STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0312

Steven H. Chase,
Appellant,

Richard Reed,
Plaintiff,

vs.

City of Plymouth,
a Minnesota municipal corporation,
Respondent.

Filed April 29, 2008
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CV-05-18642

Daniel S. Le, Murphy Law Firm, P.A., Suite 302, 5125 County Road 101, Minnetonka, MN 55435 (for appellant)

Thomas M. Scott, Samuel J. Edmunds, Campbell Knutson, P.A., 317 Eagandale Office Center, 1380 Corporate Center Curve, Eagan, MN 55121 (for respondent)

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.

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

COLLINS, Judge

Appellant Steven H. Chase challenges the district court order (1) reversing his conciliation court award of damages and (2) determining that he did not have any property right in lakeshore property located in respondent City of Plymouth. Because the district court did not err in concluding that Chase did not have a requisite property right to maintain a dock on Medicine Lake, and because Chase's additional claims lack merit, we affirm.

FACTS

In 1991, Chase purchased a house in the vicinity of Medicine Lake in Plymouth. Thereafter, Chase continued to maintain a dock on the lakeshore that had been used by his predecessor. Chase's property does not abut the shoreline of Medicine Lake, but is separated from the lake by Medicine Lake Drive and a row of residential properties. The city right-of-way of Medicine Lake Drive abuts the shoreline of Medicine Lake.

In June 2004, the city notified Chase that his dock was located on the right-of-way of Medicine Lake Drive and had to be removed. The city warned Chase that if he did not remove the dock and his associated personal property, the city would do so and charge him for the costs.

In October 2004, the city Director of Parks and Recreation prepared a report for the city council in which he noted the discovery of three docks on the lakeshore, including Chase's, that were maintained by property owners who did not have direct access to the lake. The report recommended that the city council "[a]ffirm staff's

decision that three docks in question on West Medicine Lake Drive need to be removed," noting that the "[c]ity does not currently have specific dock ordinances for Medicine Lake," but that "[i]t has been our practice to allow [each of] the home[s] immediately behind the road, which are separated from the lake, to have one dock across the street on road right-of-way for their private use."

The city council met on October 26, 2004, and determined that the owners of the docks at issue did not have "grandfathered" or "permanent dock rights." All council members voted in favor of supporting the recommendation that the three docks be removed, citing reasons such as "equity," "preserv[ing] the lake quality and safety," and not "establishing a precedent" that would allow anyone who did not own lakeshore property to put up a dock.

A letter was sent to Chase on November 15, 2004, informing him that the city council had "passed a motion reaffirming our position that only properties that have frontage on the lake may have docks." The letter gave Chase notice to remove his dock and personal property prior to May 15, 2005. Chase disputes receipt of this letter, but Chase was in communication with the city throughout the proceedings and the record shows that he had been notified by telephone that the city council would be taking up the matter at its meeting on October 26, 2004.

In a letter dated April 12, 2005, responding to Chase's letter of April 9, the city summarized the procedural history of the dispute and reiterated that "the [c]ity [c]ouncil took official action clarifying that they are not granting dock rights to your property," and reminded Chase of the May 15 removal date. And finally, by letter sent May 5, 2005,

Chase was again reminded that the deadline for removal of his dock and personal property was May 15, or the city would remove and store it at his expense.

Chase failed to remove his dock, boat, boat lift, and other personal property from the lakeshore by May 15, 2005. Thereafter, the city removed it all to an impound facility, and on June 16 the city informed Chase that he could retrieve his property by paying the removal and storage fees of $423.59.

Once again, on August 5, 2005, the city informed Chase by mail that he did not possess "any rights above and beyond any other Plymouth resident who does not have a house facing the lake." The letter also stated that the city attorney could not find any basis for Chase's property-right claims in the lakeshore, and that the matter would not be brought before the city council again.

Chase's claim for unlawful appropriation of personal property against the city's park department was heard in conciliation court on November 11, 2005, and he was awarded $3,375 in damages. The city appealed the conciliation court judgment to the district court and counterclaimed for declaratory relief determining that Chase did not have the right to maintain a dock on the city's right-of-way property, and for equitable relief enjoining Chase from his continuing violation of the city's zoning ordinance.

Following a bench trial on August 25, 2006, the district court concluded that Chase had adequate warning that his dock was unauthorized. The court ordered that Chase had no "right to maintain personal property within the public right of way," and required Chase to reimburse the city for the removal and storage fees in exchange for the return of his property.

Chase contends that (1) the district court did not have jurisdiction to decide issues of real estate ownership and boundary disputes on appeal and removal of the case from conciliation court; (2) the city did not have standing to assert its counterclaim; (3) the counterclaim was moot; (4) the district court erred in determining that Chase did not have a legal property right in the lakeshore; (5) the district court improperly placed on Chase the burden of proving the city's counterclaim; (6) the city violated Chase's due-process and equal-protection rights; and (7) the city's zoning ordinance was an unconstitutional ex post facto law as applied to Chase. We affirm on all issues.

D E C I S I O N

I.

Chase contends that the district court did not have subject-matter jurisdiction to consider claims regarding ownership of real estate and boundary disputes in a case removed from conciliation court. *See* Minn. Stat. § 491A.01, subd. 4(1) (2006) (stating that conciliation court does not have jurisdiction over actions "involving title to real estate, including actions to determine boundary lines"). The district court's determination of subject-matter jurisdiction is subject to de novo review. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

A party aggrieved by a conciliation court judgment may remove the case to the district court for "trial de novo (new trial)." Minn. R. Gen. Pract. 521(a). Once the city appealed and removed the case to the district court, the jurisdictional limitations of the conciliation court as to real estate and boundary disputes no longer pertained, and nothing precluded the district court from exercising subject-matter jurisdiction over the claims

presented. *See Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) ("District courts are courts of general jurisdiction and have the power to hear all types of civil cases. . . .").

II.

Chase argues that the city lacked standing to assert a counterclaim in the district court because it did not suffer an injury-in-fact as a result of his actions and did not have statutorily-conferred standing. "[W]hen facts relating to whether a party has standing to bring an action are not in dispute, an appellate court will decide the issue as a matter of law." *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000).

"Standing requires that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Id.* (quotation omitted). "A sufficient stake may exist if the party has suffered an injury-in-fact or if the legislature has conferred standing by statute." *Id.* (quotation omitted). The record shows that the city did suffer an injury-in-fact from Chase's continuing trespass on the city's property, as well as due to the expenditure of city funds for the removal and storage of his personal property. Therefore, the city had the requisite standing to assert the counterclaim.

III.

Next, Chase contends that the city's counterclaim seeking injunctive relief from his continuing violation of its zoning ordinance was moot when filed because the city had already removed his dock and associated personal property from the lakeshore in May 2005. *See In re Application of Minnegasco,* 565 N.W.2d 706, 710 (Minn. 1997) (stating

that when an event occurs that makes a decision unnecessary, the issue is moot). However, whether Chase had a legal property right in the lakeshore was not a moot question because, absent judicial resolution of the issue, Chase might have continued to assert entitlement and reinstalled his dock.

IV.

Chase argues that the district court's finding and conclusion that he did not have a legal property right in the shoreline property was clearly erroneous. "In a case tried without a jury, the scope of review is limited to determining whether the district court's findings are clearly erroneous and whether the court erred as a matter of law." *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). Our "authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982). Although rebuttable, "there is a strong presumption . . . favoring action taken by a city." *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964).

Chase asserts that his residence is "zoned" as though it is located on Medicine Lake Drive, and therefore he should be allowed to have a dock like the owners of property on Medicine Lake Drive directly across from the lake. Chase relies on evidence of a sign across the street from his house stating that "address numbers east of Hemlock are assigned to West Medicine Lake Drive." But this sign does not confer any property right in the lakeshore. Chase's property is simply not physically located on Medicine Lake Drive. The city allows owners of property on Medicine Lake Drive directly across from

and facing the lake to maintain a dock on the lakeshore, but Chase is not one of those property owners. The district court did not err in concluding that Chase's evidence did not establish a legal right to maintain a dock on the lakeshore.

At trial, the city proved that the lakeshore is located within the right-of-way of Medicine Lake Drive, as shown on the 1931 plat map and deed. On the deed describing the lakeshore property, it is stated that the eastern boundary for the property is the shoreline of Medicine Lake. "[W]here a water line is the boundary line of a given lot, that line, no matter how it shifts, remains the boundary. . . ." *Sherwin v. Bitzer*, 97 Minn. 252, 257, 106 N.W. 1046, 1048 (1906) (quotation omitted). The shoreline property abuts Medicine Lake Drive, which was donated "to the public use forever" in the deed. Therefore, substantial evidence supports the district court's finding that the right-of-way of Medicine Lake Drive extends to the shoreline of Medicine Lake, and the court's determination that Chase had no right to maintain personal property within the city right-of-way along Medicine Lake Drive was not clearly erroneous.

Although Chase may have continuously used the dock since 1991, he did not gain ownership of the lakeshore property through adverse possession, or possession of the lakeshore property by virtue of a prescriptive easement. *See Fischer v. City of Sauk Rapids*, 325 N.W.2d 816, 819 (Minn. 1982) (holding that private property owner cannot adversely possess property dedicated for public use); *Heuer v. County of Aitkin*, 645 N.W.2d 753, 757-58 (Minn. App. 2002) (holding that private property owner is not entitled to prescriptive easement over property dedicated for public use).

Under the city's zoning ordinance, docks are defined as water-oriented accessory structures. Plymouth, Minn., City Code § 21005.02 (2008). According to the ordinance, an accessory structure must be "located on the same lot on which the principal building or use is situated." *Id.* Because Chase's residential property does not include the lakeshore, he was in violation of the zoning ordinance by maintaining a dock on the lakeshore property that he did not own. The district court therefore did not err in determining that Chase was not entitled to keep a dock on the city's property, because he was in violation of the zoning ordinance by doing so.

V.

Chase claims that the district court erroneously placed the burden of proving the city's counterclaim on him. *See* Minn. R. Civ. P. 8.01 (stating that a counterclaim is a claim for relief); *Holman v. All Nation Ins. Co.*, 288 N.W.2d 244, 248 (Minn. 1980) ("Minnesota law ordinarily requires that the party who must allege a given fact also has the burden of proving it.").

The district court order states that Chase "failed to establish that [he has] a legally recognizable right to maintain personal property on a city right of way." In his original conciliation court claim form, Chase referenced "deed rights" as an underlying basis for his claim of conversion. In order to establish that the city owed him damages for conversion of his personal property, as he claimed, Chase would have had to prove that his personal property was lawfully situated on property in which he had a possessory interest; that is, that he was not trespassing upon property owned by the city. Nothing in the record supports Chase's contention that the district court improperly placed the

burden of proving the city's counterclaim on him, because it was an essential element of proof of his own claim that he had a legal right in the lakeshore property.

VI.

Chase contends that the district court erred by failing to consider the constitutional issues presented because, in light of (a) the conciliation court claim, (b) the district court pleadings, and (c) the testimony at trial, the court should have been aware that Chase, pro se, was challenging the constitutionality of the taking of his property.

In its order, the district court addressed Chase's procedural due-process claim by determining that he "had adequate warning that the personal property he maintained on the [c]ity right of way was unauthorized." The court did not make express findings regarding (1) Chase's claim that he was not heard before his property was removed; (2) his substantive due-process claim; or (3) his equal-protection claim. Chase failed to request such express findings, either prior or subsequent to the issuance of the findings of fact, conclusions of law and order for judgment.

Although the district court did not specifically make such findings, it did determine that Chase lacked a recognizable property right in the lakeshore. The district court was not required to sua sponte address the constitutional issues because, inasmuch as Chase did not have any property right in the lakeshore, the claims were without merit. *See State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981) (courts do not decide constitutional questions except where necessary to dispose of a case). Here, the district court did not err initially by omitting specific findings on Chase's vague constitutional claims, and Chase should have challenged the adequacy of the district court's findings in a motion for a new

trial or for amended findings if he objected to them. *See Frank v. Ill. Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983) ("Where the court fails in its duty to make a finding, the burden is on the parties to alert the court by a motion for amended finding under Minn. R. Civ. P. 52.02."). When the trial court's failure to explicitly address an issue is not raised in a new trial motion, there is no ruling for this court to review. *Id.*

Next, Chase claims that the notices issued by the city did not provide him with a meaningful opportunity to be heard before his property was removed. We review procedural due-process claims de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). We conclude that the district court did not err in determining that appellant received ample notice prior to the city's removal of his property.

Due-process protections "include reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record." *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). "At a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case." *Contos v. Herbst*, 278 N.W.2d 732, 742 (Minn. 1979).

The record indicates that Chase was given notice through letters sent by the city before and after his dock and property were removed from the lakeshore. Chase argues that he did not receive the November 15, 2004, letter informing him of the city council's

decision, but the record shows that, in addition, the city's Director of Parks and Recreation personally telephoned Chase to inform him of the October 26 meeting date when the city council would take up the matter. Furthermore, at trial, the city mayor testified that notice of upcoming city council meetings, along with the proposed agenda, is always published in the local newspaper of record. We agree with the district court that Chase was afforded adequate notice and the opportunity to be heard to challenge the removal of his personal property from the lakeshore, and the city did not deny him procedural due process.

Likewise, Chase's remaining constitutional claims are without merit. He argues that the city violated his substantive due-process rights by impinging upon his protected property interests. We apply a two-part test to determine whether a municipality violated substantive due-process rights: "first, whether there has been a deprivation of a protectable property interest and, second, whether the deprivation, if any, is the result of an abuse of governmental power sufficient to state a constitutional violation." *Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 824 (Minn. App. 2005), *review denied* (Minn. July 19, 2005) (quotation omitted). Here, Chase was without a protectable property interest in the lakeshore property, so there was no deprivation and we need not examine whether the city abused its power. Chase was not denied substantive due process.

Chase contends that the city acted in violation of 42 U.S.C. § 1983 (2006). In order to establish a section 1983 claim, Chase must show that he has been "deprived of a right, privilege, or immunity secured by the constitution or law of this state by any person

acting under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory." *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 635 (Minn. App. 2002) (quotation omitted). "To establish such a claim, the court considers (1) whether there has been a deprivation of a protectable property interest, and (2) whether the deprivation results from an abuse of governmental power sufficient to state a constitutional violation." *Id.* (quotation omitted). Again, Chase did not have a protectable property interest in the lakeshore property, so there was no deprivation and the city did not act in contravention of section 1983.

Chase claims that the city violated his equal-protection rights by treating him differently than others who had docks on the lakeshore but did not own property abutting the lake. "Equal protection requires that persons similarly situated be treated similarly." *Kottschade v. City of Rochester*, 537 N.W.2d 301, 306 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Nov. 15, 1995). A municipality "may treat similarly situated persons differently when a distinction in treatment bears a rational relation to a legitimate government objective." *Id.* (quotation omitted).

Here, the city distinguished between property owners in three classes: (1) those who owned property abutting the lake; (2) those who owned property on Medicine Lake Drive directly across from and facing the lake; and (3) those, such as Chase, who did not own property in either of the first two categories. Nothing in the record indicates that Chase was treated any differently than others who did not own lakeshore property or whose property was not directly across the roadway from and facing the lake. All property owners similarly situated to Chase were prohibited from keeping docks along

the lakeshore. This distinction was not irrational, and the city proffered rational reasons for the restrictions. The city did not violate Chase's equal-protection rights, as he was treated the same as other similarly situated property owners.

VII.

Finally, Chase argues that because the dock associated with his house was in existence since 1931, before the municipal incorporation of the city in 1974, the city violated the constitutional provision prohibiting ex post facto laws by retroactively applying its zoning ordinance to him. An ex post facto law is one which "applies to events occurring before its enactment and disadvantages the offender affected by it." *In re Welfare of B.C.G.*, 537 N.W.2d 489, 492 (Minn. App. 1995). The Minnesota Constitution prohibits such laws. Minn. Const. art. I, § 11. But the prohibition applies only to laws of a criminal nature, and is not applicable here. *See Starkweather v. Blair*, 245 Minn. 371, 386-89, 71 N.W.2d 869, 879-81 (1955) (stating that application of ex post facto clause is limited to laws involving punishment for crimes). Moreover, this issue is not properly before us because Chase did not raise it before the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.