STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2289

Dayspring Development, LLC,
Respondent,

vs.

City of Little Canada,
Appellant.

Filed August 24, 2010
Reversed
Wright, Judge

Ramsey County District Court
File No. C9-03-1906

Ernest F. Peake, Patrick J. Lindmark, Leonard, O'Brien, Spencer, Gale & Sayre, Minneapolis, Minnesota (for respondent)

Pierre N. Regnier, James G. Golembeck, Susan Steffen Tice, Jardine, Logan & O'Brien, Lake Elmo, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Johnson, Judge.

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

WRIGHT, Judge

In this appeal from the district court's denial of summary judgment, appellant argues that the district court erred by concluding that respondent has standing. We reverse.

FACTS

Respondent Dayspring Development, LLC (Dayspring) is a Minnesota limited liability company, organized on May 2, 2002, by its sole owner, Gerald Haire. On May 24, 2002, Dayspring submitted a plat application to appellant City of Little Canada (city) for development of real property known as The Preserve located in the city. The city granted conditional preliminary plat approval on October 23, 2002. Dayspring believed that the city imposed unlawful conditions and initiated litigation. This appeal is the third in more than seven years of litigation involving Dayspring and the city. The course of the litigation and the platting process are discussed in our two previous opinions. *Dayspring Dev., LLC v. City of Little Canada*, No. A07-1300, 2008 WL 2494126 (Minn. App. June 24, 2008); *Dayspring Dev., LLC v. City of Little Canada*, No. A04-1158 (Minn. App. Feb. 1, 2005).

This appeal concerns Dayspring's regulatory takings claim pursuant to *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978). Dayspring claims that the city effected a regulatory taking of The Preserve, requiring compensation, when the city denied final plat approval on August 27, 2003. The city ultimately granted final plat approval on September 28, 2005, and the parties proceeded with a development

agreement. But the grant of plat approval did not eliminate the takings claim. Rather, it rendered the claimed taking temporary and truncated any compensation owed. *Dayspring Dev.*, 2008 WL 2494126, at *5.

The city moved for summary judgment on Dayspring's temporary-takings claim in July 2009, arguing, among other things, that Dayspring lacks standing because Dayspring did not own The Preserve on August 27, 2003. The ownership history of The Preserve is undisputed. When Dayspring applied for approval of its preliminary plat in May 2002, the owners of The Preserve were Ronald and Patricia Palmen. Gerald Haire signed a purchase agreement with the Palmens on January 10, 2003 and acquired The Preserve by warranty deed on October 27, 2003. On March 22, 2006, Gerald Haire and his wife, Lucretia Haire, executed a quit-claim deed transferring The Preserve to Dayspring. As a result of that transaction, Dayspring is the current owner of The Preserve.

At the hearing on the city's summary-judgment motion, Dayspring proffered an affidavit of Steve Haire, the son of Gerald Haire, on the issue of standing. Steve Haire asserts that Gerald Haire told him that he "assigned all of his rights, title, and interest" in The Preserve to Dayspring "[b]y the time Dayspring had submitted its application for preliminary plat approval" in May 2002. The city opposed the affidavit, arguing that it was untimely and contained the hearsay statements of Gerald Haire, who died in September 2008. Although the district court did not rule on the city's hearsay objection, the district court determined that Dayspring has standing to assert the takings claim and denied the city's summary-judgment motion. This appeal followed.

D E C I S I O N

Whether a person has standing to bring a claim is a question of law, which we review de novo. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). The issue of standing may be raised at any stage of a proceeding. *Stansell v. City of Northfield*, 618 N.W.2d 814, 818 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

"Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *Rukavina*, 684 N.W.2d at 531 (quotation omitted). When a challenge to standing is raised, "[t]he essential question is 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Sundberg v. Abbott*, 423 N.W.2d 686, 688 (Minn. App. 1988) (quoting *Warth v. Seldin*, 422 U.S. 490, 498, 95 S. Ct. 2197, 2205 (1975)), *review denied* (Minn. June 29, 1988). Standing requires a showing of either actual injury-in-fact or injury that is reasonably likely to occur. *See In re Application of Crown CoCo, Inc.*, 458 N.W.2d 132, 135 (Minn. App. 1990) ("Economic injury or the prospect of economic injury may be sufficient to establish standing.").

To have standing to pursue a takings claim, an individual must establish an "injury to some interest, economic or otherwise, which differs from injury to the interests of other citizens generally." *Vern Reynolds Constr., Inc. v. City of Champlin*, 539 N.W.2d 614, 617 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Dec. 20, 1995). Ownership of property subject to regulation is sufficient to establish standing. *See Zeman v. City of Minneapolis*, 552 N.W.2d 548, 553 (Minn. 1996) (holding that a "property

owner whose property has been taken by government regulation may maintain" a *Penn Central* claim).

The district court identified three bases for its determination that Dayspring has standing to pursue a takings claim against the city: (1) that "Dayspring obtained an equitable interest in the property by January of 2003"; (2) that "Gerald Haire quit-claimed all of his rights, title, and interest to Dayspring, which included his rights to the award of any proceeds from the regulatory taking"; and (3) that the timing of when Dayspring acquired an interest in the property does not preclude standing because "there is no per se rule that prohibits a *Penn Central* takings claim by the 'mere fact that title was acquired after the effective date of the state imposed restriction.' *Palazzolo v. Rhode Island*, 533 U.S. 606, 630[, 121 S. Ct. 2448, 2464] (2001)." We address each in turn.

The district court concluded that "Dayspring obtained an equitable interest in the property by January of 2003." The record establishes, however, that Gerald Haire, not Dayspring, had an equitable interest in the property in January 2003.

"Under the doctrine of equitable conversion, once parties have executed a binding contract for the sale of real estate, . . . equitable title vests in the vendee and the vendor holds only legal title as security for payment of the balance of the purchase price." *Tollefson Dev., Inc. v. McCarthy*, 668 N.W.2d 701, 704 (Minn. App. 2003) (citing *Stiernagle v. Cnty. of Waseca*, 511 N.W.2d 4, 5 (Minn. 1994)). Gerald Haire signed a purchase agreement with Ronald and Patricia Palmen, the joint owners of The Preserve, on January 10, 2003. Although the signature line in the purchase agreement recognizes Gerald Haire's association with Dayspring, the contract itself refers to Gerald Haire as

the buyer. Gerald Haire, therefore, was the sole equitable owner of The Preserve as of January 10, 2003. Because his equitable ownership entitled him to "possession and enjoyment of the property," *id.*, any takings claim involving The Preserve accrued to Gerald Haire, not Dayspring, unless there was some other transaction that transferred that claim to Dayspring.[1]

The district court also concluded that Gerald Haire "quit-claimed all of his rights, title, and interest [in The Preserve] to Dayspring, which included assigning his rights to the award of any proceeds from [the city's] regulatory taking." The city agrees that a regulatory takings claim can be acquired by assignment. *See Brooks Inv. Co. v. City of Bloomington*, 305 Minn. 305, 315, 232 N.W.2d 911, 918 (1975) (holding that a vested takings claim "has the status of property, is personal to the owner, and does not run with the land if [the original owner] should subsequently transfer [the land] without an assignment of such right"). The city contends, however, that the record does not establish the existence of such an assignment because Gerald Haire transferred only his ownership interest in The Preserve to Dayspring. He did not assign his right to a takings claim to Dayspring in the quit-claim transfer or at any other time.

[1] Relying on the pre-May 2002 assignment asserted in Steve Haire's affidavit, Dayspring argues that the assignment automatically transferred Gerald Haire's equitable interest in the property to Dayspring, making Dayspring the equitable owner as of January 2003 and at the time of the alleged taking. But Steve Haire characterizes the assignment from Gerald Haire to Dayspring as an oral assignment. Because oral assignments are ineffective to transfer interests in real property, *see* Minn. Stat. §§ 513.04, 513.05 (2008) (statute of frauds for real property), Steve Haire's affidavit is insufficient to sustain the district court's determination that Dayspring had an equitable interest in The Preserve as of January 2003.

It is undisputed that Gerald and Lucretia Haire executed a quit-claim deed transferring ownership of The Preserve to Dayspring in March 2006. But there is no evidence that the March 2006 transfer of ownership also assigned to Dayspring any right Gerald Haire had to pursue a takings claim based on the city's August 27, 2003 denial of final plat approval. An assignment requires the manifestation of intent to make a present transfer of a right. *Minn. Mut. Life Ins. Co. v. Anderson*, 504 N.W.2d 284, 286 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). The deed does not refer to a takings claim or any kind of assignment. And without specific reference to an assignment, the deed transferred only the Haires' ownership interest. *See Pelser v. Gingold*, 214 Minn. 281, 287, 8 N.W.2d 36, 41 (1943) ("While a grantee of land is an assign of his grantor, his status is different from that of the assignee of an ordinary chose action, for the reason that a grant purports to transfer not contractual rights or duties, but an estate in land made up of various rights and duties."). Thus, the district court erred by concluding that the March 2006 transfer included an assignment of Gerald Haire's right to a takings claim.

Dayspring contends that the district court must have relied on Steve Haire's assertion that Gerald Haire assigned his takings claim to Dayspring before May 2002. Setting aside as we must on review of summary judgment the implausibility of Gerald Haire assigning a takings claim to Dayspring before either Dayspring or the takings claim existed, we first observe that there is no evidentiary support for Dayspring's contention. Nothing in the district court's order indicates that the district court relied on Steve Haire's affidavit. Indeed, the district court never mentions the affidavit. Rather, the district court's order only refers to the March 2006 quit-claim deed as the source of an

assignment. Moreover, Steve Haire's affidavit does not establish that Gerald Haire relinquished his power of revocation, which is required for a valid assignment. *Anderson*, 504 N.W.2d at 286 (stating that no "particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation"). Thus, the determination that Gerald Haire assigned his takings claim to Dayspring is devoid of both legal and evidentiary support.

Finally, the district court concluded that the timing of the transfer of property rights to Dayspring is immaterial because "there is no per se rule that prohibits a . . . takings claim by the 'mere fact that title was acquired after the effective date of the state imposed restriction.'" (Quoting *Palazzolo*, 533 U.S. at 630, 121 S. Ct. at 2464.) The city argues that the district court mischaracterizes *Palazzolo*.

Palazzolo is similar to this case in many respects. In *Palazzolo*, a company acquired property that it intended to develop. 533 U.S. at 613, 121 S. Ct. at 2455. A state governmental agency subsequently promulgated wetlands regulations that limited use of the company's property. *Id.* at 614, 121 S. Ct. at 2456. The company's charter later was revoked and title to the property passed to the company's sole owner, Anthony Palazzolo. *Id.* Palazzolo sought to develop the property, but he was stymied by the wetlands regulations. *Id.* at 614-15, 121 S. Ct. at 2456. Palazzolo initiated an inverse condemnation action, alleging that the wetlands regulations had taken his property without compensation. *Id.* at 615, 121 S. Ct. at 2456.

The United States Supreme Court, in addressing Palazzolo's suit, decided two threshold issues: "ripeness[ ] and acquisition which postdates the regulation." *Id.* at 618,

121 S. Ct. at 2458. Thus, *Palazzolo* is a ripeness case, as the city contends; but it also addresses the effect of transferring property on the recipient's ability to pursue a takings claim. Under *Palazzolo*, a takings claim based on regulation ripens when a property owner establishes the extent of governmental interference with the property. *Id.* at 619-21, 121 S. Ct. at 2458-59; *Kottschade v. City of Rochester*, 760 N.W.2d 342, 348 (Minn. App. 2009), *review denied* (Minn. Apr. 29, 2009). And transfer of property affected by regulation does not necessarily deprive the recipient of the right to pursue a takings claim. *Palazzolo*, 533 U.S. at 629-30, 121 S. Ct. at 2464; *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 638 (Minn. 2007). But *Palazzolo* does not directly address the issue before us, namely, whether the transfer of property rights after a regulatory takings claim ripens precludes the recipient from pursuing the takings claim. Nor does any other governing caselaw.

We, therefore, look to takings cases involving physical interference with private property, in which the effect of a transfer of property rights is more clearly defined. In that context, the date of physical possession or interference fixes the date of the taking, and because "'compensation is due at the time of taking, the owner at that time, not the owner at an earlier or later date, receives the payment.'" *United States v. Dow*, 357 U.S. 17, 20-21, 78 S. Ct. 1039, 1044 (1958) (quoting *Danforth v. United States*, 308 U.S. 271, 284, 60 S. Ct. 231, 236 (1939)). The Minnesota Supreme Court recognized this rule in *Brooks Inv. Co. v. City of Bloomington*, holding that a right to compensation for a taking "vests in the person owning the property at the time of [government] interference." 305 Minn. at 315, 232 N.W.2d at 918. Although the right to compensation has the status of

property, it is "personal to the owner," not an interest in land; a vested takings claim, therefore, "does not run with the land" to a subsequent owner. *Id.*

Although we are mindful that, in many respects, regulatory takings are analyzed differently from physical takings, *see Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 323, 122 S. Ct. 1465, 1478-79 (2002), *Brooks* and *Dow* are applicable to the unique facts of this case. A takings claim based on physical interference vests in the owner at the time of the physical interference because "the fact and extent of the taking are known" when the physical interference occurs. *See Palazzolo*, 533 U.S. at 628, 121 S. Ct. at 2463. The fact and extent of a regulatory taking, by contrast, are unknown until a property owner establishes the extent of the interference and the government decides whether to continue the regulation. *Id.*; *see also Bailey v. United States*, 78 Fed. Cl. 239, 272 (2007) (stating that "the 'entire damages' are not owing until the government decides not to rescind the action which results in the taking"). Thus, "whoever happens to own property while the . . . taking continues is entitled to compensation." *Bailey*, 78 Fed. Cl. at 273. But when, as here, a regulation that forms the basis of a takings claim is rescinded, the claimed taking is converted into a temporary taking and the owed compensation is truncated. *See Dayspring Dev.*, 2008 WL 2494126, at *5 (citing *First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 319-20, 107 S. Ct. 2378, 2388-89 (1987)). Thus, notwithstanding its status as a regulatory taking, its temporary nature renders "the fact and extent of the taking . . . known," just as with a physical interference. *See Palazzolo*, 533 U.S. at 628, 121 S. Ct. at 2463. A transfer of property after the regulation is rescinded, therefore, is

governed by *Danforth* and *Brooks*; and the subsequent owner acquires no interest in the previously accrued takings claim merely by virtue of the transfer of property ownership.

The temporary regulatory takings claim asserted here ripened on August 27, 2003, when the city denied final plat approval. The record demonstrates that Gerald Haire had an equitable interest in the property as of January 2003. He did not transfer his property interest to Dayspring until March 2006, after the regulation was rescinded. Because there is no evidence that Gerald Haire ever made an enforceable assignment to Dayspring of his right to compensation for the taking, any right to assert a takings claim remains with Gerald Haire's estate, subject to the applicable statute of limitations. Accordingly, the district court erred by concluding that Dayspring has standing to pursue the takings claim at issue here.

Reversed.