

*This opinion is nonprecedential except as provided by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
A24-1605**

Larry Koch,
Appellant,

vs.

Riley Purgatory Bluff Creek Watershed District, et al.,
Respondents.

**Filed June 9, 2025
Affirmed in part, reversed in part, and remanded
Larson, Judge**

Hennepin County District Court
File No. 27-CV-23-18762

John R. Neve, John Hayden, Quantum Lex, PA, Minneapolis, Minnesota (for appellant)

Paul Donald Reuvers, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondents)

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Larry Koch challenges two district court decisions that resulted in the dismissal of his complaint with prejudice for failure to post a surety bond. First, Koch argues the district court abused its discretion when it imposed the surety bond. Second, and in the alternative, Koch asserts the district court erred when it dismissed his Minnesota

Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.991 (2024), and Minnesota Open Meeting Law (OML), Minn. Stat. §§ 13D.001-.08 (2024), claims for failure to post the surety bond on the ground that those claims will not affect the public or taxpayers. Because we do not discern the district court abused its discretion when it imposed the surety bond, we affirm in part. But because our binding precedent dictates that the surety-bond requirement impacts only those claims that will affect the public or taxpayers, we reverse in part and remand for the district court to determine which claims must be dismissed for failure to post the surety bond.

FACTS

In August 2021, respondent Riley Purgatory Bluff Creek Watershed District granted conditional approval to a developer for a building permit on three parcels of land (the property).¹ The property is located next to land that is “maintained as passive recreation parkland/preserve” and a natural spring. After community members expressed concern that the development may have environmental impacts, the watershed district explored options to acquire the property. In October 2023, the watershed district approved a plan to purchase the property for \$5,775,000. The watershed district approved the planned purchase as a conservation project. Under the plan, a holding company, who previously purchased the property from the landowners, signed an assignment agreement with the watershed district. Under the terms of the assignment agreement, the holding company agreed to assign and sell its “rights, title and interests in” the property to the watershed

¹ Respondent Terry Jeffery is the watershed district’s administrator. We refer to the respondents collectively as “the watershed district.”

district. The assignment agreement contemplated that the watershed district had until December 2023 “to obtain project financing and complete the [necessary] statutory processes.” *See* Minnesota Watershed Law, Minn. Stat. §§ 103D.001-.925 (2024).²

The watershed district initially discussed financing the purchase with long-term bonds through Hennepin County but learned Hennepin County could not provide long-term financing until September 2024. Then, in December 2023, the watershed district negotiated to have a financial-services company provide short-term financing through the purchase of a \$5,804,000 “General Obligation Temporary Watershed Bond.” This would provide the watershed district with bridge financing until Hennepin County could provide long-term financing.

Koch—a manager on the watershed district’s board—opposed the watershed district’s acquisition of the property. To stop the financial-services company from issuing the temporary watershed bond, Koch brought this action against the watershed district. In the complaint, Koch alleged the watershed district violated the following statutes in its attempts to acquire funding to purchase the property: (1) Minn. Stat. § 103B.231 (2024); (2) various sections of the Minnesota Watershed Law; (3) the MGDPA; and (4) various sections of the OML.

Koch simultaneously moved for a temporary restraining order (TRO). In response, the watershed district requested the district court order Koch to file a \$5,804,000 surety

² Some of the statutes relevant to the complaint were amended in 2024, but the amendments are not relevant to the disposition of this case. *See* 2024 Minn. Laws. ch. 90, art. 3, §§ 34, at 588; 37, at 589; 38, at 589. We therefore cite to the statutes in effect at the time this opinion is issued.

bond under Minn. Stat. § 562.02 (2024). In a December 2023 order, the district court denied both motions. Koch appealed, and we affirmed. *See Koch v. Riley Purgatory Bluff Creek Watershed Dist.*, No. A24-0503, 2024 WL 4344868, at *1 (Minn. App. Sept. 30, 2024).

Following the December 2023 order, the watershed district exercised its option under the assignment agreement to extend the property's closing date to February 26, 2024, by depositing an additional \$50,000 in earnest money. But shortly thereafter, the financial-services company informed the watershed district that it would no longer move forward with bridge financing because of the pending litigation. Because the financial-services company withdrew financing, the watershed district renewed its surety-bond request.³ The watershed district claimed that Koch's lawsuit caused the watershed district immediate harm—and therefore caused harm to the public—by inhibiting its ability to obtain bridge financing and close on the property and forcing it to spend an additional \$50,000 to extend the closing date.

After the district court took the matter under advisement, Koch renewed his motion for a TRO. In their responsive letter brief, the watershed district informed the district court

³ The watershed district also brought a dispositive motion, requesting that the district court either dismiss the complaint under Minn. R. Civ. P. 12.02(e), grant judgment on the pleadings under Minn. R. Civ. P. 12.03, or grant summary judgment in the watershed district's favor under Minn. R. Civ. P. 56. Because the district court dismissed the complaint when Koch failed to post the surety bond, the district court did not resolve the watershed district's dispositive motion.

that it intended to purchase the property via a contract for deed.⁴ The watershed district described the contract for deed as bridge financing. The district court then ordered supplemental briefing, wherein the watershed district confirmed that it purchased the property on April 3, 2024. In the supplemental briefing, the watershed district reduced its requested surety-bond amount to \$1,087,461—reflecting the difference between the cost in bridge financing from the financial-services company and the contract for deed.⁵

In an August 2, 2024 order, the district court determined the watershed district “made a sufficient showing that loss or damage to the public or taxpayers may occur as a result of the litigation,” and granted the watershed district’s motion for Koch to post a surety bond in the amount of \$1,087,461.20 by September 2, 2024.⁶ When Koch did not post the bond, the district court dismissed his entire complaint under section 562.02 with prejudice.

Koch appeals.

DECISION

Koch challenges the district court’s decision to dismiss the entire complaint with prejudice for failure to post a previously ordered surety bond under section 562.02. We

⁴ “A contract for deed is a financing arrangement which allows a buyer—the vendee—to purchase property by borrowing the money for the purchase from the seller—the vendor.” *Kuhn v. Dunn*, 8 N.W.3d 633, 637 (Minn. 2024) (quotation omitted).

⁵ The actual monetary difference the watershed district claimed would occur under the contract for deed was \$1,087,461.20, but the watershed district rounded down when it made its request.

⁶ Koch appealed directly from the August 2, 2024 order, which we dismissed as premature. *See Koch v. Riley Purgatory Bluff Creek Watershed Dist.*, No. A24-1312, 2024 WL 4249719, at *2 (Minn. App. Sept. 17, 2024).

review a “district court’s order requiring a surety bond for an abuse of discretion.” *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 694 (Minn. 2015). A district court abuses its discretion if it makes findings unsupported by the evidence or misapplies the law. *In re Paul W. Abbott Co.*, 767 N.W.2d 14, 18 (Minn. 2009). We review legal conclusions de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008).

Section 562.02 provides:

Whenever any action at law or in equity is brought in any court in this state questioning *directly or indirectly* the existence of any condition or thing precedent to, or the validity of any action taken or proposed to be taken, by any public body or its officers or agents in the course of the *authorization or sale, issuance or delivery of bonds*, [or] *the making of a contract for public improvement . . .* such public body may move the court for an order requiring the party, or parties, bringing such action to file a surety bond as hereinafter set forth. . . . If the court determines that loss or damage to the public or taxpayers may result from the pendency of the action or proceeding, the court may require such party, or parties, to file a surety bond, which shall be approved by the court, in such amount as the court may determine. *The court must also consider whether the action presents substantial constitutional issues or substantial issues of statutory construction, and the likelihood of a party prevailing on these issues, when determining the amount of a bond and whether a bond should be required under this section or section 473.675. . . .* If such surety bond is not filed within a reasonable time allowed therefor by the court, the action shall be dismissed with prejudice.

(Emphasis added.)

Koch broadly makes two arguments on appeal: (1) that the district court abused its discretion when it required Koch to post the surety bond and (2) if the surety bond was

appropriately required, that the district court abused its discretion when it dismissed his entire action with prejudice. We address each argument in turn below.

I.

Koch first challenges the district court's decision to require Koch to post a surety bond. Koch argues the district court abused its discretion because: (1) it did not analyze whether Koch was likely to succeed on the merits; (2) the watershed district changed the financing such that section 562.02 no longer applied; and (3) a \$1,087,461.20 surety-bond amount was excessive. Because we do not discern that the district court abused its discretion, we affirm the district court's decision to require the surety bond.

Beginning with Koch's argument that the district court failed to assess the likelihood of success on the merits, Koch failed to preserve this issue for appeal. Under section 562.02, the district "court must . . . consider whether the action presents substantial constitutional issues or substantial issues of statutory construction, and the likelihood of a party prevailing on *these* issues." (Emphasis added.) Thus, to trigger this requirement, the complaint needed to raise a substantial constitutional or statutory-construction issue. Because the record does not indicate that Koch argued to the district court that his complaint raised substantial constitutional or statutory-construction issues, and we decide "only those issues that the record shows were presented [to] and considered by the [district] court in deciding the matter before it," *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted), we conclude that Koch forfeited this issue. See *Walker Props. of Woodbury II, LLC v. City of Woodbury*, No. A12-2323, 2013 WL 4504431, at *3 (Minn.

App. Aug. 26, 2013) (declining to reach same issue on ground it was not raised in district court), *rev. denied* (Minn. Nov. 12, 2013).⁷

We reach a similar conclusion with respect to Koch’s second argument. Koch asserts that the district court did not have authority to require a surety bond because the watershed district changed the financing such that the project no longer involved the “authorization or sale, issuance or delivery of bonds, [or] the making of a contract for public improvement.” *See* Minn. Stat. § 562.02. But the record demonstrates that Koch made the opposite argument before the district court, asserting that the district court must look to the language of the complaint—not the change in financing—when evaluating whether to require a surety bond. Thus, we deem this argument forfeited. *See Thiele*, 425 N.W.2d at 582. Further, even if it were not forfeited, we would reach the same result. The statute requires the district court to analyze the “action.” *See* Minn. Stat. § 562.02. The complaint sets forth the “claims for relief” in an action, Minn. R. Civ. P. 8.01, and the claims in Koch’s complaint relate specifically to bonds. Therefore, because Koch did not seek to amend his complaint to account for the change in circumstances, even if the issue was not forfeited, we would affirm the district court on this issue.

Finally, Koch argues that the district court required him to post an excessive surety-bond amount. Although a bond may be “viewed as excessive from the perspective of what [the plaintiff] can likely afford to pay,” the amount is not an abuse of discretion when it “is justified by the evidence presented to the [district] court.” *Kilowatt Org., Inc. v. Dep’t of*

⁷ This case is nonprecedential and, therefore, not binding. We cite nonprecedential opinions as persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Energy, Planning & Dev., 336 N.W.2d 529, 533 (Minn. 1983); *see also Pike v. Gunyou*, 491 N.W.2d 288, 291-92 (Minn. 1992) (upholding \$30 million bond requirement when that amount “reflect[ed] the anticipated total cost to the state and its taxpayers” resulting from a delay caused by litigation).

Here, the district court specifically found that the public and taxpayers were at risk of harm because of this litigation. Then, the district court found the watershed district requested a reasonable amount for the bond, because the watershed district provided a detailed explanation of the costs to the public associated with the pending litigation. While Koch argues this calculation is speculative, the statute does not require the amount to be an exact reflection of the harm. *See Anderly v. City of Minneapolis*, 552 N.W.2d 236, 242 (Minn. 1996) (interpreting similarly worded statute to “only require[] that loss or damage *may* result from the pendency of the action” in order to award surety bond, and concluding “the nature of the damages in any case such as this necessarily will be speculative”). Rather, the statute provides the district court with broad discretion to determine the amount necessary to protect the public’s interest, and we will uphold that determination when evidence supports the *potential* harm to the public. *See* Minn. Stat. § 562.02 (stating award shall be “in such amount as the [district] court *may* determine” is appropriate, based on public/taxpayers’ damages (emphasis added)); *Pike*, 491 N.W.2d at 291-92 (affirming bond amount that “reflect[ed] the *anticipated* total cost to the state and its taxpayers” (emphasis added)). Additionally, Koch’s arguments against the surety bond are speculative; the other possible financial arrangements he posits in his brief have no support in the record. Thus, because the surety-bond amount is logically reflected in the record as

the amount the public and taxpayers may be harmed by this lawsuit, the district court did not abuse its discretion.

For these reasons, we affirm the district court’s decision to impose a \$1,087,461.20 surety bond.

II.

Koch argues in the alternative that, if the surety bond was appropriately required, the district court erred when it dismissed his entire complaint for failure to post the bond. On this issue, we agree with Koch.

In *Anderson v. Pearson*, we concluded, in the syllabus, that “[a]n order dismissing the action with prejudice [under section 562.02] for failing to file the bond must be limited to those causes of action that the evidence has shown will affect the public or the taxpayers.” 400 N.W.2d 210, 211 (Minn. App. 1987). Contrary to the watershed district’s argument that this syllabus point is dictum,⁸ the supreme court has stated that “the syllabus summarizes the [authoring court’s] holding.” *Albright v. Henry*, 174 N.W.2d 106, 111 (Minn. 1970); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 214 (Minn. 1988) (citing syllabus of prior opinion as authority). And we have followed this rule with respect to our

⁸ The watershed district also argues that our decision in *Anderson* is contrary to the general definition of “action” in Minn. Stat. § 645.45(2) (2024) and the supreme court’s interpretation of that word in *Ellis v. Doe*, 924 N.W.2d 258, 263-64 (Minn. 2019). But Minn. Stat. § 645.45 (2024) expressly provides that the context of a statute can elicit a different meaning for the word “action.” And the supreme court in *Ellis* analyzed the word in the context of a rent-escrow statute, not the statute at issue here. *See Ellis*, 924 N.W.2d at 263-64. Thus, *Ellis* does not conflict with our prior precedential decision in *Anderson*. Compare *id.*, with *Anderson*, 400 N.W.2d at 212-13. And we are bound by our prior precedential decisions. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010).

own precedential opinions. *See, e.g., Dyrdal v. Wallenberg*, No. A23-1416, 2024 WL 1987879, at *2 (Minn. App. May 6, 2024). We therefore conclude that, consistent with *Anderson*, the district court erred when it did not conduct an analysis to determine whether all of Koch's causes of action affected the public or taxpayers in the manner contemplated by section 562.02. *See Anderson*, 400 N.W.2d at 211. Accordingly, we reverse and remand for the district court to evaluate whether any of Koch's claims should survive his failure to post the surety bond.

Affirmed in part, reversed in part, and remanded.