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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0748**

David Werpy, et al.,  
Appellants,

vs.

McDonald Homes, Inc.,  
Respondent,

James McDonald,  
Defendant.

**Filed June 10, 2008  
Reversed and remanded  
Poritsky, Judge\***

Dakota County District Court  
File No. C7-05-9908

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Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and  
Poritsky, Judge.

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\* 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## **UNPUBLISHED OPINION**

**PORITSKY**, Judge

Appellants David and Melissa Werpy (the Werpys) sued respondent McDonald Homes, Inc. for breach of warranty, alleging that McDonald Homes had constructed the Werpys' house defectively. The district court granted McDonald Homes's motion to dismiss. The Werpys appeal, contending that the district court erred in dismissing their complaint because the court considered facts outside of the pleadings, and they seek remand for further proceedings. McDonald Homes agrees that the district court erred in the basis for its dismissal, but argues that this court should affirm on other grounds. We reverse dismissal of the complaint and remand for further proceedings.

### **FACTS**

In 1999, McDonald Homes, Minnesota corporation, constructed a house for the Werpys. On August 2, 2002, McDonald Homes filed a notice of intent to dissolve and articles of dissolution with the Minnesota Secretary of State. The secretary of state issued a certificate of dissolution dissolving the corporation on the same date.

On September 22, 2005, the Werpys brought a pro se conciliation-court action against McDonald Homes and James McDonald, seeking damages for breach of warranty. The conciliation court found in favor of the Werpys on their claim against McDonald Homes and awarded damages, but dismissed their claim against the individual defendant with prejudice. McDonald Homes then removed the matter to district court. The Werpys ultimately retained counsel, who prepared an amended complaint (the

complaint) raising a claim of breach of statutory warranty under Minn. Stat. § 327A.02, subd. 1(c) (2006), and the district court granted the motion to amend the complaint.

McDonald Homes moved to dismiss the complaint under Minn. R. Civ. P. 12.02(e) on the following grounds: (1) the district court did not have subject-matter jurisdiction and personal jurisdiction over McDonald Homes because of its corporate dissolution; (2) the Werpys failed to state their claims within two years after notice of corporate dissolution as required under Minn. Stat. § 302A.7291 (2006); (3) the Werpys failed to provide timely written notice as required under Minn. Stat. § 327A.03(a) (2006); and (4) recent amendments to relevant statutes upon which the Werpys relied were unconstitutionally vague and violated McDonald Homes's state and federal equal protection and due process rights.

The district court first rejected McDonald Homes's argument that the court lacked subject-matter jurisdiction and personal jurisdiction and held that under Minn. Stat. §§ 327A.02, subd. 2a, 302A.781, subd. 4 (2006), McDonald Homes had the capacity to be sued for breach of warranty despite its corporate dissolution. The court then granted the motion to dismiss, ruling that the Werpys had failed to meet the notice requirement in Minn. Stat. § 327A.03(a) that they provide McDonald Homes with a report of damage in writing within six months after they discovered or should have discovered the loss. The district court did not reach the other issues raised by McDonald Homes.

The Werpys filed a notice of appeal. They moved this court to strike portions of McDonald Homes's brief in which it raised issues that had not been decided by the

district court. This court denied the motion, but gave the panel deciding the appeal on the merits the discretion to decide whether those issues should be considered.

## **D E C I S I O N**

An appellate court reviews de novo a district court decision dismissing a complaint for failure to state a claim. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

McDonald Homes moved pursuant to Minn. R. Civ. P 12.02(e) to dismiss the complaint on the ground that the Werpys' claim for breach of statutory warranty under Minn. Stat. § 327A.02, subd. 1(c) (2006), was barred. McDonald Homes argued that the Werpys did not meet the requirement in Minn. Stat. § 327A.03(a) (2006) that homeowners must report loss or damage in writing to the vendor within six months after the homeowners discovered or should have discovered the loss or damage. In effect, McDonald Homes argued that viewing the complaint in the light most favorable to the Werpys, they could not show that they stated a cause of action. The Werpys contended that their complaint sufficiently pleaded notice because it stated: "Subsequent to the completion of the construction, the Plaintiffs advised McDonald of major construction defects in the Home related to non-compliance with building standards and demanded correction of the Defects." The district court, citing facts outside the complaint as well as the Werpys' assertion in their complaint, concluded that they did not meet the notice requirement, and dismissed the complaint.

Initially, both parties to this appeal agree that the district court erred when it considered facts outside the complaint in ruling on the motion to dismiss. A district court

may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). In ruling on a motion to dismiss, however, the district court may not go outside the pleadings. *N. States Power Co. v. Franklin*, 265 Minn. 391, 396, 122 N.W.2d 26, 30 (1963). When a court considers matters outside the pleadings, the motion to dismiss is converted to one for summary judgment. Minn. R. Civ. P. 12.02. In that case, “all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” *Id.* We agree that the district court erred in considering facts outside the complaint without providing the Werpys the opportunity to be heard on the issue that the district court found to be decisive.

However, McDonald Homes argues that although the district court erred by going outside the complaint, the dismissal itself was nonetheless correct because, even if the court confined itself to the complaint, it would conclude that the Werpys did not specifically aver that they provided timely written notice as required by Minn. Stat. § 327A.03(a). The Werpys argue that the facts asserted in their complaint, if properly considered, show that they appropriately pleaded notice.

In deciding a motion to dismiss, the district court “must accept the allegations contained in the pleading under attack as true, and assumptions made and inferences drawn must favor the non-moving party. It is immaterial at the pleadings stage whether the plaintiff can prove the facts alleged.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 623 (Minn. 2007) (citation omitted). The only question “is whether the complaint sets forth a *legally sufficient* claim for relief.” *Elzie v. Comm’r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (quoting *Royal Realty Co. v. Levin*, 244 Minn. 288, 290, 69 N.W.2d 667,

670 (1955)) (alteration in original). Pleadings are to be liberally construed. *Hedlund v. Hedlund*, 371 N.W.2d 232, 234-35 (Minn. App. 1985). In general, a complaint need only include “a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought[.]” Minn. R. Civ. P. 8.01. “A claim is sufficient against a motion to dismiss . . . if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *N. States Power*, 265 Minn. at 395, 122 N.W.2d at 29. It must be “sufficient to give notice of a potential claim to the opposing party; discovery is available to flesh out the details of the claim.” 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 8.3 (4th ed. 2002).

Applying the standards on a motion to dismiss to the Werpys’ complaint, we accept the allegations in the pleadings as true, draw inferences in favor of the Werpys, and interpret the pleadings liberally. When the Werpys pleaded that they “advised McDonald of major construction defects in the Home related to non-compliance with building standards and demanded correction of the Defects,” their pleading averred that they gave McDonald Homes legally sufficient notice. We conclude that the district court erred when it dismissed the complaint on the ground that the complaint failed to state a claim upon which relief can be granted.

In urging that this court nonetheless affirm the dismissal, McDonald Homes points to the fact that it was dissolved on August 2, 2002, and argues, “it would have been impossible for the Werpys to have [given timely notice] in light of McDonald’s dissolution.” McDonald Homes contends that the Werpys had constructive notice of the

dissolution and of McDonald Homes's inability to honor any warranty, and thus any claim the breach of warranty expired in August 2004, two years after the date of dissolution. McDonald Homes urges that because the Werpys did not attempt to commence this lawsuit until September 2005, their claim is time-barred and the motion to dismiss should have been granted on that ground. This argument was raised, but not ruled on, in district court.

The Werpys responded to this argument by pointing out that recent amendments to Minn. Stat. §§ 302A.781, 327A.02, preserve their claim. This argument and response require a brief legislative history of what have been called the "*Camacho* amendments."

In *Camacho v. Todd & Leiser Homes*, 706 N.W.2d 49, 55 (Minn. 2005), the supreme court ruled that the statute of limitations governing claims such as the Werpys', Minn. Stat. § 302A.7291, subd. 3(a) (2004), was a two-year statute of repose for voluntarily dissolved corporations, which barred home-construction-warranty lawsuits from being brought against the voluntarily dissolved corporation after the statute of repose had run. Shortly thereafter, the legislature amended the statutory-dissolution statute, which now provides: "The statutory warranties provided under section 327A.02 are not affected by a dissolution under this chapter." Minn. Stat. § 302A.781, subd. 4 (2006). The legislature also added a subdivision to the statutory-warranty statute that provides: "The statutory warranties provided in this section are not affected by the dissolution of a vendor or home improvement contractor that is a corporation or limited liability company." Minn. Stat. § 327A.02, subd. 2a (2006). In light of the "*Camacho* amendments," the Werpys argue, their claim is not time-barred.

McDonald Homes replies that although the “*Camacho* amendments” provide that warranties may survive corporate dissolution, “claims” for breach of warranty do not. Further, McDonald Homes argues that the amendments are unconstitutional because they are void for vagueness and those amendments violate state and federal equal protection and due process rights. The Werpys oppose consideration of these issues, although in their reply brief they addressed these claims on the merits. As pointed out above, even though these issues were raised in district court, the court did not rule on them.

Generally, an appellate court will not consider issues raised but not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In light of the fact that this lawsuit is in its earliest stages in district court, we find it inappropriate to resolve issues not decided by the district court, particularly constitutional issues. This lawsuit may well be decided on non-constitutional grounds, such as whether “claims” for breach of warranty do not survive dissolution, and whether the Werpys’ notice was in fact adequate and timely, both of which are more suited to review by the district court on a motion for summary judgment, after discovery and after the parties have had an opportunity to be heard. Should those prove dispositive, it may not be necessary to reach the constitutional issues. Otherwise, the district court, in the first instance, can address the constitutional arguments.



For these reasons, in the exercise of our discretion, we decline to address these issues for the first time on appeal. Instead, we reverse and remand to the district court for further proceedings.

**Reversed and remanded.**