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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-287

Richard Borglum, et al., petitioners,
Respondents,

vs.

Waseca Soil and Water Conservation District,
Appellant.

Filed December 29, 2009
Reversed
Kalitowski, Judge

Waseca County District Court
File No. 81-CV-08-106

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Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

KALITOWSKI, Judge

On appeal from the district court's grant of respondents Richard and Marie Borglum's motion for summary judgment and request for a writ of mandamus, appellant Waseca Soil and Water Conservation District argues that the district court erred as a

matter of law in granting respondents mandamus relief because appellant's actions did not trigger the automatic-approval provision of Minn. Stat. § 15.99 (2008), and appellant, therefore, did not fail to perform an official duty clearly imposed by law. In the alternative appellant argues that (1) under *Breza v. City of Minnetrista*, 725 N.W.2d 106 (Minn. 2006), appellant could not approve respondents' application for exemptions and a no-loss determination under the Wetlands Conservation Act; and (2) respondents suffered no actual harm as a result of the denial of their application and had an adequate remedy other than the writ of mandamus. Because appellant complied with the requirements of Minn. Stat. § 15.99, subd. 2, we reverse.

FACTS

Appellant Waseca Soil and Water Conservation District (SWCD) is the local government unit (LGU) responsible for administering the Wetlands Conservation Act (WCA) in Waseca County. In April 2007, appellant issued a WCA cease-and-desist order to respondents Richard and Marie Borglum to stop further filling, draining, and excavation activities with regard to six acres of respondents' property. Although appellant had determined this part of respondents' land to be wetlands for purposes of the WCA in 1995, respondents dispute this determination.

On July 17, 2007, in response to the cease-and-desist order, respondents submitted an application to appellant for various exemptions and a no-loss determination under the WCA. Specifically, respondents sought to fill the six acres in order to expand their land improvement business. On September 5, 2007, appellant sent respondents a document titled "Minnesota Wetland Conservation Act, Notice of Wetland Conservation Act

Decision," informing them that their requests for exemptions and a no-loss determination were denied. The document was signed by the district manager.

Respondents appealed the decision to the SWCD Board of Supervisors pursuant to the procedure set forth in Minn. R. 8420.0200, subp. 2(B) (2009). Following a public hearing, the board affirmed the denial of respondents' application. Respondents then appealed the SWCD decision to the Board of Water and Soil Resources (BWSR) pursuant to Minn. R. 8420.0250 (2009). The BWSR issued an order remanding the exemption and no-loss determinations back to appellant with specific instructions.

Before the remand was heard, respondents filed a petition for writ of mandamus in district court, seeking to compel appellant to approve their application. Respondents claimed that appellant's refusal to grant their application pursuant to the automatic-approval provision of Minn. Stat. § 15.99, subd. 2, was a failure to perform an official duty clearly imposed by law; that they suffered irreparable loss as a result; and that there was no other adequate remedy at law. The district court issued a temporary injunction enjoining appellant from proceeding with the remand from the BWSR pending the mandamus action.

Following a hearing on the parties' separate summary judgment motions, the district court issued an order granting respondents' motion for summary judgment and for a writ of mandamus. Specifically, the district court held that appellant failed to approve or deny respondents' application within 60 days as required by section 15.99 because the decision was made by the district manager, and appellant did not formally delegate

decision-making authority to the district manager. Appellant challenges the district court's grant of summary judgment to respondents and issuance of mandamus.

D E C I S I O N

"When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006). This court reverses a district court's order for mandamus relief "only when there is no evidence reasonably tending to sustain the [district] court's findings." *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). But when the decision to issue a writ of mandamus is based solely on a legal determination, this court reviews that decision de novo. *Breza*, 725 N.W.2d at 110.

"Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles." *Coyle*, 526 N.W.2d at 207. In order to obtain mandamus relief, a petitioner must establish the following elements: (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy. *Id*. (setting forth standing requirements of Minn. Stat. §§ 586.02, 04 (1992)). A court should not grant mandamus to compel "a technical compliance with letter of law" that would violate the spirit of the law. *State v. Hodapp*, 234 Minn. 365, 48 N.W.2d 519, 522 (1951).

I.

Appellant argues that because it followed the procedures of the WCA in delegating decision-making authority to the district manager, the September 5, 2007 denial was an "agency action" issued within 60 days, as required by Minn. Stat. § 15.99. Therefore, appellant contends that the district court erred in holding that appellant had an official duty clearly imposed by law to approve respondents' application pursuant to the automatic-approval provision of section 15.99. We agree.

Minn. Stat. § 15.99 provides that an agency must approve or deny a written request relating to soil and water conservation district review within 60 days. Minn. Stat. § 15.99, subd. 2. Failure to deny a request within 60 days results in automatic approval of the request. *Id*. The district court held that appellant failed to issue the denial of respondents' application for exemptions and a no-loss determination within 60 days because the September 5, 2007 decision had "no legal effect due to the SWCD's failure to properly delegate its authority for exemption and no-loss determinations to [the district manager]."

We conclude that the district court erred. Appellant followed the procedural scheme set forth by the legislature in the WCA, and by the BWSR in the implementing rules regarding applications for exemptions and no-loss determinations and delegating decision-making authority to staff members. And because appellant notified respondents of their decision to deny respondents' application within 60 days, the automatic-approval provision of section 15.99, subdivision 2, was not triggered.

Decision-Making Procedures of the WCA

The WCA, enacted in 1991, regulates the draining, filling, and excavating of areas designated as wetlands. *See generally* Minn. Stat. § 103G.005, subd. 19 (2008) (defining "wetlands" and listing the three necessary attributes); Minn. Stat. § 103G.222 (2008) (stating that wetlands may not be drained or filled unless replaced with wetlands of equal or greater public value); Minn. R. 8420.0100 (2009) ("The purpose of the WCA is to . . . achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands."). Local government units (LGUs) implement the WCA locally and are responsible for making wetland boundary and type determinations, determinations regarding exemptions, and determinations as to whether there is a loss of wetlands. *See* Minn. Stat. § 103G.005, subd. 10e (1) (defining "local government unit" as "a soil and water conservation district or [its] delegate"); Minn. R. 8420.0200, subp. 1 (setting forth the duties of the LGU). The scheme provides for a Technical Evaluation Panel (TEP) to make technical findings and recommendations regarding exemption and no-loss determination requests. *See* Minn. R. 8420.0240 (2009) (setting forth membership requirements and duties of a TEP).

The WCA expressly provides that LGUs may delegate decision-making authority to staff members. *See* Minn. Stat. § 103G.2242, subd. 2a(b) (2008) ("The local government unit may delegate the decision authority for wetland boundary or type determinations to designated staff, or establish other procedures it considers appropriate."). Moreover, the implementing rules provide: "The local government unit may place the decision authority for exemption, no-loss, wetland boundary and type,

replacement plan, and wetland banking determinations with local government unit staff according to procedures it establishes." Minn. R. 8420.0200, subp. 2(B).

If a decision is issued by a staff member with delegated authority, the applicant is entitled to an appeal before elected officials, as well as a public hearing. *Id*. The LGU must make a ruling on the appeal within 30 days, though the parties may agree to extensions. *Id*. The applicant may then appeal the LGU's decision to the BWSR. Minn. R. 8420.0250, subp. 3 (2009). The BWSR may remand back to the LGU if local administrative remedies remain available or if further technical review is required. *Id*.

Here, appellant complied with the procedures of the WCA and its implementing rules in making the decision regarding respondents' application. The record indicates that the TEP, comprised of three members and assisted by three other individuals, reviewed the application and supporting evidence in light of the proposed activity and history of the site, and conducted an investigation that included site visits. The decision issued on September 5, 2007, was titled "Minnesota Wetland Conservation Act, Notice of Wetland Conservation Act Decision," and stated that the decision was made by the Local Government Unit. *See* Minn. R. 8420.0200, subp. 1 (stating that it's the LGU's duty to make exemption and no-loss determinations). The notice was signed by the district manager, whose job description included "administer[ing] the Wetland Conservation Act activities." *See* Minn. Stat. § 103C.321, subd. 2 (2008) (stating that the district board of a soil and water conservation district shall determine employees' duties); Minn. Stat. § 103G.005, subd. 10e(1) (defining LGU as a "soil and water conservation district or [its] delegate."). A box was checked next to "For LGU staff decisions and decisions made

without a public hearing," followed by the designated appeal body, the SWCD. *See* Minn. R. 8420.0200, subp. 2(B) (setting forth applicant's right to a local appeal process when a "final determination" is made by a staff member).

The decision adopted the TEP's recommendations and was accompanied by a letter from the district manager setting forth the reasons for each denial. *See* Minn. R. 8420.0240 (stating that the LGU must consider the TEP's recommendation in making its decision). Notification of the decision was sent within 60 days of respondents' application. *See* Minn. R. 8420.0210, .0220 (requiring exemption and no-loss determinations to conform to section 15.99); Minn. Stat. § 15.99, subd. 2(a) (requiring decisions on applications to be issued within 60 days of request). Respondents invoked their right to appeal the determination to the SWCD Board of Supervisors, and to appeal the SWCD board's decision to the BWSR. *See* Minn. R. 8420.0200, subp. 2(B) (requiring the LGU to establish a local appeal process for final determinations made by staff); Minn. R. 8420.0250, subp. 1 (stating applicant may appeal LGU decision to BWSR).

We conclude that appellant's September 5, 2007 decision was a valid agency decision because appellant complied with the detailed decision-making procedures set forth by the legislature in the WCA and by the BWSR in the implementing rules.

Agency Action Analysis of *Calm Waters*

In addition to complying with the procedures detailed in the WCA, the September 5, 2007 decision was a valid agency decision for purposes of section 15.99 under the supreme court's decision in *Calm Waters, LLC v. Kanabec Cty. Bd. of*

Comm'rs, 756 N.W.2d 716 (Minn. 2008). In *Calm Waters*, the appellant argued that the Kanabec County Environmental Services Director did not constitute an "agency" for purposes of subdivision 3(f) of section 15.99, and thus a letter he sent was ineffective to extend the 60-day deadline under that section. *Calm Waters*, 756 N.W.2d at 720-21; *see* Minn. Stat. § 15.99, subd. 3(f) ("An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant."). The supreme court rejected this argument, reasoning that Kanabec County was clearly an agency as defined in section 15.99, subdivision 1(b); that environmental services is a department within the county; and that "there is nothing in the record to suggest that the Environmental Services Director did not have the authority to act on behalf of that department." *Calm Waters*, 756 N.W.2d at 721.

As in *Calm Waters*, respondents here have offered no evidence in the record to suggest that the district manager did not have authority to act on behalf of the SWCD. To the contrary, the record indicates that the district manager had been making decisions regarding requests for exemption and no-loss determinations since she was hired in 1991, as provided in her job description. And finally, the SWCD Board of Supervisors adopted a resolution in 2008 to formally "reaffirm" the delegation.

The district court distinguished *Calm Waters* on the basis that the decision in *Calm Waters* involved the delegation of authority to extend time limits under section 15.99, whereas here, the decision was a "final agency determination." But we conclude that the reasoning of *Calm Waters* is applicable here because both section 15.99, subdivision 2, the provision at issue here, and section 15.99, subdivision 3(f), the provision at issue in

Calm Waters, discuss mandatory agency action with regard to the 60-day requirement. Moreover, in *Calm Waters*, the supreme court interpreted the scope of "agency" as defined in subdivision 1(b); this is the same "agency" that is referenced in the automatic-approval provision in subdivision 2. If the term "agency" includes action by the environmental services director in *Calm Waters*, it also includes action by the district manager of the SWCD here.

Appellant's case is stronger than the facts presented in *Calm Waters*, because the determination that was signed by the district manager here was expressly sent on behalf of the LGU, and was based on investigations and discussions of the TEP, a panel designated by the rules to make technical findings and recommendations to the LGU regarding requests for exemptions and no-loss determinations. Furthermore, the record indicates that the district manager has been the person at SWCD responsible for such determinations since 1991, when the WCA was enacted. *See generally* Restatement (Third) of Agency § 1.01 (2006) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act."). Therefore, we conclude that the September 7, 2005 decision was a valid agency decision for purposes of section 15.99.

Delegation of Decision-Making Authority to Staff

In determining that appellant's decision was invalid under section 15.99 due to an improper delegation of decision-making authority, the district court relied on this court's decision in *Fryberger v. Twp. of Fredenberg*, 428 N.W.2d 601 (Minn. App. 1988), *writ*

denied (Minn. Nov. 6, 1988). The district court construed *Fryberger* to hold that a soil and water conservation district, as a governmental and political subdivision of the state, may only delegate authority to staff through formal action, such as a resolution by the board. The district court concluded that because the September 5, 2007 decision was issued not through board action, but by the district manager, an employee without properly delegated authority, the decision "had no legal effect." The district court's reliance on *Fryberger* is misplaced.

In *Fryberger*, this court rejected appellant's argument that an appeal of the planning commission's decision granting a conditional use permit (CUP) to the board of adjustment was proper. *Fryberger*, 428 N.W.2d at 604. The Municipal Planning Act (MPA) permitted the town board of supervisors to delegate the authority to approve CUP applications and set up a system of administrative review. *Id.* But although the board delegated this authority to the planning commission, it did not set up a process for reviewing the commission's decisions. *Id.* Thus, this court held that review of the planning commission's decision by the board of adjustment was ultra vires because "the Town Board of Supervisors may only delegate its authority by ordinance, not whim." *Id.*

Fryberger is distinguishable from this case. In *Fryberger*, the decision-making authority regarding CUP applications was strictly defined by ordinance. *See* Minn. Stat. § 462.353, subd. 1 (granting municipalities the authority to "prepare, adopt and amend a comprehensive municipal plan and implement such plan *by ordinance or other official action*. . . .") (emphasis added). When the board of adjustment reviewed the planning commission's decision, the act was outside the scope of the ordinance. *Id.* at 604-05.

Here, unlike the MPA in *Fryberger*, the WCA does not require an ordinance or official action to delegate authority. The WCA and its implementing rules not only permit delegation of decision-making authority to staff, but provide that the LGU may adopt its own procedures for such delegation. *See* Minn. R. 8420.0200.

If the legislature had intended that delegation of decision-making authority to staff members be made only by formal action, it could have explicitly stated this requirement in the WCA. Indeed, the legislature has required soil and water conservation districts to act through a formal resolution with regard to some tasks. *See* Minn. Stat. §§ 103C.215 (requiring a resolution by a majority of supervisors in order to affect a name change); 103C.221 (requiring adoption of a resolution in order to change the location of the principal office). But with regard to delegation of decision-making authority to staff, the rules allow for a flexible approach as evidenced by the language "according to procedures it establishes." *See* Minn. R. 8420.0200, subp. 2(B); *see also In re Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998) ("Canons of statutory construction militate against reading into statutory text a provision not already there."). The district court's interpretation of *Fryberger* requires an inconsistent and strained reading of the statutory scheme set forth regarding an LGU's decision-making process for exemption and no-loss determinations. *See State v. Reusswig*, 110 Minn. 473, 475, 126 N.W. 279, 280 (1910) (stating that in construing a statute, the court will not allow judicial interpretation to usurp the place of legislative enactment).

Respondents further argue that the language of Minn. R. 8420.0200, subp. 2(B), requires the LGU to formally establish procedures in order to delegate decision-making

authority, and because appellant had not established procedures, it failed to delegate decision-making authority to the district manager. We disagree.

A plain reading of the rule provides that the LGU may delegate decision-making authority to staff. Allowing the LGU to delegate authority "according to procedures it establishes" does not mandate that the LGU delegate in any particular way, or pursuant to any requirements or limitations. Rather, it allows the LGU to delegate in ways, or through procedures, that the LGU chooses. *See J.M.*, 574 N.W.2d at 721 ("If statutory language is plain and unambiguous, the court must give it its plain meaning.").

Here, the record indicates that the LGU chose to delegate decision-making authority to the district manager by hiring her to make these decisions; by including them in her job description; by ratifying her performance of this task since 1991; and by adopting a resolution in 2008 to formally "reaffirm" the delegation. We conclude that this delegation by the LGU was permissible under the plain language of rule 8420.0200, subp. 2(B).

Respondents argue that "most significantly," the *Fryberger* rule promotes accountability of elected officials for a staff member's decision-making. But this argument is not persuasive here because (1) the September 5, 2007 decision signed by the district manager was expressly issued on behalf of the LGU; (2) the decision referenced the findings and analysis of the TEP, a panel established pursuant to statute to assist the LGU in decision-making; and (3) the decision informed respondents of their right to appeal the decision to the elected officials. Thus, we conclude that the record here

indicates that the decision was made according to a statutorily-established, transparent process.

II.

Appellant challenges the alternate argument made by respondents at the summary judgment hearing that appellant violated the timing requirements of section 15.99 because the September 15, 2007 decision was not "final" as required by section 15.99 due to the internal appeal process set forth in rule 8420.0250. The district court did not address this argument because it held that appellant violated section 15.99 based on its failure to formally delegate decision-making authority to the district manager. But because this is a legal issue that was briefed by the parties on appeal, we can address it on the record before us.

This argument is without merit. Minn. R. 8420.0200, subp. 2(B), provides that the LGU must establish an internal appeal process that includes a public hearing for final determinations made by staff. The rule states:

> Notwithstanding the time frames of Minnesota Statutes, section 15.99 or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of filing of the appeal, unless the appellant and local government mutually agree, in writing, to an extension of time beyond the 30 days.

Minn. R. 8420.0200, subp. 2(B). Respondents argue that this internal appeal process must occur within the 60-day time frame of section 15.99 because that section requires a decision of an "agency," and a staff person is not an agency. In support of their argument, respondents cite *Moreno v. City of Minneapolis*, 676 N.W.2d 1 (Minn. App.

2004). In *Moreno*, this court held that a decision made by a city's planning commission, a body that advised the city, was not valid under section 15.99 because the commission was not an "agency" under that section. *Moreno*, 676 N.W.2d at 5. And the commission's decision regarding the zoning application at issue was not the final decision of the city because the city council still had the opportunity to approve or deny the application after an appeal. *Id.* Respondents contend that like *Moreno*, the final decision here was the December 19, 2007 decision by the board of supervisors pursuant to respondents' internal appeal. We disagree.

Moreno is distinguishable because here, the September 5, 2007 determination was a final agency decision. The decision was issued by the agency-appellant, not by the district manager as a separate body; it was the result of the decision-making process set out for the LGU in the WCA and its implementing rules. *See also* Minn. Stat. § 103G.005, subd. 10e(1) (defining an LGU to include a "soil and water conservation district *or [its] delegate*") (emphasis added); *Calm Waters*, 756 N.W.2d at 721 (holding that the environmental services director's extension of the 60-day deadline was agency action for purposes of section 15.99). The fact that the WCA provides for an internal appeal process does not render the initial decision less than final for purposes of section 15.99. In fact, the rule setting forth the LGU's duty to provide the internal appeal process states that it is for "*final* determinations made by staff." Minn. R. 8420.0200, subp. 2(B) (emphasis added).

Furthermore, Minn. R. 8420.0200, subp. 2(B), sets forth a timeline for the internal appeal process that is contrary to respondents' argument. The rule provides that an

applicant must appeal the staff member's decision within 30 days, and that the LGU then must rule on the appeal within 30 days. Minn. R. 8420.0200, subp. 2(B). Thus, respondents' contention that the LGU's decision on an appeal of a staff person's decision must be made within 60 days of the original application would require that the staff person's decision be issued immediately after the initial application is submitted.

Moreover, the language of the rule excludes application of section 15.99 to the internal appeal process. *See* Minn. R. 8420.0200, subp. 2(B) ("Notwithstanding the time frames of Minnesota Statutes, section 15.99 or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal. . . ."). Therefore, the September 5, 2007 decision was a final agency decision issued within 60 days. And appellant issued a decision on the internal appeal within the time frame required by Minn. R. 8420.0200, subp. 2(B), after properly requesting extensions. Appellant did not violate section 15.99 by virtue of respondents invoking the internal appeal process.

In conclusion, appellant issued a valid agency decision within 60 days as required by section 15.99. Therefore, appellant did not have an official duty clearly imposed by law to approve respondents' application for exemption and no-loss determinations. Because the district court erred in granting summary judgment and mandamus relief to respondents on this ground, we do not reach appellant's alternative arguments.

Reversed.