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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1809**

Orono Oaks Volunteer Road Association,
Appellant,

vs.

Orono Oaks Association, Inc.,
Respondent.

**Filed August 11, 2025
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-24-5593

David Madgett, Madgett Law, LLC, Minneapolis, Minnesota (for appellant)

Orono Oaks Association, Inc., Orono, Minnesota (respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the district court's dismissal of claims related to the disrepair of a roadway, appellant association argues that the district court erred by determining that it did not have standing and that receivership is not an available remedy. We affirm.

FACTS

In 1978, a developer platted a housing development called Orono Oaks in Orono that included 13 lots¹ and two roads designated as the Common Roadway and the Common Driveway (the roads).² Respondent Orono Oaks Association Inc. (OOA) is a nonprofit association of which all homeowners in Orono Oaks are members and that the developer created to have “the right and duty to manage, build, reconstruct, repair, maintain, and improve the [roads].” However, over time, OOA stopped maintaining the roads, and they fell into disrepair.

Appellant Orono Oaks Volunteer Road Association (the road association) is a nonprofit corporation comprised of a subset of OOA members that was incorporated for the “express purpose of addressing OOA’s failure to maintain the common roadway, resulting in dangerous conditions for residents.” The record does not include the road association’s governing documents or any other evidence about its formation, governance, or membership. Counsel briefly refers in various memoranda to the road association’s assertion that it “was established to represent the interests of the majority of homeowners

¹ We cannot confirm whether Orono Oaks is composed of 12 or 13 lots because appellant’s governing documents state that there are 13 lots in Orono Oaks but appellant refers to 12 lots. The district court noted this discrepancy, but there is no record evidence that resolves the inconsistency.

² We take these facts from the complaint, accepting as true its factual allegations when reviewing the district court’s decision to dismiss the complaint. *See Roos v. HealthPartners, Inc.*, 22 N.W.3d 211, 213 (Minn. App. 2025) (“In reviewing a district court’s decision to grant a motion to dismiss, ‘we accept the factual allegations in the complaint as true.’” (quoting *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 64 n.2 (Minn. 2020))).

who were frustrated with [OOA]’s . . . failure to fulfill its fiduciary duties, particularly concerning the maintenance and paving of the roadway.” The only evidence about the road association’s membership comes from four affidavits filed by the road association; in each affidavit, the affiant affirms that he or she is an Orono Oaks lot owner and member of the road association who has “reviewed the Articles and bylaws of [the road association].”

In April 2024, the road association sued OOA, alleging that OOA stopped maintaining the roads approximately five years before the road association filed the complaint. The road association seeks compensatory damages for injuries to individual road-association members caused by the failure of OOA to maintain the roads³ and the appointment of a receiver to manage OOA’s “business,” including fulfillment of OOA’s roadway maintenance obligations.

On May 17, 2024, after the deadline passed for OOA to respond to the complaint, the road association moved for default judgment. In its motion, the road association requested “an order entering default judgment against [OOA]” pursuant to Minn. R. Civ. P. 55.01 and “an order . . . for appointing a receiver to manage the business and legal affairs of [OOA]” pursuant to Minn. Stat. § 576.26 (2024). In its legal memorandum in support of its motion, the road association argued that default judgment was appropriate due to OOA’s failure to respond after it had received adequate service. The road association also argued that appointment of a receiver was appropriate because OOA “is dysfunctional and

³ The road association did not request compensatory damages in its complaint; however, it included a section in its motion for default judgment in which it requested them. For the purposes of this opinion, we assume that a claim for damages was properly asserted.

requires the assistance of professional management to discharge its duties.” Finally, it argued that monetary damages of \$15,000 were appropriate because some of the road-association members sustained actual damages to their vehicles; the damaged roads caused “increased pricing for various home services”; and “the owner-members of [the road association] have contributed the time, effort, and money necessary to bring this matter to conclusion.” The road association also filed a proposed order appointing itself as the receiver and awarding “damages in the amount of \$15,000 from [OOA] funds . . . to compensate the members of [the road association] for damages caused by the contractual breach of [OOA] to keep the road in a safe and well-maintained condition.” With respect to the receivership, the proposed order included the following powers:

The power to collect, hold, manage, and disburse all dues, assessments, fees, and other incomes presently due, owing, or payable to [OOA].

The power to make necessary or beneficial repairs, replacements, and improvements to the common roadway property and other areas within [OOA]’s control.

The power to enter into, make, and terminate contracts for the management and operation of the property.

The power to hire necessary personnel or contractors to manage the property effectively.

The power to initiate or defend legal actions on behalf of [OOA].

The power to pay the debts of [OOA].

The power to amend the bylaws of [OOA] and any other governing documents as necessary to modernize said documents and to remove any impediments to the safe and effective management of the property.

On June 25, 2024, the district court held a hearing on the motion.⁴ At the hearing, the district court questioned the road association's standing to bring suit, the adequacy of service of process, whether nonparty members of the OOA were entitled to notice of the action and whether they were required to be named as parties, and if they were required to be named as parties, whether they would be plaintiffs or defendants. In its order denying the motion and for dismissal without prejudice, the district court directed the road association to file supplemental evidence to address the district court's questions by July 25, 2024.

The road association did not file any supplemental evidence by the July 25 deadline, and the district court ordered dismissal without prejudice on July 30, 2024. That same day, the road association requested that the district court reconsider and vacate its dismissal order, asserting that it had mistakenly calendared the submission deadline for 30 business days rather than 30 calendar days. On July 31, 2024, the district court granted the request, vacated the dismissal order, and issued an order setting a new deadline of August 16, 2024.

On August 16, 2024, the road association submitted seven affidavits, four documents related to OOA's internal organization, and a supplemental brief. In the six residents' affidavits,⁵ four of which purport to be from homeowners who are members of OOA and the road association and two of which purport to be from homeowners who are

⁴ The road association did not order the hearing transcript for the record; thus, the only information about the hearing in the record is the district court's order dismissing the suit.

⁵ The seventh affidavit was an affidavit of counsel.

members of OOA but not members of the road association are,⁶ all of the affiants requested that the district court authorize the road association to facilitate the repair of the roads. The filing also included three documents that the road association asserts are the governing documents of OOA: (1) a copy of the November 1, 1978 Articles of Incorporation for the Orono Oaks Association Inc. (articles); (2) a copy of a document titled, “By-Laws of Orono Oaks Association, Inc.,” (by-laws); and (3) a copy of a document titled, “Declaration of Covenants, Conditions and Restrictions for Orono Oaks Association, Inc.,” and dated November 10, 1978 (the declaration) (collectively, the organizational documents).⁷ In its supplemental brief, the road association asserted that it has associational standing and that service on OOA was proper.

The organizational documents include provisions that are relevant to the governance of OOA and this dispute. According to its bylaws, OOA is governed by a three-member board of directors that is responsible for setting an annual assessment and any special assessments and for using the fees from the assessments to pay for roadway repair and maintenance. Every owner of a lot in Orono Oaks is a member of OOA, and every member

⁶ In its memorandum to the “order denying motion for default judgment and order for dismissal without prejudice,” the district court expressly points out that “the affidavits do not address whether the affiants have ownership interest in the real properties or whether there are joint owners or spouses with marital interest in the underlying real properties.”

⁷ The road association’s filing included a “Plat Document”; however, the district court observed that it was illegible and that the court did not “glean any relevant information from the legible portions of this document.”

is responsible for paying annual assessments.⁸ OOA “shall have the right and duty to manage, build, reconstruct, repair, maintain, and improve the [roads].” The board can also set a special assessment, which is used “for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the [roads], including fixtures and personal property related thereto.” But a special assessment “shall have the assent of the Owners of all of the Lots abutting the [roads] voting in person or by proxy at a meeting duly called for this purpose.” In addition to a number of internal processes that set forth how to terminate OOA, the declaration provides that, if OOA fails to maintain the roads, the City of Orono can schedule a hearing to discuss the maintenance deficiencies and, after the hearing, if OOA does not correct the deficiencies, the city council can assess a fee to each of the lot owners to finance the repairs.

On October 14, 2024, the district court filed an order dismissing the road association’s suit without prejudice, determining that the road association lacked standing and that a receivership was not an available remedy. First, the district court explained that the road association failed to satisfy the third requirement for associational standing because the participation of individual road-association members is required based on the nature of the relief sought. The road association requested two forms of relief: (1) compensatory damages for injuries to individual persons and personal property and (2) the appointment of a receiver for OOA. The district court determined that both forms

⁸ The record is devoid of information about whether OOA has ever levied assessments, collected fees, or taken action to maintain the roads.

of relief require the participation of individual road-association members. Second, the district court determined that, even if the road association had associational standing, the court would deny relief in the form of the appointment of a receiver for the following reasons: the road association had not exhausted alternative remedies available to it pursuant to the organizational documents and exhaustion is required before an equitable remedy is available; the road association had not established any of the statutory requirements for appointment of a receiver; and, even if the road association had associational standing and no alternative remedies were available, the road association did not establish that it has the experience or capability to qualify as a receiver.

The road association appeals.

DECISION

The road association challenges the district court's dismissal of its suit, arguing that (1) it meets all the requirements to establish associational standing in the underlying lawsuit and (2) a receivership is an appropriate remedy because no other remedies are available to the road association. We address each argument in turn.⁹

Associational Standing

The road association asserts that it meets all three requirements to establish associational standing in the underlying lawsuit because the individual members of the road association would otherwise have standing to sue in their own right, the interests the road

⁹ OOA did not participate in any proceedings before the district court and did not file briefs or participate in oral argument before us. Because it did not file a brief, we determine this appeal on the merits. *See* Minn. R. Civ. App. P. 142.03 (providing that, if respondent fails to file a brief, the case shall be determined on the merits).

association seeks to protect are germane to the road association's purpose, and neither the claim asserted nor the relief requested requires individual road-association members to participate in the lawsuit. The district court determined that the road association met the first two requirements but failed to meet the third requirement and, therefore, that it lacks associational standing.

Standing is essential to jurisdiction and is a question of law that we examine de novo. *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024). An organization has standing to bring suit on behalf of its members if “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); accord *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 498 (Minn. 1996) (adopting the Supreme Court's theory of associational standing set forth in *Hunt*).¹⁰ Although the district court determined that the road association met the first two requirements, we address all three requirements because our review is de novo.

With respect to the first requirement, the road association asserts that its individual members have standing to bring suit in their own right because they suffered

¹⁰ The district court applied associational standing as set forth in *Hunt*, 432 U.S. at 343, and neither party challenges its application on appeal. We observe that the supreme court has cited the three-part inquiry set forth in the United States Supreme Court's *Hunt* decision, see *Minn. Voters All.*, 10 N.W.3d at 170 (citing *Hunt*, 432 U.S. at 343); we therefore apply it here.

injuries-in-fact caused by the deteriorated road conditions. A party has standing if (1) the legislature has conferred standing by statute or (2) the party has suffered “injury-in-fact.” *Nash v. Wollan*, 656 N.W.2d 585, 588 (Minn. App. 2003), *rev. denied* (Minn. Apr. 29, 2003). To satisfy the “injury-in-fact” requirement, a party must demonstrate that they have suffered actual, concrete injuries caused by the challenged conduct. *In re Improvement of Cnty. Ditch No. 86*, 614 N.W.2d 756, 762 (Minn. App. 2000), *rev’d on other grounds*, 625 N.W.2d 813 (Minn. 2001). “[T]he injury must be fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014).

With respect to whether its members suffered injuries-in-fact, the road association submitted affidavits of four of its members, one of whom attested that their child sustained minor injuries on multiple occasions while biking because of potholes on the unmaintained road. And in its complaint, the road association states that OOA’s “failure to maintain the road has resulted in significant deterioration such that the road has caused and will continue to cause further damage to vehicles.” Because the road association’s members allege that the damaged roadway caused them harm—personal injury and property damage—and because a favorable judicial decision may redress those injuries, it appears that at least some of the road association’s members would have standing to sue in their own right. We therefore conclude that the road association has satisfied the first *Hunt* requirement.

With respect to the second requirement, the road association asserts that the interests it seeks to protect are germane to the road association’s purpose. We agree with the district court’s assessment that, although the record is limited at this point, the road association

“appears to have been formed for the purpose of resolving the problem of the lack of an existing board and lack of action by [OOA] to maintain [the roads].” Our review of the record persuades us that, because the road association is comprised of Orono Oaks homeowners, the suit alleges a failure of OOA to maintain the roads, and the suit requests relief in the form of damages that would compensate owners for injuries from the unmaintained roads and for equitable relief to ensure the road would be maintained moving forward, the interests the road association seeks to protect are germane to its purposes. We therefore conclude that the road association has satisfied the second *Hunt* requirement.

With respect to the third *Hunt* requirement, the road association asserts that neither the claim nor the requested relief requires the participation of individual road-association members. The road association seeks compensatory damages for injuries sustained by its members and requests that the district court appoint it as receiver for OOA. We assess each type of relief requested in turn.

We begin with the request for compensatory damages. Although the road association never amended its complaint, in which it sought relief only via the creation of a receivership and an award of attorney fees, litigation expenses, and any other appropriate relief, it later requested compensatory damages in its motion for default judgment. In its memorandum in support of its “Motion for Default and Appointment of a Receiver,” the road association asserted that “some members have suffered actual damages in the form of damage to their vehicles and through increased pricing for various home services given the limited group of home service providers willing to travel to homes served by the dilapidated road” and requested that the district court award it “contractual damages and

other compensation” in the amount of \$15,000. And in its proposed order granting default judgment, the road association included a provision stating that “the receiver shall pay [the road association] damages in the amount of \$15,000 from [OOA’s] funds to compensate the members of [the road association] for damages caused by the contractual breach of [OOA] to keep the road in a safe and well-maintained condition.”

The term “actual damages” means an “amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses.” *Ray v. Miller Meester Advert., Inc.*, 684 N.W.2d 404, 407 (Minn. 2004) (quoting *Black’s Law Dictionary* 394 (7th ed. 1999)). Actual damages are generally synonymous with compensatory damages. *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 275 (Minn. 1995). The United States Court of Appeals for the Eighth Circuit has held that an organization seeking compensatory damages lacks associational standing because the claim for compensatory damages “is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof.”¹¹ *Higgins Elec., Inc. v. O’Fallon Fire Prot. Dist.*, 813 F.3d 1124, 1128 (8th Cir. 2016); *see also United Union of Roofers No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990) (“The courts that have addressed [the third requirement of the *Hunt* test] have consistently held

¹¹ Because our associational-standing analysis derives from federal caselaw, *see Philip Morris Inc.*, 551 N.W.2d at 498, we may look to federal caselaw for guidance on standing issues. *See, e.g., Blanding v. Sports & Health Club, Inc.*, 373 N.W.2d 784, 789-90 (Minn. App. 1985) (reviewing *Church of Scientology of Cal. vs. Cazares*, 638 F.2d 1272 (5th Cir. 1981), and *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983)), *aff’d*, 389 N.W.2d 205 (Minn. 1986)).

that claims for monetary relief necessarily involve individualized proof and thus the individual participation of association members.”).

Here, the road association is asserting a claim for compensatory damages of \$15,000 for injury to persons and property caused by the deteriorated condition and lack of maintenance of the roads. These damages are specific to the person or property that was injured and would require individual road-association members to participate in the lawsuit. Because the individual road-association members would have to provide proof of both the existence and the extent of their injuries for the road association to assert its right to compensatory damages and to justify the amount of the compensation that it requested, the road association cannot meet the third *Hunt* requirement for associational standing. Therefore, the road association does not have standing with respect to its request for relief in the form of compensatory damages.¹²

We next consider the road association’s request for a receivership as it relates to standing. The road association argues that, even if it did not have standing to seek monetary

¹² On appeal, the road association now asserts that the damages it sought were “based on collective harm to its members” and that it did not seek damages “tied to personal injury claims.” But the fact that the road association describes individual injuries to justify the damages it seeks belies this assertion. The road association sought monetary damages before the district court based on individualized injuries to its members. To the extent that the road association now argues that it sought compensation for harms to the road association rather than for harms to the individual members of the road association, the road association’s argument fails because the record does not include any evidence to substantiate the claim that the road association itself was injured as a result of OOA’s failure to maintain the roadway. Moreover, because the road association did not assert any associational injury before the district court, the issue is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court’s review is generally limited to those issues presented to, and considered by, the district court).

damages, it still has standing to “seek declaratory or injunctive relief,” including equitable relief in the form of the appointment of a receiver, and that organizations can have associational standing for equitable remedies even if they do not have standing for other relief. *See Philip Morris Inc.*, 551 N.W.2d at 497-98 (holding that plaintiff organization had “associational standing” to pursue equitable claims pleaded, but limiting standing to “pursuit of injunctive relief on these claims”). The district court determined that, with respect to the relief it requested in the form of a receivership, the road association could not establish the third *Hunt* requirement, reasoning that establishing a receivership with the broad powers requested would grant the road association the power to infringe upon the rights and interests of all Orono Oaks homeowners, including nonmembers of the road association, and that, therefore, the participation of individual road-association members would be required to equitably resolve the receivership.

We conclude, however, that we need not reach the issue of standing here because we determine below that the district court did not abuse its discretion in deciding that equitable relief is not available to the road association.

Receivership as a Remedy

We next consider whether the district court abused its discretion in determining that receivership was not available because the road association was required but failed to exhaust alternative remedies, including administrative remedies through the City of Orono. The road association asserts that no other remedies are available to it and, thus, that a receivership is an appropriate remedy.

The power to appoint a receiver comes from a court’s general equity powers, and the purpose of the appointment of a receiver “is to accomplish, as far as practicable, complete justice for the parties before it.” *Asleson v. Allison*, 247 N.W. 579, 580 (Minn. 1933). The appointment of a receiver is within the discretion of the district court and is reviewed for abuse of discretion. *Minn. Hotel Co. v. ROSA Dev. Co.*, 495 N.W.2d 888, 891 (Minn. App. 1993). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). “The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008). “A receiver is not to be appointed when the moving party has an adequate remedy at law.” *Asleson*, 247 N.W. at 580; *accord Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 68 (Minn. 2019).

The district court determined that the road association “has not exhausted alternative remedies provided under the [organizational] documents in obtaining relief through the City of Orono.” The organizational documents submitted into the record by the road association establish a process through which, if OOA fails to maintain the roadways, the city can schedule a hearing, and depending on the outcome of the hearing, the city council can schedule an assessment that is charged to each lot owner to effect the repairs. Because this process does not rely on OOA’s participation, it is available even if OOA is completely defunct as the road association asserts it is.

The road association claims in its brief that this alternative remedy is unavailable because the city “has explicitly declined to involve itself in private roadway disputes, as

confirmed by affidavits from homeowners.” In one of the affidavits from a homeowner who is not a member of the road association, the affiant recounts that a group of neighbors spoke with a city engineer in 2019 about repairs needed for the roadway, but there is no discussion of the hearing mechanism or any request to the city to effect repairs to the roadways. The other affidavits also do not address whether any requests were made to the city. Because statements and arguments of counsel are not evidence, *Derksen v. Comm’r of Pub. Safety*, 11 N.W.3d 340, 345 (Minn. 2024), and none of the affidavits or other evidence in the record demonstrate that the road association has attempted to avail itself of a remedy through the city as provided in OOA’s organizational documents, the road association has not shown that it cannot pursue alternative remedies. The road association does not point to any law to support its position or to any evidence in the record to explain why it cannot pursue alternative remedies, and there is no evidence in the record about the city’s involvement in roadway disputes in general or in this case. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an assignment of error in an appellate brief based on “mere assertion” and not supported by argument or authority is forfeited “unless prejudicial error is obvious on mere inspection”). Because the record demonstrates that alternative remedies may be available, the district court did not abuse its discretion by finding that the road association has not exhausted alternative remedies provided under the organizational documents. And because the district court determined that there was an adequate remedy at law, it was appropriate for the district court to further determine that it would deny the road association’s request for receivership and dismiss the lawsuit on that basis. *See Asleson*, 247 N.W. at 580.

Finally, even if the road association had no alternative remedy available, the district court also determined that there is no evidence in the record to establish that the road association is eligible to be appointed as a receiver under Minnesota law.¹³ A receiver must be “independent as to the parties and the underlying dispute.” Minn. Stat. § 576.26, subd. 1(2) (2024). But the road association is not independent—it is the plaintiff in this dispute. Additionally, the members of the road association are also members of OOA, which is the defendant organization that currently maintains the proposed receivership property in this dispute. On this record, it was within the district court’s discretion to determine that the road association was not eligible to be appointed receiver because the road association is not “independent as to the parties and the underlying dispute.”

In sum, because the road association cannot establish the requirements for associational standing with respect to compensatory damages, and because receivership is unavailable as a remedy here even assuming the road association had standing to pursue that equitable remedy, the district court did not abuse its discretion by dismissing the road association’s suit without prejudice.

Affirmed.

¹³ Initially, the road association proposed an entity called “CERRON Commercial Properties” to serve as the receiver, and there is no information about this entity in the record other than its name appearing in the proposed order. Furthermore, in its final proposed order, the road association was named as the receiver instead.