This opinion is nonprecedential except as provided by Minn.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
A23-1819

Mahmood Khan,
Appellant,

vs.

City of Minneapolis,
Respondent,

Hennepin County,
Respondent.

Filed July 15, 2024
Affirmed
Gaïtas, Judge

Hennepin County District Court
File No. 27-CV-23-1735

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Kristyn Anderson, Minneapolis City Attorney, Gregory P. Sautter, Assistant City Attorney, Minneapolis, Minnesota (for respondent City of Minneapolis)

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Considered and decided by Connolly, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Mahmood Khan, a landlord in Minneapolis, sued respondents City of Minneapolis and Hennepin County, alleging that respondents' assessment of "vacant building registration" (VBR) fees violated his rights under the Minnesota Constitution. Respondents moved to dismiss Khan's complaint for failure to state a claim upon which relief may be granted and for lack of subject-matter jurisdiction. The district court dismissed Khan's complaint. It determined that Minnesota Statutes section 429.081 (2022), provides the exclusive method for challenging the assessment of VBR fees, and because Khan did not follow the statutory requirements, he waived the claims in his complaint. Khan appeals the district court's dismissal of his complaint, arguing that he was not required to comply with section 429.081 because his claims involve constitutional challenges to the assessment of VBR fees. We reject Kahn's arguments and affirm.

FACTS

Khan initiated his lawsuit against respondents by filing a complaint in the district court on February 8, 2023. The factual allegations in Khan's complaint,[1] which we accept as true,[2] are as follows.

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[1] Khan amended his complaint on February 22, 2023. The amended complaint asserts the same facts as the initial complaint but contains an additional claim. Unless otherwise noted, we rely on the amended complaint.

[2] Appellate courts "accept the factual allegations in the complaint as true" when reviewing a district court's order granting a motion to dismiss. *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 64 n.2 (Minn. 2020). The facts recited here are based on Khan's pleadings, which are accepted as true for this appeal.

Khan owned buildings located in Minneapolis, and he rented to low-income tenants. By 2016, Khan had 43 valid rental-dwelling licenses. However, in 2017, the city revoked all of Kahn's rental licenses under a city ordinance.[3] Consequently, tenants were evicted from Khan's buildings, and the buildings became vacant.

After Khan's buildings became vacant, the city began imposing annual VBR fees on 21 of those buildings. The fees were approximately $7,000 per year for each vacant building. Khan's complaint asserts that Kahn has been charged 100 VBR fees in the past five years, totaling more than $700,000 for 21 buildings. The complaint states that the most recent VBR fee was assessed and levied on November 21, 2022, with an effective date of November 26, 2022.[4] Khan's complaint asserts that Khan is unable to pay the outstanding fees without the expected rental income from his buildings.

According to the complaint, when a property owner is unable to pay VBR fees, the fees are converted to assessments, which are then turned over to Hennepin County for collection. If the fees remain unpaid, Hennepin County may foreclose on the property and then sell it. The complaint asserts that Hennepin County retains any proceeds of the sale that exceed the amount owing on the property.

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[3] This court affirmed the city's revocation decision on appeal. *See In re Khan*, No. A16-0633, 2017 WL 1376379, at *1 (Minn. App. Mar. 20, 2017) (determining that Khan did not meet his burden of demonstrating error in the city council's revocation of his rental licenses), *rev. denied* (Minn. May 30, 2017).

[4] Khan's complaint, and the supporting affidavits that he filed with the complaint, do not indicate when the VBR fee assessed and levied on November 21, 2022, was adopted by the city council.

Khan's complaint asserts five claims based on the factual allegations. Counts I and V allege that respondents' assessment and collection of the VBR fees violated the excessive fines clause of the Minnesota Constitution. *See* Minn. Const. art. I, § 5. Counts II and IV allege that respondents' assessment and collection of the VBR fees violated the takings clause of the Minnesota Constitution. *See* Minn. Const. art. I, § 13. And Count III alleges that the City of Minneapolis violated the equal protection clause of the Minnesota Constitution "[b]y imposing VBR fees only on landlords . . . and making no attempt to find and assess vacant properties owned by parties who are not landlords." *See* Minn. Const. art. I, § 2.

Respondents moved to dismiss Khan's complaint for lack of subject-matter jurisdiction and for failure to state a claim upon which relief may be granted. *See* Minn. R. Civ. P. 12.02(a), (e). They argued that Khan was precluded from asserting his claims because he had not appealed the assessment of the VBR fees within 30 days of the city council's adoption of the assessment, as required by Minnesota Statutes section 429.081. Khan opposed respondents' motions.

The district court dismissed Khan's complaint. It determined that the exclusive avenue for challenging an assessment is an appeal to the district court pursuant to section 429.081. The district court concluded that, because Khan failed to appeal the assessment of the VBR fees to the district court within the 30-day timeframe provided by section

429.081, Khan waived the claims in his complaint and the district court did not have "jurisdiction over the case."[5]

Khan appeals.

DECISION

Khan challenges the district court's grant of respondents' motions to dismiss his complaint. "A pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 594 (Minn. 2021) (quotation omitted).

An appellate court reviews a district court's decision on a motion to dismiss de novo. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008); *see also Tischer v. Hous. & Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005) (applying de novo review to issues of subject-matter jurisdiction and statutory interpretation).

Respondents moved to dismiss Khan's complaint under both rule 12.02(a), for lack of subject-matter jurisdiction, and 12.02(e), for failure to state a claim upon which relief may be granted. It is not clear to us that this case implicates the district court's subject-matter jurisdiction, and we need not resolve that issue. Whether or not subject-matter jurisdiction is implicated, it is clear under the applicable statutes and caselaw that the district court did not err by dismissing Khan's complaint.

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[5] Respondents raised additional arguments in their motions to dismiss, which the district court did not address due to its determination that Khan had waived his claims by failing to follow section 429.081. Likewise, the district court did not rule on a separate motion for summary judgment that the city filed.

We begin by summarizing the law regarding municipal assessments, including Minnesota Statutes section 429.081. Under Minnesota law, cities may collect assessments to defray the cost of regulatory services. *Am. Bank of St. Paul v. City of Minneapolis*, 802 N.W.2d 781, 787 (Minn. App. 2011). "Minnesota Statutes chapter 429 governs local improvements and special assessments." *Curiskis v. City of Minneapolis*, 729 N.W.2d 655, 658 (Minn. App. 2007); *see also* Minn. Stat. §§ 429.011-.111 (2022). To make improvements and impose special assessments for those improvements, a city operating under a home rule charter may rely on either chapter 429 or its own charter. Minn. Stat. § 429.111.

As relevant here, a city may collect delinquent VBR fees through special assessments. *See Am. Bank of St. Paul*, 802 N.W.2d at 787. Chapter 429 provides that cities may collect "unpaid special charges as a special assessment against the property benefited for all or any part of the cost of . . . the recovery of delinquent vacant building registration fees under a municipal program designed to identify and register vacant buildings." Minn. Stat. § 429.101, subd. 1(a)(12). Similarly, Minneapolis ordinance allows an annual VBR fee to be imposed "to recover all costs incurred by the city for monitoring and regulating vacant buildings, including nuisance abatement, enforcement and administrative costs." Minneapolis, Minn., Code of Ordinances (MCO) § 249.80(j)(1) (2022). Unpaid fees may then be levied and collected as a special assessment against the property. MCO § 249.80(j)(3) (2022).

A special assessment is subject to procedural protections, including notice requirements for a proposed assessment and the right to appeal. *See* Minn. Stat.

§§ 429.061, .081. To levy a special assessment, a city must provide notice to the affected property owner. Minn. Stat. § 429.061, subd. 1. This notice must advise the owner that "no appeal may be taken as to the amount of any assessment adopted [under this statute], unless a written objection signed by the affected property owner is filed with the municipal clerk prior to the assessment hearing or presented to the presiding officer at the hearing." *Id.* Further, the owner must be notified that an assessment can be appealed "to district court pursuant to section 429.081 by serving notice of the appeal upon the mayor or clerk of the municipality within 30 days after the adoption of the assessment and filing such notice with the district court within ten days after service upon the mayor or clerk." *Id.* Similarly, Minneapolis ordinance requires the city to notify the owner that "the owner may appeal the assessment to the district court within thirty (30) days after the adoption of the assessment" by the city council. MCO § 227.100(d) (2022). Following a hearing, the city council may adopt a resolution approving the assessment. Minn. Stat. § 429.061, subds. 1, 2. The city council's action is quasi-judicial in nature. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000).

Once a city council has adopted a special assessment, chapter 429 provides a right to judicial review of the assessment. The section governing judicial review of a special assessment provides:

> Within 30 days after the adoption of the assessment, any person aggrieved, who is not precluded by failure to object prior to or at the assessment hearing, or whose failure to so object is due to a reasonable cause, may appeal to the district court by serving a notice upon the mayor or clerk of the municipality. . . . The court shall either affirm the assessment or set it aside and order a reassessment . . . . All objections to

> the assessment shall be deemed waived unless presented on such appeal. This section provides the exclusive method of appeal from a special assessment levied pursuant to this chapter.

Minn. Stat. § 429.081.[6] Because "'appeals by property owners from assessments are wholly statutory, . . . the conditions imposed by the statute must be strictly complied with.'" *Curiskis*, 729 N.W.2d at 657 (quoting *Wessen v. Village of Deephaven*, 170 N.W.2d 126, 128 (Minn. 1969)).

Against this legal backdrop, we turn to the district court's decision dismissing Khan's complaint. Initially, we observe that Khan does not contend that he timely sought judicial review under section 429.081. His complaint asserts that the most recent VBR fee was assessed and levied on November 21, 2022, with an effective date of November 26, 2022. The record confirms that Kahn served his initial complaint against respondents on February 8, 2023—well beyond the 30-day period under the statute. And, in his briefs to this court, Khan concedes that he did not comply with section 429.081.

Because Khan did not seek judicial review of the assessment in district court within the 30-day period prescribed by section 429.081, we agree with the district court that he waived his challenge to the assessment. The plain language of the statute supports this conclusion. *See* Minn. Stat. § 429.081 ("All objections to the assessment shall be deemed waived unless presented on such appeal."); *see also Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) (stating that, if legislature's intent is clearly discernible

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[6] Minneapolis ordinance likewise provides that a property owner "may appeal the assessment to the district court within thirty (30) days after the adoption of the assessment." MCO § 227.100(d).

from plain and unambiguous language, "statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning").

The caselaw applying section 429.081 also supports this conclusion. In *Sievert v. City of Lakefield*, the Minnesota Supreme Court held that the failure to challenge a special assessment using the procedures in section 429.081 waives all objections to the assessment. 319 N.W.2d 43, 44 (Minn. 1982). There, a property owner proposed to develop some land and asked the city council to fund some of the required improvements. *Id.* at 43. Although the city council originally agreed to assume some of the costs, it later required the owner to assume the full costs of the improvements, and the city assessed the costs against the owner. *Id.* at 43-44. The owner did not object to the assessments or seek judicial review. *Id*. Approximately two years later, the owner brought a breach-of-contract suit against the city, and a jury found in the owner's favor. *Id.* But relying on the plain language of section 429.081, the supreme court reversed the jury's verdict, holding that the owner's failure to object to the assessment in the manner prescribed by statute waived the owner's right to challenge the assessment. *Id.*

Khan argues that an aggrieved party is not required to seek judicial review under section 429.081 when the party's claims are entirely constitutional. He points out that the claims in his complaint challenge "the constitutionality of the VBR fees that the City has imposed on him and the constitutionality of the County's collection of those fees." We disagree for several reasons.

First, Khan's argument is contrary to the plain language of section 429.081. The statute requires a property owner to raise "[*a*]*ll* objections" to an assessment on appeal or the objections "shall be deemed waived." Minn. Stat. § 429.081 (emphasis added).

Second, cases applying section 429.081 have concluded—consistent with the plain language of the statute—that the failure to raise any claim in an appeal to the district court operates as a waiver of the claim. *See DRB No. 24 LLC v. City of Minneapolis*, 774 F.3d 1185, 1190 (8th Cir. 2014) (holding that a party waived its common-law claims of fraud, misrepresentation, and unjust enrichment by failing to raise them in an appeal from a special assessment under section 429.081);[7] *Bauch v. City of Pine Island*, A18-0586, 2019 WL 1510510 at *3-4 (Minn. App. Apr. 8, 2019) (determining that a property owner waived a constitutional challenge to an assessment by failing to raise it in an appeal to the district court under section 429.081).[8]

Third, the Minnesota Supreme Court has held in a similar context—a challenge to a tax assessment under Minnesota Statutes chapter 278 (2020)—that a taxpayer forfeits constitutional issues that were not timely raised under the statute that provides the exclusive remedy for such a challenge. *Walmart Inc. v. Winona County*, 963 N.W.2d 192, 204-05 (Minn. 2021). In that case, Walmart sued two counties, alleging in its complaints that the counties discriminated in their tax assessments in violation of the federal and state

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[7] A federal court's interpretation of a state law is not binding authority, but it may have persuasive value. *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. App. 2017).

[8] Although nonprecedential opinions are not binding authority, we may consider them as persuasive authority. Minn. R. Civ. P. 136.01, subd. 1(c).

constitutions. *Id.* at 195-96. The district courts in both counties dismissed Walmart's complaints under rule 12.02(e) because the complaints failed to state claims upon which relief could be granted. *Id.* at 196. They determined that Walmart's claims were subject to Minnesota Statutes section 278.01, which requires property tax challenges to be filed on or before April 30 of the year when the tax becomes payable, and that Walmart did not timely file the challenges alleged in its complaints. *Id.* at 196. The supreme court affirmed the dismissal of Walmart's complaints. *Id.* at 204-05. Walmart argued that its constitutional claims were outside of the scope and procedures in chapter 278. *Id.* at 198. But the supreme court disagreed, determining that, "[i]f a challenge to a property tax assessment is based on one of the five statutory grounds, chapter 278 provides the exclusive means for bringing such a challenge." *Id.* (quotation omitted). The supreme court observed that the plain language of the statute "makes no exceptions for constitutional claims." *Id.* at 204. It further noted that "the statute does not prohibit a taxpayer from bringing a [constitutional challenge] under chapter 278." *Id.* at 200. Based on a plain reading of the statute, the supreme court concluded that Walmart's constitutional claims were barred because they were not filed by the statutory deadline. *Id.* at 204-05.

The circumstances here are analogous to those in *Walmart Inc.* Given the supreme court's reasoning in *Walmart Inc.*, we are not persuaded that the constitutional nature of Khan's claims exempts them from the requirements of section 429.081.

Khan argues that he should not be required to "exhaust administrative remedies" to challenge the constitutionality of VBR fees. He contends that an aggrieved party does not need to exhaust administrative remedies if the process would be futile. *See Nw. Airlines,* *Inc. v. Metro. Airports Comm'n*, 672 N.W.2d 379, 381 (Minn App. 2003) (addressing whether the failure to exhaust administrative remedies deprives a court of subject-matter jurisdiction), *rev. denied* (Minn. Feb. 25, 2004). And he asserts that it would have been futile to pursue his administrative remedies because the city council could not consider his constitutional claims.

This argument is misguided. Section 429.081 permits a party who is aggrieved by a city council's assessment of fees to appeal that assessment "to the district court." Minn. Stat. § 429.081. Minnesota district courts are courts of general jurisdiction that, with limited exceptions, have the authority to hear "all civil and criminal cases." Minn. Const. art. VI, § 3; *see also* Minn. Stat. § 484.01, subd. 1(1) (2022) ("The district courts shall have original jurisdiction in . . . all civil actions within their respective districts."). In an appeal to the district court under section 429.081, the district court would have had authority to consider Khan's constitutional claims. And Kahn does not identify any authority suggesting that his constitutional claims fall outside the broad scope of the district court's jurisdiction. Thus, it would not have been futile for Kahn to pursue such relief.

Finally, for the first time on appeal to this court, Khan argues there is "reasonable cause" for his failure to timely appeal the assessment. He notes that section 429.081 allows a property owner "who is not precluded by failure to object prior to or at the assessment hearing, or whose failure to so object is due to a reasonable cause," to appeal to the district court. Minn. Stat. § 429.081. Khan suggests, without authority, that reasonable cause should excuse a property owner from seeking judicial review within 30 days of the adoption of an assessment. However, because Khan did not raise this argument in the district court, the argument is forfeited, and we do not consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider an issue raised for the first time on appeal).

We conclude that Khan's complaint failed to state a legally sufficient claim for relief. Khan failed to appeal to the district court within 30 days of the adoption of the assessment of VBR fees as required by section 429.081, which provides the exclusive method for challenging a special assessment. He therefore is precluded from challenging the assessment of VBR fees, and the claims in his complaint are not legally cognizable. Thus, the district court properly dismissed Khan's complaint pursuant to rule 12(e).

Affirmed.