

NO. A05-1505

State of Minnesota
In Court of Appeals

Instant Testing Company, et al.,

Appellants,

v.

Community Security Bank, Eagan Economic
Development Authority, Barbara Alice Kopacek, et al.,

Respondents.

**RESPONDENT EAGAN ECONOMIC DEVELOPMENT
AUTHORITY'S BRIEF**

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LEGAL ISSUES

A. Whether the district court correctly determined that it lacked subject matter jurisdiction to hear the Appellants' motion for determination of relocation benefits?

The district court determined that it lacked subject matter jurisdiction

1) because the Appellants could not satisfy the statutory prerequisites for bringing a motion under section 117.232 and 2) because the Appellants failed to exhaust their administrative remedies.

Land O'Lakes Dairy Co. v. Hintzen, 31 N.W.2d 474, 476 (Minn. 1948).

Irwin v. Goodno, 686 N.W.2d 878, 880 (Minn. App. 2004).

Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen, 663 N.W.2d 559, 562 (Minn. App. 2003).

MINN. STAT. § 117.232, subd. 2 (2005).

MINN. STAT. § 117.025 (2005).

B. Whether the district court correctly determined that the Appellants lacked standing to bring a motion or claim for relocation benefits under section 117.232?

The district court determined that the Appellants lacked standing under section 117.232 1) because they could not allege injury in fact or 2) satisfy the basic prerequisites to filing a motion under section 117.232.

Sundberg v. Abbott, 423 N.W.2d 686, 688 (Minn. App. 1988).

State by Humphrey v. Philip Morris, Inc., 551 N.W.2d 490, 493 (Minn. 1996).

MINN. STAT. § 117.232, subd. 2 (2005).

MINN. STAT. § 117.025 (2005).

STATEMENT OF THE CASE

In November 2004, a claim for relocation benefits was submitted by the Appellants to Respondent Eagan Economic Development Authority (“EDA”). The Appellants, two companies, claimed that as former tenants on property owned by Respondent Gordon Kopacek, they should receive moving costs based on Mr. Kopacek’s December 2003 sale of property to the EDA. Following a thorough review of the Appellants’ claim, the EDA determined that the Appellants were not “displaced persons” *because they were tenants that had moved from property before the initiation of negotiations*. Analyzing the applicable federal statutes and regulations, the EDA issued a nine-page decision denying the Appellants’ claims. When transmitting that decision to the Appellants, the EDA enclosed a copy of its appeal policy, which included a 90-day right to administrative appeal and a final right of appeal by writ of certiorari directly to this Court.

The Appellants chose not to appeal the EDA’s January 20, 2005 decision; rather, the Appellants filed a motion in district court for a determination of relocation benefits. The EDA responded to the Appellants’ motion by filing a motion to dismiss. Among other things, the EDA argued that the Appellants were not entitled to bring a motion for a determination of appraisal and moving costs because they could not satisfy the basic elements of the statute upon which their motion relied and because they failed to exhaust their administrative remedies. The district court agreed with the EDA, dismissing the Appellants’ motion with prejudice. This appeal followed.

STATEMENT OF THE FACTS

On or about March 11, 2003, Respondent Gordon Kopacek—who owns the Appellant companies—contacted the City of Eagan (“City”) and asked the City to consider acquiring his Property.¹ (A.4.) Past negotiations with private developers had broken off, and Mr. Kopacek decided to affirmatively request that the City, through its EDA, pursue acquisition. (A.4.) On March 19, 2003, prior to any discussion of acquisition with an EDA representative, the Appellants sent a memo to their customers, which reads, in relevant part, as follows: “We will be moving to our new office and laboratory building on March 21, 2003. Our new address is 7125 West 126th Street, Suite 500, Savage, Minnesota 55378.” (RA.1.)² It was not until the following month (April 2003) that the City or EDA contacted Gordon Kopacek in response to his March 2003 request that the City purchase his Property. (A.6.) In mid-April 2003, Mr. Kopacek met with the EDA’s relocation consultant, Dan Wilson, to discuss general pricing for the Property. (*Id.*) Memorializing an April 21, 2003 meeting with Mr. Kopacek, Mr. Wilson wrote the following in a letter to a representative of the EDA: “We discussed relocation, the primary point is that those dollars are tax exempt. That interested him.” (*Id.*)

¹ The Property is located at at 3996 and 4000 Cedar Grove Parkway in the City of Eagan (the “Property”).

² Not unexpectedly, both Appellants stopped paying rent to Mr. Kopacek at the Eagan Property after their move and began paying rent—at a higher rate—to Mr. Kopacek for the use of his new facility in Savage. (RA.2-3.) Also in April 2003, Mr. Kopacek began charging his company, Appellant Allied Test Drilling, to store personal property at his new facility in Savage. (RA.5.) Invoices supplied by the Appellants reflect that their computers were moved to Savage in March 2003 (RA.6) and that their phones and network were installed in Savage prior to that time. (RA.7-14).

Mr. Kopacek has not, and cannot, allege that the EDA threatened or even suggested that it would use the power of eminent domain to acquire the Property. (A.3-7.) The parties did not discuss eminent domain: the purchase was voluntary. (A.6 & A.70-76.) The EDA did not urgently need the Property; the Property remained vacant and undeveloped on the day this matter was heard by the district court. (T.6.) Nevertheless, the undisputed record establishes that long before contacting the EDA, Mr. Kopacek had begun construction on a new, larger facility in Savage, Minnesota. (A.5.) Mr. Kopacek took this action well before he signed the Purchase Agreement with the EDA in June 2003. (RA.1; A.6; A.76; A.83.)³

On June 17, 2003, the EDA adopted a resolution approving a purchase agreement for the Property. (A.84.) The purchase agreement contains the following disclosure with respect to the \$41,000 payment: "This amount is agreed to be full satisfaction of any and all claims for benefits, which may be available to Sellers pursuant to MINN. STAT. § 117.52 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and regulations pursuant thereto."⁴ (A.71.) Following environmental testing, closing occurred on December 5, 2003. (A.86.) Due to

³ The Appellants focus ad nauseum on the "personal property" that apparently remained on the property *after* they announced to their customers that they would be relocating to Savage, Minnesota on March 21, 2003. (App. Brief at 29-30.) However, Mr. Wilson wrote to Mr. Kopacek in May 2003 to confirm *Mr. Kopacek's* responsibility for cleaning the site of "all debris, car/truck bodies, tires, batteries and other personal property." (A.62.) The Appellants have come forward with no invoice or bill indicating that the "personal property" left at the Eagan facility was *their* personal property. More importantly, however, the Appellants did not pay rent at the Eagan facility after March 2003. (RA.2-3.) The record reflects, and the district court properly concluded, that the Appellants were not tenants on the Property in April 2003. (A.96.)

environmental concerns, the parties executed an escrow agreement at closing and money remained in escrow pending environmental remediation. (*Id.*)

It was not until approximately one year following closing that the Appellants returned to the EDA with a claim for relocation benefits framed as an “actual costs” claim. (*See Apps. Brief* at 20.) The EDA, through its consultant, Dan Wilson, analyzed the claims. (A.80-88.) The EDA then adopted Findings of Fact, Conclusions and Decision denying the Appellants alleged claim for relocation benefits. (*Id.*) That decision was served upon the Appellants via United States mail on February 2, 2005. (A.79.) At that time, the Appellants were also provided with a copy of the EDA’s relocation appeal policy. (A.79 & A.89.) The Appellants, through their legal counsel, indicated they did not like the choice of the hearing officer. (A.91-92.) Rather than exhaust their administrative remedies and pursue an appeal under the EDA’s relocation appeal policy, the Appellants chose another forum, district court. (RA.13.) Appellants alleged that MINN. STAT. § 117.232 conferred jurisdiction upon the district court. (*Id.*) The EDA brought a motion to dismiss alleging, among other things, lack of standing and lack of subject matter jurisdiction. (RA.15.)

The district court concluded 1) that the Appellants’ failed to exhaust the administrative remedy provided by the EDA’s Relocation Appeal Policy; 2) that the court lacked jurisdiction to toll the 90-day limitations period stated in the Relocation Appeal Policy; 3) that the Appellants were not owners or tenants within the meaning of MINN. STAT. § 117.025, subdivision 3; and 4) that MINN. STAT. § 117.232 did not confer

⁴ The “Sellers” referenced in the purchase agreement are Respondents Gordon Joseph Kopacek and Alice Barbara Kopacek. (A.76.)

jurisdiction upon the court and 5) that the Appellants lacked standing to bring a motion under MINN. STAT. § 117.232. (A.96.)

The foregoing conclusions of law were based, in part, on the following uncontroverted findings of fact:

...

3. In the spring of 2002, Mr. Kopacek began construction of a new building in Savage, Minnesota based on an expectation that Delta Development was interested in purchasing the Eagan property.

4. The proposed sale to Delta fell apart in March of 2003.

5. On or about March 11, 2003, Mr. Kopacek contacted the City of Eagan about the possible acquisition of the Eagan property.

6. On March 19, 2003, the Appellants sent a memo to their customers stating "we will be moving to our new offices and laboratory building on March 21, 2003. Our new address is 7125 West 126th Street, Suite 500, Savage, MN 55378."

7. On April 9, 2003, Mr. Kopacek met with Dan Wilson, the acquisition consultant for the Eagan Economic Development Agency (hereafter "EDA") to talk about a potential sale of the Eagan property.

8. On June 17, 2003, the EDA adopted a resolution approving the purchase of the Eagan property. Closing occurred on December 5, 2003.

9. There is no evidence that the EDA or the City of Eagan approached Mr. Kopacek or initiated any of the negotiations for acquisition. The record does not indicate that there was any intent to acquire the Eagan property by eminent domain.

10. The purchase agreement between EDA and the Kopaceks provides for relocation benefits of \$41,000.00 and that this amount was in "full satisfaction of any and all claims for benefits, which may be available to Sellers pursuant to MINN. STAT. § 117.52 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

(A.94-95.)

The EDA respectfully requests that this Court affirm the trial court's Findings of Fact, Conclusions of Law and Order for Judgment dated June 2, 2005.

LEGAL ARGUMENT

I. STANDARD OF REVIEW.

Subject-matter jurisdiction is a question of law reviewed de novo. *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) (citing *In re Thulin*, 660 N.W.2d 140, 143 (Minn. App. 2003)). Nevertheless, where the trial court is weighing statutory criteria in light of the found basic facts, the trial court's conclusions of law will include determination of mixed questions of law and fact, determination of "ultimate" facts, and legal conclusions. In such a blend, the appellate court may correct erroneous applications of the law. As to the trial court's conclusions on the ultimate issues, mindful of the discretion accorded the trial court in the exercise of its equitable jurisdiction, the reviewing court reviews under an abuse of discretion standard. *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990). "A trial court's dismissal of an action for procedural irregularities will be reversed on appeal only if it is shown that the trial court abused its discretion." *Sorenson v. St. Paul Ramsey Medical Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990); *see also Bonhiver v. Fugelso, Porter, Simich & Whiteman*, 355 N.W.2d 138, 144 (Minn. 1984) (addressing involuntary dismissal).

II. THE DISTRICT COURT CORRECTLY CONCLUDED THAT IT LACKED SUBJECT MATTER JURISDICTION.

Despite the Appellants' suggestions and claims of injustice, the present case does not pit the three-step administrative process approved in *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 563 (Minn. App. 2003), against the judicial

remedy addressed in section 117.232, subdivision 2 of the Minnesota Statutes. The district court's dismissal of the Appellants' motion did not deny the existence of section 117.232 or render that statute impotent. Rather, the district court's decision recognized that section 117.232, like many statutes, is not meant to be used by everyone, or in every situation. The district court recognized that by acting pursuant to section 117.232, subdivision 2, the court was bound to act within the parameters of that statute and its language.⁵ Had the Appellants satisfied the basic prerequisites of section 117.232, subdivision 2, this case would be quite different. Because they did not, however, this Court should affirm the district court's conclusion that it lacked subject matter jurisdiction.

Because section 117.232, subdivision 2 is jurisdictional, the Appellants are barred from filing a motion under that subdivision, first, because they were not "owners" or "tenants." Second, the Appellants cannot proceed under section 117.232, subdivision 2 because they previously *accepted*, through Gordon Kopacek, the EDA's relocation

⁵ In *Land O'Lakes Dairy Co. v. Hintzen*, the Minnesota Supreme Court observed the following rule with respect to jurisdiction conferred by statute:

In the *Ullman* case, it was held that where jurisdiction is specially conferred by statute and the court is expressly prohibited from exercising it unless certain conditions have been complied with, its judgment is not valid unless it appears affirmatively that the conditions were complied with. In the *Sache* case, this court said that proceedings outside the authority of the court or in violation or contravention of statutory prohibitions are void, regardless of whether or not the court has jurisdiction of the parties and subject matter of the action or proceedings.

31 N.W.2d 474, 476 (Minn. 1948) (citing *Ullman v. Lion*, 8 Minn. 338 (1863) and *Sache v. Wallace*, 112 N.W. 386 (Minn. 1907)).

payment. Finally, appeals from final administrative decisions must be made directly to the Court of Appeals by writ of certiorari, and not to the district court.

A. Subject Matter Jurisdiction Standard

When jurisdiction is conferred by statute, the statute limits the power of the court to act and the court cannot exercise jurisdiction unless the terms of the statute have been satisfied. *Land O'Lakes Dairy Co. v. Hintzen*, 31 N.W.2d 474, 476 (Minn. 1948). In *Irwin v. Goodno*, this Court recently summarized the rule relating to subject-matter jurisdiction as follows:

Subject-matter jurisdiction is defined as “not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide.” *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995) (quotations omitted), *review denied* (Minn. May 31, 1995). “Minnesota courts have consistently recognized that statutory requirements limiting a court’s jurisdiction are threshold requirements that must be complied with before a court can exercise jurisdiction.” *State v. Rojas*, 569 N.W.2d 418, 420 (Minn. App. 1997) (holding that district court may not accept guilty plea without resolving disputed jurisdictional facts as to juvenile’s age). “Because subject-matter jurisdiction goes to the authority of the court to hear a particular class of actions, lack of subject-matter jurisdiction may be raised at any time.” *Cochrane*, 529 N.W.2d at 432 (citing Minn. R. Civ. P. 12.08(c)). Subject-matter jurisdiction may not be conferred by consent of the parties. *No Power Line, Inc. v. Minn. Env’tl. Quality Council*, 262 N.W.2d 312, 321 (Minn. 1977). If the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Minn. R. Civ. P. 12.08(c).

Irwin v. Goodno, 686 N.W.2d 878, 880 (Minn. App. 2004).

The statute under which the Appellants attempted to proceed is MINN. STAT. § 117.232, which reads, in relevant part, as follows:

Subd. 2. Rejection of offer for appraisal and moving costs. In the event the purchaser and owner agree on the fair market value of the property but cannot agree on the appraisal fees and moving costs, the *owner* shall have the option to accept the offer for the property and reject the offer for the

appraisal fees and moving costs. In addition thereto, the *owner* may, after due notice to all interested parties, bring a motion at a special term of the district court in the county in which the property is located for a determination of such moving costs and appraisal fees by the court.

MINN. STAT. § 117.232, subd. 2 (2005) (emphasis added). Chapter 117 of the Minnesota Statutes provides that the term “owner” includes “all persons interested in such property as proprietors, tenants, life estate holders, encumbrancers, or otherwise.” MINN. STAT. § 117.025, subd. 3 (2004).⁶ Thus, if a party cannot satisfy the “owner” requirement provided in section 117.232 and defined in section 117.025, that party may not file a motion under section 117.232, subdivision 2.

A *former tenant* is neither an owner nor a tenant. *Id.* As such, former tenants are not entitled to relocation benefits under MURA or URA and former tenants are thus not bring a motion pursuant to section 117.232, subdivision 2.⁷ This Court has observed that a former tenant is not entitled to relocation benefits. *In re Lecy*, 2005 Minn. App. LEXIS 281, *9 (Minn. App. Mar. 15, 2005) (observing that “[w]ithout a valid leasehold, relator cannot be considered a displaced person under any definition”). (RA.32.) Likewise, a

⁶ At the outset, it is important to recognize the connection between state and federal law in this context. A proper interpretation of the Minnesota Uniform Relocation Assistance Act (“MURA”) can only be made by direct reference to its federal counterpart, the Uniform Relocation Assistance Act (“URA”). This is the case because MINN. STAT. § 117.52 directly incorporates URA and all regulations adopted under URA. Thus, while the doctrine of preemption is not implicated, Minnesota has incorporated federal law by reference, and, as such, URA and its policies, rules and definitions are applicable when analyzing MURA.

⁷ Minn. Stat. § 117.52 provides that “the acquiring authority . . . shall provide all relocation assistance . . . required by the Uniform Relocation Assistance Act . . . and those regulations adopted pursuant thereto.”

party must be a displaced person in order to be entitled to relocation benefits under MURA. MINN. STAT. § 117.50.

B. The District Court Correctly Determined That The Appellants Were Not Entitled to Bring a Motion Under MINN. STAT. § 117.232, Subd. 2 Because the Appellants Were Not “Owners” or “Displaced Persons” in April 2003.

In this case, the district court concluded that the Appellants were not “tenants” in April 2003; they had already moved. (RA.1-14; A.96.) The evidence in the record supports this conclusion and establishes that the Appellants announced their departure to the world in March 2003 (RA.1) and left the Property in March 2003 (RA.2-14), prior to preliminary discussions about the Property with the EDA in April 2003 (A.64). At best, the Appellants were “former tenants” when actual negotiations began, and neither MURA nor section 117.232 provides a remedy, expressly or by implication, for *former tenants*. *In re Lecy*, 2005 Minn. App. LEXIS 281, *9 (Minn. App. Mar. 15, 2005); *see also* MINN. STAT. 117.232, subd. 1 (providing that entitlement to “relocation costs, moving costs and another other related expenses” is only as provided by sections 117.50 to 117.56.)

Being a creature of statute, the right to petition a district court for a determination of relocation benefits carries with it a number of statutory conditions or prerequisites. MINN. STAT. § 117.232, subd. 2. First, a petitioner must establish that an “acquiring authority” acquired its property by “direct purchase.” *Id.* Second, a petitioner must demonstrate that it was an “owner.” *Id.* Third, a petitioner must establish that it followed the procedure set forth in section 117.232, i.e., that the petitioner opted to “accept the offer for the property and reject the offer for the appraisal fees and moving costs.” *Id.*

Here, Appellants could only satisfy the first prerequisite: The EDA is an *acquiring authority* that *purchased* the Property. By contrast, the district court correctly concluded that, as a matter of law, the Appellants could not satisfy section 117.232's latter two prerequisites.

With respect to the second prerequisite—ownership status—the Court properly determined, based on its findings of fact, that the Appellants were not owners or tenants as defined in section 117.025. (A.96.) The lower court correctly concluded that the Appellants' were not tenants in April 2003. (*Id.*) The lower court's conclusions in this regard are well documented in the record, primarily as evidenced in the Appellants' own announcement to their customers that they were leaving the Eagan facility in mid-March 2003. (RA.1) Moreover, as part of their claim for relocation benefits, the Appellants submitted rent invoices reflecting higher rent at their new facility in Savage, Minnesota. (RA.2-3.) Those same invoices reflect that the Appellants stopped paying rent in Eagan after March 2003. (*Id.*) Relocation benefits are not intended for tenants who leave prior to the written offer by the acquiring authority. *See* 49 C.F.R. § 24.2 (a)(9)(ii)(A) (2005); *see* 49 C.F.R. § 24.2 (a)(15)(iv) (2005).

Mr. Kopacek approached the City in March 2003, and Mr. Kopacek, as President of the Appellant companies, moved those companies to a new location in March 2003. They were no longer tenants in April 2003 when discussions about the Property commenced with the EDA. They were no longer tenants in June 2003 when the purchase agreement was signed. Because satisfaction of the owner/tenant requirement is

jurisdictional, the district court properly concluded that it lacked subject matter jurisdiction to hear the Appellants' claims.

In the context of the discussion as to one's status as an "owner," it is appropriate to emphasize that section 117.232 is foremost a tool of MURA and that parties not entitled to relocation benefits under MURA *would not be entitled to bring a motion under section 117.232, subdivision 2.* MINN. STAT. § 117.232, subd. 2. Consequently, the "owner" discussion directly implicates a discussion relating to whether the Appellants are "displaced persons" under MURA. Here, just as the Appellants are not owners or tenants under section 117.232, neither are they "displaced persons" under section 117.50 of the Minnesota Statutes.⁸ This analysis lends further support to the district court's determination that the Appellants were not entitled to relocation benefits (or to bring a motion seeking them). Because the Appellants were not displaced when the EDA *undertook to acquire* the subject property, the Appellants are not eligible for relocation benefits under MURA or section 117.232.

A former version of section 117.50 defined "displaced person" as "any person who moves from real property, or moves personal property from real property, *as a result of acquisition undertaken by an acquiring authority* or as a result of voluntary rehabilitation carried out by a person pursuant to acquisition or as a consequence thereof." MINN. STAT. § 117.50 (2002). In July 2003, the statute was amended to incorporate the more accurate definition of "displaced person" used in URA and to

⁸ Likewise, the "displaced person" rubric is incorporated into section 117.232 in that an owner not "entitled by sections 117.50 to 117.56" to relocation benefits would not be entitled to make any claim for such benefits under section 117.232. MINN. STAT. § 117.232, subd. 1.

resolve conflict problems created by the former version used in Minnesota. MINN. STAT. § 117.50 (2004).

The URA regulations are helpful in understanding this terminology and instructive in determining one's eligibility as a "displaced person" under both MURA and URA. Applicable URA regulations provide that persons are "not displaced" if they move "before the initiation of negotiations (*see* § 24.403(d)) . . ." 49 C.F.R. § 24.2 (a)(9)(ii)(A) (2005). For purposes of URA, negotiations are initiated when "[i]n the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5), [relating to amicable or voluntary acquisitions] the initiation of negotiations means the actions described in § 24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, *for purposes of establishing eligibility for relocation assistance for such tenants under this part*, until there is a written agreement between the Agency and the owner to purchase the real property." 49 C.F.R. § 24.2 (a)(15)(iv) (2005) (emphasis added). Hence, where amicable acquisitions are concerned, the earliest eligibility date for tenants is the *date of the purchase agreement. Id.*

Regardless of the definition used in this appeal, the Appellants were not displaced persons in April 2003 when negotiations began or in June 2003, when the Purchase Agreement was signed. Appellant's suggestion that negotiations with prior developers establishes the right to relocation benefits is misguided, if not novel. Negotiations alone, by their existence, do not secure relocation benefits for all time. This case does not raise the question, already decided in Wren, whether a developer must pay relocation benefits

when it acquires property on behalf of a municipality. *In re Wren Residential Relocation Claim*, 699 N.W.2d 758, 761 (Minn. 2005). Here, the lower court properly found that the developers' negotiations for the Property had ended. (A.94.) The Appellants were not forced to move, and no agreement of any kind existed with any party when the Appellants independently moved. It is uncontroverted that the Appellants had vacated the property and were no longer tenants when negotiations began between Mr. Kopacek and the EDA in April 2003. Moreover, pursuant to specific federal regulations, the Appellants do not qualify for relocation benefits because they left the Property before Mr. Kopacek signed the purchase agreement in June 2003. (RA.2-3) (reflecting that in April 2003, the Appellants began paying Mr. Kopacek increased rent at the Savage facility and stopped paying rent at the Property in Eagan.)

Mere interest by the EDA in considering acquisition of the Property does not thereby confer "displaced person" status on them under MURA or URA. Because neither 1) the acquisition nor 2) Dan Wilson's initiation of negotiations for the acquisition caused the Appellants' relocation, the Appellants cannot claim relocation benefits as "displaced persons" under MURA. *In re Lecy*, 2005 Minn. App. LEXIS 281, *9 (Minn. App. Mar. 15, 2005) (observing that "[w]ithout a valid leasehold, relator cannot be considered a displaced person under any definition") (emphasis added).

In summary, the Appellants simply cannot claim that they moved in March 2003 as a result of an *acquisition undertaken* or negotiations that did not occur until a month later. The Appellants were not "displaced persons" and were therefore not an "owner . . .

entitled [to relocation benefits] by section 117.50 to 117.56.” MINN. STAT. § 117.232, subd.1.

C. *By Specifically Agreeing to Accept a Payment of \$41,000 from the EDA, Mr. Kopacek Forfeited the Right to Later Bring a Claim for Relocation Benefits Under Section 117.232 of the Minnesota Statutes.*

Next, the district made the following finding with respect to the third prerequisite set forth in section 117.232, subdivision 2:

17. There is no evidence or pleading before the court to indicate that the petitioners or Mr. Kopacek, on behalf of the petitioners, rejected EDA’s initial relocation benefit offer of \$41,000 prior to the closing. The purchase agreement demonstrates that the parties reached an agreement as to the appropriate amount of relocation benefits and that petitioners did not reject those amounts as contemplated by Minn. Stat. § 117.232, subd. 2 until after the closing.

(A.95.) By virtue of the Purchase Agreement signed on June 17, 2003, Mr. Kopacek, on behalf of Appellants, accepted \$41,000 in “relocation benefits” in “full satisfaction of any and all claims for benefits, which may be available to Sellers . . .” (A.71.) As such, the Appellants cannot now proceed under a subdivision titled “Rejection of offer for appraisal fees and moving costs.” MINN. STAT. § 117.232, subd. 2.

Forum-shopping aside, the Appellants chose their remedy by requesting an up-front, lump sum payment that would be tax-free. Questions of “eligibility” aside for the moment, the Appellants simply cannot claim—and they do not claim—that they opted to “reject” the EDA’s offer under section 117.232. Rather, the Appellants appear to argue that a party may agree to accept a settlement and return to reject the amount of the claim nearly one year later. However, Mr. Kopacek, on behalf of Appellants, expressly waived the right to make such a claim in the purchase agreement he signed in June 2003. (A.71

at ¶ 2.) Even assuming, arguendo, that the Appellants were owners or tenants under section 117.232, subdivision 2, the facts do not reflect that they rejected the EDA's offer. MINN. STAT. § 117.232, subd. 2. As such, a second jurisdictional prerequisite is lacking.

D. This is Not an Appeal From a Final Administrative Decision But From a District Court's Conclusion that it Lacked Subject Matter Jurisdiction to Hear a Motion Brought Under Section 117.232.

This Court has previously upheld the three-step administrative process for determining relocation benefits claims under MURA. *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 563 (Minn. App. 2003). This Court has also observed that final administrative decisions under the Minnesota Uniform Relocation Assistance Act ("MURA") may only be reviewed as provided in MINN. STAT. §606.01, that is, by writ of certiorari to this Court.⁹ *Naegele Outdoor Adver., Inc. v. Minneapolis Cmty. Dev. Agency*, 551 N.W.2d 235, 237 (Minn. App. 1996).

Working within the context of MURA in *Chanhassen Chiropractic, P.A. v. City of Chanhassen*, this Court observed the following with respect to the administrative procedures mandated by federal law:

The Code of Federal Regulations sets up a three-step process for relocation-benefit decision-making. 49 C.F.R. § 24.10 (2002). This court has recently addressed whether Minnesota should follow the federal appeal process for relocation benefits and decided that Minnesota's process must be dictated by common law and constitutional procedural-due-process principles. *In re*

⁹ Section 606.01 reads as follows:

No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. The party shall apply to the Court of Appeals for the writ.

MINN. STAT. § 606.01 (2005).

Relocation Benefits of James Bros. Furniture, 642 N.W.2d 91, 96-97, 103-04 (Minn. App. 2002), *review denied* (Minn. June 18, 2002).

Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen, 663 N.W.2d 559, 562 (Minn. App. 2003). In *Chanhassen Chiropractic Ctr.*, the court concluded that the procedure employed did comply with due process requirements *Id.* The Court summarized the procedure as follows:

First, there is the initial agency decision on the request for benefits. Second, an aggrieved person may file a written appeal of the initial agency decision. 49 C.F.R. § 24.10(b). Upon receipt of the written appeal, the agency or other appointing authority then selects an official to consider the appeal:

The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Id. § 24.10(h) (2002). Third, if the official conducting the appeal does not grant the full relief requested, the official must explain the decision and “advise the person of his or her right to seek judicial review.” *Id.* § 24.10(g).

Chanhassen Chiropractic Ctr., P.A., 663 N.W.2d at 562. The court in *Chanhassen Chiropractic Ctr., P.A.* went on to reason that the appellant’s “legal remedy was, in the first place, an appeal to the city council.” *Id.* at 563; *see also* 49 C.F.R. § 24.10 (2005) (outlining procedure for appeals). The court determined that the city council was the appropriate appellate authority to “address the propriety of the initial denial of benefits by the city manager.” *Id.* (citing *Naegele Outdoor Adver., Inc. v. Minneapolis Cmty. Dev. Agency*, 551 N.W.2d 235, 237 (Minn. App. 1996)) (observing that final administrative decisions under MURA may only be reviewed by certiorari to the Minnesota Court of Appeals as provided by MINN. STAT. § 606.01 (2000)).

A number of Minnesota cases provide support for the rule that a party aggrieved by a City's eligibility determination regarding relocation benefits must exhaust existing administrative remedies under the federal regulatory scheme before appeals to the judicial branch.¹⁰ In fact, the Appellants can cite no case in support of their move directly to district court because no Minnesota court has permitted an appeal directly to district court.

Here, the Appellants did not seek review by writ of certiorari. Neither did the Appellants seek review of a *final administrative decision* under MURA. As such, the findings rendered in the EDA's administrative process are not at issue in the instant appeal. If the Appellants wished to appeal from a final decision rendered in the administrative process, their only remedy was an appeal directly to this Court, which was not done. As such, to the extent that the Appellants improperly sought such review in district court, the Appellants were properly barred from doing so. *See Robbinsdale Farm-Garden-Pet Supply, Inc. v. Hennepin County Reg'l R.R. Auth.*, 2002 Minn. App. LEXIS 1126 (Minn. App., October 1, 2002) (affirming district court's ruling that it lacked subject-matter jurisdiction over the relocation benefit claim; claimant was required to appeal by writ of certiorari) (RA.35.)

In the absence of an applicable statute conferring jurisdiction, the Appellants were bound to assert their purported claims within the three-step administrative process adopted by the EDA, a process similar to one previously approved by this Court. *See Chanhassen Chiropractic Ctr., P.A.*, 663 N.W.2d at 562. This is consistent with the

¹⁰ (*See* note 3 at RA.25.) (string cite summarizing Minnesota cases addressing relocation benefits appeals to this Court.)

express language of the EDA Policy and its reference to Sections 14.63 to 14.68 of the Minnesota Statutes.¹¹ Because the Appellants did not follow the procedure outlined in numerous cases decided by this Court, the Appellants were properly barred from asserting their claims in district court.

III. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE APPELLANTS LACKED STANDING TO BRING A MOTION UNDER SECTION 117.232.

Because the Appellants could not satisfy at least two requirements set forth in section 117.232, subdivision 2, the Appellants lacked standing to file a motion pursuant to that section.

As this court has observed, standing is an amorphous concept. *Sundberg v. Abbott*, 423 N.W.2d 686, 688 (Minn. App. 1988) (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)).

However, “the fundamental aspect of standing is that it *focuses on the party* seeking to get his complaint before a * * * court and *not on the issues* he

¹¹ The EDA’s Relocation Appeals Policy specifically provides that appeals from a final decision of the hearing officer may be made pursuant to section 14.63, which reads as follows:

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68, but nothing in sections 14.63 to 14.68 shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on the agency not more than 30 days after the party receives the final decision and order of the agency. Sections 572.08 to 572.30 govern judicial review of arbitration awards entered under section 14.57.

MINN. STAT. § 14.63 (2005). It is undisputed that the instant appeal does not arise from a district court’s review of a “final decision in a contested case.”

wishes to have adjudicated.” *Id.* (emphasis added). The essential question is “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975).

Sundberg, 423 N.W.2d at 688 (emphasis in original). Similar to subject-matter jurisdiction, but distinguishable nevertheless, standing implicates a party’s right to appear in court on a specific legal issue or question. “Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court.” *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Standing requires a potential party to “allege injury in fact, or otherwise have a sufficient stake in the outcome, to have a court decide the merits of a dispute.” *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 433 (Minn. App. 1995).

Here, the Appellants cannot allege injury in fact because they were not displaced persons entitled to claim injury under MURA. As discussed in Part II.B above, the district court properly determined that the Appellants were not owners or displaced persons under MURA or URA. As such, they lacked injury in fact and thus, standing. Likewise, as discussed above in Part II.C above, the Appellants did not preserve any claims they might have made under section 117.232, subdivision 2 by *rejecting* the settlement offered by the EDA. The right to claim relocation benefits is created by statute, and the right to claim them is statutory. Minn. Stat. § 117.50 *et al.* Because the Appellants cannot satisfy the statutory scheme set forth in MURA or the prerequisites in section 117.232, they lack standing to proceed with a statutory motion in district court.

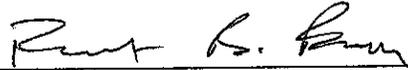
CONCLUSION

For the reasons stated herein, the EDA requests that this court affirm the district court's decision.

Respectfully submitted,

Dated: December 6, 2005

SEVERSON, SHELDON, DOUGHERTY
& MOLEND, P.A.



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).