STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0852

State of Minnesota by Smart Growth Minneapolis, et al.,
Respondents,

vs.

City of Minneapolis,
Appellant.

Filed December 27, 2022
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Hennepin County District Court
File No. 27-CV-18-19587

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Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this post-remand appeal, appellant-city challenges the district court's grant of summary judgment and injunctive relief to respondents on their claim under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2022). We affirm the grant of summary judgment to respondents. But we reverse and remand the order for injunctive relief because the district court did not make adequate findings to enable appellate review.

FACTS

This is the second appeal in this MERA action brought by respondents Smart Growth Minneapolis, Audubon Chapter of Minneapolis, and Minnesota Citizens for the Protection of Migratory Birds to challenge the Minneapolis 2040 comprehensive plan as adopted by respondent City of Minneapolis. The facts underlying the action are recited in a previous supreme court decision, and we do not fully restate them here. *See State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 587-89 (Minn. 2021) (*Smart Growth*).

Respondents' MERA claim is based on a presumption that there will be a "full build-out"[1] of the 2040 Plan that will cause significant environmental effects. Respondents

[1] Although respondents assert that the 2040 Plan must be evaluated based on a "full build-out," they do not define this term, and their expert's analysis appears to evaluate the potential environmental effects of some but not all of the development that could be allowed under the 2040 Plan.

asserted this theory in their complaint and attached an expert report by Kristen Pauly (the Pauly Report) that "calculates a number of projections under the Plan, including increased residential density, traffic trips per day, volume of water runoff, and contaminant loads on the storm sewer system," based on the full build-out assumption. *Smart Growth*, 954 N.W.2d at 588. As relief, respondents sought to enjoin implementation of the 2040 Plan "unless and until City satisfies its MERA-required burden, presumably through a voluntary environmental review (*i.e.*, [environmental-impact statement] or [alternative urban areawide review])."

The district court granted the city's motion to dismiss respondents' MERA claim, reasoning that, because comprehensive plans are exempt from environmental-review requirements under an administrative rule implementing the Minnesota Environmental Policy Act, *see* Minn. R. 4410.4600, subp. 26 (2021), respondents could not state a claim under MERA seeking environmental review as relief. The district court also concluded that respondents could not demonstrate causation under MERA because they had not challenged a discrete, identifiable project. Respondents appealed, and this court affirmed. *See State by Smart Growth v. City of Minneapolis*, 941 N.W.2d 741 (Minn. App. 2020), *rev'd*, 954 N.W.2d 584 (Minn. 2021). Respondents petitioned for further review, which the supreme court granted. *Smart Growth*, 954 N.W.2d at 589.

In *Smart Growth*, the supreme court held "[1] that adoption of a comprehensive plan can be the subject of a MERA claim and [2] that [respondents'] allegations [were] sufficient to state a claim for which relief can be granted under MERA." *Id.* at 587. In concluding that respondents' allegations were sufficient, the supreme court explained that

respondents' complaint alleged that the 2040 Plan was likely to materially adversely affect the environment and that a full build-out of the plan would cause "dramatic" effects. *Id.* at 596. The supreme court acknowledged that "the projections supporting [respondents'] allegations are based on a full build-out" but reasoned: "that build-out is what the actual land-use criteria contained in the Plan allows for; [respondents are] not speculating about the type of actions that will result from other future comprehensive plans that would follow the 2040 Plan." *Id.* The supreme court concluded that respondents' allegations were sufficient to support a MERA claim and thus reversed and remanded with instructions to the district court to reinstate respondents' complaint. *Id.* at 596-97.

On remand following discovery, respondents and the city each moved for summary judgment. Respondents argued that they had established a prima facie case under MERA, and that the city had not rebutted that prima facie case or established an affirmative defense. The city argued that respondents failed to present evidence sufficient to meet their prima facie burden, and that, even if they could meet that burden, there existed genuine issues of material fact regarding whether the city could rebut the prima facie burden or prove an affirmative defense.

The record before the district court on summary judgment consisted of two expert reports, attorney affidavits attaching various documents, and substantive affidavits from city officials. Respondents continued to rely on the Pauly Report filed with their complaint, the analysis of which is based on the presumption of a full build-out. The city submitted an expert report and affidavits disputing the factual basis for the presumption of a full build-

out, but the city did not dispute Pauly's opinion that a full build-out would cause material adverse environmental effects.

At the hearing on the summary-judgment motions, the district court requested submissions from the parties regarding appropriate relief should respondents prevail on their claims. Respondents submitted proposed findings of fact and conclusions of law and a proposed order for judgment. Respondents requested that the court enjoin the 2040 Plan and require the city to restore the status quo ante under the city's previous comprehensive plan (the 2030 Plan). The city responded that it was surprised that respondents had submitted proposed injunction language and asserted that the proposed language was not specific enough under Minn. R. Civ. P. 65.04 or tailored to be necessary to protect the environment under MERA.

The district court denied the city's motion for summary judgment, granted respondents' motion for summary judgment, and ordered injunctive relief. In addressing whether respondents had established a prima facie case, the district court reasoned that the threshold issue was "whether a presumption of an immediate full build-out is a proper basis on which to base a MERA challenge to a comprehensive plan." The district court then identified a subsidiary question: "When can a [c]omprehensive [p]lan, such as the 2040 Plan, be challenged under MERA?" The district court concluded that MERA allows a challenge to a comprehensive plan "when it is still just that—a plan" and that use of a full build-out presumption was appropriate. Having concluded that the presumption was appropriate, the district court relied on the Pauly Report to determine that respondents had made a prima facie showing under MERA.

The district court next addressed whether the city had submitted sufficient evidence to rebut respondents' prima facie showing or to support an affirmative defense and determined that it had not. The district court discussed the opinion of the city's retained expert and determined that it did not discuss or rebut the Pauly Report.[2] Accordingly, the district court concluded that respondents were entitled to summary judgment on their MERA claim.

The district court's order immediately enjoined the city from "any ongoing implementation of the 2040 Plan" and required it to "immediately cease all present action in furtherance of the 2040 Plan, unless and until the City satisfies the MERA requirements of rebutting [respondents'] prima facie showing, or prevails in establishing an affirmative defense, as required by MERA." The order also required the city, within 60 days, to

> restore the *status quo ante* relationship between the parties, as it existed on December 4, 2018 by refraining from its enforcement of, and any prospective enforcement of, any aspect of the 2040 Plan, including amendments to land use ordinances directed by the 2040 Plan, that authorize the scope and degree of residential development that this court has determined is likely to create adverse environmental impacts to the Minneapolis area;

and

> reinstating for its prospective enforcement both the residential development portions of the City's Comprehensive 2030 Plan,

[2] The district court noted that the city's failure to rebut or affirmatively defend "appears to be due largely to tactical decisions made by the City during the course of this litigation." The district court observed that the city had failed to follow through on its expressed intent to take discovery, challenge the admissibility of the Pauly Report, and submit a rebuttal to the Pauly Report. The district court concluded: "This unfortunate strategy has left the City bereft of any fact-based rebuttal or affirmative defense, the type of which is called for under MERA."

> and the pre-December 4, 2018 land use ordinances which implement the same residential development portions of the 2030 Plan.

The city filed a notice of appeal and a motion in district court to stay the district court's order pending appeal. The district court granted a stay of the order pending the outcome of this appeal.

DECISION

I.

"This court reviews a grant of summary judgment de novo, evaluating whether genuine issues of material fact exist and whether the district court properly applied the law." *Friends to Restore St. Mary's, LLC v. Church of Saint Mary*, 934 N.W.2d 130, 134 (Minn. App. 2019), *rev. denied* (Minn. Nov. 19, 2019); *see also* Minn. R. Civ. P. 56.01 ("The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.").[3]

To prevail on their MERA claim, respondents were required to show that the city's conduct in adopting the 2040 Plan has caused, or is likely to cause, material adverse environmental effects. *See* Minn. Stat. §§ 116B.02, subd. 5, .04(b); *State by Schaller v.*

[3] Although no judgment has been entered by the district court, we review the grant of summary judgment as a necessary component of reviewing the district court's grant of injunctive relief. *See* Minn. R. Civ. App. P. 103.03(b) (allowing appeal from order granting injunction), 103.04 (allowing review of order affecting order from which appeal is taken); *Williams v. Nat'l Football League*, 794 N.W.2d 391, 394-95 (Minn. App. 2011) (stating that "on appeal from a permanent injunction, the scope of review is limited and encompasses the merits of the underlying claims only to the extent necessary to review challenges to the injunction"); *Graupmann v. Rental Equip. & Sales Co.*, 425 N.W.2d 861, 862 (Minn. App. 1988) (noting that order granting summary judgment is not appealable, and the proper appeal is from the resulting judgment).

County of Blue Earth, 563 N.W.2d 260, 266 (Minn. 1997). MERA sets forth a burden-shifting framework, under which a plaintiff is required to present a prima facie case and a defendant must then rebut the prima facie case or offer an affirmative defense. Minn. Stat. § 116B.04(b). *Schaller* sets forth a two-part test for a MERA plaintiff's prima facie case, requiring a showing (1) of the existence of a protectable natural resource, and (2) that the defendant's conduct will or is likely to cause the pollution, impairment, or destruction of that resource. 563 N.W.2d at 264. There is no dispute in this case that protectable natural resources are implicated. But the city asserts that respondents failed to satisfy the second, causation element of the *Schaller* test.

"MERA itself does not set forth a causation standard." *Smart Growth*, 954 N.W.2d at 595. But the caselaw requires that the causal chain not be "too speculative." *Schaller*, 563 N.W.2d at 268 (affirming summary-judgment dismissal of claim alleging speculative future noise violations); *see also Stansell v. City of Northfield*, 618 N.W.2d 814, 820 (Minn. App. 2000) (affirming summary-judgment dismissal of claim alleging speculative future harm to historic resources), *rev. denied* (Minn. Jan. 26, 2001). The city asserts that respondents' causation theory is too speculative because it relies on a presumption of full build-out of the 2040 Plan.[4] But, as we explain below, the supreme court has already

[4] The city also argues that the district court erred by granting summary judgment because respondents failed to comply with the requirements of Minn. R. Gen. Prac. 115.03(d); *see also* Minn. R. Civ. P. 56.03(a) (imposing similar requirement for citations to record). We agree with the city that respondents failed to conform to the rules and that the nonconformity hinders both district court and appellate court review. But we also agree with respondents that the district court had discretion to consider the motion on the merits notwithstanding the nonconformity. *See, e.g.*, Minn. R. Civ. P. 56.03(c) ("The court need

determined that respondents' causation theory is not speculative. *See Smart Growth*, 954 N.W.2d at 596.

In *Smart Growth*, the parties' arguments mirrored the arguments made in this appeal:

> The City argue[d] that the Plan is a high-level planning document—simply a statement of policies, goals, and intentions for future development—and that adoption of the Plan does not in and of itself *cause* environmental effects. Rather, the City argues that it would need to take subsequent actions to implement any part of the Plan before environmental effects might occur. *The City's position is that the appropriate time for a MERA challenge is when a specific, discrete project is approved, and that Smart Growth's reliance on the alleged environmental damage from a projected full build-out of the Plan is too speculative and tenuous*. Smart Growth argue[d] that challenging individual projects fails to capture the full scope of the environmental effects of the Plan, and that its MERA action is the "exclusive" opportunity for review of the entire scope of the Plan. Smart Growth relie[d] heavily on its expert report to support its claim that the adoption of the Plan is "likely to cause" the environmental harm it alleges.

Id. at 595.

The supreme court stated that the question before it was "solely whether Smart Growth's allegations are sufficient to support the contested causation element in order to state a claim that *adoption of the Plan* is likely to cause materially adverse environmental effects." *Id*. (emphasis added). The supreme court further stated that it would "determine whether Smart Growth's allegations *based on the future projected implementation of the 2040 Plan*, if true, state a legally sufficient claim for relief." *Id*. at 596 (emphasis added).

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consider only the cited materials, but it may consider other materials in the record."). Accordingly, we reject the city's argument for reversal on this ground.

The supreme court recognized that Smart Growth's allegations were based on a "full build-out" and accepted that approach, explaining that a full build-out "is what the actual land-use criteria contained in the Plan allows for; Smart Growth is *not speculating* about the type of actions that will result from other future comprehensive plans that would follow the 2040 Plan." *Id*. (emphasis added).

The city argues that the supreme court's decision in *Smart Growth* does not control in this appeal because of its differing procedural posture. It is true that *Smart Growth* was decided under the standard applicable to a motion to dismiss for failure to state a claim whereas this appeal is governed by the standard applicable to a motion for summary judgment. *Compare* Minn. R. Civ. P. 12.02(e), *with* Minn. R. Civ. P. 56.01. But we are unable to discern a basis to limit to the rule 12 context the supreme court's holding that respondents' claim is not speculative. The supreme court did not merely accept as true an allegation that the plan would (as a matter of fact) be fully built out. In fact, respondents made no such allegation. Instead, they alleged that "*using the legally required assumption* of the immediate and full build-out of City per its 2040 Plan," there would be "dramatic" environmental impacts. (Emphasis added.) Thus, we can only conclude that the supreme court accepted respondents' legal conclusion that the environmental effects of the 2040 Plan must be determined based on a presumption of a full build-out. *Smart Growth*, 954 N.W.2d at 596.[5] The provisions of the 2040 Plan have not changed, and the supreme

[5] The supreme court was not required to accept as true legal conclusions in respondents' complaint. *See Graphic Commc'ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014) (stating that "a legal conclusion in the complaint does not bind us, and a plaintiff must provide more than mere labels and conclusions");

court's holding therefore remains controlling as law of the case. *See Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989) ("Law of the case applies when the appellate court has ruled on a legal issue and remanded for further proceedings on other matters.").

We observe that the presumption of a full build-out appears to be a natural extension of the supreme court's recognition that the adoption of a comprehensive plan may be challenged under MERA. Recognizing such a claim inherently introduces an added level of speculation to a causation determination under MERA. That is so because adoption of the policy in and of itself does not cause environmental effects. *See* Minn. Stat. § 473.859, subd. 1 (2022) (requiring comprehensive plans to "contain objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and waters within the jurisdiction of the local governmental unit"). Instead, such effects may result from implementation of the policy. *See Smart Growth*, 954 N.W.2d at 596 (explaining that "a comprehensive plan has the direct effect of controlling a city's land use development because the plan becomes supreme vis-à-vis zoning ordinances"). Thus, the question becomes whether presuming full implementation of the policy is impermissibly speculative when the alternative is predicting the likelihood of a lesser scope of implementation. From a practical perspective, a determination regarding the circumstances that would result from full implementation can be based on known quantities (i.e., the number of residential parcels subject to the policy) and known

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Hebert v. City of Fifty Lakes, 744 N.W.2d 226, 235 (Minn. 2008) ("We are not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim.").

factors (the permitted land uses under the policy). Whereas a determination regarding the likely lesser scope of implementation must be based on predictions—which are inherently more speculative than application of known factors to known quantities.

We also note that presuming full implementation of the policy may better serve the purpose of MERA, which is to provide every person with "an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction," such that present and future generations may enjoy the state's natural resources. Minn. Stat. § 116B.01; *see Smart Growth*, 954 N.W.2d at 592 (emphasizing broad scope of MERA). Presuming full implementation of a land-use policy results in broader environmental review than limiting review based on a prediction regarding the likely lesser scope of implementation. As the supreme court observed in *Smart Growth*:

> There is some validity to Smart Growth's argument that a MERA challenge to the Plan itself is the only way to consider the potential environmental effects of the *entire* Plan rather than individual projects, the effects of which would necessarily be only a portion of what Smart Growth alleges the cumulative effects of the Plan will be.

954 N.W.2d at 596 n.17 (emphasis added).[6]

[6] Similarly, when the supreme court considered a MERA challenge to a city council's act of rezoning approximately 35 acres of property from residential to commercial in *Krmpotich v. City of Duluth*, the supreme court considered whether a proposed development project would violate MERA "*if completed in accordance* with the council's actions." 483 N.W. 2d 55, 56 (Minn. 1992) (emphasis added).

In sum, we conclude that, under *Smart Growth*, it was appropriate for the district court to base its MERA analysis on the presumption of a full build-out under the 2040 Plan. Using that approach, the district court correctly determined that respondents established a prima facie case for relief under MERA and that the city failed to raise a genuine issue of material fact sufficient to preclude summary judgment. We therefore affirm the district court's grant of summary judgment to respondents.

II.

Upon determining a violation of MERA, "The court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction." Minn. Stat. § 116B.07; *see also State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (*Swan Lake III*). A district court "may issue an injunction that 'provides an adequate remedy without imposing unnecessary hardship on the enjoined party.'" *State ex rel. Wacouta Twp. v. Brunkow Hardwood Corp.*, 510 N.W.2d 27, 31 (Minn. App. 1993) (quoting *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 93 n.6 (Minn.1979)). This court reviews the district court's equitable decision to award relief under MERA for an abuse of discretion. *Swan Lake III*, 799 N.W.2d at 625. An abuse of discretion occurs when the district court's decision is against the facts in the record or based on legal error. *Id.*

The city argues that the injunctive relief ordered by the district court (1) is based on inadequate notice that injunctive relief would be ordered without further proceedings and

(2) lacks findings and record support for the relief ordered. The first argument does not persuade us. The city had notice that respondents were seeking injunctive relief and that the district court was considering injunctive relief in conjunction with the summary-judgment proceedings. Indeed, the city filed a response to respondents' proposed order granting injunctive relief, raising many of the same arguments it does on appeal. Although the better practice might be to hold a separate hearing on injunctive relief, the city does not cite, and we are not aware of, authority requiring such procedure. We therefore conclude that the district court did not abuse its discretion in this regard.

But the city's second argument is persuasive. In opposing respondents' proposed injunctive relief, the city argued that "injunctive relief would not remedy issues arising from full build-out [of the 2040 Plan] unless a full build-out under the new order's conditions [reversion to the 2030 Plan] would cause fewer environmental effects." Respondents, the city asserted, had "provide[d] the Court no basis to infer that a full build-out under [the 2030 Plan] would be less harmful to the environment than a full build-out of Minneapolis 2040." The district court ordered the city to revert to the 2030 Plan without findings on the necessity and scope of injunctive relief, and the analysis of this issue in its accompanying memorandum is brief:

> The relief requested by Plaintiff is that the City be enjoined from any ongoing implementation of the 2040 Plan, and that the City be required to revert back to the 2030 Plan for its prospective enforcement of both residential development and land use ordinances. While this may no doubt create no small amount of short-term chaos—which the court does not take lightly—this court is inclined to agree that, under MERA, no other action by the court would properly address or remedy the likely adverse environmental impacts of the 2040 Plan.

"Where the trial court has broad discretion, the Minnesota Supreme Court has demonstrated persistence in demanding findings to explain the trial court's exercise of discretion." *In re Amitad, Inc.*, 397 N.W.2d 594, 596 (Minn. App. 1986); *see Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (remanding for additional findings where district court's findings were insufficient to enable an appellate court to determine whether district court properly considered statutory requirements). Given the lack of findings supporting the district court's grant of injunctive relief, as well as the district court's limited analysis of this issue, the record is insufficient for this court to determine whether the district court properly exercised its discretion in granting injunctive relief. Accordingly, we reverse the injunctive relief and remand for additional proceedings on respondents' request for injunctive relief.

Affirmed in part, reversed in part, and remanded.