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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0786**

In re: Petition of Michael E. Morath and
Other Wabasha County Registered Voters to
Establish the Wabasha County Government Study Commission

**Filed December 16, 2013
Affirmed
Smith, Judge**

Wabasha County District Court
File No. 79-CV-11-1269

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, Minnesota (for appellants
Norman and Snow)

James Nordstrom, Wabasha County Attorney, Wabasha, Minnesota (for Wabasha
County)

Steve Erwin, Wabasha, Minnesota (attorney pro se respondent)*

Considered and decided by Johnson, Presiding Judge; Smith, Judge; and Minge,
Judge.**

* Appellants named numerous individuals as adverse parties in their district court motion, but the record is unclear as to which, if any, of them were served. Appellants identify no adverse parties in their appellate brief. Two of the named individuals appeared in the district court proceedings, and they are listed here in their capacities as identified from the district court record and by letter from Steve Erwin to this court dated May 16, 2013.

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

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's denial of a motion requesting declaratory judgment that the work of the Wabasha County Government Study Commission was void because appellants do not contest the district court's finding that the motion was moot.

FACTS

In December 2011, the Wabasha County Board of Commissioners abolished its county administrator position. In that same month, the county auditor certified that she had received a valid petition to establish a government study commission under Minnesota Statutes section 375A.13 (2010). Pursuant to section 375A.13, the district court ordered the creation of a government study commission, and it appointed commissioners, including appellant Merl Norman, who was then a member of the county board. Appellant Beverly Snow was subsequently appointed to the commission to replace a resigning commission member. Although the appointed commissioners met and conducted business, none of them filed written letters accepting their positions with the district court, as required by statute. *See* Minn. Stat. § 375A.13, subd. 1. However, no one contemporaneously challenged the formation of the government study commission as statutorily improper.

On December 13, 2012, the commission issued its final report, recommending that the county board adopt an administrator form of government, requesting that the district court issue a 90-day extension for its operations, and stating that it would request that the

district court order a referendum if the county board did not adopt its recommendations. The report was signed by each of the commissioners except Norman and Snow. The district court appears to have granted the requested 90-day extension. And the county board voted on January 22, 2013, to readopt an administrator form of government and reestablish the county administrator position, as recommended by the commission's final report.

In March 2013, Norman and Snow moved the district court for an order "to void the Commission and its subsequent work." The district court held a hearing, wherein it asked Norman and Snow's attorney to explain how their motion presented a justiciable controversy, noting that, although the government study commission had the statutory power to compel a referendum, it had not exercised that power. Norman and Snow's attorney responded that the commission's report was "a permanent record" and that the issue was "the validity of that report and whether that report was validly issued by the study commission" and "should it remain in the file as is or should there be a comment that the statutory procedures weren't followed [and] vacating the report as a product of this study commission."

The district court denied Norman and Snow's motion, ruling that it raised no justiciable controversy because it was rendered moot when the commission's term expired and that the commission had only presented recommendations to the county board. The district court found that, because the commission did not invoke its power to compel a referendum, "it did no more than what any citizen has the right to do." Although it declined to rule on the substantive merits of Norman and Snow's allegations

of irregularities in the creation and work of the commission, the district court opined that the submitted resumes and statements of willingness to serve on the commission acted as acceptances of appointments.

D E C I S I O N

In their appellate brief, Norman and Snow reiterate various objections to the procedural and substantive work of the government study commission, but they do not address the district court's finding of mootness. Failure to raise an issue on appeal results in waiver of the issue, and we will not consider it "unless prejudicial error is obvious on mere inspection." *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (quotation omitted). We can see no obvious error in the district court's determination that the absence of a referendum and the end of the government study commission's operations render Norman and Snow's motion moot. The county board was free to either accept or reject the government study commission's recommendations, and the mere existence of the commission's report has no continuing effect after the county board has acted. We therefore affirm the district court's denial of the motion.

Affirmed.