STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1300

Dayspring Development, LLC,
Appellant,

vs.

City of Little Canada,
Respondent.

Filed June 24, 2008
Reversed and remanded
Poritsky, Judge[*]

Ramsey County District Court
File No. C9-03-1906

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Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Poritsky, Judge.

U N P U B L I S H E D O P I N I O N

PORITSKY, Judge

This case arises from a plat-approval dispute, in which the district court dismissed the claims of appellant developer Dayspring Development, LLC ("Dayspring"). On

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

appeal, Dayspring argues that (1) the district court erred by concluding that its takings claim was moot, (2) the district court abused its discretion by dismissing Dayspring's takings claim for failure to prosecute, and (3) the district court erred by denying Dayspring's motion for summary judgment. Because the district court erroneously concluded that Dayspring's temporary takings claim was moot, and because the district court's findings are insufficient to demonstrate that it addressed the necessary criteria in dismissing Dayspring's claims for failure to prosecute, we reverse and remand.

FACTS

Appellant Dayspring Development, LLC, is a Minnesota limited liability company. The dispute between the parties arises out of Dayspring's pursuit of plat approval from respondent City of Little Canada (the City) for its proposed plan to subdivide and develop residential lots on real property (the Preserve) within the City.

Dayspring first submitted its plan to the City in May 2002. On October 23, 2002, the City granted Dayspring preliminary-plat approval, subject to compliance with a number of conditions. Dayspring objected to several of the conditions imposed under the City's preliminary-plat approval, including a condition requiring Dayspring to move the location of a proposed 50-foot right-of-way off of a pipeline easement held by the Williams Pipeline Company. Because of its objections, Dayspring decided not to submit a final plat for approval. Instead, in February 2003, Dayspring petitioned the district court for an alternative writ of mandamus commanding the City to either grant unconditional preliminary-plat approval or show cause why it had not done so. Dayspring also initiated a declaratory-judgment action against the City, alleging, in part,

that the City's conditional approval of the preliminary plat was unlawful, arbitrary, and capricious.

The district court initially issued the alternative writ. However, after the City presented its reasons for not unconditionally granting preliminary-plat approval, the district court issued an order quashing the alternative writ and denying a peremptory writ. The district court concluded that a peremptory writ was not appropriate, because some of the conditions the City had imposed were lawful, notwithstanding that other conditions were unlawful.

On August 27, 2003, the City considered Dayspring's final plat and denied final-plat approval. Thereafter, Dayspring moved the district court for permission to amend its complaint. The district court granted Dayspring's motion, and Dayspring filed an amended complaint on November 6, 2003, adding, as an alternative to the writ, a takings claim seeking damages based on the City's denial of final plat approval and imposition of unlawful conditions.

Dayspring moved for partial summary judgment in December 2003, arguing that the City's denial of final-plat approval was unlawful, arbitrary, and capricious. Agreeing, the district court granted Dayspring partial summary judgment. The district court struck the unlawful conditions from the City's denial of final-plat approval and ordered Dayspring to submit within 100 days of the order a final plat that complied with all the remaining, lawful conditions. The district court ordered the City to approve the plat within the applicable time limits, provided the plat complied with the lawful conditions.

The City appealed, and this court affirmed all of the district court's decision except with respect to the district court's determination that the City could not require that its 50-foot right of way be unencumbered. *Dayspring Dev., LLC v. City of Little Canada*, No. A04-1158, 2005 WL 221961, at *2-4 (Minn. App. Feb. 1, 2005). Since a municipal ordinance requires the City to avoid "unnecessary encumbrances" on its rights-of-way, we concluded that there was a question of fact as to whether the pipeline easement constituted an "unnecessary" encumbrance on the City's right-of-way and, therefore, summary judgment on that issue was improper. *Id.*, at *3. We reversed and remanded on that single issue. *Id.*, at *3-4.

After this court's opinion, the parties exchanged correspondence regarding outstanding issues, including the question of whether the pipeline easement constituted an "unnecessary" encumbrance on the City's right-of-way. Apparently feeling that the City did not intend to grant final-plat approval, Dayspring petitioned the district court in late summer 2005, for a peremptory writ of mandamus. The district court struck Dayspring's petition pending an expedited scheduling conference.

After the scheduling conference, the district court issued a scheduling order containing numerous directives. Among other things, the district court ordered (1) the parties and their lawyers to meet as soon as possible to discuss Dayspring's compliance with the items enumerated in the City's resolution denying final-plat approval; (2) Dayspring to submit a final plat for approval to the City by September 15, 2005; and (3) the City to put discussion of Dayspring's final plat on the city council's agenda for

September 28, 2005, if Dayspring submitted the final plat by September 15, 2005. The district court also set a court trial to commence on November 14, 2005.

Dayspring submitted a final plat by September 15, 2005. Review of the final plat was placed on the city council agenda for September 28, 2005. And on September 28, 2005, the City granted final-plat approval for Dayspring's Preserve development. No trial occurred on November 14, 2005. When a district court clerk contacted the parties in January 2006 regarding the necessity of a new trial, the clerk received no response and consequently closed the file.

The parties signed a development agreement on May 9, 2006. The plat for the Preserve development was filed in the Ramsey County Recorder's Office, and Dayspring commenced work on the project. In June 2006, the City wrote to Dayspring to communicate its understanding that Dayspring's claims were moot and to request that Dayspring sign a stipulation for dismissal. Dayspring refused to sign the stipulation, stating that it objected to the City's claim that it was entitled to reimbursement from Dayspring for development expenses associated with the plat-approval process.

On December 4, 2006, the City moved the district court to dismiss Dayspring's claims. Dayspring moved for summary judgment on December 15, 2006, regarding its takings claim. The district court granted the City's motion and denied Dayspring's motion, reasoning that the City's grant of final plant approval had rendered Dayspring's claims moot and, alternatively, that Dayspring had failed to prosecute its takings claim. This appeal followed.

D E C I S I O N

I.

Dayspring argues that the district court erred by dismissing Dayspring's takings claim on the ground that the claim was moot. The issue of whether a cause of action is moot presents a question of law, which this court reviews de novo. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *review denied* (Minn. Apr. 4, 2005).

"[M]ootness can be described as the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (quotation omitted). The district court may dismiss an issue as moot if "an event occurs that resolves the issue or renders it impossible to grant effective relief." *Isaacs*, 690 N.W.2d at 376.

In its prayer for relief in its first amended complaint, Dayspring requests that the district court:

> 1. . . . issue a Writ of Mandamus ordering [the City] to immediately grant final plat approval[;]
>
> 2. . . . grant a declaratory judgment that [the City]'s denial of final plat approval is unlawful, arbitrary and capricious and beyond its authority as provided in the subdivision ordinance[;]
>
> 3. . . . grant a declaratory judgment that [the City] is estopped from granting subdivision approval pursuant to its Standard Subdivision Ordinance[;]
>
> 4. . . . grant a declaratory judgment that Dayspring's rights in the project are vested so that [the City] cannot deny final plat approval under its Standard Subdivision Ordinance[;]
>
> 5. [i]n the alternative to the Writ of Mandamus and declaratory judgment, . . . find against [the City] and award

> Dayspring its damages suffered as a result of [the City]'s illegal actions[;]
>
> 6. [a]ward Dayspring its costs, disbursements and reasonable attorneys' fees[; and]
>
> 7. [grant] such other and further relief as the [district] court deems just and equitable.

Dayspring ultimately obtained the relief sought in the first four paragraphs—namely, final-plat approval for the Preserve development. Because the grant of final-plat approval resolved the first four issues in the prayer for relief, those claims are moot. Indeed, Dayspring appears to concede as much.

Dayspring maintains, however, that the City's grant of final-plat approval does not render moot Dayspring's claim for monetary damages, which appears in paragraph five of its prayer for relief. Although the claim for money damages is framed as an alternative to the various forms of relief aimed toward securing final-plat approval, a prayer for relief does not necessarily control the district court's ability to grant relief. *Hoffman Motor Truck Co. v. Erickson*, 124 Minn. 279, 281, 144 N.W. 952, 953 (1914). Rather, the district court "should consider the facts proved within the allegations of the complaint." *Prince v. Sonnesyn*, 222 Minn. 528, 537, 25 N.W.2d 468, 473 (1946) (quotation omitted). Thus, the district court should grant any appropriate relief, "either legal or equitable," so long as the pleadings give the defendant factual notice of the claim and the evidence supports the factual allegations. *Id.* (quoting *Erickson*, 124 Minn. at 281, 144 N.W. at 953); *Johnson v. Mut. Serv. Cas. Ins. Co.*, 732 N.W.2d 340, 343 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). We conclude that, although Dayspring's request for damages was pleaded as an alternative to its claim for a writ of

mandamus, the granting of the relief called for by the writ does not render the damages claim moot.

Dayspring's request for damages is grounded on its claim of a *temporary taking* of its property. Dayspring argues that its pleadings gave the City notice of a temporary taking claim that survives the grant of final-plat approval. A governmental regulation may cause the taking of private property. "[T]he right to use property as one wishes is subject to and limited by the *proper* exercise of the police power in the regulation of land use." *McShane v. City of Faribault*, 292 N.W.2d 253, 257 (Minn. 1980) (emphasis added) (citing *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926)). But, as the United States Supreme Court has long recognized, government regulation of private property may, in some instances, "be so onerous that its effect is tantamount to a direct appropriation," and the property owner may be entitled to compensation for such "regulatory takings." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537, 125 S. Ct. 2074, 2081 (2005); *see also* U.S. Const. amend. V (Takings Clause); Minn. Const. art. I, § 13 (Takings Clause); *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 (Minn. 2007) (discussing *Lingle* in context of regulatory-takings analysis). For example, a partial use restriction, including the exaction of conditions on a government-issued permit or approval, may constitute a regulatory taking when the restriction fails to "serve[] the same governmental purpose" as a refusal to issue the permit or approval. *Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825, 837, 107 S. Ct. 3141, 3149 (1987); *see Dolan v. City of Tigard*, 512 U.S. 374, 386, 114 S. Ct. 2309, 2317 (1994) (clarifying that there must be an

essential nexus between a legitimate state interest and the condition exacted by the government).

An individual whose property is taken is entitled to compensation, regardless of whether the taking is temporary or permanent. If a regulation works a taking of private property but is later invalidated, the property owner is still entitled to compensation for the temporary taking of the property. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 318-20, 107 S. Ct. 2378, 2388-89 (1987) (*First English*). Claims of temporary takings "require[] careful examination and weighing of all the relevant circumstances." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 335, 122 S. Ct. 1465, 1486 (2002) (*Tahoe-Sierra*) (quotation omitted). Allegations of temporary takings require courts to weigh (1) the regulation's economic impact on the owner, (2) the extent to which the regulation has interfered with particular investment-backed expectations, and (3) the nature of the regulation. *Id.* at 334-35, 122 S. Ct. at 1485-86 (requiring application of three-part test from *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978)).

Thus, the issue before us is whether Dayspring's first amended complaint gives the City sufficient notice of a temporary takings claim, notwithstanding the grant of final-plat approval. In this case, Dayspring alleged two different takings claims. In relevant part, Dayspring's first amended complaint reads:

> 43. The denial of final plat approval for The Preserve, without just compensation, interferes with Dayspring's reasonable investment-backed expectations of the economic and beneficial use of the land underlying The Preserve.

> 44. Little Canada's adoption of the Pipeline Setback Policy and arbitrary and capricious conditions set forth in the Findings and Resolution No. 2002-10-240 denies all economically beneficial or productive use of The Preserve.
>
> 45. Accordingly, Dayspring must be justly compensated by Little Canada, which compensation exceeds $50,000.00, in accordance with the U.S. Constitution's 5th amendment and the Minnesota Constitution Article I, § 13.

In essence, Dayspring alleges that exaction of the unlawful conditions and denial of final-plat approval worked a taking of its property. Assuming a taking took place, the eventual grant of final-plat approval would not eliminate the taking; rather, it would render the taking temporary and truncate the compensation owed Dayspring. *First English*, 482 U.S. at 319-20, 107 S. Ct. 2388-89; *see also Tahoe-Sierra*, 535 U.S. at 342, 122 S. Ct. at 1489 (stating that "the duration of the restriction is one of the important factors that a court must consider in the appraisal of a regulatory takings claim"). Thus, the temporariness of the taking "constitutes little more than relevant evidence in determining the amount of damages." *Kick's Liquor Store, Inc. v. City of Minneapolis*, 587 N.W.2d 57, 60 (Minn. App. 1998).

The City argues, however, that *Lowry Hill Props., Inc. v. State by Head*, 294 Minn. 510, 200 N.W.2d 295 (1972) (*Lowry Hill*), precludes Dayspring's temporary takings claim. In *Lowry Hill*, the property owner's apartment buildings were damaged during the construction of a highway near the buildings. The court held that inverse condemnation could not be mandated when the owner of private property affected by government action "has other adequate legal remedies." 294 Minn. at 512, 200 N.W.2d at 296. The City argues that Dayspring "had the adequate remedy of declaratory

judgment that was available to it." But in our opinion, *Lowry Hill* is wide of the mark for two reasons. First, *Lowry Hill* was an action for mandamus, and the court based its ruling on the procedural ground that mandamus would not lie when the owner had an adequate legal remedy. Dayspring's demand for damages in its takings claim is distinct from its demands for mandamus. Second, after the Minnesota court decided *Lowry Hill*, the United States Supreme Court held that invalidation of a regulation that effected a taking of private property, "though converting the taking into a 'temporary' one, is not a sufficient remedy to meet the demands of the Just Compensation Clause." *First English*, 482 U.S. at 319, 107 S. Ct. 2388. Thus, whatever authority *Lowry Hill* had on the issue of temporary takings has been trumped by *First English*. We conclude that the City's grant of final-plat approval does not prevent Dayspring's temporary takings claim.

We conclude that Dayspring's allegations are sufficient to give the City factual notice of a temporary takings claim and, therefore, sufficient to enable Dayspring to proceed on its takings claim. Because the district court erroneously dismissed Dayspring's temporary takings claim, we reverse.

II.

We next address Dayspring's argument that the district court abused its discretion by dismissing its takings claim for failure to prosecute. Dismissal of an action for failure to prosecute is discretionary. *State of Minnesota v. St. Paul Fire & Marine Ins. Co.*, 434 N.W.2d 6, 8 (Minn. App. 1989), *review denied* (Minn. Mar. 17, 1989). We view the record on appeal from a dismissal in the light most favorable to the district court's order and will reverse a district court's decision to dismiss an action for failure to prosecute

only when the district court has abused its discretion. *Id.* However, we review de novo whether the district court applied the proper legal standard when deciding whether to dismiss for failure to prosecute. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

Because dismissal with prejudice "is the most punitive sanction that can be imposed for failure to prosecute, it should be granted only under exceptional circumstances." *Minn. Humane Soc'y v. Minn. Federated Humane Soc'ys*, 611 N.W.2d 587, 590 (Minn. App. 2000). Dismissal of a claim for failure to prosecute is appropriate only when: (1) the plaintiff's delay in pursuing the claim prejudiced the defendant; and (2) the delay was unreasonable and inexcusable. *Modrow*, 656 N.W.2d at 394. Both prongs must be met, and the district court must address each separately. *Id.* at 394, 396. However, prejudice is the primary factor to be considered and must be more than the ordinary expense and inconvenience of trial preparation; it should not be presumed from the mere fact of delay. *Ed. H. Anderson Co., Inc., v. A.P.I.*, 411 N.W.2d 254, 256 (Minn. App. 1987), *review denied* (Minn. Oct. 30, 1987); *cf. Modrow*, 656 N.W.2d at 395 (recognizing that "under extraordinary circumstances, *significant* delay can be enough to justify dismissal without a showing of prejudice to the defendant" (emphasis added)).

Here, the district court cited Minn. R. Civ. P. 41.02 and correctly observed that dismissal for failure to prosecute is discretionary and depends on the facts of the case. But the court made no finding that the City was prejudiced by the delay. Nor did the court make an express finding that the delay was unreasonable and inexcusable. The court found: "For over a year, Dayspring acted in such a manner that gave both [the

City], and the [district] court the impression that this was no longer a live controversy. Given the circumstances in this case, it would be unjust to allow Dayspring to reopen this matter at this time." On appeal, Dayspring offered a number of reasons why the delay was not unreasonable and/or inexcusable, and the City offered a number of reasons why it was. The parties did not have the opportunity to present these reasons to the district court. The finding, "[g]iven the circumstances . . ., it would be unjust" to allow Dayspring to proceed, could be read to be a finding that the delay was both 'unreasonable and inexcusable," but because the parties never argued the issue to the court, we cannot assume that the district court actually made such a finding. Thus, because the court's findings do not show that the proper criteria were applied, we remand.

The district court dismissed Dayspring's claims sua sponte, as allowed by Minn. R. Civ. P. 41.02(a). But as noted above, the court did not have the benefit of the parties' arguments. On remand, the district court shall have the discretion to reopen the record and allow the parties to be heard on the failure-to-prosecute issue, or the court may permit Dayspring to proceed directly with its temporary takings claim.[1]

Reversed and remanded.

[1] Because we are remanding for reconsideration of the failure-to-prosecute issue or reinstatement of Dayspring's temporary takings claim, we need not address Dayspring's argument regarding the district court's denial of its summary-judgment motion.