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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1211**

Town of West Lakeland,  
Respondent,

vs.

Karl E. Auleciems,  
Appellant,

Susanne M. Auleciems,  
Appellant,

Ethan Auleciems, et al.,  
Defendants.

**Filed March 9, 2020  
Affirmed  
Connolly, Judge**

Washington County District Court  
File No. 82-CV-18-2962

Viet-Hanh Winchell, Galowitz • Olson PLLC, Lake Elmo, Minnesota (for respondent)

Karl E. Auleciems, Susanne Auleciems, Lake Elmo, Minnesota (pro se appellants)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly,  
Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants challenge the district court's grant of declaratory judgment, permanent injunctive relief, and attorney fees for respondent. They also argue that the district court erred by not dismissing them from the case, not ruling on their motion for summary judgment, and not awarding them damages for being wrongfully enjoined. Because the district court did not err, we affirm.

### FACTS

Appellants Karl and Susanne Auleciems own property on which they reside in West Lakeland Township, Minnesota. They have rented out their property for weddings and other uses and have used it to store a skid steer loader for their sons' landscaping business. In June 2018, respondent Town of West Lakeland sued appellants, as well as KEASons Enterprises, LLC (KEASons) and Ethan Auleciems, for violating respondent's zoning code (the code). See West Lakeland, Minn., Town Code §§ 1.1-1.5.2, 2.1-2.10.3, 4.1-4.7.2.3, 10.1-10.6 (2017).<sup>1</sup> Respondent sought injunctive relief, an order to compel compliance, and a declaratory judgment.

In July 2018, the district court granted respondent's motion for an ex parte temporary restraining order restricting appellants from renting, leasing, or advertising their property for rent. The next month, the district court granted a temporary injunction prohibiting the same activities. Despite these orders, appellants continued to list their

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<sup>1</sup> KEASons is a registered limited liability company; its registered agent is Ethan Auleciems. Neither Ethan Auleciems nor KEASons is a party to this appeal.

property for rent online. Respondent then moved for a finding of contempt and sanctions against appellants.

The district court held a two-day bench trial on both respondent's original claims and its contempt motion. After receiving testimony and exhibits, the district court issued a detailed and well-written 49-page order. The district court, after finding that appellants had violated both the code and the court's orders, issued an order permanently enjoining appellants from renting their property or advertising it for rent. The order also granted respondent's contempt motion and awarded attorney fees under Minn. Stat. § 588.11 (2018). In a supplemental order, the district court awarded respondent all requested attorney fees. This appeal follows.

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

To begin, we observe that appellants have not provided this court with a transcript, which limits our review. *Brown v. First Growth, Inc.*, 386 N.W.2d 794, 797 (Minn. App. 1986). It is the appellant's burden to provide an adequate record. *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968). Without a transcript, we review whether the district court's findings of fact support its conclusions of law. *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (Minn. 1970). And our review requires deference to the district court's credibility determinations. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

### **I. Interpretation of the code**

Appellants raise two arguments about the district court's interpretation of the code. They argue first that the district court erred in finding that appellants engaged in

commercial activity under the code. Second, they argue that the district court erred in not applying an exemption in the code.

To resolve appellants' arguments, we must interpret the code. We do so *de novo*, *Billy Graham Evangelistic Ass'n v. City of Minneapolis*, 667 N.W.2d 117, 122 (Minn. 2003), while applying statutory interpretation principles, *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984).

State statutes allow townships to establish zoning ordinances and other controls. Minn. Stat. §§ 462.351-.365 (2018). The district court's order cites testimony and exhibits establishing that respondent enacted the code under this statutory authority and that its purpose is "to preserve and protect the rural character, natural landscape, and natural and scenic beauty of the township and to provide for the compatibility of different land uses and the most appropriate use of land." WLTC §§ 1.3.1, 1.3.3.

The code also contains various zoning ordinances. *Id.*, §§ 4.1-4.7.2.3. These zoning ordinances create several zoning districts and specify each district's primary uses, uses allowed with a certificate of compliance, and uses allowed with a conditional use permit. *Id.*, § 4.2. Appellants' property is in the single family estate (SFE) district, which has two primary uses: agriculture and single family residential. *Id.*, § 4.3.1. Appellants do not use their property for agricultural purposes.

The code also allows limited business activities, called home occupations, in the SFE district. *Id.*, §§ 10.1-10.6. A "home occupation" is defined as "a business or commercial use of a residential property where the residential use is the primary use." *Id.*, § 10.1.2. The code then categorizes businesses into four types and provides that a

homeowner may seek a home-occupation certificate of compliance or a home-occupation permit from respondent's town board. *Id.*, §§ 10.2-10.6. The business type dictates which approval a homeowner must seek. *Id.*, § 10.6.

With that framework in mind, we examine appellants' conduct here. Appellants never obtained a permit or a certificate. On appeal, they do not challenge the district court's findings that they rented their property 18 times in 2018, which included six wedding rentals, and that they stored on their property a skid steer loader that their sons use for a landscaping business.

Based on these findings, the district court held that appellants violated the code, which explicitly prohibits home operation of a "bed and breakfast" or "wedding venue." *Id.*, § 10.1.5. And a homeowner who operates a business without obtaining a permit or certificate may not store business equipment on their property. *Id.*, § 10.2.1.3. The district court correctly applied the code to the testimony and exhibits cited in its order.

The order cites testimony both from appellants' neighbors about the frequency of the rentals and from several persons who rented appellants' property for weddings. It also cites exhibits from online rental sites showing that appellants advertise their property online for weddings. Finally, the district court's order reflects that appellants admitted to owning the skid steer loader stored on their property.

In support of reversal, appellants contend that their actions meet the code's "occasional business activity" exemption. Under the code, certain business activities conducted for less than 15 days in one year do not require town board approval. *Id.*, § 10.1.4.2. For example, the code lists "garage or yard sales; craft sales; sale of individual

vehicles or equipment; dinners; or pot-luck meals” as occasional business activities. *Id.* Appellants’ actions do not match any of these uses. In any event, appellants have conducted their actions for more than 15 days, as they authorized 18 total rentals that each included a minimum two-night stay.

Finally, appellants cite foreign authorities for the proposition that renting one’s home does not equal commercial activity under the code, but all of these cases interpret home rental in the context of restrictive covenants, different from the code provisions here. *See Forshee v. Neuschwander*, 914 N.W.2d 643 (Wis. 2018); *Tarr v. Timberwood Park Owners Ass’n, Inc.*, 556 S.W.3d 274 (Tex. 2018); *Wilkinson v. Chiwawa Cmtys, Ass’n*, 327 P.3d 614 (Wash. 2014); *Pinehaven Planning Bd. v. Brooks*, 70 P.3d 664 (Idaho 2003); *Houston v. Wilson Mesa Ranch Homeowners Ass’n, Inc.*, 360 P.3d 255 (Colo. App. 2015). And these foreign decisions are not binding on a Minnesota court. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (recognizing that foreign cases are not binding authority but may retain persuasive value).

## **II. Alleged Fourth Amendment violation**

Appellants next argue that the district court’s order violates the Fourth Amendment by giving law enforcement unlimited access to their property. Respondent counters that this issue is not ripe for review.

The federal and state constitutions protect individuals from unreasonable governmental searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Appellants ask us to vacate this part of the district court’s order:

Local law enforcement, including, but not limited to the Washington County Sheriff's Office, [is] empowered to enforce the Orders of this Court. Local Law Enforcement is also empowered to gain access to the property in order to properly investigate matters related to this Court's Order, i.e. should there be suspicion of violations of this Court's order, law enforcement may inquire of the people in or on [appellants' property] for information to include, but not limited to their respective identities, their purpose for being on [appellants' property], how they came to be on [appellants' property], and the duration of their stay on [appellants' property].

A justiciable controversy must exist before an appellate court will exercise its jurisdiction. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 308 (Minn. 2017). We review justiciability issues de novo. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 341 (Minn. 2011). Issues involving only hypothetical possibilities are not justiciable because “[n]either the ripe nor the ripening seeds of a controversy are present.” *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949).

When an individual has to submit to warrantless searches, but law enforcement has made no searches, whether the requirement is unconstitutional lacks ripeness. *See State v. Colsch*, 284 N.W.2d 839, 842 (Minn. 1979). Accordingly, nothing in the record here suggests that police have used the district court's order to violate appellants' Fourth Amendment rights. A police report dated after the district court's final order reveals that one law enforcement investigation on appellants' property occurred when appellants were not home. But appellants do not suggest that this investigation violated the Fourth Amendment. To accept appellants' argument requires this court to speculate. We conclude that this issue is not ripe for review.

### **III. Temporary and permanent injunctions**

Appellants challenge the district court's grant of a temporary and permanent injunction against them. "An appeal may be taken to the Court of Appeals . . . from an order which grants, refuses, dissolves, or refuses to dissolve an injunction." Minn. R. Civ. App. P. 103.03(b). As to the temporary injunction order from August 2018, appellants argue that respondent did not properly serve them and failed to submit the required security. But this appeal is from the district court's order and entry of judgment on June 24, 2019. Appellants never appealed the temporary injunction order. Thus, we decline to consider their arguments about the temporary injunction.

On the permanent injunction, appellants challenge the provision preventing them from advertising or leasing property, arguing that it violates their free speech rights and their right to equal protection. For two reasons, we decline to address these arguments. First, an appellate court normally considers only those issues presented to the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Here, appellants never made these constitutional arguments below.

Second, these arguments lack citations to legal or factual support. "Summary arguments made without citation to legal support are waived." *Fannie Mae v. Heather Apartments Ltd. P'ship*, 811 N.W.2d 596, 600 n.2 (Minn. 2012); *see also Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (noting that this court declines to address allegations unsupported by legal analysis or citation). As a result, we do not reach appellants' constitutional challenges.



#### **IV. Failure to rule on appellants' summary judgment motion**

Appellants fault the district court for not ruling on their summary judgment motion, but they do not argue this issue in their brief. Issues not argued in a brief are deemed forfeited. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982); see *McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (declining to consider issues raised in a brief when the appellant alluded to them but failed to “address them in the argument portion of his brief”). And even if we did reach this argument, the record shows that the district court orally denied appellants' motion at a February 9, 2019 hearing.

#### **V. Failure to dismiss appellants from the case**

Appellants argue that the district court erred by not dismissing them from this case because they are not personally liable: they lease the property from KEASons and respondent never alleged that KEASons represented appellants' “alter ego.” We decline to consider the issue because appellants cite no supporting legal authority. See *Fannie Mae*, 811 N.W.2d at 600 n.2.<sup>2</sup>

#### **VI. Attorney fees**

Appellants next argue that “[t]here is no contract or law that entitles either the appellant[s] or the respondent [to] attorney's fees in this action.” But this argument overlooks the district court's reliance on Minn. Stat. § 588.11 to award attorney fees.

Section 588.11 allows a court to order a person found guilty of contempt to pay the opposing party's attorney fees if three factors exist. *Hanson v. Thom*, 636 N.W.2d 591,

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<sup>2</sup> We note that appellants still own the property individually. They lease it to KEASons, which sublets it back to them.

593 (Minn. App. 2001). “First, the fees must be based on proof of actual damages. Second, the award must not penalize the contemnor. Finally, the party receiving the fees must actually incur the fees.” *Id.* (citations omitted). The district court analyzed these factors in its order. We see no error in the court’s analysis.

## **VII. Wrongfully enjoined and award of damages**

Lastly, appellants contend that the district court erred in not finding that they were wrongfully enjoined and in not awarding them damages. Again, we conclude that appellants have forfeited this issue by not arguing it in their brief. *See Melina*, 327 N.W.2d at 20.

**Affirmed.**