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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1841**

Marijo Vik,
Appellant,

vs.

Wild Rice Watershed District, et al.,
Respondents.

**Filed August 10, 2010
Affirmed
Worke, Judge**

Norman County District Court
File No. 54-CV-08-454

Paul R. Haik, Krebsbach & Haik, Ltd., Minneapolis, Minnesota (for appellant)

Kristy Albrecht, Dorsey & Whitney LLP, Fargo, North Dakota (for respondents)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by: (1) dismissing her open-meeting-law claim; (2) granting summary judgment in favor of respondents on her declaratory-judgment and data-practices-act claims; and (3) granting respondents' motion to stay her depositions pending the resolution of the dispositive motions. We affirm.

FACTS

Respondent Wild Rice Watershed District (the district) is a special-purpose government entity that solves and prevents water-related issues. The district is governed by a board of managers authorized to purchase property to effectuate water-management goals, pursuant to Minn. Stat. § 103D.335, subd. 11 (2008). At an open board meeting in March 2008, the district's administrator, respondent Steven L. Dalen, reported that he intended to close three property acquisitions to facilitate an ongoing flood-relief project. Believing that he was authorized to purchase the properties following the meeting, Dalen made several purchases on behalf of the district over the next five weeks without formal board approval. Upon learning of Dalen's purchases, Gerald Von Korff, the district's outside legal counsel, recommended that the board formally ratify the purchases to ensure unambiguous authorization of the transactions.

The board held an open meeting on May 14, and Von Korff presented a ratification resolution for approval. In addition to the ratification of Dalen's purchases, the board also addressed three other potential property acquisitions for the flood-relief project: separate properties owned by David and Joyce Stumble, John Hogetvedt, and John Schultz. The board voted to temporarily close the meeting to discuss these possible transactions, and recorded the closed session. No discussion of Dalen's purchases took place during the closed session. Following the closed session, the board resumed the open session and unanimously passed the resolution ratifying Dalen's purchases.

On July 15, 2008, appellant Marijo Vik e-mailed Dalen requesting information pertaining to the properties discussed at the May 14 board meeting, including a recording

of the closed session and all financial documents relating to the purchases ratified by the board's resolution. The district sent appellant everything she requested except for the recording of the closed session and the financial documents pertaining to the transactions. The district did not explain the absence of the requested financial information, but informed appellant that the closed-session recording was not yet available to the public because the potential transactions discussed were not complete. Appellant, who claims to be a freelance journalist, persisted with her requests of the financial documents and the closed-session recording upon her belief that the meeting was improperly closed to discuss Dalen's purchases. The district repeatedly denied appellant's requests for the recording of the closed session, but invited her to schedule an appointment to view the financial documents. Appellant scheduled a meeting with Dalen on August 28, but Dalen postponed the meeting until September 3 because he did not have all of her requested information assembled. Appellant met with the district's accountant instead, who provided her access to the financial documents she requested. After viewing the documents, appellant did not attend the rescheduled meeting with Dalen.

Appellant filed suit on September 10 against the district, Dalen, and respondent Warren J. Seykora, chairperson of the board (respondents). Appellant (1) alleged that respondents violated Minnesota's Open Meeting Law (OML) by improperly closing part of the May 14 meeting, (2) sought a declaratory judgment of whether the district duly authorized the land purchases, and (3) alleged that respondents violated Minnesota's Government Data Practices Act (MGDPA) by failing to disclose the requested financial documentation. Respondents moved for an in camera review of the closed-session

recording, dismissal of the OML complaint, and summary judgment on the remaining issues. After an in camera review of the closed-session recording, the district court concluded that the session was permissibly closed pursuant to Minn. Stat. § 13D.05, subd. 3(b), (c)(3) (2008), and dismissed appellant's OML complaint. The court also granted respondents' summary-judgment motion, concluding that appellant's declaratory-judgment claim failed to advance a justiciable controversy and that appellant's MGDPA claim did not seek damages. This appeal follows.

D E C I S I O N

OML Claim

This court reviews de novo a district court's application of the OML to undisputed facts. See *Free Press v. County of Blue Earth*, 677 N.W.2d 471, 475 (Minn. App. 2004) (reviewing de novo interpretation of statute and its application to underlying facts). Generally, the OML requires a governmental body to open meetings to the public. Minn. Stat. § 13D.01, subd. 1 (2008). But a meeting may be closed when the intended discussion is "to develop or consider offers or counteroffers for the purchase or sale of real or personal property." Minn. Stat. § 13D.05, subd. 3(c)(3). Prior to closing a meeting, a record must be made of "the specific grounds permitting the meeting to be closed and [] the subject to be discussed." Minn. Stat. § 13D.01, subd. 3 (2008). When the subject of the closed meeting is the acquisition of real property, the particular property intended to be discussed must be noted on the record. Minn. Stat. § 13D.05, subd. 3(c)(3).

Content of the Closed Session

Appellant asserts that section 13D.05 should be read as requiring boards to discuss specific terms of purchase agreements in order for a meeting to be properly closed for the discussion of property transactions. Because the recording illustrates no discussion of prices or the actual terms of the acquisitions contemplated by the board, appellant claims that the district court erred in concluding that the content of the meeting warranted a closed session.

The OML was enacted for the benefit of the public, and courts are to construe its provisions in favor of public access. *Star Tribune Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 280 (Minn. 2004). But the object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2008). When words in a statute are clear and unambiguous, the court must give effect to the plain meaning of the language. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986); *see also* Minn. Stat. § 645.16 (providing that when the language of a statute is "clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit").

The OML clearly and unambiguously states that a meeting may be closed to the public to "*develop or consider* offers or counteroffers for the purchase or sale of real or personal property." Minn. Stat. § 13D.05, subd. 3(c)(3) (emphasis added). Thus, appellant's argument that no offers or counteroffers were discussed due to the board's failure to address concrete purchase terms is unconvincing; the board need only discuss the development or consideration of a property transaction for the meeting to be closed,

not the specific terms of advanced negotiations. The district court concluded that the closed session centered on property acquisitions, and appellant does not deny this. Accordingly, the court did not err in concluding that content of the meeting warranted a closed session.

Record Preceding Closed Session

Appellant also asserts that the meeting was not properly closed because the board failed to specifically identify the properties to be discussed during the closed session, as required by section 13D.05. The district court concluded that appellant's claim was meritless. The court reviewed the transcript of the open meeting before the board went into a closed session, noting the following omissions in the transcript where the properties were identified:

Man: Which property is going to be considered?

Man: We're going to talk a little bit about the closing of Neil H_____ deal . . . and then we're also going to look at Dave Stumble[']s] property.

Man: And _____.

Man: Well, I mean we haven't been negotiating with, we can talk about Schultz's, yes. . . .

Man: Alright. If I can have motion to close the meeting for that purpose.

Man: So moved.

The district court concluded that the omissions in the transcript were likely due to a clerical error, surmising that the first blank in the transcript was in reference to Hogetvedt and the second omission was in reference to Schultz, as evidenced by the next sentence. Thus, the district court concluded that the board properly identified the properties that were the subject of the closed session prior to closing the meeting.

Appellant argues that the district court inappropriately speculated as to why the omissions occurred and erred in concluding that the record sufficiently established the need for a closed session. But as respondents assert, the district court's conclusion that the error was clerical is supported by the meeting minutes, which note that the meeting was closed "to discuss offers and counter offers on property" under the flood-relief project and identify the "Hog[et]vedt property" as such a property. Considering that the property was referenced on the record as "Neil H _____" and the Hogetvedt property was one of the properties listed in the minutes as the subject of the meeting, this was a reasonable inference for the district court to make. Likewise, the second omission seems to refer to the Schultz property by virtue of the following sentence in the record. Accordingly, the district court did not err in concluding that the closed session was procedurally sound.

Dalen Affidavit

Appellant also argues that the district court erred by improperly relying on an affidavit submitted by Dalen in order to reach the conclusion that the transcript omissions were due to a clerical mistake. But there is no indication that the district court expressly relied on Dalen's affidavit in determining that the meeting was properly closed; rather, the district court relied on the recording of the meeting and the minutes. Absent an express reliance on the affidavit and in light of the district court's dependence on the closed-session recording and meeting minutes, the district court's review of Dalen's affidavit was harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

Dismissal

The OML provides that “[i]f the court finds that this section was not violated, the action shall be dismissed.” Minn. Stat. § 13D.03, subd. 3(b) (2008); *see also* Minn. Stat. § 13D.05, subd. 3 (applying the dismissal standard of section 13D.03 to any claim alleging that public business was impermissibly discussed in a closed meeting). The district court did not err in assessing the content of the closed session, examining the transcript of the meeting prior to the closed session, or reviewing the Dalen affidavit. Because the district court did not err in concluding that there was no violation of the OML, the district court correctly dismissed appellant’s claim.

Summary Judgment

When reviewing a grant of summary judgment, this court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A motion for summary judgment is appropriately granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *Id.* at 77. We may affirm summary judgment if it can be sustained on

any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

Declaratory-Judgment Claim

Appellant's declaratory-judgment claim sought a determination of "whether the governing body of the Wild Rice River Watershed District duly authorized the purchases." Appellant asserted that she "holds [a] legally cognizable interest[] in [the] declaration" and that "there is a justifiable [sic] controversy between [appellant] and [respondents]." The district court concluded that appellant's claim failed to advance a justiciable controversy, noting that appellant "failed to request any sort of meaningful relief . . . such as rescinding the land purchases or seeking a return of [the district's] money[,]" and was essentially "seeking a non-justiciable advisory opinion."

"[A] justiciable controversy must exist before the courts have jurisdiction to render a declaratory judgment." *Thuma v. Kroschel*, 506 N.W.2d 14, 20 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). In order to present a justiciable controversy, a party must request "specific relief by a decree or judgment of a specific character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977) (quoting *Seiz v. Citizens Pure Ice Co.*, 207 Minn. 277, 281, 290 N.W. 802, 804 (1940)).

Appellant seems to argue that a justiciable controversy exists because the declaratory relief sought pertained to the district's ratification of the purchases after the fact rather than properly approving the transactions at the March meeting. Appellant

asserts that there is no precedent on attempted “after-the-fact” ratification of a government board decision in Minnesota and cites to a Colorado Court of Appeals case. In *Barbour v. Hanover Sch. Dist. No. 28*, the school district decided not to renew a probationary teacher’s contract during a closed meeting, several weeks before the decision was ratified at an open meeting. 148 P.3d 268, 270 (Colo. Ct. App. 2006), *aff’d in part, rev’d in part, sub nom. Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223 (Colo. 2007). The Colorado Court of Appeals concluded that, because the Colorado OML prohibited the adoption of any formal action at a closed meeting and because the board decided to terminate the teacher at a closed meeting, the school board violated the state’s OML. *Id.* at 272-73.

But the teacher in *Barbour* sued the school district seeking concrete damages in the form of back-pay, benefits, and reinstatement resulting from the OML violation; thus, this case is factually distinguishable. *Id.* at 270. Appellant’s case is more analogous to our decision in *Thuma*, as respondents correctly argue and upon which the district court relied. In *Thuma*, a private citizen sought a declaratory judgment that her town mayor and council members acted ultra vires when entering into a municipal contract. 506 N.W.2d at 19-20. We held that the citizen failed to demonstrate a justiciable controversy because the citizen did not seek to void the contract or restrain the future misappropriation of city funds, instead seeking “solely . . . a judicial declaration that [the mayor] acted ultra vires.” *Id.* at 21.

Similarly, in *Rupp v. Mayasich*, this court addressed the inadequacy of declaratory relief in the context of an OML complaint. 561 N.W.2d 555, 558 (Minn. App. 1997). In

Rupp, citizens sought a declaratory judgment that the Minnesota Transportation Regulation Board violated the OML by failing to provide adequate notice of a meeting. *Id.* at 556. We concluded that the citizens failed to present a justiciable controversy because they “sought neither injunctive relief, nor damages, but solely a declaration . . . that respondents violated the [OML].” *Id.* at 558.

Like in *Thuma* and *Rupp*, appellant sought merely a declaration that the district inappropriately purchased land without first obtaining approval from the board; appellant did not seek damages or injunctive relief. Appellant attempts to differentiate her claim under the auspice of being a freelance journalist, claiming that respondents’ actions caused injury by “either directly or indirectly interfering with [her] function[] of collecting or disseminating the news.” *Nw. Publ’ns, Inc. v. Anderson*, 259 N.W.2d 254, 256 (Minn. 1977). But again, appellant failed to seek any concrete relief that would have assisted her role of disseminating the news, such as an injunction against future acquisitions conducted in this manner. Thus, appellant still fails to assert a justiciable controversy.

Finally, appellant argues for the first time on appeal that a justiciable controversy exists because respondents’ land acquisition violated the procedure for water-management and government projects under Minn. Stat. § 103D.605 (2008). This court will not address issues not raised before the district court and presented for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The district court did not err in concluding that appellant failed to present a justiciable controversy and

appropriately granted summary judgment in favor of respondents on appellant's declaratory-judgment claim.

MGDPA Claim

“[A] person shall be permitted to inspect and copy public government data at reasonable times and places” upon a request made to a “responsible authority or designee.” Minn. Stat. § 13.03, subd. 3(a) (2008). All government data is presumed to be public unless deemed classified pursuant to a statute or other law. *Id.*, subd. 1 (2008). Information discussed in closed meetings is not considered public data. *See* Minn. Stat. § 13D.05, subd. 1(b) (2008) (stating that a meeting may be closed to discuss data that are not public). To sustain an action under the MGDPA, a plaintiff must demonstrate (1) a violation on the part of a government official and (2) damages incurred as a direct result of that violation. Minn. Stat. § 13.08, subd. 1 (2008). Similar to the declaratory-judgment claim, the district court granted summary judgment on appellant's MGDPA claim by noting that she “failed to allege that she suffered any damages whatsoever.”

Appellant fails to demonstrate a valid MGDPA claim for both the recording of the closed meeting and the financial records of the property transactions. Because the closed session of the May 14 meeting was valid under the OML, the recording was not public data and respondents did not violate the MGDPA by refusing to disclose it to appellant. And appellant was allowed to view the financial records she requested from the district's accountant; thus, even if we assume that the district somehow violated the MGDPA in its handling of appellant's request for financial documents, appellant cannot demonstrate

damages. Accordingly, the district court did not err in granting summary judgment on appellant's MGDPA claim.

Stay of Depositions

A district court has “wide discretion to issue discovery orders and, absent clear abuse of that discretion, [] its order with respect thereto will not be disturbed.” *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). District courts have authority to limit discovery until dispositive issues have been “sufficiently litigated.” *Baskerville v. Baskerville*, 246 Minn. 496, 507, 75 N.W.2d 762, 770 (Minn. 1956). And a stay of discovery is warranted to “protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense.” Minn. R. Civ. P. 26.03.

Appellant argues that the district court abused its discretion by staying her requested depositions pending the outcome of the dispositive motions because the depositions would have helped her uncover material facts which would have prevented summary judgment from being granted. But respondents' summary-judgment motion raised questions of law that did not implicate issues of fact that would have been explored during depositions. Appellant's argument is, therefore, unavailing. The district court did not abuse its discretion in staying appellant's deposition requests pending the resolution of dispositive motions raising exclusively questions of law.

Affirmed.