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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2216**

Responsible Governance for Roseville,
Appellant,

vs.

City of Roseville,
Respondent.

**Filed April 23, 2012
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-CV-11-9250

Jeremy P. Greenhouse, Jeffrey D. Gram, Greenhouse & Gram LLC, Minneapolis,
Minnesota (for appellant)

Scott G. Knudson, Diane B. Bratvold, Maren F. Grier, Briggs and Morgan, P.A.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Johnson, Chief Judge; and
Kalitowski, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Responsible Governance for Roseville (RGR) challenges the district
court's dismissal of its claims against respondent City of Roseville arising out of the
city's allegedly unauthorized decision to issue general-obligation bonds under its port-

authority powers without holding a public referendum. Because the district court did not abuse its discretion in requiring RGR to post a surety bond pursuant to Minn. Stat. § 562.02 (2010), and because RGR's failure to post that bond compelled the court to dismiss the action, we affirm.

D E C I S I O N

Under Minn. Stat. § 562.02, a public body defending an action questioning its conduct “in the course of the authorization or sale, issuance or delivery of bonds” may

move the court for an order requiring the party, or parties, bringing such action to file a surety bond. . . . If the court determines that loss or damage to the public or taxpayers may result from the pendency of the action or proceeding, the court may require such party, or parties, to file a surety bond. . . .

Id. In determining whether to require a bond and in what amount, the court should consider “whether the action presents substantial constitutional issues or substantial issues of statutory construction, and the likelihood of a party prevailing on these issues.”

Id. If the party bringing the action fails to pay a required bond within a reasonable time provided by the district court, the action must be dismissed with prejudice. *Id.*

The district court exercises broad discretion in determining “the necessity of a surety bond to protect the public interest, the amount of the bond and the ‘reasonable time’ allowed for the filing of the bond.” *Pike v. Gunyou*, 491 N.W.2d 288, 291 (Minn. 1992) (quoting Minn. Stat. § 562.02). The district court’s decision to require a surety bond will be upheld absent a clear abuse of discretion. *Id.*

Here, RGR initiated an action seeking declaratory judgment and injunctive relief to preclude the city from issuing approximately \$27 million in general-obligation bonds to fund a new firehouse and improvements to its parks system. The district court denied RGR's motion for temporary injunctive relief, granted the city's request to require a surety bond, and required RGR to obtain a \$670,000 surety bond within two weeks. When RGR failed to obtain the required bond within that timeframe, the district court dismissed the action with prejudice.

RGR asserts that the district court abused its discretion by granting the city's request for a surety bond. We disagree. Consistent with the requirements of Minn. Stat. § 562.02, the district court made express findings that the city would suffer damages by virtue of the pendency of the action in the form of construction delay costs on projects to be funded by the bonds, additional fees that would be incurred if the city was forced to reissue the bonds in a subsequent calendar year, and additional interest that would be incurred if the city was not able to take advantage of historically low interest rates. The court concluded the bond was appropriate because "the citizens of Roseville, because of this dispute, are now in a position where the mere existence of this lawsuit is going to cost the citizens of Roseville money, whether they are plaintiffs in this lawsuit or not." The court also considered, as required by the statute, the potential merits of RGR's legal challenges, concluding that there was a low likelihood that RGR would succeed on the merits. We conclude that on this record, the district court properly exercised its broad discretion under Minn. Stat. § 562.02 to require a surety bond.

Although not technically a port authority, the city is authorized to exercise the powers of a port authority. *See* Minn. Stat. § 469.082 (2010) (authorizing the City of Roseville to exercise the powers of a port authority). Port-authority powers include the power to issue general-obligation bonds for certain purposes without holding a voter referendum. *See* Minn. Stat. § 469.060, subd. 1 (2010) (authorizing issuance of general-obligation bonds without a referendum); *see also* Minn. Stat. § 469.059, subd. 15 (2010) (authorizing use of port-authority powers for purposes in the Minnesota Statutes municipal industrial development provisions, Minn. Stat. §§ 469.152-.165 (2010)). RGR asserts that the district court erred in its interpretation and application of the port-authority statutes when it considered RGR's likelihood of success on the merits. Specifically, RGR asserts that the city's proposed projects do not fall within the purposes for which a port authority can issue general-obligation bonds, and that the district court thus erred in determining that it has a low likelihood of success on the merits.

But we need not determine with precision the likelihood of RGR's success on the merits because, consistent with Minn. Stat. § 562.02, the district court primarily relied on the losses that the city would potentially suffer during the pendency of the action. *See Pike*, 491 N.W.2d at 291-92 (affirming requirement of \$30 million surety bond based on district court's determination that mere pendency of lawsuit had effect of temporary injunction). Moreover, although the statute requires a district court to consider a party's likelihood of success, it does not preclude a court from requiring a surety bond in cases where that party may succeed on its claims. Thus, even if the district court erred in

concluding that RGR's likelihood of success on the merits was low, the district court acted within its discretion in requiring a surety bond.

RGR also asserts that the district court abused its discretion in setting the amount of the bond. We disagree. The city submitted evidence of four categories of loss expected to be incurred by virtue of the pendency of the litigation: (1) \$335,000 in costs arising from the delay of the firehouse construction; (2) \$730,000 in additional interest costs if the city was forced to issue more than \$10 million in bonds in a single calendar year, in which case the bonds would not be bank qualified; (3) approximately \$43,000 in preparation costs that would have to be reincurred if the first round of bonds was not issued until 2012; and (4) additional interest costs of up to approximately \$292,000 in the likely event that the interest rates went up before the bonds could be issued. The court accepted each of the city's expected losses except for the \$730,000 in additional interest costs, reasoning that the city could avert those losses by issuing the bonds in offerings of less than \$10 million over three years starting in 2012, rather than 2011 as it had planned. The district court's findings were not clearly erroneous and it did not abuse its discretion in setting the amount of the bond.

RGR argues that intervening events demonstrate that the district court abused its discretion in setting the amount of the bond. But this court is limited to considering the record before the district court at the time that it made that decision. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); see *Bhd. of Maint. of Way Emps. v. Chicago & Nw. Transp. Co.*, 827 F.2d 330, 337 n.6 (8th Cir. 1987) (explaining that review from grant of

preliminary injunctive relief is “limited to the record before the district court *at the time* it issued the preliminary injunction” (emphasis added)).

In sum, we conclude that the district court did not abuse its discretion in requiring a surety bond pursuant to Minn. Stat. § 562.02, or in setting the amount of that bond. Because appellant’s failure to obtain the required bond mandated dismissal under the statute, we do not reach appellant’s argument that the district court erred in denying its motion for temporary injunctive relief.

Affirmed.