns entirely on statutory interpretation." Resp. Br. 12. Anoka fully presented its interpretive arguments to the district court, and the district court considered them. There is therefore no basis to East Bethel's argument of waiver on appeal.

The question on appeal is the same question the parties have disputed from the beginning of this case. It is whether Anoka's special law, Minn. Stat. § 383E.17, expressly limits the scope of its taxing authority granted by Minn. Stat. § 469.033, subd. 6, since only an express limitation can have effect under Minn. Stat. § 469.012, subd. 11. At trial, Anoka introduced evidence showing the county-wide benefits its programs produced to justify its taxes. *See, e.g.*, Tr. 57-62. In its final trial brief, it vigorously argued that the county-wide benefits of its programs justified allowing it to continue taxing in East Bethel. App. 29-30. In its proposed findings, Anoka identified both findings of fact and conclusions of law directed to county-wide authority. App. 36. Anoka specifically relied on Minn. Stat. § 469.012, subd. 11, the statutory provision requiring that any limitation on its power be an "express" limitation, and on Minn. Stat. § 383E.17, subd. 1, the provision expressly describing its area of operation as county-wide—the same provisions it relies on in this appeal. App. 36.

It is undisputed that Anoka presented all of the interpretive arguments it presents on appeal in its post-trial motions. The district court, having reviewed Anoka's briefing and heard its oral argument at the post-trial hearing, declared that it had taken "all of your arguments into account." Sept. 14, 2010 Tr. 42. East Bethel argues that the district court should not have considered Anoka's interpretive arguments in the post-trial briefing because they contained new ways of arguing about the statutory sections at issue. But this misunderstands the role of post-trial motions. Post-trial motions "permit the trial court an opportunity to review its own exercise of discretion." *Stroh v. Stroh*, 383 N.W.2d 402, 407 (Minn. App. 1986). They provide "both trial court and counsel with a unique opportunity to eliminate the need for appellate review or to more fully develop critical aspects of the record in the event appellate review is sought." *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986). Because Anoka's motions more fully developed issues that were already before the district court, they were entirely appropriate.

East Bethel's cited authority is not on point because in each of its cases, unlike here, the appellant attempted to raise entirely new legal theories or defenses in post-trial motions that depended on factual questions that had not been presented to a jury. *See Allen v. Cent. Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939) (holding that defendants could not present claim of implied warranty for first time after trial where defense was based only on fraud); *People's State Bank v. Dickie*, 254 N.W. 782, 783 (Minn. 1934) (holding that after trial for nonpayment of promissory note, where only factual question presented to jury was a factual question of intent of employee,

defendant could not raise new defense based on a challenge to employee's authority); *Minn. Mut. Fire & Cas. Co. v. Retrum*, 456 N.W.2d 719, 723 (Minn. App. 1990) (stating that it was not an abuse of discretion to deny new trial motion where defendant "raised a new theory and new factual argument for the first time"). Here—where there was a bench trial, not a jury trial; where Anoka is relying on the existing factual record, not new factual issues; and where its legal arguments are a further development of issues already before the court, not brand new defenses—the district court was correct to consider Anoka's arguments.

Indeed, Anoka could have raised its more fully developed interpretive arguments for the first time in this Court on appeal, even if it had not presented them so fully in its post-trial motions, because Minnesota courts allow litigants to further develop interpretive arguments on appeal. In *Weigel v. Commissioner of Revenue*, 566 N.W.2d 79 (Minn. 1997), for example, the Commissioner of Revenue contended that the Weigels could not argue on appeal that their sale of supplies was not a "sale at retail" under Minn. Stat. § 297A.01, subd. 4, because they had not cited that statute in the district court. *Id.* at 82 n.2. The Minnesota Supreme Court expressly rejected that argument, holding that "[a]lthough the Weigels did not specifically argue this issue under section 297A.01, subd. 4, they adequately preserved the argument by" presenting a more general argument on "double taxation." *Id.*; see also *Capital One Small Business v. Johnson*, No. A07-2373, 2008 WL 4909628, at *3 (Minn. App. Nov. 18, 2008) (describing that when a party's memorandum was "quite general" but

“consistent with” the litigant’s appellate arguments, it was sufficient to “adequately preserve[] the argument that is the central issue on appeal”).

Because Anoka’s arguments were presented to and considered by the district court, they are preserved for appeal. *See Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 311 (Minn. 2003).

II. Anoka’s Special Law Does Not Expressly Limit Its Taxing Authority.

On the merits of the taxation question before the Court, East Bethel agrees with Anoka that, unless it can identify an express limitation on Anoka’s taxing authority in Anoka’s special law, Anoka’s taxing authority stretches county-wide. As East Bethel states, “only an express limitation contained in the special law creating the Anoka County HRA curtails whatever authority may be granted under the general housing and redevelopment authority statutes.” Resp. Br. 12. Anoka’s special law contains no such limitation.

A. The legislature did not use the term “jurisdiction” to expressly limit Anoka’s taxing authority.

East Bethel’s argument is that the legislature expressly limited Anoka’s taxing authority by regulating its “jurisdiction” in § 383E.17, subd. 2. Resp. Br. 18-19. The problem with that argument is that the legislature used a different term of art, “area of operation,” to regulate HRAs’ taxing authority, and used the term “jurisdiction” to regulate only their housing and redevelopment project authority.¹ Because this Court

¹ Anoka did not concede the correctness of East Bethel’s interpretation of “jurisdiction” in the proceedings below, as East Bethel claims. Resp. Br. 16. In the
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must consider the statute as a whole in interpreting its plain meaning, *see* Minn. Stat. § 645.08, it must reject East Bethel’s argument.

As Anoka demonstrated in its opening brief, the Minnesota legislature uses the term “area of operation” to define the taxing authority of HRAs. *See* Br. 11. It does so in Section 469.033, subd. 6, which specifically uses the term to delineate an HRA’s authority to tax, providing, “All of the territory included within the area of operation of any authority shall constitute a taxing district.” It also does so in Section 469.008, which limits other HRAs’ ability to tax in certain cities by carving those cities out of the HRAs’ “area of operation.” *See* Minn. Stat. § 469.008.

Not once in its brief does East Bethel address the legislature’s use of the term “area of operation” or attempt to reconcile its proposed interpretation with the fact that the legislature expressly defined Anoka’s “area of operation” to be county wide *in its special law*. Minn. Stat. § 383E.17, subd. 1. If East Bethel were correct, the legislature first used its chosen term “area of operation” to make Anoka’s taxing power county wide, then used the different term “jurisdiction” to make its taxing power not county wide—in the very same section. This is not remotely plausible. The term “area of operation” should be given the same meaning in Anoka’s special law that it holds elsewhere in the HRA statutes. *See* Minn. Stat. § 645.08(1) (providing that “technical

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cited passages of its briefs, Anoka advanced its timing argument that, even if jurisdiction covered taxing, Anoka nonetheless had taxing authority in East Bethel because later-created city HRAs do not affect Anoka’s jurisdiction. Anoka expressly rejected East Bethel’s interpretation of jurisdiction elsewhere. *See* App. 42-48, 50-53.

words or phrases . . . are construed according to such special meaning”). And the term “jurisdiction” should be given the meaning it has in context.

In context, the term “jurisdiction” in Anoka’s special law refers to its authority to commence housing or redevelopment projects. The statute provides,

If a municipal housing and redevelopment authority requests the Anoka County Housing and Redevelopment Authority to handle *the housing duties* of the municipal authority, the Anoka County Housing and Redevelopment Authority shall act and have exclusive *jurisdiction for housing* in the municipality. A transfer of duties related to housing shall not transfer any *duties relating to redevelopment*.

Minn. Stat. § 383E.17, subd. 2 (emphases added). East Bethel acknowledges that one aspect of “jurisdiction” is “jurisdiction for housing.” Resp. Br. 19. It argues, however, that if the legislature used the limited term “jurisdiction for housing” in one context, the unmodified term “jurisdiction” must include other types of jurisdiction as well. *Id.* It does. It also includes jurisdiction for redevelopment, which the statute makes clear by saying that a transfer of “housing duties”—and the concomitant transfer of “jurisdiction for housing”—does not transfer “duties relating to redevelopment,” or jurisdiction for redevelopment. Minn. Stat. § 383E.17, subd. 2. This Court need not force “jurisdiction” to cover taxing authority and override the separate term “area of operation” in order to give the term “jurisdiction” meaning.

Perhaps the best evidence that the term “jurisdiction” in § 383E.17 does not impose an express limitation on Anoka’s taxing authority is the fact the legislature removed the section addressing taxing authority before enactment. Anoka’s proposed

special law contained a separate subdivision that expressly addressed taxing authority and limited the amount it could collect. *See* Add. 15 (providing S.F. 682, subd. 2 § 2 titled “County Taxing Authority”). The legislature chose to delete that provision before passing the law. *See* Add. 16; *see also* Minn. Stat. § 383E.17. Anoka is not asking the Court to speculate on the reasons why the limitation was removed. The reasons do not matter. What matters is that the term “jurisdiction” was used side by side with an actual express limitation in the original bill, and the actual express limitation was removed—making it impossible to say that the term “jurisdiction” itself is an express limitation on Anoka’s taxing authority.

East Bethel’s policy arguments fare no better. East Bethel suggests that Anoka cannot levy a county-wide tax because East Bethel’s residents may not benefit from Anoka’s projects since they live in “a municipality in which no Anoka County HRA housing or redevelopment authority could be undertaken.” *See* Resp. Br. 21. The legislature disagrees, because it deems *all* residents in the county to benefit from every housing and redevelopment project, no matter where it is located. *See* Minn. Stat. § 469.033, subd. 6. East Bethel could also authorize Anoka HRA to undertake housing activities in East Bethel. *See* Minn. Stat. § 383E.17. And regardless of the location of housing projects, Anoka conducts other activities that undisputedly generate county-wide benefits, including county-wide housing studies and market analyses, an economic development site selection website, and projects that increase Anoka’s “livable community score,” benefitting all cities within the county. Tr. 57-64.

East Bethel also reasons that Anoka should not be allowed to continue to tax in East Bethel based on an objection to “double taxation.” The legislature does not share East Bethel’s concern. As East Bethel concedes, “double” taxation is allowed in Dakota County, Resp. Br. 19-20; *see also* Tr. 103-114, which precludes East Bethel from arguing that it is such an unmitigated policy harm that the legislature must be presumed not to have intended to allow it in Anoka County. East Bethel’s concern, moreover, is well founded only if its own HRA adds nothing to what Anoka does. Presumably, East Bethel finds additional value in having its own HRA, or it would not have created one. If it does not find that value, it can choose not to levy its own tax, thus eliminating any concern about “double” taxation.

East Bethel’s arguments about policy concerns, moreover, should not affect the outcome of this case, because Minn. Stat. § 383E.17, subd. 1, does not expressly limit Anoka’s taxing authority, and Anoka therefore retains the authority to levy a special benefit tax in East Bethel, regardless of East Bethel’s creation of a city HRA.

B. Only municipal HRAs that existed before Anoka was created have any effect on its authority, taxing or otherwise.

In the alternative, the Court should affirm Anoka’s authority to tax in East Bethel because Anoka’s taxing authority cannot be reduced by municipal HRAs that are created after Anoka’s HRA was established.

East Bethel argues to the contrary by relying on the portion of the statutory interpretation maxim that provides, “words used in the past or present tense include the future.” Resp. Br. 15 (citing Minn. Stat. § 645.08). East Bethel ignores, however, the

remainder of that canon, which states that it does not apply when the interpretation it would produce would be “repugnant to the context of the statute.” Minn. Stat. § 645.08.

Here, Anoka has demonstrated that interpreting its special law to allow newly created municipal HRAs to limit Anoka’s authority would be “repugnant to the context of the statute.” *See id.* That is so because the statute distinguishes between existing and later-created municipal HRAs. The sentence directly preceding the one relied on by East Bethel provides that Anoka “shall not limit or restrict any existing housing and redevelopment authority” and “cannot prevent a municipality from creating an authority.” Minn. Stat. § 383E.17, subd. 2. The specific choice to distinguish between existing and later-created municipal housing and redevelopment authorities precludes the conclusion that the very next sentence should be read to refer to both existing and later-created municipal HRAs, when it states that Anoka’s jurisdiction is limited only in municipalities where an HRA “is established.” *Id.* Anoka’s argument does not turn on the meaning of the word “is,” as East Bethel characterizes it, Resp. Br. 3, but on the meaning of the word “established” and the clear parallel between that word and “existing” in the previous sentence.

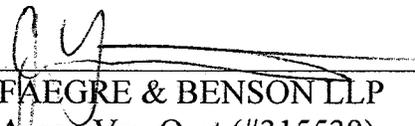
Because the statute as a whole expresses the legislative intent to allow only previously established municipal HRAs to affect Anoka’s jurisdiction, East Bethel’s later creation of an HRA had no effect. Hence, even if “jurisdiction” included taxing authority, Anoka would retain its authority to levy taxes on real property in East Bethel.

CONCLUSION

This Court should hold that Anoka possesses a mandatory, county-wide taxing district for purposes of levying special benefit taxes under Minn. Stat. § 469.033, subd. 6, and that its taxing authority is not expressly limited by its special law. The Court should therefore reverse and remand with instructions allowing Anoka to continue to levy special benefit taxes on real property in East Bethel, and authorizing the recovery of Anoka's lost tax revenue from 2010 against the security posted by East Bethel.

Dated this 2nd day of December, 2010

Respectfully submitted,



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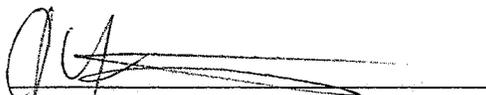
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Defendant-Respondent

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,343 words. This brief was prepared using Microsoft® Office Word 2007 software.

Dated: December 2, 2010

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