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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-726**

City of Delano,
Appellant

vs.

Minnesota Office of the State Demographer,
within the Minnesota Department of Administration, et al.,
Respondents,

Minnesota Department of Transportation, et al.,
Respondents.

**Filed May 6, 2008
Affirmed
Worke, Judge**

Wright County District Court
File No. 86-CV-07-489

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Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of a writ of mandamus that would force respondent demographer to certify the city's population, based on appellant's estimate, and force respondent MnDOT to allow the city to participate in the state-aid street fund, arguing that the court erred in holding a hearing prior to ruling on the petition and finding that the demographer's procedures are the exclusive method for determining population. We affirm.

FACTS

Minn. Const. art. XIV, § 8 provides that cities having a population of 5,000 or more are eligible to receive an apportionment of the state-aid street fund. On June 1, 2006, respondent Minnesota Office of the State Demographer (demographer) issued its annual population estimate for appellant City of Delano (city), which was benchmarked to April 1, 2005, and put the city's population below 5,000. As a result, the city was presumptively ineligible to participate in the state-aid street fund for the fiscal year July 2006 through July 2007. Between April 2005 and June 2006, however, the city experienced growth and believed that its population exceeded 5,000. The city commenced a population study using the demographer's methodology, which indicated a population of 5,119 as of June 2006. In preparation of an application for municipal state-aid funds from respondent Minnesota Department of Transportation (MnDOT), the city requested that the demographer analyze and certify the city's study. The demographer's office responded that it did not certify estimates prepared by cities. The city submitted an

application without the demographer's certification. On January 17, 2007, the city petitioned for an alternative writ of mandamus, requesting that the district court command the demographer to certify that the evidence established that the city's population exceeded 5,000 as of July 1, 2006, and command MnDOT to certify that the city is eligible to participate in the state-aid street fund for the fiscal year July 2006 through July 2007. The city also requested a temporary restraining order, which is not an issue on appeal. Following a hearing, the district court denied the city's motions, finding that the city did not have a population exceeding 5,000 according to Minnesota law. This appeal follows.

D E C I S I O N

“When the district court's decision on a petition for a writ of mandamus is based solely on a legal determination, this court reviews that decision *de novo*.” *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 493 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004). A district court's mandamus-related findings of fact, however, are reviewed for clear error. *Pelican Group of Lakes Improvement Dist. v. Minn. Dep't of Natural Res.*, 589 N.W.2d 517, 518-19 (Minn. App. 1999), *review denied* (Minn. May 18, 1999); *see* Minn. R. Civ. P. 52.01 (“Findings of fact . . . shall not be set aside unless clearly erroneous.”).

Mootness

The demographer and MnDOT argue that the appeal should be dismissed on the grounds of mootness, contending that the funds have already been distributed and judicial intervention is too late. But in the district court MnDOT argued:

[The city] claims that ‘once the State-Aid pool for 2006/2007 is certified and disbursed, [the city] will have lost all rights to participate in that pool [of] funds.’ . . . [The city] has provided the Court with no constitutional, statutory, or regulatory analysis from which it can conclude that this statement is accurate. *The Court has been presented with no argument demonstrating that if [the city] ultimately prevails the Court could not order a distribution from future accruals in the Fund.*

(Emphasis added.) The district court found that if the city were to prevail on the merits there was no evidence that it would not be paid the money it was owed. Additionally, one of the city’s requests was for the district court to issue a writ ordering the demographer to certify that the evidence established that the city had a population in excess of 5,000. Distribution of the funds would affect only the city’s second request—that MnDOT certify that the city is eligible to participate in the state-aid street fund. Therefore, the appeal is not moot, and we will address it on the merits.

Denial of Petition

The city requested mandamus relief and must show that (1) the demographer and MnDOT “failed to perform an official duty clearly imposed by law”; (2) it “suffered a public wrong” and was specifically injured by the failure to perform the duty; and (3) it has “no other adequate legal remedy.” *Breza v. City of Minnetrista*, 725 N.W.2d 106, 109-10 (Minn. 2006) (quotation omitted); *see also* Minn. Stat. §§ 586.01, .02 (2006). The city sought an alternative writ of mandamus. In cases when an obligation to act exists, but valid reasons for not acting may also exist, the court may issue an alternative writ, which permits the officials to show cause explaining the “omission” of their act. Minn. Stat. § 586.03 (2006); *see also Mendota Golf, LLP v. City of Mendota Heights*, 708

N.W.2d 162, 171 n.5 (Minn. 2006) (“An alternative writ of mandamus permits a defendant to answer the petition and show cause for not complying with the writ . . .”).

The city argues that the district court erred by conducting a hearing prior to issuing the writ. The city relies on Minn. Stat. §§ 586.02, .08 (2006). “The writ shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02.

No pleading or written allegation, other than the writ, answer, and demurrer, shall be allowed. They shall be construed and amended, and the issues tried, and further proceedings had, in the same manner as in a civil action. The demurrer need not be noticed for argument, but the issues raised thereby may be disposed of as are other objections to the pleadings.

Minn. Stat. § 586.08. The city argues that the district court was required to issue the writ based on the city’s “information” and erred by addressing the merits. First, “[m]andamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles.” *State ex rel. Hennepin County Welfare Bd. v. Fitzsimmons*, 239 Minn. 407, 422, 58 N.W.2d 882, 891 (1953). Thus, the district court was not required to issue a writ. Second, to be entitled to mandamus relief the city must show: “(1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to [the city]; and (3) no other adequate remedy.” *Kramer v. Otter Tail County Bd. of Comm’rs*, 647 N.W.2d 23, 26 (Minn. App. 2002). The city requested a writ that would command the demographer to “immediately certify that the evidence . . . established that the City had a population in excess of 5,000

as of July 1, 2006.” But the city fails to establish that the demographer had a duty to certify the city’s population estimate. The city argues that the demographer failed to review, comment on, and analyze their submitted population estimate. If the demographer had such a duty and failed to perform it, that would not necessarily mean that after reviewing the city’s population study the demographer would have certified the city’s population estimate. Thus, the command in the writ did not address the duty that the city claims that the demographer failed to perform. The district court provided the city an opportunity to show that the demographer failed a duty to review, comment on, and analyze the city’s population estimate, but it was unable to do so. Thus, the district court did not err in refusing to issue the writ based on the city’s petition.

Ruling on the Merits

The city argues that the district court erred in determining that the demographer’s procedures were the exclusive method of determining population. The city contends that once a city’s population reaches 5,000, it has a constitutional right to participate in the state-aid street fund because the constitution leaves no “discretion to the Legislature as to which municipalities are eligible to participate.” The constitution provides:

There is hereby created a municipal state-aid street fund to be apportioned as provided by law among municipalities having a population of 5,000 or more. The fund shall be used by municipalities as provided by law for the construction, improvement and maintenance of municipal state-aid streets. The legislature may authorize municipalities to use a part of the fund in the construction, improvement and maintenance of other municipal streets, trunk highways, and county state-aid highways within the counties in which the municipality is located.

Minn. Const. art. XIV, § 8. “In determining whether any city has a population of 5,000 or more, the last federal census shall be conclusive, except as otherwise provided in this subdivision.” Minn. Stat. § 162.09, subd. 4(a) (2006) (addresses the municipal state-aid street system).

The population of a city that is not receiving a municipal state-aid street fund apportionment shall be determined, upon request of the city, by the most recent population estimate of the Metropolitan Council or state demographer. A municipal state-aid street fund apportionment received by the city must be based on this population estimate until the next federal decennial census or special census.

Id., subd. 4(e). The city argues that it has a constitutional right to eligibility as soon as it reaches a population of 5,000, but the constitution does not provide a manner in which to measure population. As a result, the legislature has provided for how and when population is to be measured and, thus, the district court did not err in finding that the city’s population was less than 5,000 based on the demographer’s most recent estimate.

Finally, the city argues that the demographer failed to follow statutory requirements to review, comment on, and prepare an analysis of the population estimate projected by the city. The demographer’s statutory duties are set out in Minn. Stat. § 4A.02(b)-(d) (2006). Among other things, the demographer is required to prepare a population estimate for governmental subdivisions and convey the estimates by June 1 of each year. *Id.* (b)(9). The demographer is also required to “review, comment on, and prepare analysis of population estimates and projections made by state agencies, political

subdivisions, other states, federal agencies, or nongovernmental persons, institutions, or commissions[.]” *Id.* (b)(4). Additionally,

A governing body may challenge an estimate made under paragraph (b) by filing their specific objections in writing with the state demographer by June 24. If the challenge does not result in an acceptable estimate, the governing body may have a special census conducted by the United States Bureau of the Census. The political subdivision must notify the state demographer by July 1 of its intent to have the special census conducted. The political subdivision must bear all costs of the special census. Results of the special census must be received by the state demographer by the next April 15 to be used in that year’s June 1 estimate to the political subdivision under paragraph (b).

Id. (c).

The city failed to follow the requirements under Minn. Stat. § 4A.02(c). There is nothing in the statute that requires the demographer to review, comment on, and analyze a population estimate submitted at any time. The statute requires that specific objections be filed by June 24. The city did not file an objection, claiming that at the time it did not challenge the demographer’s population estimate. However, no statutory duty exists that requires the demographer to do as the city requests. The city has failed to show that the demographer failed to perform a legal duty; thus, the district court did not err in determining that the city was not entitled to an alternative writ of mandamus.

Affirmed.