

*This opinion is nonprecedential except as provided by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
A22-1648**

Glen Brazier, individually and as owner of Wagon Wheel Ridge, Inc.,
a Minnesota Corporation, et al.,
Appellants,

vs.

Minnesota Department of Natural Resources,
Respondent,

Kittson Soil and Water Conservation District,
Respondent.

**Filed June 26, 2023
Affirmed
Frisch, Judge**

Kittson County District Court
File No. 35-CV-22-35

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Considered and decided by Cochran, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellants challenge the dismissal of their civil complaint seeking, pursuant to Minn. Stat. § 626.21 (2022), the return of evidence obtained during an allegedly illegal search by respondent Minnesota Department of Natural Resources (DNR) and the suppression of such evidence in actions brought by the DNR and respondent Kittson Soil and Water Conservation District (the district) or other future proceedings. Because the claims set forth in the complaint are moot and not ripe, we affirm.

FACTS

The underlying civil action followed determinations by the DNR and the district that construction occurring on property owned by appellant Wagon Wheel Ridge, Inc. impacted wetlands in violation of state law and rules. The complaint and the attachments to the complaint set forth the following facts.

The property at issue is in Deerwood Township in Kittson County (the property). Appellant Glen Brazier is the owner of Wagon Wheel Ridge.¹ The district and DNR have jurisdiction over wetlands on the property.

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

¹ Brazier is an appellant in his individual capacity and as the owner of appellant Wagon Wheel Ridge, Inc. We refer to appellants collectively as “Brazier.”

In or around early 2019, Brazier constructed a ditch approximately 1,650 feet in length on portions of the property that qualify as Type 2 or Type 3 wetlands and public-water wetlands. Brazier also constructed a road approximately 1,900 feet in length on portions of the property containing Type 2 and Type 3 wetlands.

Site Visit and Restoration Orders

In summer 2019, an anonymous complainant informed the DNR and the district that the newly constructed ditch and road impacted wetlands. In response to the anonymous complaint, on July 15, 2019, representatives from the DNR, the district, and the Minnesota Board of Water and Soil Resources (BWSR) met with Brazier at the property to determine whether the construction of the ditch impacted a wetland.

The representatives asked Brazier for permission to view the property, and Brazier consented.² A representative asked to dig a hole to look at the soil. Brazier responded, “You can’t dig a hole up there unless you call 911 or up out you can’t [sic]. There is so much infrastructure under there. I can’t tell you where it all is.” The representatives thereafter inspected the property and dug five holes to make observations about the soil.

In August 2019, the district issued a restoration order regarding the constructed road and ditch. The order directed Brazier to remedy wetland violations under the Minnesota Wetland Conservation Act (WCA) by restoring the property or submitting a replacement plan, exemption, or a no-loss application.

² Brazier recorded the meeting with the representatives and attached a transcript of that recording to the complaint. The transcript of the recording indicates that Brazier stated, “Well, it isn’t going to do any good for us not to let you on there. I guess just, uh, just be extremely careful. I would suggest, uh, you gotta walk.”

In October 2019, the DNR issued a restoration order to Brazier. The order directed Brazier to remedy violations of state rules regulating public waters. The DNR restoration order did not direct Brazier to undertake a remedy with respect to the constructed road.

BWSR Appeal

In May 2021, Brazier submitted a no-loss application seeking a determination from the district that the newly constructed ditch had or would have no impact on the surrounding wetlands regulated under the WCA. In the application, Brazier also proposed to extend the ditch. The district denied the application, finding that the completed and proposed actions impacted the Type 2 and Type 3 wetlands.

Brazier timely appealed the district's determination to the BWSR. In September 2022, the BWSR affirmed the district's denial of Brazier's no-loss application. The BWSR found that, in his application, Brazier did not contest that the existing ditch had been constructed through Type 2 and Type 3 wetlands, or that the proposed expansion would also be constructed through such wetlands. The BWSR also found that the record "fully supports the Kittson district's determination that these elements of the Project were constructed or proposed to be constructed in a wetland covered by the WCA and subject to the Kittson District's jurisdiction." The BWSR concluded that exhibits related to the collection of soil samples during the July 15, 2019 site visit were not relevant to the appeal because Brazier conceded that the soil sampling was "conducted in connection with the

road,” not the ditch or proposed expansions at issue on appeal of Brazier’s no-loss application.³

Section 626.21 Claim

During the pendency of the appeal to the BWSR, in April 2022, Brazier filed a civil complaint in district court pursuant to Minnesota Statutes section 626.21, seeking an order that the DNR and BWSR return soil samples collected from the property and that the samples be “suppressed by the Court and made unavailable for use by the [DNR, BWSR, and the district] in the pending BWSR regulatory appeal, and any future regulatory actions and any court actions.”

The DNR and district moved to dismiss the complaint, arguing that the district court lacked subject-matter jurisdiction and that Brazier failed to state a claim upon which relief may be granted. The district court granted the motion, concluding that it lacked subject-matter jurisdiction because section 626.21 “is limited to criminal matters,” and therefore, “this Court has no jurisdiction to pre-decide the legality of the soil sampling which occurred or the admissibility of the resulting evidence in a civil action which is not pending before it.”

Brazier appeals.

DECISION

On appeal to this court, Brazier argues that the district court erred in dismissing his complaint, which sought an order from the district court pursuant to section 626.21

³ The DNR and the district requested that we take judicial notice of the BWSR decision and administrative record, and we granted this request.

(1) compelling the return of soil samples from the DNR, (2) suppressing evidence derived from the soil samples in the BWSR appeal, and (3) suppressing evidence derived from the soil samples in any future regulatory actions and any court actions.⁴ Brazier argues that the district court erred by determining that section 626.21 does not provide a remedy in a civil action. We need not decide this issue because, even assuming the statute affords Brazier with a civil cause of action to obtain such relief, the claims set forth in the complaint are moot and not ripe. *See Goeb v. Tharaldson*, 615 N.W.2d 800, 815 n.9 (Minn. 2000) (“Because the other issues raised are dispositive of this matter, we do not address this argument.”).

“We review de novo whether a complaint sets forth a legally sufficient claim for relief.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). We accept factual allegations set forth in a complaint as true and construe all reasonable inferences from the

⁴ In relevant part, Minn. Stat. § 626.21 provides:

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the district court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion

allegations in favor of the nonmoving party. *Id.* “Justiciability is an issue of law that we review de novo.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

Return of the Soil Samples

Brazier seems to argue that his underlying complaint properly sought an order from the district court for the return of soil illegally seized from his property. But neither the complaint nor the attachments to the complaint contain allegations or a factual basis that any respondent removed and retained soil or any tangible thing from Brazier’s property. And at oral argument before this court, counsel for Brazier conceded that he did not have a good-faith basis to maintain that any soil or other tangible thing had been removed from the property and retained by any respondent. We note that both respondents affirmatively stated that they did not remove and retain any soil or tangible thing from Brazier’s property. In any event, the parties now agree that there is no property in the possession of the respondents subject to return pursuant to section 626.21.

For that reason, Brazier’s claim under section 626.21 seeking the return of property is moot. “Well established in this state’s jurisprudence is the precept that the court will decide only actual controversies.” *O’Brien & Wolf, LLP v. S. Cent. Minn. Elec. Workers’ Fam. Health Plan*, 923 N.W.2d 310, 316 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Mar. 27, 2019). “If we cannot grant relief on an issue purportedly raised on appeal, the issue is moot” *Id.* (citing *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989)).⁵

⁵ We remind litigants that “[b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading . . . or other document” an attorney is

Suppression of Evidence in the BWSR Appeal

We conclude that because a final order has been issued in the BWSR appeal resulting in the conclusion of that action, Brazier’s attempt to suppress evidence for use in the BWSR appeal is also moot. “An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Because the BWSR appeal has concluded, the BWSR has issued a decision, and that decision is final because Brazier did not timely appeal it, Brazier cannot obtain the relief requested in the complaint. *See* Minn. Stat. § 14.63 (2022) (providing that an appeal from a contested case must be filed within 30 days of receiving the final decision); Minn. R. 8420.0905, subp. 5 (2021) (providing that an appeal from a board decision is a contested case for purposes of judicial review); *cf. Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996) (recognizing that “public policy favors the finality of judgments” and therefore “Minnesota law does not permit the collateral attack on a judgment valid on its face”), *rev. denied* (Minn. Feb. 26, 1997).

“certifying that to the best of the person’s knowledge, information, and belief . . . the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support.” Minn. R. Civ. P. 11.02(c). We emphasize that violation of this rule is sanctionable conduct. Minn. R. Civ. P. 11.03.

Brazier seems to argue that his claim to suppress evidence in the BWSR appeal under section 626.21 is not moot because it could not be raised to the BWSR. He also seems to argue that the fact that the BWSR appeal has concluded does not render his section 626.21 claim moot because it is an incidental consequence of the time it takes to appeal the district court's dismissal of his claim rather than a justiciable defect.

These arguments reflect a misunderstanding of the mootness doctrine. Mootness applies when “a decision on the merits is *no longer necessary* or an award of effective relief is *no longer possible*.” *Dean*, 868 N.W.2d at 5 (emphasis added). Suppression of evidence in the BWSR appeal is not “necessary” because that appeal has concluded with a final order not subject to collateral attack. Similarly, suppression of evidence in the BWSR appeal is “no longer possible” because that appeal has concluded with a final order.

Suppression of Evidence in Future Proceedings

Brazier argues that he is entitled to prospective suppression of evidence under section 626.21 in any future regulatory actions and any court actions. Because such a claim is not ripe, we disagree.

We consider the issue of ripeness even though the parties did not raise the issue on appeal. “[T]he existence of a justiciable controversy is essential to this court’s exercise of jurisdiction”; therefore, the court ‘may always raise the issue on its own motion.’” *Harstad v. City of Woodbury*, 902 N.W.2d 64, 70 (Minn. App. 2017) (quoting *Izaak Walton League of Am. Endowment, Inc. v. State, Dep’t of Nat. Res.*, 252 N.W.2d 852, 854 (Minn. 1977)), *aff’d on other grounds*, 916 N.W.2d 540 (Minn. 2018). “Ripeness is a justiciability doctrine.” *Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn.

App. 2007) (quotation omitted), *rev. denied* (Minn. Aug. 7, 2007). “Ripeness determines when a claim may be brought.” *Werlich v. Schnell*, 958 N.W.2d 354, 363 (Minn. 2021). “To establish the existence of a justiciable controversy, the litigant must show a *direct and imminent injury*.” *Leiendecker*, 731 N.W.2d at 841 (emphasis added) (quotation omitted). “Issues that are purely hypothetical are not justiciable.” *Werlich*, 958 N.W.2d at 363 (quotation omitted); *see also Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949) (stating that hypothetical issues that “have no existence other than in the realm of future possibility” are not justiciable). “[W]e review questions of justiciability, including ripeness, *de novo*.” *Werlich*, 958 N.W.2d at 363.

Brazier’s claim that the soil-sample evidence should be suppressed under section 626.21 in “any future regulatory actions and any court actions” is not ripe because the complaint does not contain allegations of any direct or imminent injury, and Brazier does not otherwise point to the existence of any such injury. *See Leiendecker*, 731 N.W.2d at 841. Brazier emphasizes that the restoration orders included language providing that a violation of the restoration orders is a misdemeanor. But the record does not show that Brazier has violated the restoration orders, and the complaint contains no allegation that he violated the restoration orders. Brazier does not allege that he is being investigated for a criminal offense, that he has been charged with a crime, or that there is any basis to conclude that he will face criminal consequences associated with a violation of the restoration orders. Stated differently, Brazier’s claim is purely hypothetical, and therefore is not ripe. *See Werlich*, 958 N.W.2d at 363. Further, we cannot render an opinion to

address something that may transpire in the future because we “do not issue advisory opinions.”⁶ *McCaughtry*, 808 N.W.2d at 337.

Affirmed.

⁶ Brazier seems to argue that his claim under section 626.21 is justiciable even before he is subject to an actual criminal prosecution because we have interpreted section 626.21 to allow “a person aggrieved by a search the opportunity to raise an issue not necessarily germane to any criminal prosecution, i.e., possession of property, before a criminal complaint has been filed and in a court which may not have jurisdiction over the criminal offense.” *Bonynge v. City of Minneapolis*, 430 N.W.2d 265, 266 (Minn. App. 1988).

We are not persuaded for two reasons. First, *Bonynge* is not instructive because its comment on section 626.21 is limited to the issue of the *return* of property under section 626.21 before a criminal complaint is filed. *Id.* Second, even if *Bonynge* can be read as interpreting the statute to allow such preventative claims, Braizer’s claim must still be ripe and therefore justiciable. *Cf. McCaughtry*, 808 N.W.2d at 337, 339 (recognizing the “preventative” purpose of declaratory judgment actions and stating that “[n]onetheless, like every other action, a declaratory judgment action must present an actual, justiciable controversy” (quotation omitted)).