



John C. Martin
Bryson C. Smith
Holland & Hart LLP

Richard E. Schwartz
Crowell & Moring LLP

January 3, 2020

The Honorable John H. Guthmann
Ramsey County District Court
1470 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102

Re: Ramsey County Court File No. 62-CV-19-4626

Dear Judge Guthmann:

On behalf of the Minnesota Pollution Control Agency, I write in response to Relators' letter of December 30, 2019, regarding MPCA's December 27, 2019 Motion for Partial Summary Judgment to Narrow and Define Issues for Hearing. In this motion, MPCA seeks a legal ruling on a few purely legal determinations that require no factual development. Thus, they are appropriate for summary disposition.

MPCA filed this motion pursuant to this Court's direction that "[a]ll motions including those *in limine* shall be served and filed with the Court Administrator . . . no later than December 27, 2019 or the motion shall be barred." Amended Order Setting Evidentiary Hearing, ¶ 11 (Nov. 19, 2019) (emphasis added). The Court's plain language should be construed to convey exactly what it says: that "all" motions are to be filed by the specified date. The Court did *not* limit the types of motions that could be filed, nor did the Court impose a different deadline for motions that would summarily dispose of issues on legal grounds.

Relators suggest that this Court is not empowered to hear the motion for a variety of reasons, none of which is well-founded.

First, Relators contend that MPCA's motion is inconsistent with the Court of Appeals' transfer order. To the contrary, MPCA's motion is entirely consistent with the transfer order, which transferred this matter to this Court "for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure." Transfer Order at 4 (June 25, 2019). Notably, the transfer order does not define the term "irregularities in procedure." Thus, the Court of Appeals left it to this Court to make its "determination" as to the presence of any "irregularities in procedure." So, necessarily, this Court must determine what constitutes such irregularities and, in the instant motion, MPCA has presented strictly legal issues as to the meaning of the term. By ruling on these issues as a matter of law, the Court can streamline the presentation of evidence during the evidentiary hearing, thereby conserving the resources of both



January 3, 2020
Page 2

the Court and the parties and helping to ensure that all relevant evidence can be presented in the nine days allotted.¹

Second, Relators argue that “MPCA cites no authority in their PSJ Motion that would allow MPCA to submit a dispositive motion where the Court has not provided for such motions.” Relators’ Ltr. at 2. Thus, Relators are implying that the Court needed to grant MPCA express permission to file a dispositive motion before the motion can be heard. Relators’ Ltr. at 2. This position is certainly without precedent: Minnesota law does not require “permission” to file a dispositive motion and Relators cite no authority for their novel argument. Indeed, Minnesota law encourages resolution of issues prior to trial. *See, e.g.*, Minn. R. Civ. P. 56.01 (“The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.”).²

Summary disposition of issues increases efficiency, and this case is no exception. This Court should not be saddled with hearing evidence on issues that cannot conceivably be considered procedural irregularities. For example, MPCA’s decision to follow the Memorandum of Agreement with EPA cannot constitute a “procedural irregularity,” and ruling on EPA’s conduct is well beyond the jurisdiction of this Court. These are straightforward legal issues that can be resolved independently of any factual development, thereby narrowing this case in a way that promotes efficiency.

Here, Relators make no effort to specify factual elements that would prevent the Court from ruling on the issues raised in MPCA’s motion. Minnesota law has long recognized that a non-moving party “must present specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” *Ahlm v. Rooney*, 143 N.W.2d 65, 68 (Minn. 1966) (quoting Minn. R. Civ. Pro. 56.05);³ *Matter of Carlson*, No. A18-1649, 2019 WL 4745369, at *2 (Minn. Ct. App. Sept. 30, 2019) (“When a summary-disposition motion is made and supported, the nonmoving party must present specific facts showing that a genuine issue of material fact exists.”). Even in cases which, like the instant action, are not governed by the Minnesota Rules of Civil Procedure, summary disposition of legal issues is still encouraged. *E.g.*, Minn. R. 1400.5500(K) (authorizing ALJ in a contested

¹ Relators misleadingly assert that “MPCA seeks judgment on claims the Court of Appeals rejected in transferring this matter.” Relators’ Ltr. at 2. In fact, the Court of Appeals plainly did not make such a decision; rather, the Court of Appeals instructed this Court to determine whether there were any irregularities in procedure.

² While the Minnesota Rules of Civil Procedure do not apply, just as Rule 26 and precedent under the Rule guides this Court’s analysis of attorney work product, Rule 56 serves as a guide to summary disposition of issues in this proceeding.

³ Rule 56.05 has since been amended, but there is nothing to suggest that this principle no longer applies.



January 3, 2020
Page 3

case to “recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact . . .”).

Third, Relators argue that MPCA’s motion is untimely pursuant to the Minnesota General Rules of Practice. Relators’ Ltr. at 2-3. This argument is a non-starter, as the December 27, 2019 filing date plainly accords with this Court’s order prescribing that date as the deadline to file “[a]ll motions.” Amended Order Setting Evidentiary Hearing, ¶ 11 (Nov. 19, 2019). Relators’ implication that the General Rules of Practice prevented this Court from setting this deadline is unfounded. In fact, Minn. Gen. R. Prac. 115(b) expressly authorizes this Court to “modify the time limits” prescribed by Rule 115.01(b) as long as the time limits remain consistent with Minn. R. Civ. P. 56.02.⁴ Moreover, Relators’ timeliness argument is ironic given that, if this Court’s scheduling order were somehow invalid, then Relators’ own pre-trial motions would be barred as untimely.

Fourth, Relators miss the mark with their suggestion that a ruling on the instant motion would violate Relators’ due process rights. Relators’ Ltr. at 3. This motion concerns strictly legal issues; it requires no factual development and, in turn, no additional discovery upon which the Court’s ruling could depend. Consequently, due process is not implicated. *See, e.g., Oliver v. Noxubee Cnty. Tax Dep’t*, 200 F.3d 815 (5th Cir. 1999) (“A litigant is not deprived of due process when a court grants summary judgment because the litigant has failed to demonstrate a genuine issue of material fact.”).

Finally, Relators summarily claim that MPCA’s motion is somehow prejudicial because Relators were caught “off-guard” by it. Relators’ Ltr. at 3. Again, MPCA complied with this Court’s scheduling order, and Relators have cited no authority requiring that a party notify the other side prior to filing a dispositive motion. Relators’ argument is particularly unconvincing given the flurry of unannounced motions that Relators themselves filed on the same day that MPCA filed the instant motion.

In short, MPCA’s dispositive motion was timely filed and raises legal issues for which summary disposition is intended and appropriate. The motion therefore should be heard.

Sincerely,

/s/ John C. Martin

John C. Martin
Bryson C. Smith
Holland & Hart LLP

⁴ Minn. R. Civ. Pro. 56.02 prescribes for dispositive motions a 14-day limit that has been met.



January 3, 2020
Page 4

/s/ Richard E. Schwartz
Richard E. Schwartz
Crowell & Moring LLP

cc: All Attorneys of Record