

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0869**

Doran 610 Apartments, LLC, et al.,
Appellants,

vs.

State of Minnesota by and through its Governor Tim Walz,
Attorney General Keith Ellison and
Executive Council, et al.,
Respondents.

**Filed March 14, 2022
Affirmed
Kirk, Judge***

Ramsey County District Court
File No. 62-CV-21-1081

Jack Y. Perry, Jason R. Asmus, Taft, Stettinius & Hollister LLP, Minneapolis, Minnesota
(for appellants)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Thomas S. Madison,
Michael Goodwin, Assistant Attorneys General, St. Paul, Minnesota (for respondents)

Considered and decided by Bratvold, Presiding Judge; Slieter, Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant-landlords challenge the district court’s dismissal under Minn. R. Civ. P. 12.02(e) of their petition for a writ of mandamus and their complaint for declaratory judgment, arguing that the district court erred in determining that (1) respondent Minnesota Executive Council is not a legal entity subject to suit, and (2) the governor’s emergency executive orders, which temporarily limited the ability of residential landlords to evict tenants in specified circumstances, do not constitute a “commandeering” of private properties. Because Minnesota Statutes chapter 9 does not provide authority for the Executive Council to sue or be sued and because the governor does not “commandeer” property within the meaning of Minn. Stat. § 12.34, subd. 1(2) (2020), of the Minnesota Emergency Management Act of 1996 (MEMA) by issuing executive orders during a peacetime emergency that impose a temporary moratorium on eviction actions, we affirm.

FACTS

Appellants are the owners of residential apartment buildings in Hennepin County, Minnesota. Respondents are the State of Minnesota, Minnesota Governor Tim Walz, Minnesota Attorney General Keith Ellison, and the Executive Council. At issue in this case are the several COVID-19-related executive orders that limit landlords from evicting tenants from residential properties: Executive Orders 20-14, 20-73, and 20-79 (the Orders).¹

¹ Executive Order 20-14 suspended residential landlords’ ability to file eviction actions and execute writs of recovery, and prevented the termination of residential leases except where

On January 27, 2021, appellants brought claims before the district court for a writ of mandamus, or alternatively, a declaratory judgment that the governor, by way of the Orders, commandeered appellants’ “right to repossess their residential rental properties for their tenants’ non-payment of rents or the expiration of their leases for the duration of the Orders” under Minn. Stat. § 12.34, subd. 1(2). Respondents moved to dismiss the Executive Council on the basis that it is not a legal entity subject to suit and moved to dismiss the petition under Minn. R. Civ. P. 12.02(e) for failing to state a claim upon which relief may be granted, contending that appellants’ properties had not been commandeered. Appellants moved for partial summary judgment, asserting that they are entitled to just compensation under Minn. Stat. § 12.34, subd. 2 (2020) because no genuine issue of material fact exists about whether their properties were commandeered by the Orders.

a tenant “seriously endanger[ed] the safety of other residents” or other narrow exceptions apply. Emerg. Exec. Order No. 20-14, *Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* 2 (Mar. 23, 2020). Executive Order 20-73 created an additional exception to the eviction moratorium that permitted the commencement of an eviction action or the termination of a lease when a tenant seriously endangered the safety of others on the premises. Emerg. Exec. Order No. 20-73, *Clarifying Executive Order 20-14 Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* 1 (June 5, 2020). And among other things, Executive Order 20-79: (1) rescinded Executive Orders 20-14 and 20-73; (2) expanded protections to tenants by restricting a landlord’s ability to decline to renew a tenant’s lease; (3) created an additional exception to the eviction moratorium when the tenant materially violates the lease by “significantly” damaging property on the premises; (4) allowed landlords to terminate or non-renew leases when the owner or the owner’s family seeks to move into the leased premises; and (5) required landlords to give tenants seven days’ written notice before filing an eviction action. Emerg. Exec. Order No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* 2-3 (July 14, 2020). None of the Orders relieved a tenant’s obligation to pay rent.

The district court granted respondents’ motion to dismiss both the Executive Council and the petition. It ruled that, as a matter of law, the Orders did not constitute the compensable commandeering of appellants’ properties under Minn. Stat. § 12.34, subd. 1(2).

Appellants sought review of the district court’s dismissal. Appellants also filed a petition for accelerated review (PAR) by the Minnesota Supreme Court and filed a motion to consolidate this case with a petition for further review (PFR) in *Buzzell v. Walz*, 962 N.W.2d 894 (Minn. App. 2021), *rev. granted* (Minn. Sept. 21, 2021). The Minnesota Supreme Court denied appellants’ PAR and the motion to consolidate this appeal with *Buzzell*, which is now pending in the Minnesota Supreme Court.

DECISION

We review de novo a district court’s grant of a motion to dismiss under rule 12.02(e). *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). “In doing so, we consider only the facts alleged in the complaint, accepting those facts as true.” *Id.* (quotation omitted). We also apply a de novo standard of review to issues involving statutory interpretation. *White Bear Lake Restoration Ass’n ex rel. State v. Minn. Dep’t of Nat. Res.*, 946 N.W.2d 373, 379 (Minn. 2020).

I. The Minnesota Executive Council is not an entity subject to suit.

Appellants challenge the district court’s dismissal of the Executive Council from this suit. To sue or be sued, a party must be a legal entity. *Galob v. Sanborn*, 160 N.W.2d 262, 265 (Minn. 1968). State entities “are creatures of statute and they have only those powers given to them by the legislature.” *In re Hubbard*, 778 N.W.2d 313, 318 (Minn.

2010). The enabling statute creating a state entity must provide the entity the ability to sue or be sued in its own name. *See Galob*, 160 N.W.2d at 265 (stating that court lacked power to make division of municipality an entity capable of suing or being sued absent statutory authorization); *see also, e.g.*, Minn. Stat. § 216A.09 (2020) (providing that the Minnesota Public Utilities Commission may sue or be sued in its own name).

Minnesota Statutes chapter 9, which establishes the Minnesota Executive Council, provides no express authority for the Executive Council to sue or be sued. *See* Minn. Stat. §§ 9.011 to 9.071 (2020) (providing the members, duties, and powers of the council). And appellant has failed to identify any other provisions that convince this court the Executive Council has that authority. Because the enabling legislation pursuant to which the Executive Council was established does not make it a legal entity that can be sued, the dismissal of the Executive Council is affirmed.

II. The COVID-19-related Executive Orders that temporarily limited the ability of residential landlords to evict tenants in specified circumstances do not constitute a commandeering of private properties under Minn. Stat. § 12.34, subd. 1(2).

Appellants assert that they are entitled to just compensation because the governor, by way of the Orders, commandeered their properties within the meaning of Minn. Stat. § 12.34, subd. 1(2).² As such, the issue before this court is whether the Orders facilitated a “commandeering” under MEMA, which is an issue of statutory interpretation.

² Appellants also assert that the Executive Council commandeered their properties under Minn. Stat. § 9.061. Appellants’ chapter 9 commandeering argument is without merit because the Orders were expressly predicated on the governor’s chapter 12 authority. Appellants correctly point out the Executive Council’s statutorily required participation in declaring a peacetime emergency and issuing executive orders. *See* Minn. Stat. §§ 12.31,

The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550 (Minn. 2016) (quoting Minn. Stat. § 645.16 (2014)). “In interpreting statutes, we give words and phrases their plain and ordinary meaning.” *Id.* (quotation omitted). “When legislative intent is clear from the statute’s plain and unambiguous language, [appellate courts] interpret the statute according to its plain meaning without resorting to other principles of statutory interpretation.” *Id.* (quotation omitted). But “[i]f a statute is reasonably susceptible to more than one interpretation, it is ambiguous and [appellate courts] may resort to the canons of construction or legislative history in order to determine the intent of the [l]egislature.” *Id.* at 550-51.

In relevant part, Minn. Stat. § 12.34 of the MEMA provides:

Subdivision 1. Emergency Powers. When necessary to save life, property, or the environment during a national security emergency or during a peacetime emergency, the governor . . . may:

[. . .]

(2) commandeer, for emergency management purposes as directed by any of the persons described above, any motor vehicles, tools, appliances, medical supplies, or other personal property and any facilities.

Subd. 2. Compensation. The owner of commandeered property must be promptly paid just compensation for its use

subd. 2(a) (2020) (providing that a “peacetime emergency must not be continued for more than five days unless extended by resolution of the Executive Council up to 30 days”) and 12.32 (2020) (stating that the executive orders have “the full force and effect of law” only “when approved by the Executive Council”). But appellants fail to recognize that chapter 12 expressly grants the governor the authority to declare a peacetime emergency and issue executive orders, while it merely requires that they be approved by the Executive Council. Further, section 9.061 applies only to the Executive Council, and as discussed above, the Executive Council is not a proper party to this lawsuit.

and all damages done to the property while so used for emergency management purposes. The governor . . . according to the use of the property, shall make a formal order determining the amount of compensation.

“Commandeer” is not defined in MEMA. In ascertaining the plain meaning of a statute, we may look to dictionary definitions when the statute does not define a term. *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019). The word “commandeer” generally means “to seize for military or police use; confiscate,” “to take arbitrarily or by force,” or “to force into military service.” *The American Heritage Dictionary of the English Language* 370 (5th ed. 2018); *see also Merriam-Webster’s Collegiate Dictionary* 248 (11th ed. 2014) (defining “commandeer” as “to compel to perform military service,” “to seize for military purposes,” or “to take arbitrary or forcible possession of”). These definitions demonstrate four fundamental aspects of the term “commandeer”: (1) direct action; (2) through force or seizure; (3) of private property; and (4) with control or possession.

For appellants to state a claim that respondents commandeered appellants’ residential properties here, appellants must allege that respondents directed action to seize the appellants’ property and respondents had control and possession of the seized property for emergency management purposes. But those are not the circumstances described in appellants’ complaint. Rather, appellants’ complaint alleges that their properties were occupied by tenants that appellants selected and contracted with, not by emergency management employees, the military, or other individuals chosen by the government. Further, under the Orders challenged by the complaint, appellants can still evict tenants, terminate leases, or non-renew leases in certain circumstances; they can still lease vacant

units and collect rent; and if tenants do not pay rent, appellants maintain the right to sue for rent owed. We are satisfied that, for purposes of MEMA, this type of government order does not constitute “commandeering.” Taking the allegations in the complaint as true, which we must on appeal from dismissal under rule 12, the appellants’ complaint alleges indirect governmental action that constructively impaired a single aspect of the appellants’ possessory rights in private properties. Thus, the allegations in the complaint do not state a claim for commandeering under chapter 12.

Our interpretation of commandeering as requiring direct and active use of private properties by the government for emergency management purposes is consistent with this court’s recent precedential decision in *Buzzell*, where we held that “a business owner subject to operating restrictions under executive orders issued by the governor during a peacetime emergency is not, on that basis, ‘an owner of commandeered property’ entitled to compensation under Minn. Stat. § 12.34, subd. 2.” 962 N.W.2d at 902 (quoting Minn. Stat. § 12.34, subd. 2)). In *Buzzell*, we were tasked with determining whether executive orders that restricted business operations at bars, restaurants, and other places of public accommodation “commandeered” a business owner’s property within the meaning of MEMA. *Id.* at 895. There, we concluded that “commandeer” “requires direct, active use of private property by the government for emergency management purposes” and specifically concluded that the term does not apply in circumstances “where the government places restrictions on a person’s own use of private property.” *Id.* at 901-02. And while appellants oppose following *Buzzell* as it is pending review by the Minnesota Supreme Court, the law is clear that this court’s precedential opinions have immediate

authoritative effect upon filing. *State v. Chauvin*, 955 N.W.2d 684, 695 (Minn. App. 2021), *rev. denied* (Minn. Mar. 10, 2021); *see also State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (“The district court, like [the court of appeals], is bound by supreme court precedent and the published opinions of the court of appeals.”), *rev. denied* (Minn. Sept. 21, 2010).

Because the term *commandeer* does not encompass the behavior alleged in appellants’ complaint, the plain language of Minn. Stat. § 12.34 does not apply to the circumstances of this case and appellants’ claim for compensation fails as a matter of law.

Affirmed.