STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1762

Margots Kapacs,
Appellant,

vs.

Kelly Umhoefer, et al.,
Respondents.

Filed June 19, 2017
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CV-15-14496

Margots Kapacs, Minneapolis, Minnesota (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney, Minneapolis, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Pro se appellant landlord challenges the district court's handling of his claims relating to respondent city's revocation of his rental license. We affirm.

FACTS

Appellant Margots Kapacs held a rental license pursuant to Minneapolis, Minn., Code of Ordinances (MCO) § 244.1810 (2012),[1] which authorized him to rent out two dwelling units in a Minneapolis duplex. Kapacs's rental-license application listed Kapacs as both the owner-applicant and the person responsible for maintaining and managing the rental property.[2] In late July 2014, Kapacs's license application indicated that his "residence or business street address" was the address of another residential property in Minneapolis (hereinafter "address on file").

On July 21, 2014, respondent City of Minneapolis Department of Regulatory Services received a complaint alleging code violations at the rental property. On July 24, respondent Kelly Umhoefer, a department housing inspector, mailed notice of an August 8 inspection of the rental property to Kapacs at a P.O. Box address that he had provided to Umhoefer by phone.[3] Kapacs complied with the inspection, during which Umhoefer found code violations. Umhoefer gave Kapacs until September 30 to correct the violations.

On October 16, 2014, Umhoefer mailed notice of an October 21 inspection of the rental property to Kapacs at both the address on file and the P.O. Box address, warning that

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[1] Because individual provisions of the Minneapolis Code of Ordinances are often revised multiple times each year, we cite to the year in which each specific provision was most recently revised.

[2] Under MCO § 244.1840(3) (2015), a rental-license applicant must "identify in the application, by name, residence or business street address, telephone number, and date of birth, a natural person who is actively involved in, and responsible for, the maintenance and management of the premises."

[3] Rental licensees must permit inspection of the licensed premises "to verify compliance with the housing maintenance code, and the fire, health, zoning and building codes of the city." MCO § 244.2000(c) (2015).

inspection could be accomplished by warrant if Kapacs failed to comply. The same day, Umhoefer procured an administrative search warrant authorizing entry of the rental property for inspection. Kapacs did not appear at the scheduled time, and the warrant was executed. Umhoefer's inspection revealed continuing code violations, and she issued an administrative citation to Kapacs.

On October 30, 2014, Umhoefer mailed notice of a November 18 inspection of the rental property to Kapacs at the address on file. Umhoefer attempted to inspect the rental property at the scheduled time, but Kapacs did not appear. The next day, Umhoefer mailed notice of a December 4 inspection of the rental property to Kapacs at the address on file. Umhoefer attempted to inspect the rental property at the scheduled time, but again Kapacs did not appear.

On December 5, 2014, Umhoefer mailed a Notice of Director's Determination of Non-Compliance (DDNC) to Kapacs at the address on file, pursuant to MCO § 244.1930 (2013). The DDNC stated that the rental property was in violation of licensing standards because Kapacs had failed to permit inspection, and it directed Kapacs to permit inspection no later than December 18. Having heard nothing from Kapacs in response to the DDNC, Umhoefer initiated the process to revoke Kapacs's rental license on December 30.

On January 5, 2015, the department mailed a notice of revocation of Kapacs's rental license to him at the address on file, pursuant to MCO § 244.1940 (2011). The rental property also was placarded with a notice of license revocation on or about that date. On March 5, Kapacs filed an administrative appeal of the license revocation. On April 3, the department mailed notice of an April 21 license revocation hearing to Kapacs, who

acknowledges receiving the notice. An administrative hearing officer conducted the revocation hearing as scheduled; Kapacs did not appear, and the hearing officer recommended revocation of Kapacs's rental license.

On April 27, 2015, the department mailed notice of a May 5 city council hearing to Kapacs at both the address on file and the P.O. Box address. The notice stated that the matter of Kapacs's license revocation would be addressed at the hearing and that Kapacs would be given an opportunity to speak. Kapacs appeared at the hearing and spoke before the city council. On or about June 1, the department gave notice of the city council's final decision to revoke Kapacs's rental license; this notice was mailed to Kapacs at both the address on file and the P.O. Box address.

Kapacs then sued the department and Umhoefer (collectively, "the city"), raising various pro se claims in connection with the revocation of his rental license. The city moved to dismiss for lack of subject-matter jurisdiction. Kapacs filed a response, a first amended complaint, and a letter to the district court asking whether further action was necessary to amend the original complaint. The court apparently did not respond to Kapacs's letter and issued an order granting in part the city's motion to dismiss Kapacs's claims. After a bench trial on Kapacs's one remaining claim, the court issued findings of fact, conclusions of law, and an order for judgment against Kapacs. This appeal followed.

D E C I S I O N

Kapacs first asks us to reverse the district court's dismissal of most of his claims for lack of subject-matter jurisdiction on the ground that jurisdictional dismissal resulted from the court's improper refusal to allow him to amend the original complaint. The city

implicitly concedes that Kapacs was entitled to amend the original complaint but asserts that jurisdictional dismissal was based on the allegations in the first amended complaint. The city argues in the alternative that any error here is harmless because jurisdictional dismissal is warranted on either the original complaint or the first amended complaint.

"A party may amend a pleading once as a matter of course at any time before a responsive pleading is served . . . ." Minn. R. Civ. P. 15.01. A district court has no discretion to refuse to allow amendment of a pleading before service of a responsive pleading. *Sharkey v. City of Shoreview*, 853 N.W.2d 832, 835-36 (Minn. App. 2014). A rule 12.02 motion to dismiss is not a responsive pleading within the meaning of rule 15.01. *Hardin Cty. Sav. Bank v. Hous. & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 189 (Minn. 2012); *Sharkey*, 853 N.W.2d at 835.

In this case, Kapacs filed the first amended complaint after the city moved for dismissal under rule 12.02(a) but before the city answered the original complaint. Kapacs therefore had an absolute right to amend the original complaint, and the district court was required to resolve the city's motion to dismiss based on the allegations in the first amended complaint. *See Sharkey*, 853 N.W.2d at 835-36 (concluding that district court erred by refusing to allow appellant to amend complaint after respondents moved for dismissal but before respondents answered complaint and erred by declining to consider appellant's amended complaint instead of appellant's original complaint, on respondents' motions to dismiss).

The record shows that the district court properly resolved the city's motion to dismiss based on the allegations set forth in the first amended complaint. In its order

granting in part the city's motion to dismiss, the court briefly summarized Kapacs's allegations against the city, citing to the first amended complaint. The order neither cites to the original complaint nor refers to any allegation or request for relief that appears only in the original complaint. And in a later order addressing Kapacs's attempt to disqualify the district court judge for her purported failure to accept the first amended complaint, the court stated that it had "accepted Plaintiff's First Amended Complaint *as a matter of course*" and determined that "Plaintiff's assertion that the Court failed to accept the First Amended Complaint is without any basis in fact or law." Because we conclude that jurisdictional dismissal did not result from a refusal by the district court to allow Kapacs to amend the original complaint, reversal is not warranted on that ground.

Kapacs also asks us to reverse the district court's jurisdictional dismissal on the merits, conceding that the revocation of his rental license was a quasi-judicial decision but arguing that the district court nevertheless has subject-matter jurisdiction over the claims in the first amended complaint. In response the city essentially adopts the reasoning and conclusion of the district court, which stated:

> [T]he license revocation at issue here was a quasi-judicial decision. Accordingly, the Minnesota Court of Appeals has exclusive jurisdiction over the City's decision to revoke Plaintiff's license. Thus, Plaintiff's claims stemming from the license revocation decision are dismissed for lack of jurisdiction, with one exception: Plaintiff's constitutional challenge to Minneapolis Code of Ordinances section 244.1840 . . . .

Appellate courts review subject-matter jurisdiction de novo. *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016).

A quasi-judicial decision is "reviewable only through the filing of a petition for a writ of certiorari with the court of appeals." *Id.* at 609. Likewise, "when the underlying basis of [a] claim requires review of a municipality's quasi-judicial decision to determine its validity—that is, whether the decision was unreasonable, arbitrary, or capricious—then the exclusive method of review is by certiorari." *Id.* at 610 (quotation omitted). In other words, a claim that arises from a quasi-judicial decision (derivative claim) must be raised on certiorari appeal if "resolution of the claim . . . depend[s] on the validity of the quasi-judicial decision." *Id.*

Certiorari review of a derivative claim is exclusive only if adjudication of the claim "requires an inquiry into the validity of a quasi-judicial decision." *Id.* at 611. The question is not whether "an inquiry into the facts surrounding the [derivative] claim[] would involve an inquiry into the quasi-judicial decision[]." *Id.* at 609-10 (quotation omitted). That is, mere "overlap in the facts" underlying a quasi-judicial decision and a derivative claim does not divest the district court of jurisdiction over the derivative claim. *Id.* at 612. And the question is not whether the derivative claim is "separate and distinct" or "stand[s] alone" from the quasi-judicial decision. *Id.* at 608, 612 (quotation omitted). But where the derivative claim seeks to "undo," modify, or directly compensate the plaintiff for the negative effects of a quasi-judicial decision, the claim may be no more than "creative pleading to bring a veiled challenge to the validity" of the quasi-judicial decision. *Id.* at 612-13 (quotation marks omitted).

In this case, Kapacs makes the following claims in his first amended complaint: (1) the department violated his federal rights of due process and equal protection by

(a) failing to give him sufficient notice of two of the inspections and the administrative search warrant, (b) refusing to accept his P.O. Box address, and (c) failing to give him sufficient notice and opportunity to be heard before revoking his rental license; (2) the department "committed fraud" by (a) failing to disclose certain facts during the license revocation hearing and (b) making intentional misrepresentations during that hearing; (3) the department "acted arbitrarily and capriciously" by "shut[ting] down the access" to the rental property; (4) the department "acted with intentions to harass" him and violated his right of equal protection by (a) requesting inspections that were "impossible" and (b) requiring eight inspections in less than a year; and (5) the inspector "commit[ed] fraud" by (a) intentionally mailing notices to the wrong address, (b) attempting notice by mail to the exclusion of notice by e-mail and/or phone, and (c) intentionally giving him insufficient notice of the warrant. Construed liberally, Kapacs's first amended complaint requests a judgment declaring that MCO § 244.1840(3) is unconstitutional on its face and a money judgment in the amount of his "missed rent income or all losses resulting [from] . . . repossess[ion]" of the rental property "for non mortgage payments."

Kapacs's request for declaratory relief logically connects with claim (1)(b), i.e., Kapacs's constitutional attack on the department's refusal to accept his P.O. Box address. Because adjudication of a facial challenge to the constitutionality of an ordinance involves no consideration of any application of that ordinance to the plaintiff, adjudication of claim (1)(b) requires no inquiry into the validity of the license revocation, and the district court correctly concluded that it has jurisdiction over that claim.

Kapacs's request for monetary relief, as his only other request for relief on the merits, exposes the rest of his claims as veiled challenges to the validity of the license revocation. Kapacs's loss of income from the rental property, his alleged inability to pay the mortgage on the rental property, and any foreclosure on the rental property are negative effects of the license revocation. Thus, while each of the dismissed claims alleges some wrongdoing short of invalid license revocation, Kapacs does not seek redress of that purported wrongdoing. Instead, he seeks direct compensation for the negative effects of the license revocation itself, on an implied theory that the wrongdoing invalidates the license revocation and entitles him to compensation for its negative effects. Adjudication of the dismissed claims therefore requires inquiry into the validity of the license revocation, and the district court correctly concluded that it has no jurisdiction over those claims.

Finally, Kapacs assigns reversible error to the district court's ruling against him on the merits of claim 1(b), arguing that MCO § 244.1840(3) is facially unconstitutional as violative of federal due process and equal protection. The city responds that Kapacs failed to meet his burden to prove that the ordinance is unconstitutional, pointing to certain evidence presented at trial.

"A city ordinance is presumed constitutional, and the burden of proving that it is unconstitutional is on the [challenging party]." *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (quotation omitted). That burden is a "heavy" one: the challenging party must "demonstrat[e] beyond a reasonable doubt that the [law] violates some constitutional provision." *Singer v. Comm'r of Revenue*, 817 N.W.2d 670, 675 (Minn. 2012). "Constitutional interpretation presents a legal question, which [appellate

courts] review de novo." *McCaughtry*, 831 N.W.2d at 521. "However, findings of fact made by the district court in deciding constitutional questions are reviewed for clear error." *State v. McCormick*, 835 N.W.2d 498, 509 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).

"When legislation is not based on a suspect class and does not infringe on a fundamental right, it need only be rationally related to a legitimate governmental purpose in order to withstand federal equal protection or substantive due process challenges." *Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281, 288 (Minn. App. 1996) (citing *Fed. Commc'ns Comm'n v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313, 113 S. Ct. 2096, 2101 (1993), and *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15, 96 S. Ct. 2882, 2892 (1976)), *review denied* (Minn. Oct. 29, 1996). "Legislation will fail rational basis review only when it rests on grounds irrelevant to the achievement of a plausible governmental objective." *Id.* (citing *Heller v. Doe*, 509 U.S. 312, 323, 113 S. Ct. 2637, 2645 (1993)).

Here, the challenged ordinance provides in relevant part:

> Every applicant [for a rental license] . . . shall identify in the application, by name, *residence or business street address*, telephone number, and date of birth, a natural person who is actively involved in, and responsible for, the maintenance and management of the premises. . . . *A post office box or commercial mail receiving service are not acceptable as an address for such a person.*

MCO § 244.1840(3) (emphases added). Another ordinance provides that notices relating to rental licenses "shall be deemed sufficient if sent by first class mail to the owner or owner's designated agent at the address specified in the last license application." MCO

§ 244.2010 (2013). Thus, an owner-licensee who also maintains and manages the rental property is prohibited from using a P.O. Box as his mailing address for notices relating to his license.

At trial in this case, the supervisor of the department's housing division testified. The district court summarized the supervisor's testimony as follows:

> The supervisor . . . testified that post office boxes are not allowed as contact addresses because the city often has to send out emergency notifications, such as loss of heat in the wintertime. These emergency notifications require that there be a local person checking mail daily who can respond promptly. The City's experience is that phone numbers are often out of date and, in any event, a written record is required. The City is just beginning to use email notifications. For that reason, the ordinance also requires that either the owner of a licensed rental property or a contact person live within the 16 county metropolitan area. Allowing a post office box as the contact address would make it easier to ignore that requirement. The City's rental licensing program has included this requirement since it started in 1990. [The supervisor] testified that he believes this is a common requirement of city rental license programs.

The court accordingly found that the P.O. Box restriction "has been in place since 1990, applies to all applicants for a rental license, and is a common requirement of city licensing programs." The court further found that the purpose of the P.O. Box restriction is to "ensur[e] prompt responses from local property managers to issues involving rental property, especially emergency issues."

Kapacs does not challenge those findings on appeal; neither does he argue that the identified purpose of the P.O. Box restriction is not a legitimate one. Rather, he argues that the P.O. Box restriction is not rationally related to that purpose because mail is a relatively

slow means of communication and because a property manager will not necessarily retrieve his mail from a mailbox at a residential or business street address more quickly than from a P.O. Box.

But "a state [law] need not be so perfectly calibrated in order to pass muster under the rational-basis test." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 85, 108 S. Ct. 1645, 1654 (1988); *see Walker v. Hartford Life & Accident Ins. Co.*, 831 F.3d 968, 978 (8th Cir. 2016) ("Rational-basis review does not require a perfect or exact fit between the means used and the ends sought." (quotation and citation omitted)); *see also ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 423 (Minn. 2005) ("[I]mperfection is not a constitutional defect." (quotation omitted)). And lawmakers "may implement [a] program step by step[,] adopting regulations that only partially ameliorate a perceived evil and referring complete elimination of the evil to future regulations." *ILHC*, 693 N.W.2d at 423 (quotations omitted).

Thus, while Kapacs is correct that the P.O. Box restriction does not *ensure* that property managers will respond promptly to rental-property issues, it need not do so to pass constitutional muster. The P.O. Box restriction eliminates property managers' reliance on a means of communication that is likely to be slower than other available means of communication. The restriction thereby promotes property managers' prompt response to rental-property issues, i.e., is rationally related to a legitimate purpose. We conclude that Kapacs did not meet his heavy burden to prove that MCO § 244.1840(3) is unconstitutional on its face.

Affirmed.