STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2347

Lee Stokke, et al.,
Appellants,

vs.

Marshan Township,
Respondent.

Filed September 14, 2010
Affirmed
Worke, Judge

Dakota County District Court
File No. 19-HA-CV-08-1685

Gerald S. Duffy, Mark Thieroff, Kristin L. Kingsbury, Siegel, Brill, Greupner, Duffy & Foster, P.A., Minneapolis, Minnesota (for appellants)

Paul D. Reuvers, Stephanie A. Angolkar, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

WORKE, Judge

Appellant landowners argue that the district court erred by granting summary judgment in favor of respondent township on appellants' petition for a writ of mandamus. We affirm.

D E C I S I O N

Appellants Lee and Judy Stokke sought a writ of mandamus from the district court to compel respondent Marshan Township to issue a conditional-use permit (CUP) that would facilitate completion of appellants' recreational-vehicle (RV) park. The district court granted summary judgment in favor of respondent and dismissed appellants' petition. Appellants argue that the district court erred in granting summary judgment in favor of respondent because respondent's failure to take action on appellants' CUP application automatically granted the application under Minn. Stat. § 15.99 (2008).

When reviewing a grant of summary judgment, this court determines whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "Mandamus is an extraordinary legal remedy that courts issue only when the petitioner shows that there is a clear and present official duty to perform a certain act." *Breza v. City of Minnetrista*, 706 N.W.2d 512, 518 (Minn. App. 2005) (quotation omitted), *aff'd*, 725 N.W.2d 106 (Minn. 2006). To successfully petition for mandamus relief to compel action by a municipality, a party must demonstrate that: (1) the municipality "failed to perform an official duty clearly imposed by law"; (2) "a public wrong" was suffered, specifically related to the failure to perform; and (3) there is "no other adequate legal remedy." *Breza*, 725 N.W.2d at 109-10 (quotation omitted). "When a decision on a writ of mandamus is based solely on a legal determination, we review that decision de novo." *Id.* at 110.

Appellants claim that respondent violated Minn. Stat. § 15.99, subd. 2(a), which provides that "an agency must approve or deny within 60 days a written request relating to zoning. . . . Failure of an agency to deny a request within 60 days is approval of the request." *See also id.*, subd. 1(b) (stating that "agency" includes a township). But section 15.99 includes several conditions tolling the 60-day time period to consider an application. *See id.*, subd. 3. Most notably, the time period does not begin until "the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency." *Id.*, subd. 3(a). If an application is incomplete, the agency must send notice of the deficiencies to the applicant within 15 business days of receipt of the request. *Id.* The district court concluded that "[appellants] have failed to establish that [the township] failed to perform a legal duty under [section] 15.99 and are not entitled to a writ of mandamus."

On September 2, 2008, appellants submitted their CUP application. Respondent deemed appellants' application to be incomplete and sent appellants a letter on September 20 citing several deficiencies and requesting supplemental information. Appellants responded on October 3, claiming that none of the alleged deficiencies constituted a sufficient basis to consider their CUP application to be incomplete under section 15.99. Respondent replied on October 23, indicating that the application was still considered incomplete and that appellants needed to resubmit a proper application containing all of the information referenced in respondent's letter. Appellants responded on October 30, reiterating that their application was complete as submitted and that respondent was required to act by November 1 under section 15.99; without action, appellants asserted

that they would seek to enforce their rights in court. On November 5, respondent wrote to appellants, indicating its compliance with section 15.99 and that there was nothing presently before respondent to act upon because appellants had yet to submit a complete application.

Appellants do not deny that respondent sent notice of the perceived deficiencies of the application within the statutory timeframe. Instead, appellants assert that they submitted a complete application validly triggering the 60-day period in which respondent was required to issue a final decision. But appellants were aware of respondent's ability to request supplemental information because respondents signed the "Agreement" portion of respondent's CUP-application form, which states that appellants may be required to submit additional "property descriptions, property surveys, site plans, building plans, *and other information . . . before the application is accepted* and the public hearing is set." (Emphasis added.) Because appellants did not comply with respondent's request for follow-up documents, appellants' CUP application was incomplete. Thus, the 60-day period never started, and appellants cannot establish the necessary failure to act by respondent required for the issuance of a writ of mandamus. Accordingly, the district court did not err in granting summary judgment favor of respondent.

Affirmed.