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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0704**

Bridgewater Township,
Appellant,

vs.

City of Dundas, Minnesota,
Respondent.

**Filed December 23, 2013
Affirmed in part, reversed in part, and remanded
Hudson, Judge**

Rice County District Court
File No. 66-CV-12-2961

Peter B. Tiede, Brent D. Kettelkamp, Murnane Brandt, St. Paul, Minnesota (for
appellant)

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Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from summary judgment, appellant Bridgewater Township argues that the district court erred in granting summary judgment to respondent/cross-appellant Dundas. On cross-appeal, Dundas argues that the district court erred in denying its motion to dismiss for lack of a justiciable controversy. Because we conclude that a

justiciable controversy exists, but that the district court erred in granting summary judgment to Dundas, we affirm in part and reverse and remand for the district court to enter judgment in favor of Bridgewater Township.

FACTS

Bridgewater Township shares a common boundary with the City of Dundas in Rice County. On July 12, 2004, the township and the city entered into a contract known as an Orderly Annexation Agreement, providing for annexation of certain pieces of township land (the annexation area) to the city between 2004 and 2033. *See* Minn. Stat. § 414.0325 (2012).¹ The parties dispute which entity was granted planning and zoning authority in the annexation area. Prior to the agreement, the Dundas City Council had planning and zoning authority in the city, and the Dundas Planning Commission served in an advisory capacity to the city council. The annexation agreement required Dundas to expand its planning commission to include three residents of Bridgewater. Bridgewater claims the agreement also granted the newly expanded planning commission authority over all planning and zoning in the annexation area; Dundas claims the agreement granted that authority to the Dundas City Council, with the new planning commission serving only in an advisory capacity.

¹ Pertinent portions of section 414.0325 were amended in 2008. *See* 2008 Minn. Laws ch. 196, art. 1. §§ 10–12, at 461–63. Because the amendments do not “alter rights that had matured or become unconditional, . . . impose new and unanticipated obligations on a party, or . . . work some other injustice due to the nature and identity of the parties,” we apply the most current version of the law. *McClelland v. McClelland*, 393 N.W.2d 224, 226–27 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986).

The uncertainty surrounding planning and zoning in the annexation area has led to conflict. In spring 2012, for example, Bridgewater granted a permit to Rice County for the construction of an antenna tower within the annexation area. Dundas then sent an official notice to the county stating that construction violated the Dundas city zoning code. Dundas claimed the annexation agreement granted the city sole authority over the annexation area, and thus the Bridgewater permit was invalid. The antenna construction was completed, but a determination of which entity could properly grant building permits in the annexation area was never made. Bridgewater also claims that Dundas has wrongly prohibited the new planning commission from enacting ordinances for the annexation area.

On October 31, 2012, Bridgewater filed suit seeking a declaratory judgment that the annexation agreement grants the new planning commission “the jurisdiction and authority to exercise planning and land use control authority within the Annexation Area.” Dundas moved to dismiss, arguing that the district court had no jurisdiction because there was no justiciable controversy. In the alternative, Dundas moved for summary judgment claiming that the annexation agreement unambiguously grants the city sole authority to control zoning and land use within the annexation area. Bridgewater also moved for summary judgment.

The district court concluded that a justiciable controversy existed, denying Dundas’s motion to dismiss. But the district court granted summary judgment for Dundas and entered judgment declaring that the annexation agreement unambiguously vested planning and zoning authority in the annexation area to the city. The district court

concluded that Bridgewater’s proposed interpretation of the agreement would lead to absurd results and fail to give effect to all of the agreement’s provisions.

Bridgewater appeals the district court’s order granting summary judgment to Dundas. Dundas cross-appeals from the district court’s ruling that a justiciable controversy exists, claiming the judgment should be vacated and the case should be dismissed. In the alternative, Dundas argues that summary judgment should be affirmed.

D E C I S I O N

I

Dundas appeals the district court’s determination that it had jurisdiction to enter a declaratory judgment because a justiciable controversy exists between the parties. Specifically, Dundas argues that Bridgewater’s claim amounts to a “difference of opinion with the city” and that “there is no genuine conflict in tangible interests between the parties.”

This court reviews de novo whether a justiciable controversy exists, and thus, whether a district court has jurisdiction to issue a declaratory judgment. *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273 (Minn. App. 2001). The Minnesota Uniform Declaratory Judgments Act provides courts with the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Minn. Stat. § 555.01 (2012). Parties to a contract “may have determined any question of construction or validity” arising under the contract. Minn. Stat. § 555.02 (2012). But a district court does not have jurisdiction to enter a declaratory judgment unless a justiciable controversy exists. *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn.

1977). A justiciable controversy exists in a declaratory-judgment case if the claim: “(1) involves definite and concrete assertions of right that emanate from a legal source; (2) involves a genuine conflict in tangible interests between parties with adverse interests; and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.” *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617–18 (Minn. 2007).

Definite and concrete assertions of right that emanate from a legal source

Dundas claims the annexation agreement grants planning and zoning authority in the annexation area to the city, while Bridgewater asserts the new planning commission was granted that authority. These asserted rights both emanate from a legal source—the annexation agreement.

Dundas argues that Bridgewater’s claim fails because the township is not asserting that *it* has the right to regulate the annexation area, but rather that the planning commission has that right. Accordingly, Dundas claims Bridgewater has not shown it will be prejudiced or imminently harmed without a judicial resolution of this issue, relying on *Thuma v. Kroschel*, 506 N.W.2d 14, 20 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). In *Thuma*, a taxpayer sought a declaratory judgment that city officials acted ultra vires in executing a contract without city council approval. *Thuma*, 506 N.W.2d at 20. There, this court found that, because the taxpayer did not argue she was prejudiced by the mayor’s actions, no justiciable controversy existed. *Id.*

Here, although Bridgewater does not argue that its own planning and zoning authority is affected, it does argue that the township is adversely affected in other ways.

Specifically, the planning commission, which Bridgewater claims is being wrongfully denied authority, is composed in part of Bridgewater residents. Bridgewater further argues that granting Dundas sole control causes harm because township residents do not vote for the elected officials of Dundas. Therefore, residents would not have a voice in the development of the annexation area. In addition, the annexation area is within the township's borders, yet residents do not know who has proper authority to plan and zone the land. Thus, this case is not analogous to *Thuma*, because Bridgewater has identified several ways its citizens would be harmed if the conflict is not resolved.

Genuine conflict in tangible interests between parties with adverse interests

We agree with the district court that “the exercise of planning and zoning authority is undoubtedly a tangible interest” and that a clear conflict exists between the parties. Here, Bridgewater points to “confusion, uncertainty, and risk to the community” caused by the conflict in the annexation area. Bridgewater identifies two specific instances where a dispute arose over building permits in the area and also claims Dundas has wrongly prevented the planning commission from enacting ordinances. The annexation agreement in question extends to 2033. Thus, Dundas's argument that the “controversy” in the annexation area has passed is not supported by the record.

Capable of resolution by judgment

Finally, this dispute is capable of specific resolution by declaratory judgment. The district court found that a declaratory judgment would not only resolve uncertainty between the parties but also allow the public to have certainty regarding which entity has planning and zoning authority.

Dundas argues that the judgment amounts to an advisory opinion, claiming that the district court improperly interpreted *LaCrescent Twp. v. City of LaCrescent*, 515 N.W.2d 608 (Minn. App. 1994). In *LaCrescent*, a township and city entered into an orderly annexation agreement, but the manner in which cities could annex land was subsequently modified by statute. 515 N.W.2d at 609–11. When the City of LaCrescent attempted to annex land via the statutory terms instead of the agreement terms, the township sought a declaratory judgment that the city must follow the agreement terms. *Id.* Here, Dundas claims that Bridgewater is seeking an interpretation of the agreement only “for guidance in possible future controversies,” not because it claims that some specific action by the city violates the agreement, as in *LaCrescent*. But a party seeking declaratory judgment must only “possess a bona fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner.” *State ex rel. Smith v. Haveland*, 223 Minn. 89, 92, 25 N.W.2d 474, 477 (1946). The declaratory judgment here is not merely advisory. It would immediately impact the legal rights and obligations of the parties with respect to planning and zoning within the annexation area. The facts presented are not hypothetical; there is a current disagreement over the rights of the parties, which could be resolved by declaratory judgment.

Accordingly, we conclude that the case presents a justiciable controversy, and the district court properly held that it had jurisdiction to issue a declaratory judgment.

II

Bridgewater appeals the district court's order granting summary judgment to Dundas, arguing that the district court erred in concluding that the annexation agreement unambiguously grants planning and zoning authority within the annexation area to the city. "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Absent ambiguity, the interpretation of a contract presents a question of law, which this court reviews de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011). The determination of whether a contract is ambiguous is also a question of law. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003).

"A contract is ambiguous if, judged by its language alone without reference to parol evidence, it is reasonably susceptible of more than one meaning." *Metro Office Parks Co. v. Control Data Corp.*, 295 Minn. 348, 351, 205 N.W.2d 121, 123 (1973). When interpreting a contract, a court examines its language to determine the parties' intent. *Savela v. City of Duluth*, 806 N.W.2d 793, 796 (Minn. 2011). Terms of a contract must be read as a whole and not in isolation. *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). Unambiguous contract language is given its plain meaning. *Id.* "[W]hen a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364–65 (Minn. 2009). When contract language is

ambiguous, summary judgment is inappropriate, and contract interpretation becomes a question of fact for a jury. *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005).

At the center of the conflict here is what authority Dundas's newly expanded planning commission was granted in paragraph 13 of the annexation agreement:

Pursuant to MN Statute 414.0325, subd. 5, the parties agree that the Planning Commission shall have the authority to exercise planning and land use control authority within the Annexation Area, said Commission to operate in the manner prescribed by MN Statute 471.59, subd. 2-8 inclusive. Said Commission shall have planning, zoning and subdivision jurisdiction in the entire Annexation Area. If Rice County objects to the Commission's zoning control over the Annexation Area, which is located outside of the incorporated area of the City, then the Township and the City shall each designate one of its Planning Commission members to serve as members of the three-person governing committee described in MN Statute 414.0325, subd. 5. The City shall designate the zoning administrator for the Annexation Area.

Bridgewater argues that this paragraph unambiguously grants the planning commission, not the city of Dundas, planning and zoning authority in the annexation area. We agree. Paragraph 13 explicitly states that the commission "shall have the authority to exercise planning and land use control." It grants the commission "jurisdiction" in the annexation area and refers to the commission's "zoning control."

In rejecting Bridgewater's interpretation, the district court relied on Minn. Stat. § 462.354, subd. 1(1) (2012). Section 462.354, subdivision 1, authorizes a municipality to create a "planning agency," which may include a planning commission, to serve as an advisory body to the municipality on planning and zoning matters. The district court

concluded that, because that section classifies a “planning commission” as “advisory,” the expanded planning commission created by the annexation agreement must be advisory as well. This interpretation is not supported by the plain language of the agreement. No provision of Minn. Stat. § 462.354 appears in the annexation agreement. Instead, paragraph 13 explicitly cites a different section, which provides that municipalities may delegate actual zoning authority to a board or “other planning authority” as part of an orderly annexation agreement:

Planning in orderly annexation area. (a) An orderly annexation agreement may provide for the establishment of a board to exercise planning and land use control authority within any area designated as an orderly annexation area pursuant to this section, in the manner prescribed by section 471.59. The orderly annexation agreement may also delegate planning and land use authority to the municipalities or towns or may establish some other process within the orderly annexation agreement to accomplish planning and land use control of the designated area.

(b) A board or other planning authority designated or established pursuant to an orderly annexation agreement shall have all of the powers contained in sections 462.351 to 462.364, and shall have the authority to adopt and enforce the State Fire Code promulgated pursuant to section 326B.02, subdivision 5.

Minn. Stat. § 414.0325, subd. 5 (2012).

Subdivision five directly supports Bridgewater’s argument that the new planning commission was intended to be a “joint board” with independent powers in the annexation area. This interpretation is further bolstered by paragraph 13, which largely mirrors subdivision five, and states that the planning commission will “operate in the manner prescribed by” Minn. Stat. § 471.59 (2012). Section 471.59 governs the joint

exercise of powers between governmental units. Thus, we conclude that paragraph 13 unambiguously vests the planning commission with the “planning and land use control authority within the Annexation Area.”

Dundas maintains that, when read in light of the complete agreement, paragraph 13 grants the planning commission only an advisory role. Dundas points to other provisions of paragraph 13, which provide that commission members “serve at the discretion of the [Dundas] City Council,” and that the city “shall designate the zoning administrator for the Annexation area.” But these clauses do not conflict with the planning commission having planning and zoning authority. Nor do paragraphs 11 and 12, which the district court found would be “rendered ineffective” by Bridgewater’s interpretation. Paragraph 11 states:

The City will revise the present Comprehensive Plan, and zoning and subdivision regulations to establish: (A) Zoning and subdivision ordinances and regulations to address areas to be annexed; and (B) Criteria for development agreements. The City and Township agree to develop a joint policy for sharing the cost with respect to road maintenance and other improvements, which are adjacent to annexed areas which are serviced by township roads.

We agree with Bridgewater that this paragraph, read in conjunction with paragraph 13, allows the city to regulate annexation area land as it is annexed into the city, not before.

Paragraph 12 states:

The Planning Commission and/or the City Council of the City of Dundas shall not modify, change, or alter in any way the Comprehensive Plan, zoning and/or subdivision regulations regarding industrial development, within the Annexation Area, without the consent of the Township Board. The Township Board may not unreasonably withhold

its approval if such change is based on reasonable considerations.

Bridgewater acknowledges that this paragraph could be written more clearly, particularly that the phrase “and/or” should not have been used. But one poorly written phrase does not create an ambiguity where the totality of the agreement plainly vests the planning commission with planning and zoning authority in the annexation area. Importantly, paragraph 12 is not inconsistent with the planning commission having such authority. Further, paragraph 12 does not grant any specific authority and is limited solely to industrial development, not development in general.

Finally, the district court found that Bridgewater’s interpretation of the agreement would lead to the absurd result of the planning commission having two roles—as an advisory commission to the Dundas City Council with respect to planning and zoning within the city and as its own independent “fully-empowered agency” with respect to the annexation area. Bridgewater contends that it is possible for a government entity such as the planning commission to wear “two hats.” For example, by statute, a planning commission may also serve as a board of appeals and adjustments with respect to zoning ordinances. *See* Minn. Stat. § 462.354, subd. 2 (2012). We conclude that it is not an absurd result for the newly expanded planning commission to retain its advisory capacity to the Dundas City Council while also exercising independent zoning and planning authority within the annexation area.

Because the annexation agreement unambiguously grants planning and zoning authority in the annexation area to the planning commission, we reverse the grant of

summary judgment to Dundas and remand for the district court to enter summary judgment and declaratory judgment in favor of Bridgewater consistent with this opinion.

Affirmed in part, reversed in part, and remanded.