STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1847

RKL Landholding, LLC,
Relator,

vs.

Ramsey County Board of Commissioners,
Respondent.

Filed June 30, 2014
Affirmed
Stauber, Judge

Board of Ramsey County Commissioners

Kirk M. Anderson, Anderson Law Firm, P.L.L.C., Minneapolis, Minnesota (for appellant)

John J. Choi, Ramsey County Attorney, James A. Mogen, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Reilly, Judge.

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

STAUBER, Judge

In this certiorari appeal, relator-former owner of certain land forfeited to respondent county, argues that the county should have granted his application to re-purchase the land where relator was not the owner of the property when it burned down and subsequently became a nuisance. We affirm.

FACTS

In 2002, relator RKL Landholding, LLC acquired property on University Avenue in St. Paul. In February 2009, relator allegedly sold the property to another entity, 1563 University Avenue, LLC, by contract for deed. On July 8, 2009, a fire broke out on the property, and afterward the city determined that the building on the property was "unsafe and dangerous." Between February 2009 and July 2010 there were numerous incidents at the property that required police involvement. In addition, sometime during the winter of 2009-2010 the pipes in the building froze and burst, resulting in a $15,000 assessment against the property by the city water utility. In August 2010, someone made arrangements to have the building demolished.[1] But following demolition a dangerous unsupported wall was left standing, requiring the city to hire a contractor to remove the wall, assessing the cost against the property.

Sometime in 2010, the purported contract for deed was allegedly canceled, and relator resumed possession of the property in 2011.[2] On August 1, 2012, the property forfeited for non-payment of real-estate taxes. About two months later, relator submitted an application to repurchase the property following forfeiture. The repurchase application was sent to the city for review on December 4, 2012, and on April 8, 2013, the city issued a resolution recommending that respondent Ramsey County Board of Commissioners deny appellant's application for repurchase. The resolution stated that after "review[ing] police, building, and property maintenance code violations within the

[1] There is no evidence in the record regarding who arranged and paid for the demolition.
[2] There is no evidence in the record regarding when the contract for deed was canceled or when relator regained possession of the property.

past five years," "the City of St. Paul has determined that the property . . . is a municipal problem."

The county's Department of Property Records and Revenue (department) issued a report recommending that the county commissioners deny the application for repurchase. The department determined that "[t]he prior owner has a history of neglect in property maintenance and nuisance property issues cited by the City of St. Paul." It also determined that "[t]he property has been the subject of excessive citizen complaints since 2007 for graffiti, snow removal, unsecured premises and an unsafe structural building." The report stated that the owner "failed to respond to the city's repeated requests to address the complaints" which "forc[e]d the city to . . . abate the nuisance conditions using city crews." The department's report acknowledges relator's claim that "the subject property was sold on a contract for deed," but states that "[n]o evidence to support that claim was provided to the county." The report also states that relator was aware of the unpaid tax burden on the property but relator asserted that "a dispute with the city over a water bill caused [relator] to default" and that "the delay in processing a tax petition caused [relator] hardship."

Relator's application for repurchase came before the Board of County Commissioners on August 6, 2013. Relator RKL was represented by Emad Abed and attorney Kirk Anderson. Anderson testified that relator was not responsible for the nuisance conditions and fire at the property because he was not the owner of the property during that time. He testified that relator plans to rebuild on the property in order to develop a mixed-use facility with a coffee shop or restaurant on the main level and

offices above it. He further testified that by granting relator's repurchase request, the city will be "made whole," that the public good would be served by redeveloping the property, and that it would prevent undue hardship to relator based on "this large amount of tax burden on it and [relator] was involved in this very costly litigation with the insurance company." Abed testified that the repurchase amount should be reduced by $15,000 because he should not be held liable for the water bill, which he argued was the result of the water utility's negligence. Abed then stated that "I'm bringing these points out because I fear it is injustice for Government to do these activities, and you can correct this problem by allowing me to buy my property back."

At the hearing, one of the commissioners observed that they had heard from this same owner in the previous year. The commissioner added that "I would be supportive of this recommendation today to deny approval because the concerns that were reported to us have not been addressed." But Anderson testified that the commissioner was "confusing this with another property that was down the street from this one," and that "since July of 2010, there hasn't been any police action with this property at all." Relator's other property similarly suffered fire damage and was forfeited for non-payment of taxes. Relator's application to repurchase the other property was denied and relator subsequently appealed that decision to this court, and this court affirmed. *RKL Landholding, LLC v. Ramsey Cnty. Bd. of Comm'rs*, No. A12–2025, 2013 WL 3779286, *1 (Minn. App. July 22, 2013), *review dismissed* (Minn. Oct. 3, 2013).

At the close of testimony, the commissioners voted unanimously to deny relator's repurchase application. This certiorari appeal followed.

D E C I S I O N

"On certiorari review of a board decision, the court's inquiry is limited to questioning whether the board had jurisdiction, whether the proceedings were fair and regular, and whether the board's decision was unreasonable, oppressive, arbitrary, fraudulent, without evidentiary support, or based on an incorrect theory of law." *Radke v. St. Louis Cnty. Bd.*, 558 N.W.2d 282, 284 (Minn. App. 1997). A county board's ruling is arbitrary and capricious if it

> (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006).

Minnesota law provides that an owner of a tax-forfeited parcel "may repurchase any parcel of land claimed by the state to be forfeited" under certain conditions. Minn. Stat. § 282.241, subd. 1 (2012).

> [R]epurchase is permitted . . . only after the adoption of a resolution by the board of county commissioners determining that by repurchase undue hardship or injustice resulting from the forfeiture will be corrected, or that permitting the repurchase will promote the use of the lands that will best serve the public interest."

Id. This statute "is remedial in its purpose." *State ex rel. Burnquist v. Flach*, 213 Minn. 353, 355, 6 N.W.2d 805, 807 (1942). "If any reasonable means can be devised whereby ownership may be protected against tax forfeitures, without injury to others, clearly it

should be the purpose of the state to lend a helping hand." *Id.* at 356, 6 N.W.2d at 807 (quotation omitted).

Relator argues that the county erred by failing to consider whether repurchase would best serve the public interest. Relator asserts that repurchase is in the public interest because relator plans to rebuild on the site in order to develop a mixed-use facility. But the county board's resolution states that repurchase "will not promote the use of the lands that will best serve the public interest." The resolution further states that the county board considered the city's recommendation based upon "review of the police, building and property maintenance code, illegal activity, and health violations." The department report submitted to the county board found that relator's property had been "the subject of excessive citizen complaints since 2007," and that "[t]he prior owner has a history of neglect in property maintenance and nuisance property issues." This evidence supports the reasonableness of the county board's finding that repurchase would not serve the public interest.

Relator also argues that the only issue the county board should have considered was whether relator had adequate funds to repurchase the property and that the county board erred by considering the history of nuisance issues at the property. The purpose of the repurchasing statute is to "protect . . . property interests from tax forfeiture." *Radke*, 558 N.W.2d at 285. But this purpose is limited by the statutory provisions requiring the county board to consider whether repurchase would correct a hardship or serve the public interest. Minn. Stat. § 282.241, subd. 1; *see also State ex rel. Equity Farms, Inc. v. Hubbard*, 203 Minn. 111, 116, 280 N.W. 9, 13 (1938) ("If any reasonable means can be

devised whereby ownership may be protected against tax forfeitures, *without injury to others*, clearly it should be the purpose of the state to lend a helping hand." (emphasis added)); *Flach*, 213 Minn. at 359, 6 N.W.2d at 808-09 ("In view of the beneficent purpose of the repurchase act, no one can doubt that the landowner is the intended beneficiary, who is permitted to redeem from forfeiture within the time and *pursuant to the conditions* stated in the act." (Emphasis added.)). Because the plain language of the statute requires the county board to consider whether repurchase would correct a hardship or serve the public interest, the county board did not err by not limiting its inquiry to whether relator had the means to repurchase the property.

Relator also argues that the county board erred by finding that repurchase would not correct a hardship. Relator asserts that he suffered hardship when the property was demolished following a fire, and when nuisance issues arose under ownership by his alleged contract-for-deed vendee for which relator was not responsible. But no evidence of a contract for deed was presented to the county board. Relator's attorney testified that a contract for deed conveyed the property to another entity in February 2009, but there is no evidence in the record of this conveyance or when the contract was canceled. And it remains unclear whether the contract-for-deed was recorded. Moreover, testimony provided by Abed contradicts the assertion that relator was not the owner of the property because he testified that, in 2009 and 2010, he personally handled problems for relator arising from the frozen pipes and a dispute with the water utility.

Relator argues that this case is analogous to *Radke*, in which the landowner sought repurchase following tax-forfeiture which resulted from years of nonpayment of taxes

while the landowner was suffering from a mental illness and believed the taxes were being paid. 558 N.W.2d at 283. In *Radke*, however, this court concluded that the landowner "lost the property through no willful act of his own," and that "he exhibited responsibility once he achieved mental stability." *Id.* at 285. The county argues that *Radke* is distinguishable because relator was aware of the unpaid tax liability and assessments against the property for demolition costs and water damage, and that his nonpayment of the taxes and assessments was a "willful act." We agree. Because the record lacks evidence to support relator's assertion that the unpaid taxes and assessments accrued while the property was owned by another entity and because Abed testified that he was contemporaneously aware of the fire and water damage, we conclude that relator's nonpayment of taxes was wilful and that the county board's decision was not unreasonable or arbitrary.

Affirmed.