

**STATE OF MINNESOTA
IN COURT OF APPEALS
A26-0021**

Equity Residential Holdings, LLC, et al.,
Appellants,

vs.

City of Minneapolis,
Respondent.

**Filed August 24, 2026
Certified Question answered in the negative;
Reversed and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-23-8638

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appellants)

Considered and decided by Ede, Presiding Judge; Worke, Judge; and Connolly,
Judge.

SYLLABUS

A plaintiff may not bring a suit for damages based on an alleged violation of the
Due Process Clause of the Minnesota Constitution.

OPINION

CONNOLLY, Judge

Appellants-rental license holders in respondent-city claimed monetary damages from respondent for violations of the Due Process Clause of the Minnesota Constitution. Respondent moved for summary judgment dismissing appellants' claims, arguing, in relevant part, that appellants' constitutional rights had not been violated and that they had been given due process. The district court granted in part and denied in part respondent's motion, concluding that damages were available for violations of the Due Process Clause of the Minnesota Constitution, but not addressing the standard for awarding such damages; denied appellants' summary-judgment motion; and granted in part respondent's summary judgment motion.

Both parties filed cross-appeals under Minn. R. Civ. App. P. 103.03(i). They then moved to certify two questions as important and doubtful: (1) may a plaintiff bring a suit for damages based on an alleged violation of the Due Process Clause of the Minnesota Constitution and, if so, (2) is the standard for municipality liability in such an action the same as that for municipal liability for a violation of federal constitutional rights under 42 U.S.C. § 1983 (2024), namely, the standard set forth under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and its progeny. The district court granted the parties' motion to certify, and appellants filed this interlocutory appeal.

Respondent then filed a notice of related appeal and a statement of the case, listing this case as a prior or pending appeal arising from the same action as this appeal and seeking reversal in part of the district court's denial of summary judgment as it relates to

the claim for damages based on an alleged violation of the Due Process Clause of the Minnesota Constitution.

We first determine that the first certified question is important and doubtful. We then answer that certified question in the negative and conclude that a plaintiff may not bring a suit for damages based on an alleged violation of the Due Process Clause of the Minnesota Constitution. The second question is moot based on our answer to the first question. We also reverse and remand the denial of respondent's motion for summary judgment as it relates to those claims for damages.

FACTS

Appellants are four entities having joint or overlapping ownership, management, and licensing of apartment buildings in respondent City of Minneapolis (the City): Equity Residential Holdings LLC; 2020 Vision Investments LLC; Berkely Holdings Inc.; and SS Quarters Inc. (collectively, the ERH). In 2012, this court affirmed the City's revocation of three rental-dwelling licenses in which Spilos Zorbalas had an interest and declared him ineligible to hold or have interest in rental dwellings for five years. *In re Rental Dwelling License ex rel. Zorbalas*, No. A11-892, 2012 WL 686095, at *4 (Minn. App. March 5, 2012), *rev. denied* (Minn. May 30, 2012).

Zorbalas and Stephen Frenz formed the ERH, each contributing the rental properties under their control. Frenz was chief operating officer of the ERH; Zorbalas was chief executive officer and chief financial officer. Both were responsible only to the managers, who were themselves. Frenz notified the City that he had purchased Zorbalas's properties, obtained rental-dwelling licenses on behalf of the ERH, and provided the City

with a list of the ERH members that did not include Zorbalas. When the City's attorney asked Frenz for names of shareholders of the ERH because "they want[ed] to make sure Zorbalas is not involved," Frenz answered, "We discussed a transfer of ownership that would remove [Zorbalas] from any control. The only difference is that you insisted on him being removed from the equation. I have done exactly as you demanded. Take the gift you have been given and use it wisely." The City relied on these statements and issued renewal licenses for the properties in 2014, 2015, and 2016. Frenz later admitted his statements had not been truthful.

In September 2016, the City became aware that Zorbalas was still involved in rental properties within Minneapolis, sent Frenz a list of licensed properties, and again asked him to provide the names and addresses of all interest holders in the entities that owned the licensed properties, specifically Zorbalas. Frenz submitted an affidavit listing other interest holders, but not Zorbalas. *Id.* In November 2016, the City revoked the rental licenses, and Frenz administratively appealed. *Id.* On August 3, 2017, Noah Schuchman, the director of the City's Department of Regulatory Services (DRS), sent Frenz a letter stating that DRS would forego the renewal of licenses while the adverse license decision was pending, so Frenz would not be able to renew his licenses when they expired on August 31, 2017.

In September 2015, the only other time when the renewal of licenses while a revocation procedure was pending had been an issue, Schuchman had written the license holder that his rental licenses would "continue to be considered valid through the . . . revocation action and any subsequent appeal, if necessary, to the Minnesota Court of

Appeals or [the] Minnesota Supreme Court.” In that case, the name of the license holder was Mahmood Khan.

However, Schuchman’s letter to Frenz said:

In past years, the City’s general practice has been to for[]go renewal of rental license(s) during the pendency of adverse licensing actions. [DRS] intends to follow that practice with regard to Mr. Franz’[s] licenses, particularly because the basis for [DRS’s] revocation action is [DRS’s] assessment that Mr. Frenz and his entities are [i]neligible to hold licenses.

Notwithstanding the foregoing, no adverse action based on the validity of Mr. Frenz’[s] licenses will be taken by [DRS] against Mr. Frenz during the pendency of the revocation action and no renewal forms will be required by the City with regard to Mr. Frenz’[s] licenses until written notice requiring the same is issued by the City.¹ . . .

(Footnote added). The ERH sold all its rental properties in August 2017.

In September 2017, an administrative hearing officer (AHO) concluded that there were grounds to revoke the ERH’s licenses and recommended that they be revoked. The City Council adopted the AHO’s findings and conclusions, and in December 2017, the City approved the revocation of Frenz’s rental-dwelling licenses. This court affirmed. *In re Rental Licensed Revocation Appeal for Stephen Frenz for properties owned by ERH and three other corporations*, No. A18-0123, 2019 WL 1006795, at *6 (Minn. App. Mar. 4, 2019), *rev. denied* (Minn. May 28, 2019).

¹ The district court observed in its order that “the City’s decision to not renew/update [the ERH]’s licenses—and the City’s decision to do the contrary for Khan—could be due to the City’s exercise of discretion, which [is] afforded by the lack of Code provisions requiring the City to renew/update licenses during appeals.”

In 2023, the ERH filed the complaint in this action against the City. Count I sought a declaration that the City had violated the ERH's procedural and substantive due-process rights. Among other things, the ERH sought a declaration that the City violated the ERH's procedural and substantive due-process rights under the Minnesota and U.S. Constitutions and the Takings Clauses of the Minnesota and U.S. Constitutions by temporarily taking the ERH's private property for public use without paying the ERH just compensation. Counts II and III asserted that the City's effective revocation violated the ERH's procedural and substantive due-process rights under the Minnesota and U.S. Constitutions. Count IV asserted that the City's effective revocation constituted a taking in violation of the Takings Clauses of the Minnesota and U.S. Constitutions. Count V was a 42 U.S.C. § 1983 claim asserting due-process violations of the U.S. Constitution.

In July 2023, the City moved to dismiss the complaint and for summary judgment, stating that the August 3, 2017, letter had no legal effect and could not violate the ERH's constitutional rights and that the ERH was afforded substantive and procedural due process. The district court granted the City's motion to dismiss on the takings claims (Count IV and part of Count I). The parties then brought cross-motions for summary judgment. The ERH sought summary judgment on the due-process claims in Counts II and III and, in its brief, sought summary judgment on Count V; the City sought dismissal of all the ERH's remaining claims.

The district court denied ERH's summary-judgment motion as to its procedural due-process claims in Counts I, II, and V, agreed with the City that federal due-process claims must be brought under section 1983, agreed with the ERH that there is a private right to

monetary damages for due-process claims under the Minnesota Constitution, dismissed with prejudice the ERH's federal substantive due-process claim under Count III, reiterated its denial of the ERH's request for reconsideration of the dismissal of the takings claims in Counts I and IV, and denied dismissal of ERH's declaratory-judgment claim, Count I.

ISSUE²

May a plaintiff bring suit for damages based on an alleged violation of the Due Process Clause of the Minnesota Constitution?

ANALYSIS

The standard of review for certified questions and for issues of constitutional interpretation is de novo. *Larson v. Wasemiller*, 738 N.W.2d 300, 303 (Minn. 2007) (certified questions); *In re Blilie*, 494 N.W.2d 877, 881 (Minn. 1993) (constitutional interpretation). The standard of review for whether a certified question is important and doubtful is also de novo. *Siewert v. N. States Power Co.*, 757 N.W.2d 909, 914 (Minn. App. 2008), *aff'd*, 793 N.W.2d 272 (Minn. 2011); *see also Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 180-81 (Minn. 1988) (applying de novo review to determine whether a question is important and doubtful).

The Minnesota Rules of Civil Appellate Procedure provide that an appeal may be taken to the Court of Appeals if

² This opinion does not address the second question regarding the standard for municipal liability under the state constitution because the district court did not address it. *See Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 44 (Minn. App. 2014) (“We cannot answer a certified question which is not first decided and explained by the [district] court.” (quotation omitted)). We note that our conclusion in this regard is consistent with the position of the parties, who agreed at oral argument that we need not reach the second certified question. Moreover, since we answer the first question in the negative, the second question is moot.

the [district] court certifies that the question presented is important and doubtful, from an order which denies a motion for summary judgment. Appellate courts must determine whether the district court properly certified the question for appellate review. Not every vexing question is important and doubtful.

The Minnesota Supreme Court has provided factors to consider in determining whether a question is important. A question is important if (1) it will have statewide impact, (2) it is likely to be reversed, (3) it will terminate lengthy proceedings, and (4) the harm inflicted on the parties by a wrong ruling by the district court is substantial. A question is doubtful only if there is no controlling precedent. That the question is one of first impression is not, however, of itself sufficient to justify certification as doubtful; the question should be one on which there is substantial ground for a difference of opinion.

Aschel Cos., Inc. v. County of Dodge, 10 N.W.3d 877, 881-82 (Minn. App. 2024) (quotations and citations omitted), *rev. granted* (Minn. Dec. 17, 2024), *and ord. granting rev. vacated* (Minn. Apr. 23, 2025).

The first certified question asks us to consider whether there is a claim for damages from a violation of the Due Process Clause of the Minnesota Constitution. We conclude that this question is important and doubtful. The question is important because resolution of the certified question will impact constitutional claims statewide. The question is also doubtful because no caselaw from the Minnesota Supreme Court or Minnesota Statutes explicitly addresses the question.

In the memorandum supporting its motion for summary judgment, the City argued that “there is no private right to monetary damages for deprivation of due process rights.” The district court disagreed, concluding that there is a “private right to monetary damages

for due process claims under [the] Minnesota Constitution.” For this conclusion, the district court relied on an inference from one sentence in *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 792 (Minn. 1989): “When procedural due process violations occur, including total denial of constitutionally-required predeprivation hearings, damages are not presumed[;] rather[,] claimants must prove the procedural denial caused damages.” The district court quoted this sentence, then inferred from it “that ‘damages’ [for a violation of due process] are recoverable if ‘proven.’”

But we conclude that the district court’s reliance was misplaced for two reasons. First, *Snyder* is distinguishable on a crucial point: the appellant in that case alleged “negligence, estoppel and a deprivation of his constitutional rights in violation of 42 U.S.C. § 1983,” which specifically provides for a private cause of action. *Snyder*, 441 N.W.2d at 783. The ERH did not and could not allege a violation of the Due Process Clause in the Minnesota Constitution in its section 1983 claim. Both *Snyder* and the Supreme Court case on which it is based, *Carey v. Phipps*, 435 U.S. 247, 264 (1978), concern whether damages under section 1983 must be proved: “[C]laimants must prove the procedural denial caused damages.” *Snyder*, 441 N.W.2d at 792 (citing *Carey*, 435 U.S. at 259-64). Neither case concerns whether damages for due-process violations are available under state constitutions.

Second, the district court’s conclusion that there is a right to damages for violation of the Minnesota Constitution conflicts with other caselaw. See, e.g., *Bird v. State, Dep’t of Pub. Safety*, 375 N.W.2d 36, 40 (Minn. App. 1985) (“[S]ince the Minnesota Supreme Court has not as yet recognized a tort [for deprivation of due process] we decline to do so

here.”); *Mitchell v. Steffen*, 487 N.W.2d 896, 905-06 (Minn. App. 1992) (noting that “the Minnesota Supreme Court has not yet recognized [a] tort for violation of due process rights” and that “even if such an action was recognized in Minnesota,” relief in the form of money damages is otherwise barred under the doctrine of sovereign immunity), *aff’d*, 504 N.W.2d 198 (Minn. 1993).

Federal courts have stated that Minnesota does not have a private cause of action for constitutional violations. *See, e.g., Guite v. Wright*, 976 F. Supp. 866, 871 (D. Minn. 1997) (dismissing claims because “plaintiff admitted during the hearing on this motion that there is no private cause of action for violations of the Minnesota Constitution”), *aff’d on other grounds*, 147 F.3d 747 (8th Cir. 1998); *Ben Oehrleins, Inc. v. Hennepin Cnty.*, 922 F. Supp. 1396, 1400 (D. Minn. 1996) (“Minnesota does not recognize a damage remedy for violations of Art. 1, § 7, of the Minnesota Constitution.”), *rev’d on other grounds*, 115 F.3d 1372 (8th Cir. 1997). Thus, state and federal Minnesota caselaw clearly indicates that the district court’s reliance on *Snyder* to infer that there is a private right to monetary damages for due-process claims under the Minnesota Constitution was misplaced.

We have also observed that “the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987). The supreme court has “the power to recognize and abolish common law doctrines” and “to define common law torts and their defenses.” *Alonzo v. Menholt*, 9 N.W.3d 148, 154 (Minn. 2024) (quotations omitted). But “[t]his court, as an error[-]correcting court, is without authority to change the law.” *Lake George Park, L.L.C.*

v. IBM Mid-America Emps. Fed. Credit Union, 576 N.W.2d 463, 466 (Minn. App. 1998), *rev. denied* (Minn. June 17, 1998).

DECISION

We answer the first certified question in the negative, holding that a plaintiff may not bring a suit for damages based on an alleged violation of the Due Process Clause of the Minnesota Constitution; we reverse the district court's contrary determination and its denial of the City's motion for summary judgment in its favor on the ERH's damages claims for alleged violation of the Minnesota Constitution's Due Process Clause, and we remand for further proceedings not inconsistent with this opinion.

Certified question answered in the negative; reversed and remanded.