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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1674**

Bruce Allen,
Appellant,

vs.

City of Waconia,
Respondent.

**Filed May 11, 2026
Affirmed
Cochran, Judge**

Carver County District Court
File No. 10-CV-24-774

Patrick J. Neaton, Neaton & Puklich, P.L.L.P., Chanhassen, Minnesota (for appellant)

Justin L. Templin, Niklaus M. Svendsen, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This case arises from appellant installing landscaping on a city-owned public right-of-way adjacent to appellant's property and respondent's subsequent demand that

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

appellant remove the landscaping. Appellant filed a complaint in district court challenging both respondent's resolution finding that the landscaping violated the city code and respondent's subsequent demand that he remove the landscaping from the right-of-way. Appellant's complaint set forth seven claims. The district court granted summary judgment in favor of respondent on all seven claims. Because there are no disputed issues of material fact and respondent is entitled to judgment as a matter of law, we affirm.

FACTS

Appellant Bruce Allen owns a residential property located in Waconia (the property) that he purchased in 2022.¹ The backyard of the property abuts a 66-foot-wide public right-of-way for Old Beach Road. Old Beach Road is no longer used as a roadway but instead is used as a path for pedestrians and bicycles. The public right-of-way for Old Beach Road is owned by respondent City of Waconia.

In the 2022-2023 time period, Allen undertook an extensive yard and patio landscaping project on the property. Some of Allen's landscaping extended beyond the property line into the public right-of-way for Old Beach Road. The landscaping that extended into the public right-of-way included mulch, rocks, and shrubbery.

The city received a complaint from an unidentified individual regarding Allen's landscaping extending onto city property. After inspecting the property and confirming that Allen installed landscaping on public property, the city sent a letter to Allen indicating

¹ This recitation of facts is derived from the summary-judgment record, viewed in the light most favorable to appellant as the non-movant. *See Windcliff Ass'n, Inc. v. Breyfogle*, 988 N.W.2d 911, 916 (Minn. 2023).

that the landscaping improvements that extended onto the public right-of-way would have to be removed. In response, Allen requested an after-the-fact permit to allow the landscaping to remain in the public right-of-way for Old Beach Road. When Allen installed the landscaping in the right-of-way, he had no knowledge that the city required permission for the type of landscaping improvements that he made.

At a city council meeting on June 17, 2024, the city considered Allen's request for an after-the-fact permit to keep the landscaping in the public right-of-way for Old Beach Road. The city denied Allen's request in a three-to-two vote. Approximately two weeks later, the city council adopted Resolution 2024-142 formally denying Allen's request for an after-the-fact permit. In Resolution 2024-142, the city found that "[a]llowing the improvements to remain in their current configuration and location is not in the best interest of the [c]ity" and that Allen's "approach of 'asking forgiveness rather than permission' for private use of public property is a fundamental alteration from Section 320.01" of the city code. On July 5, a few days after adopting the resolution, the city sent a letter to Allen informing him that the city adopted the resolution and stating that he had 30 days "from the date of this letter to remove all landscape improvements from the public property and restore the area to the satisfaction of the Public Services Department."

After receiving the July 5 letter, Allen sued the city. In his complaint, Allen included seven counts: (I) Resolution 2024-142 is void and unenforceable; (II) inverse condemnation; (III) taking of private property in violation of the Fifth and Fourteenth Amendments; (IV) excessive fines and unusual punishment in violation of the Eighth Amendment; (V) violation of the Equal Protection Clause of the Fourteenth Amendment;

(VI) deprivation of civil rights in violation of 42 U.S.C. § 1983; and (VII) injunctive relief enjoining the city from enforcing its resolution and letter demanding that Allen remove landscaping from the public right-of-way property. The city moved for summary judgment.

The district court granted summary judgment in favor of the city on all counts. After the district court filed its order, Allen filed a letter requesting leave to bring a motion for reconsideration. In his letter request, Allen alleged that he was aware of at least three situations where a landowner installed landscaping on the public right-of-way for a paved trail and he further alleged that the property owners were not required to obtain a permit from the city to install the landscaping. In support of his request, he also included photographs of the three properties with landscaping. The district court denied Allen's request to bring a motion for reconsideration, concluding that Allen "has not shown a compelling circumstance necessitating an opportunity to bring a motion to reconsider."

Allen appeals.

DECISION

Allen argues that the district court erred by granting summary judgment in favor of the city. Allen contends the district court erred when it found the city was entitled to summary judgment on counts I-V and VII of his complaint. Allen does not challenge the district court's grant of summary judgment on count VI (alleging a violation of section 1983).

We review a district court's decision to grant summary judgment de novo. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). Summary judgment is appropriate

where “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01; *see also Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 427 (Minn. 2024). “A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented.” *Rygwall*, 6 N.W.3d at 427. We view “the evidence in the light most favorable to the nonmoving party and resolving all doubts and factual inferences against the moving party.” *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021). But a party opposing a summary judgment motion must rely on more than “mere averments.” *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 172 (Minn. 2021) (quotation omitted).

Additionally, appellate courts generally decline to address issues that are inadequately briefed. *State Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (explaining that “assignment[s] of error based on mere assertion and not supported by any argument or authorities in appellant’s brief [are] waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”). Many of Allen’s arguments challenging the district court’s grant of summary judgment are unsupported by relevant legal authority or analysis. Arguments are deemed forfeited when a “brief contains no argument or citation to legal authority in support of the allegations.” *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Nonetheless, even considering Allen’s arguments on the merits, we conclude that none of the arguments warrant reversal.

I. The city’s resolution is neither void nor unenforceable.

The first count of Allen’s complaint seeks an order from the district court declaring that Resolution 2024-142 is void and unenforceable. Allen contends that the resolution is void and unenforceable because it relies on section 320.01 of the city code, which Allen argues is unconstitutionally vague.

The district court granted summary judgment in favor of the city on this claim based on its conclusion that section 320.01 is not unconstitutionally vague but rather unambiguously provides that it is “unlawful to occupy or otherwise use [a] right-of-way or public grounds for any purpose without first obtaining a permit” from the city.

On appeal, Allen argues the district court erred in its legal analysis. He contends that section 320.01, when read in conjunction with section 320.07, is unconstitutionally vague and ambiguous. He maintains that, at a minimum, there is a fact dispute in this regard precluding the grant of summary judgment. We are not persuaded.

“The constitutionality of an ordinance is a question of law.” *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted). Municipal ordinances are presumed constitutional, and the burden of demonstrating they are unreasonable “rests on the party attacking [their] validity.” *City of St. Paul v. Dalsin*, 71 N.W.2d 855, 858 (Minn. 1955). Courts exercise “extreme caution” before declaring that an ordinance is void for vagueness. *Hard Times Cafe, Inc.*, 625 N.W.2d at 171. An ordinance is void for vagueness if it “defines an act in a manner that encourages arbitrary and discriminatory enforcement,” or is so indefinite that people “must guess at its meaning.” *Humenansky v. Minn. Bd. of Md. Exam’rs*, 525 N.W.2d 559, 564 (Minn.

App. 1994) (citations omitted), *rev. denied* (Minn. Feb. 14, 1995). A person challenging the constitutionality of an ordinance on vagueness grounds must show the ordinance lacks specificity as to their particular circumstances. *Ruzic v. Comm’r of Pub. Safety*, 455 N.W.2d 89, 92 (Minn. App. 1990) (citation omitted), *rev. denied* (Minn. June 26, 1990).

Section 320.01, subdivision 2, of the city code provides in relevant part:

Permit required. No person shall occupy or otherwise use any of the public right-of-way or public grounds in the city for any purpose, nor install or maintain any sign, gas main, utility main, wireless facility, or any equipment in any of said public right-of-way or public grounds, without first having obtained a permit pursuant to the provisions herein.

Waconia, Minn., City Code § 320.01, subd. 2 (2019). As the district court noted, this provision unambiguously requires a person to obtain a permit from the city prior to occupying or otherwise using any public right-of-way or public grounds in the city “for any purpose.” Here, the undisputed facts show that Allen occupied a portion of the public right-of-way for Old Beach Road when he installed landscaping in the public right-of-way. And there is no dispute that Allen installed the landscaping without first obtaining a permit from the city. Because Allen occupied the public right-of-way by installing the landscaping without a permit, Allen’s conduct was prohibited by section 320.01, subdivision 2. There is no ambiguity in this regard.

We are not persuaded otherwise by Allen’s reliance on another provision of the city code—section 320.07, subdivision 3—to argue that section 320.01, subdivision 2, is unconstitutionally vague. Allen asserts section 320.01, subdivision 2, is unconstitutionally

vague because “[t]here is inherent ambiguity between” section 320.01, subdivision 2, and section 320.07, subdivision 3, in its application to the undisputed facts of this case.

Section 320.07, subdivision 3, reads in relevant part:

Duty of property owners to cut grass and weeds and maintain shrubs and trees. Every owner of property abutting upon any street shall cut any grass or weeds growing thereon Every owner of property abutting on any street shall, subject to the provisions herein requiring a permit therefor, trim, cut and otherwise maintain all trees and shrubs from the line of such property nearest to such street to the center of such street.

Waconia, Minn., City Code § 320.07, subd. 3 (2019). Allen’s argument hinges on his contention that the requirement under section 320.07, subdivision 3, that property owners mow or cut grass and weeds on an abutting street is in tension with the requirement to obtain a permit before “occupy[ing] or otherwise us[ing]” a public right-of-way in section 320.01, subdivision 2. He further contends that there is an issue of material fact as to whether Old Beach Road is a street under section 320.07, subdivision 3.

Like the district court, we conclude that the language of section 320.07, subdivision 3, does not create any ambiguity in the language of section 320.01, subdivision 2. The two provisions govern different conduct. Section 320.07, subdivision 3, imposes a limited duty of *maintenance* on property owners. The provision governs only a property owner’s duty to maintain shrubs and trees and to cut grass and weeds. Nothing in the plain language of section 320.07, subdivision 3, permits a landowner to install new landscaping in a public right-of-way. There is no question that the installation of new landscaping materials is not subject to or permitted by section 320.07,

subdivision 3. Consequently, we reject Allen’s argument that section 320.01, subdivision 2, is ambiguous when read in conjunction with section 320.07, subdivision 3.

And, while Allen himself asserts in his brief that he was confused about the applicability of section 320.01 to his situation, he has not demonstrated how the ordinance is vague as applied to his situation. His claim of confusion is not sufficient by itself to preclude the grant of summary judgment. To avoid summary judgment, Allen must show there is a disputed issue of material fact as to whether section 320.01, subdivision 2, is so indefinite that people of reasonable intelligence “must guess at its meaning.” *Humenansky*, 525 N.W.2d at 564. Because the language of section 320.01, subdivision 2, is plain and unambiguous, we discern no basis to reverse the district court’s grant of summary judgment based on Allen’s alleged confusion.

Accordingly, because Allen has not demonstrated that section 320.01, subdivision 2, is unconstitutionally vague, there is no basis to conclude that the resolution is void and unenforceable on that basis as alleged by Allen. We therefore conclude the district court properly granted summary judgment in favor of the city on this claim.

II. The district court properly granted summary judgment on Allen’s takings and inverse-condemnation claims.

We next consider Allen’s arguments regarding his takings and inverse-condemnation claims and his related claim for injunctive relief (counts II, III, and VII). In his complaint, Allen alleged that the city will engage in an unconstitutional taking of property in violation of the United States and Minnesota Constitutions “[i]n the event the [city] proceeds to remove or destroy the landscaping improvements that [Allen] has

installed on the [right-of-way] for Old Beach [Road].” He further alleged that he is entitled to a writ of mandamus ordering the city to commence condemnation proceedings due to the alleged taking and injunctive relief. The district court concluded that (1) Allen’s takings claim is not ripe because there is no evidence that the landscaping has been removed by the city, and (2) even if the claim is ripe, summary judgment is proper because Allen does not have a protected property interest in the public right-of-way for Old Beach Road to support either a takings claim or an inverse-condemnation claim. The district court also denied Allen’s claims for inverse condemnation and injunctive relief.

Allen argues the district court erred when it concluded that his takings claim is not ripe and that he does not have a protectable property interest. He seeks reversal of the grant of summary judgment on counts II, III, and VII on this basis. We are not persuaded.

Both the United States and Minnesota Constitutions prohibit the taking of private property by the government without just compensation. The Fifth Amendment of the United States Constitution provides that private property shall not “be taken for public use, without just compensation.” U.S. Const. amend. V. Similarly, the Minnesota Constitution provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Minn. Const. art. I, § 13.

“The purpose of the Minnesota Takings Clause is to ensure that the government does not require some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Fletcher Props., Inc. v. City of Minneapolis*, 24 N.W.3d 287, 299 (Minn. 2025) (quotation omitted). “Under the Minnesota Takings Clause, a constitutional taking may occur through a physical taking or a regulatory taking.”

Id. at 300. A regulatory taking may occur “when the government goes too far in its regulation, so as to unfairly diminish the value of the individual’s property, thus causing the individual to bear the burden rightly borne by the public.” *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 (Minn. 2007) (quotation omitted). Because “the Takings Clause in the Minnesota Constitution is similar to the Takings Clause in the U.S. Constitution, . . . [w]e have therefore relied on cases interpreting the U.S. Constitution’s Takings Clause in interpreting this clause in the Minnesota Constitution.” *Id.* at 631-32 (citations omitted). And while “[t]he Minnesota Constitution provides broader protections to property owners than does the United States Constitution when property is taken, damaged, or destroyed for a public or governmental use,” Allen does not ask us to interpret the Minnesota Constitution more broadly than the United States Constitution here. *Interstate Cos., Inc. v. City of Bloomington*, 790 N.W.2d 409, 416 (Minn. App. 2010), *rev. granted* (Minn. Jan. 26, 2011), *and appeal dismissed* (Minn. Apr. 27, 2011).

Assuming without deciding that Allen’s takings claim is ripe, his takings and inverse-condemnation claims nonetheless fail as a matter of law. To prevail on a takings claim, Allen must demonstrate that (1) he has a protectable property interest in the subject property and (2) there has been a taking of that property by the government. *Hall v. State*, 908 N.W.2d 345, 352 (Minn. 2018) (explaining that an appellant alleging a takings claim “must show that: (1) they have a property interest protected by the Fifth Amendment; (2) the government took the property interest; (3) the property interest was taken for public use; and (4) just compensation was not paid”). Further, to be entitled to an award in an

inverse-condemnation proceeding, Allen must show that the city has “interfered with ownership, possession, or enjoyment of a property right.” *Oliver v. State ex rel. Comm’r of Transp.*, 760 N.W.2d 912, 915 (Minn. App. 2009), *rev. granted* (Minn. Apr. 29, 2009), *and appeal dismissed* (Minn. Nov. 16, 2009). While Allen asserts he has property rights in the landscaping materials that he installed on the public right-of-way for Old Beach Road, there is no evidence in the record that the city seeks to take or destroy the landscaping materials as alleged by Allen in his complaint. Rather, it is undisputed that the city required Allen to remove the materials himself and that he can retain those materials. In addition, it is undisputed that the right-of-way for Old Beach Road where Allen installed the landscaping materials is public property. Consequently, Allen fails to present any evidence to support his claim that the city has engaged in taking of his private property in violation of either the state or federal constitutions by requiring him to remove the landscaping from the city’s right-of-way. *See Hagen*, 963 N.W.2d at 172 (noting that “the nonmoving party must do more than rest on mere averments to create a genuine issue of material fact that precludes summary judgment” (quotation omitted)).

The only case that Allen cites to support his takings and inverse-condemnation claims is *Vern Reynolds Const., Inc. v. City of Champlin*, 539 N.W.2d 614, 616 (Minn. App. 1995), *rev. denied* (Minn. Dec. 20, 1995). This case is inapposite. *Vern Reynolds* involved a question of whether a subsequent landowner had standing to bring an inverse-condemnation claim against a municipality for construction of storm water facilities on private property. *Id.* The case did not address a situation like this one where a property owner installed landscaping materials *on public property*. *Id.* Allen points us

to no other legal authority to support his takings and inverse-condemnation claims. We therefore conclude the district court properly granted summary judgment on Allen's takings and inverse-condemnation claims as well as his related claim for injunctive relief.

III. The district court properly granted summary judgment on Allen's claim that the city's actions constitute "cruel and unusual" punishment.

Allen next challenges the district court's grant of summary judgment on his claim that the city's actions denying Allen's after-the-fact permit request and requiring Allen to remove the landscaping from the right-of-way amounts to an "excessive fine" and "unusual punishment" in violation of the Eighth Amendment (Count IV). In granting summary judgment on this count, the district court explained that the city's actions requiring removal of the landscape materials do not constitute punishment because removal of the materials "is remedial—not punitive." And the district court further explained that, even if the Eighth Amendment is applicable to the landscaping dispute, Allen's claim fails because he has not demonstrated that removal of the materials would be "grossly disproportional" to the offending conduct of installing the landscaping.

"Identical clauses in the United States and the Minnesota Constitutions prohibit the state from imposing excessive fines." *Thigpen v. Best Home Care LLC*, 29 N.W.3d 205, 211 (Minn. 2025); *see also* U.S. Const. amend. VIII; Minn. Const. art. I, § 5. The Eighth Amendment of the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII; *see also* Minn. Const. art. I, § 5 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted."). "[T]he Eighth

Amendment does not limit an excessive fines challenge to criminal proceedings exclusively.” *Wilson v. Comm’r of Revenue*, 656 N.W.2d 547, 552 (Minn. 2003).

Civil sanctions may implicate the excessive-fines clause of the Eighth Amendment “when the sanction cannot fairly be said to serve a solely remedial purpose but rather can only be explained as serving either retribution or deterrent purposes as well.” *Id.* at 553. A fine “violates the Excessive Fines Clause if it imposes a fine that is ‘grossly disproportional to the gravity of a defendant’s offense.’” *Thigpen*, 29 N.W.3d at 213 (quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)). The Minnesota Supreme Court has explained that the “‘touchstone’ of the Excessive Fines Clause inquiry ‘is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.’” *Id.* (quoting *Bajakajian*, 524 U.S. at 334).

Allen asserts that the city’s demand that he remove the landscape materials from the right-of-way and restore the area is (1) “punishment” and (2) “clearly disproportionate” to the offense in question. His argument fails. Allen provides no legal or evidentiary support for his contention that the demand for removal of landscaping materials is a “punishment” within the scope of the Eighth Amendment, and not a “purely remedial” measure. *Id.* at 212. We agree with the district court that the city’s demand does not constitute punishment because it simply requires Allen to restore the city property back to its original condition.

Additionally, there is no support in the record for Allen’s insistence that the remedy is “clearly disproportionate.” Allen makes passing reference to the fact that returning the city’s property back to its original state “would clearly diminish the value” of his property.

Allen does not support his assertion with any evidence in the summary-judgment record. Nor does he explain how restoring the public right-of-way to its original state makes the remedy clearly disproportionate to his violation of the city code. Therefore, we conclude that the district court properly granted summary judgment on his claim under the Eighth Amendment.

IV. The district court properly granted summary judgment on Allen’s equal-protection claim.

Lastly, Allen argues that summary judgment on his equal-protection claim was inappropriate. In his complaint, Allen alleged the city violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by selectively enforcing section 320.01, subdivision 2, against him. The district court concluded that Allen’s equal-protection claim failed as a matter of law because Allen did not identify any similarly situated property owner whom the city treated more favorably than Allen.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires “that all similarly situated individuals shall be treated alike.” *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 631 (Minn. 2022) (quotation omitted). A litigant bringing a claim under the Equal Protection Clause typically must identify a protected class of which they are a member. *Id.* The Equal Protection Clause also permits a litigant to assert that they are a “class of one.” *See In re Brown*, 28 N.W.3d 486, 505 (Minn. App. 2025) (recognizing that “equal-protection claims may be brought by ‘a class of one’”). But without a showing that “similarly situated persons

have been treated differently,” an equal-protection claim fails. *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (quotation omitted).

Allen argues that the district court erred in granting summary judgment because there is a disputed issue of material fact as to whether the city treated Allen differently than other similarly situated landowners. In support of his argument, he points to photographic evidence of other properties in the city. Based on our review, we agree with the district court that “none of those photographs or properties discussed appear to involve a situation where a property owner had installed landscaping or other improvements on public property.”

Allen draws this court’s attention to one home in particular that he argues is the “most compelling ‘identical’ situation” where there is landscaping “right up to the outer edge of the paved walking trail—without obtaining [c]ity permission.” Even regarding this example, there is no basis to conclude from the photograph alone that the landscaping extends onto public property. And Allen did not provide any evidence of a survey or an affidavit from the homeowner to support his assertion that the landscaping at this home extends past the homeowner’s property line and into the public right-of-way. Because Allen has not provided evidence of any other private property owner who has installed landscaping on public property, much less that the city treated a similarly situated landowner differently than Allen, there is no disputed issue of material fact precluding summary judgment in favor of the city on Allen’s equal-protection claim. Consequently, we conclude Allen’s equal-protection claim fails as a matter of law and the district court properly granted summary judgment in favor of the city on this claim.

Conclusion

In sum, because there are no disputed issues of material fact and the city is entitled to judgment as a matter of law on Allen's claims challenged on appeal, we affirm the district court's grant of summary judgment in favor of the city.

Affirmed.