STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0300

Aurelia Tessmer,
Appellant,

vs.

City of Saint Paul,
Respondent.

Filed January 27, 2009
Affirmed
Crippen, Judge[*]

Ramsey County District Court
File No. 62-CV-07-4296

Jane L. Prince, 1004 Burns Avenue, St. Paul, MN 55106 (for appellant)

John J. Choi, St. Paul City Attorney, Virginia D. Palmer, Chad A. Staul, Assistant City Attorneys, 400 City Hall and Courthouse, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant Aurelia Tessmer brought an action against the City of Saint Paul, alleging that the city's decision to demolish her property constituted a taking without

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

compensation and violated her right to equal protection. The district court dismissed for lack of subject matter jurisdiction, and we affirm.

FACTS

Appellant challenges the city's determinations, premised on its ordinances, for demolition of a building at 332 St. Clair Avenue owned by appellant. The city's decisions were previously upheld on a writ of certiorari to this court, and the opinion in that case states the underlying facts. *Tessmer v. City of St. Paul*, No. A07-2349, 2008 WL 5215938 (Minn. App. Dec. 18, 2008).

Simultaneous to certiorari review, appellant sought relief in district court, where she raised constitutional issues not stated in her certiorari appeal. Appellant challenges the district court's dismissal and restates her allegations that the city's demolition decision violated her property rights and her right to equal protection.

D E C I S I O N

The subject matter jurisdiction of the district court is a question of law, which we review de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002).

A city's decision to abate a nuisance property is quasi-judicial, and when city or state legislation does not place review authority elsewhere, jurisdiction rests exclusively in the court of appeals by writ of certiorari. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). The jurisdiction of this court forecloses district court consideration of any claim that is not "separate and distinct" from the decision we are to review. *Id.* at 172.

The only issue raised in this appeal is the jurisdiction to review the city's nuisance-abatement decision. This court has already determined that no statutory authority[1] has displaced this court's exclusive review by certiorari. *Tessmer*, 2008 WL 5215938, at *2-*4. And the constitutional claims appellant stated in district court are not separate and distinct from the demolition decision reviewed on certiorari.

Appellant's takings claim is subsumed by our decision on certiorari that the city did not act arbitrarily or capriciously. *Meldahl*, 607 N.W.2d at 172 (holding that when city demolishes property by acting properly under power to abate nuisances, no taking occurs); *Tessmer*, 2008 WL 5215938, at *4-*5 (holding that city proceeded properly against Tessmer's property).

Similarly, appellant's equal protection claim is not separate and distinct from the demolition decision and involves examining the propriety of that decision. To prove a violation of equal protection, appellant must present evidence comparing city treatment of appellant with treatment of other property owners and showing that preferences, if any, were for reasons that are not related to health, welfare, or safety. *See Northwestern College v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979) (addressing equal protection in zoning context and stating that one property owner may not be preferred

[1] We specifically examined the relevant city ordinances in the certiorari appeal. *Tessmer*, 2008 WL 5215938, at *2-*4. We need not address whether other statutes might create authority for constitutional actions in district court. Tessmer did not bring a facial challenge to a statute under the declaratory judgment act, as in *Farrell v. City of Minneapolis*, No. A03-1052, 2004 WL 885692 (Minn. App. Apr. 27, 2004). Nor did she bring her claim under 42 U.S.C. § 1983, as in *LeBlanc v. Morrison County*, No. C8-94-1343, 1994 WL 714314 (Minn. App. Dec. 27, 1994). Similarly, this is not a case where the district court already had jurisdiction due to other proceedings, as in *County of Freeborn v. Claussen*, 295 Minn. 96, 98, 203 N.W.2d 323, 325 (1972).

over another except for reasons related to health, welfare, or safety); *see also Kottschade v. City of Rochester*, 537 N.W.2d 301, 310 (Minn. App. 1995) (noting that property owner bears burden of showing that city treated other owners differently in enforcing its regulations), *review denied* (Minn. Nov. 15, 1995). Such a comparison requires examining the city's decision to demolish appellant's property.

Appellant argues that her equal protection claim must be heard in the district court because discovery will be necessary in order to develop the evidentiary basis for the claim. The relator in *Meldahl* made a similar argument, and this court determined that "[t]he question of whether the record is in fact inadequate is one that should be addressed in the certiorari appeal and does not affect jurisdiction." *Meldahl*, 607 N.W.2d at 173. A property owner must make the equal protection argument to the city in the first instance and utilize the city's abatement proceedings to make a record regarding patterns of demolition. If the record on certiorari were sufficient to raise the claim but not to decide it, the matter can be remanded for further production of evidence. *Meldahl*, 607 N.W.2d at 173 (noting that this court may remand to city for further findings).

Because of our decision, appellant now faces the consequence that her only avenue to present her constitutional arguments is in proceedings that are already concluded. Because of this, it is in the interests of justice to briefly address the evident merits of the two claims. As noted above, the inverse condemnation claim has been decided on certiorari, and there is no taking where the city has followed a proper nuisance abatement procedure. *Id.* at 172.

It also is evident that appellant has failed to allege or offer to show sufficient facts to establish her equal protection claim. Even if appellant is suggesting that other nuisance-property owners are similarly situated, she has offered no proof that they were treated differently. She has asserted that certain other buildings are still standing, but she has not alleged that the city has taken different steps or has failed to take steps to abate the nuisances on the properties. Finding unequal treatment requires comparison to the way some other person was treated, and it was appellant's burden in the city's abatement proceedings to properly establish an equal protection claim. *See Kottschade*, 537 N.W.2d at 307 (determining that equal-protection claim failed when relator "failed to show any similarly situated property owners whom the city treated differently from [relator]").

Because the district court lacked jurisdiction to hear appellant's challenge to the city's decision, we affirm dismissal of her action.

Affirmed.