STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1269
A09-1288

Leonard N. Anderson,
Relator (A09-1269),
Appellant (A09-1288),

vs.

City of St. Paul,
Respondent.

Filed May 11, 2010
Affirmed
Peterson, Judge

City of St. Paul
File No. 09-658

James G. Roban, St. Paul, Minnesota (for relator/appellant-relator)

Gerald T. Hendrickson, Interim St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

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

PETERSON, Judge

In these consolidated appeals from (1) a district court judgment that dismissed appellant's declaratory judgment action for lack of subject-matter jurisdiction and (2) a

St. Paul City Council resolution that ordered relator to abate a nuisance on his property, appellant/relator argues that (1) the district court erred in concluding that it did not have jurisdiction, (2) his constitutional rights were violated, and (3) the city council did not follow the requirements of the nuisance ordinance. We affirm.

FACTS

Appellant/relator Leonard N. Anderson owns real property in St. Paul. Based on an April 8, 2009, inspection, respondent City of St. Paul issued Anderson an order to abate nuisance storage on the property. The order cited violations of St. Paul, Minn., Legislative Code § 45.03 and declared the property a nuisance for excessive storage of trailers, vehicles, commercial vehicles, and accessory structures. The order required Anderson to take five remedial measures by May 15 to prevent substantial abatement action by the city. When the city code-enforcement supervisor notified Anderson about a follow-up inspection on May 15, Anderson said that he would deny the inspector access to the property. The inspector applied for and was granted an administrative search warrant. Upon inspecting the property, the city determined that Anderson had not complied with the order to abate, and a notice of public hearings was posted.

At a legislative hearing on June 9, the city code-enforcement supervisor outlined his findings regarding Anderson's ordinance violations in a report to the legislative hearing officer. The supervisor estimated that the cost to fully abate the nuisance would be approximately $30,000. Anderson's attorney spoke and presented evidence that included photographs of the property. On June 17, Anderson's case was considered by the St. Paul City Council. The legislative hearing officer who conducted the June 9

legislative hearing presented evidence of Anderson's nuisance storage and recommended that the city council order abatement of the nuisance within 15 days. The evidence included numerous photographs of the property. Anderson's attorney also spoke at the city-council meeting. The city council adopted a resolution ordering abatement of the nuisance within 15 days and authorizing the city department of safety and inspections to abate the nuisance if Anderson failed to comply with the resolution.

On June 24, Anderson filed a complaint in district court requesting a declaration that St. Paul, Minnesota, Legislative Code chapter 45, as applied, is unconstitutional, the city acted outside its statutory authority, the order to abate was made upon unlawful procedure, and the city-council resolution is not supported by substantial evidence and is arbitrary and capricious. The complaint also requested a declaration that the city-council resolution cannot be enforced against Anderson's real estate and a determination of the city's adverse claims to the real estate and sought an injunction to prevent the city from enforcing the city-council resolution. On June 30, Anderson filed a motion in the district court requesting a temporary restraining order, and the city filed a motion to dismiss. The district court entered a judgment dismissing Anderson's complaint for lack of jurisdiction. Anderson appealed from the judgment and initiated a certiorari appeal of the city council's resolution. This court consolidated the two appeals.

D E C I S I O N

I.

The district court determined that it did not have subject-matter jurisdiction to review the city council's quasi-judicial decision to order Anderson to abate the nuisance

on his property. The existence of subject-matter jurisdiction is a question of law reviewed de novo on appeal. *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Unless otherwise provided by statute or appellate rule, to obtain judicial review of an administrative agency's quasi-judicial decision, a party must petition this court for a writ of certiorari. *Neitzel v. County of Redwood*, 521 N.W.2d 73, 76 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). If no statute or rule expressly vests judicial review in the district court, this court has exclusive certiorari jurisdiction. *Twp. of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994).

> A quasi-judicial act is an act of a public officer, commission, or board that is "presumably the product or result of investigation, consideration and deliberate human judgment based upon evidentiary facts of some sort commanding the exercise of their discretionary power. It is the performance of an administrative act which depends upon and requires the existence or non-existence of certain facts which must be ascertained and the investigation and determination of such facts cause the administrative act to be termed quasi judicial."

Neitzel, 521 N.W.2d at 75 (quoting *Oakman v. City of Eveleth*, 163 Minn. 100, 108-09, 203 N.W. 514, 517 (1925)). Before ordering Anderson to abate a nuisance, the city needed to investigate the conditions on his property and consider whether the conditions constituted a nuisance. The city council then needed to exercise its judgment in determining whether the conditions warranted an abatement order. Consequently, the city council's decision to issue the abatement order was a quasi-judicial act.

Anderson argues that the district court had jurisdiction to consider his action against the city under Minn. Stat. §§ 555.01-.16 (2008), the Uniform Declaratory Judgments Act (UDJA). The UDJA gives courts "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. But the UDJA does not confer on a court jurisdiction over an action. *Hoeft v. Hennepin County*, 754 N.W.2d 717, 722 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008). The "UDJA cannot create a cause of action that does not otherwise exist." *Id.* (quotation omitted). Anderson has not cited any authority that creates a cause of action for the improper application of an ordinance. Because the substance of Anderson's declaratory judgment action is that the city council improperly applied chapter 45 to his property, the action is not separate and distinct from his certiorari appeal of the city council's quasi-judicial decision, and the district court correctly determined that it did not have subject-matter jurisdiction over Anderson's action. *See City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 172 (Minn. App. 2000) (explaining that district court lacked subject-matter jurisdiction to review city's quasi-judicial decision to demolish building determined to be a nuisance under city ordinance when ordinance did not provide for district court review of decision). Anderson's only method to obtain review of the city council's decision is a certiorari appeal in this court.

II.

Anderson argues that limiting his right to judicial review to a certiorari appeal in this court violates the Minnesota Constitution by limiting the original jurisdiction of the district court. Under the constitution, "[t]he district court has original jurisdiction in all

civil and criminal cases and shall have appellate jurisdiction as prescribed by law." Minn. Const. art VI, § 3. We first note that in Minnesota, "the writ of certiorari is a writ of review in the nature of a writ of error or an appeal." *State ex rel DePonti Aviation Co., v. Minneapolis-St. Paul Metro. Airports Comm'n*, 226 Minn. 272, 275, 32 N.W.2d 560, 562 (1948). The legislature has granted this court "jurisdiction to issue writs of certiorari to all agencies, public corporations and public officials, except the Tax Court and the Workers' Compensation Court of Appeals." Minn. Stat. § 480A.06, subd. 3 (2008).

In *Breimhorst v. Beckman*, an employee who was injured in an accident at work received disability, hospital, and medical benefits under the Workmen's Compensation Act (the act). 227 Minn. 409, 413-14, 35 N.W.2d 719, 724 (1949). The employee argued that because the act deprived her of her right to sue in tort for damages for serious disfigurement that did not affect her employment, the act was unconstitutional because the industrial commission, an administrative agency with quasi-judicial powers under the act, encroached upon the judicial power. *Id.* at 429, 35 N.W.2d at 732. The supreme court held:

> In the exercise of the police power, the vesting by the legislature in the industrial commission of quasi-judicial powers--inclusive of the power to determine facts and apply the law thereto in employment-accident controversies--is not in violation of state constitutional provisions for the division of the powers of government or for the vesting of the judicial power in the courts, as long as the commission's awards and determinations are not only subject to review by certiorari, but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by a duly established court.

Id. at 433, 35 N.W.2d at 734.

As we have already stated, the city council's decision with respect to Anderson's property is subject to review by certiorari, which satisfies the first requirement in *Breimhorst*. And although Anderson has not addressed the relevant provisions of the St. Paul Legislative Code, our review of the code persuades us that the city council's decision is not enforceable by execution or other process in the absence of a binding judgment entered by a duly established court. Under section 45.11.1 of the code, the city is entitled to collect its costs of abating the nuisance on Anderson's property "by special assessment under the authority in Minnesota Statutes, section 429.101 and the charter by the procedure outlined in chapter 60 of the Saint Paul Administrative Code." St. Paul, Minn., Legislative Code § 45.11.1 (2010). But any special assessment under section 429.101 may be appealed to the district court under Minn. Stat. § 429.081. Minn. Stat. § 429.101, subd. 2 (2008). And any special assessment under chapter 60 may be appealed to the district court under section 60.03.f of the Saint Paul Administrative Code. St. Paul, Minn., Administrative Code § 60.03f (2010). Consequently, if Anderson objects to any special assessment by the city under section 45.11.1, he may appeal to the district court, and the city cannot enforce its decision by execution or other process without prevailing in the district court and obtaining a judgment. This ordinance provision satisfies the second requirement in *Breimhorst*.

Anderson argues that his real property and the $30,000 that the city estimates will need to be spent to clean up his property can only be taken away from him by due process of law. He contends that due process includes a hearing by an impartial tribunal and claims that there is no impartial tribunal in this case because the only hearing he received

was before a legislative hearing officer who, as an employee of the city, had a bias and prejudice to rule in favor of the city.[1] Anderson's argument fails to recognize that before the city could take his real property or $30,000, it would have to levy a special assessment, and, as we have just discussed, the process for levying a special assessment includes a right to appeal to the district court, which is an impartial tribunal.

Anderson argues that if another landowner had brought a nuisance action against him in district court, he would have had available all the safeguards of a trial to protect his property, including the right to subpoena witnesses, an impartial jury or judge, the right to present witnesses without a time limit, and the right to cross-examine witnesses. Anderson contends that limiting his right to judicial review to a certiorari proceeding in which these safeguards are not available is a denial of equal protection. "The guarantee of equal protection of the laws requires that the state treat all similarly situated persons alike. It does not require the state to treat things that are different in fact or opinion as though they were the same in law." *State v. Behl*, 564 N.W.2d 560, 568 (Minn. 1997) (citations omitted). Anderson offers no explanation why a landowner who is a defendant in a private nuisance action and a landowner whose property is the subject of a municipal proceeding to enforce an ordinance are similarly situated for equal-protection purposes.

III.

Anderson argues that because St. Paul Ordinances chapter 45 provides in several places that the "opinion of the enforcement officer" determines whether there is an

[1] Anderson does not cite any evidence to support his bare assertion that the legislative hearing officer had a bias and prejudice to rule in favor of the city.

ordinance violation, the ordinance is a violation of due process. Anderson contends that the ordinance provides insufficient guidance about what constitutes a nuisance.

> [D]iscretionary power may be delegated to administrative officers if the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the operative facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers.
>
> There are, however, exceptions and qualifications to the rule that a statute which vests discretion in a public official must prescribe precise rules of action. The modern tendency is to be more liberal in permitting grants of discretion to administrative officers in order to facilitate the administration of laws as the complexity of economic and governmental conditions increase. The rule which requires an expressed standard to guide the exercise of discretion is subject to the exception that where it is impracticable to lay down a definite comprehensive rule--such as, where the administration turns upon questions of qualifications of personal fitness, or where the act relates to the administration of a police regulation which is necessary to protect the general health, welfare, and safety of the public--it is not essential that a specific prescribed standard be expressly stated in the legislation. This is so because it is impossible for the legislature to deal directly with the many details in the varied and complex conditions on which it legislates, but must necessarily leave them to the reasonable discretion of administrative officers.

Anderson v. Comm'r of Highways, 267 Minn. 308, 311-12, 126 N.W.2d 778, 780-81 (1964) (footnotes omitted) (quotations omitted).

The ordinance provisions that Anderson contends provide insufficient guidance are the following definitions:

(1) "*Attractive nuisance:* A condition such as a dangerous structure, an unsecured vacant or condemned building, or other condition which in the opinion of the enforcement officer may attract nonowner(s) or other unauthorized person(s) and which would expose them to risk, peril or danger." St. Paul, Minn., Legislative Code § 45.02 (2010).

(2) "*Fire hazards.* Any thing or condition on the property which, in the opinion of the enforcement officer, creates a fire hazard or which is a violation of the fire code." St. Paul, Minn., Legislative Code § 45.03(4) (2010).

(3) "*Hazards.* Any thing or condition on the property which, in the opinion of the enforcement officer, may contribute to injury of any person present on the property. Hazards, which shall include, but not be limited to, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators or trapping devices." St. Paul, Minn., Legislative Code § 45.03(8) (2010).

(4) "*Health hazards.* Any thing or condition on the property which, in the opinion of the enforcement officer, creates a health hazard or which is a violation of any health or sanitation law." St. Paul, Minn., Legislative Code § 45.03(9) (2010).

(5) "*Vermin harborage.* Conditions which, in the opinion of the enforcement officer, are conducive to the harborage or breeding of vermin." St. Paul, Minn., Legislative Code § 45.03(23) (2010).

Although these definitions grant discretion to enforcement officers, they provide reasonably clear policies or standards of action to control and guide enforcement officers in ascertaining the operative facts to which the ordinance applies, so that the ordinance

can take effect upon the existence of discernible facts by virtue of its own terms, and not solely according to the whim or caprice of the enforcement officers. Furthermore, Anderson has not explained how any of these definitions was ambiguous or confusing when applied to the conditions on his property.

IV.

With respect to the city council's consideration of conditions on his property, Anderson argues that the council did not follow the requirement under the ordinance that "[a]t the time of the public hearing, the city council shall hear from the enforcement officer." St. Paul, Minn., Legislative Code § 45.11(5) (2010). Anderson contends that because the enforcement officer did not appear at the city-council meeting and only the legislative hearing officer (who did not have personal knowledge about the condition of his property) presented evidence, the city council could not know the current condition of the property and had no basis to order a nuisance abated.

In a certiorari appeal,

> [d]ecisions of administrative agencies, including cities, are presumed to be correct, and this court will reverse or modify an agency decision only if a party's substantial rights have been prejudiced because the decision exceeded the agency's statutory authority, was made upon unlawful procedure, was affected by other error of law, or was arbitrary or capricious. Review is limited to the evidence in the record, and the decision is upheld if the administrative action has a legal basis demonstrated by substantial evidence.

Rostamkhani v. City of St. Paul, 645 N.W.2d 479, 483 (Minn. App. 2002) (citations omitted).

Anderson does not identify any errors in the information that the legislative hearing officer provided to the city council or explain how the condition of his property changed following the legislative hearing. Therefore, he has not shown that his substantial rights were prejudiced by the enforcement officer's failure to appear at the city-council meeting, and he has not rebutted the presumption that the city-council's decision is correct.

Affirmed.