STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1639

Almir Puce,
Appellant,

vs.

City of Burnsville, MN,
Respondent.

Filed May 19, 2025
Affirmed
Schmidt, Judge

Dakota County District Court
File No. 19HA-CV-19-2127

Stephen W. Cooper, Stacey R. Everson, The Cooper Law Firm, Chartered, Minneapolis, Minnesota (for appellant)

Paul Donald Reuvers, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Almir Puce challenges the district court's order granting summary judgment to respondent City of Burnsville after it deemed his lawsuit moot. Because the district court did not err in determining that Puce's lawsuit was moot and that no exception to the mootness doctrine applies, we affirm.

FACTS

Puce applied to the city for approval to redevelop property for commercial use. Pursuant to a city ordinance that requires land developers to contribute land or money for use as public parks—Burnsville, Minn., Code § 11-4-8(A), (E) (2013)[1]—the city council approved Puce's application, which included a $11,700 park dedication fee.

Puce sued the city to challenge the park dedication fee, alleging that the fee violated several statutory provisions. As litigation progressed, Puce also argued that the fee violated the Takings Clause of the Fifth Amendment.

After a trial, the district court rejected Puce's claims and allowed the city to impose the park dedication fee. Puce appealed. We reversed the district court, concluding that the city's imposition of the park dedication fee "was unreasonable, arbitrary, and capricious" in violation of a state statute. *Puce v. City of Burnsville*, 971 N.W.2d 285, 296 (Minn. App. 2022), *rev'd*, 997 N.W.2d 49 (Minn. 2023).

The supreme court granted a petition for further review. *See Puce*, 997 N.W.2d at 52. For the first time, the city asserted that Puce's claim was moot because the city's approval of the plat became void when Puce failed to adhere to a city ordinance that required him to record his plat in Dakota County within one year after the city's approval. *See* Burnsville, Minn., Code § 11-2-4(D) (2013). However, at oral argument, the city urged the supreme court "to nonetheless reach the merits." *Puce*, 997 N.W.2d at 52 n.1. The

[1] The city adopted the ordinance pursuant to a statute that enables municipalities to pass regulations requiring "a reasonable portion of the buildable land . . . be dedicated to the public or preserved for public . . . parks" or "to accept a cash fee . . . for some or all of the new lots created in a subdivision." Minn. Stat. § 462.358, subd. 2b (2024).

supreme court then addressed the merits of whether the park dedication fee violated the state statute, reversed our decision, and remanded the case to the district court. *Id.* at 62.

On remand, Puce argued that the district court should declare the park dedication fee unconstitutional. The city, however, returned the fee to Puce because he had failed to record his plat within the one-year timeframe as required by the ordinance. The city then moved for summary judgment, arguing that the dispute was moot.

The district court granted the city's motion for summary judgment, determining that that Puce's lawsuit was moot and that no exceptions to mootness applied. Puce appeals.

DECISION

On appeal, Puce argues that the district court erred by dismissing his lawsuit as moot because his constitutional claim qualifies for multiple exceptions to the mootness doctrine. We review a district court's grant of summary judgment de novo. *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 371-72 (Minn. 2022).

I. The city did not forfeit the mootness argument.

Before we address mootness, we must first address Puce's preliminary argument that the city forfeited its mootness arguments by failing to raise the issue before the initial appeal. We conclude that Puce's forfeiture argument lacks merit.

Since an actual controversy is "a constitutional prerequisite" to a court's exercise of jurisdiction, both district courts and appellate courts will dismiss a case as moot even if a party failed to raise the issue in district court. *See In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989) ("[A court] must consider the mootness question even if ignored by the parties."). Although the city did not raise the issue of mootness until late in the

proceedings, Puce cites no case whereby a party forfeited the issue of mootness by failing to raise the issue sooner. Instead, courts have a continuing obligation to ensure that they have jurisdiction over a dispute. *Id.* The city's failure to litigate mootness sooner does not preclude us from reviewing the district court's mootness ruling in this second appeal.[2]

II. Puce's claim is moot and no exception applies.

Puce argues that the district court erred in dismissing his lawsuit because several exceptions to the mootness doctrine apply. A case becomes moot when "an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Because an actual controversy is "a constitutional prerequisite to the exercise of jurisdiction," courts generally dismiss matters that are moot. *Schmidt*, 443 N.W.2d at 826. But mootness "is a flexible discretionary doctrine, not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved." *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984). We review mootness rulings de novo. *Snell v. Walz*, 985 N.W.2d 277, 283 (Minn. 2023).

Puce argues the following exceptions apply: (1) he suffered collateral consequences resulting from the judgment, *see Winkowski v. Winkowski*, 989 N.W.2d 302, 308 (Minn. 2023); (2) the city is likely to repeat its constitutional violations while evading review, *see Dean*, 868 N.W.2d at 5; (3) his constitutional claim presents issues of statewide significance that merit immediate review, *see Walz*, 985 N.W.2d at 284; and (4) the city voluntarily stopped its unlawful conduct, *see id.* We address each argument in turn.

[2] We also note that the city returned the fee to Puce after the supreme court issued its decision. The district court's mootness ruling was premised, in part, on this additional fact.

A. Collateral-consequences exception does not apply.

First, Puce argues that the collateral-consequences exception to mootness applies. "Where [a party] produces evidence that collateral consequences actually resulted from a judgment, [a matter] is not moot." *Winkowski*, 989 N.W.2d at 308 (quotation omitted).

The Minnesota Supreme Court has applied the collateral-consequences exception to harms arising from "criminal convictions or civil commitments," but has declined to expand the exception beyond those contexts. *Quinn v. LMC NE Minneapolis Holdings, LLC*, 985 N.W.2d 571, 575 (Minn. 2023) (collecting cases). As an error-correcting court, we cannot expand the exception when the supreme court has expressly declined to do so. *See In re Welfare of J.P.-S.*, 880 N.W.2d 868, 873 (Minn. App. 2016). Thus, the collateral-consequences exception to the mootness doctrine does not apply.

B. Capable-of-repetition-while-evading-review exception does not apply.

Second, Puce argues that we should review his claim under the capable-of-repetition-while-evading-review exception to the mootness doctrine. *Dean*, 868 N.W.2d at 5. The exception applies when: (1) "there is a reasonable expectation that a complaining party would be subjected to the same action again" and (2) "the duration of the challenged action is too short to be fully litigated before it ceases or expires." *Id.*

Here, if Puce were to submit another application to the city to develop his property for commercial use, he would be subjected to the same fee again. The city ordinance has not been repealed; thus, the city council would require Puce to contribute land or money for public parks. The first prong to invoke this exception is met. *Id.*

However, Puce's argument fails on the second prong because his claims would not evade judicial review. If Puce submitted a new application, and the city imposed another fee, Puce could sue the city and plead his constitutional claims. The district court could then address the claims in a new lawsuit.

Puce offers no reasoning as to why "the duration of the challenged action" would be too short to fully litigate. *Id.* This lawsuit became moot because he failed to comply with the ordinance that required him to record the plat in Dakota County within one year after the city's approval. If a second lawsuit is filed, Puce could simply comply with the ordinance, record the plat, and the issue would not be moot. Thus, Puce failed to demonstrate that his claim would evade review. This exception does not apply.

C. Statewide-significance exception does not apply.

Third, Puce argues that his claim falls within the statewide-significance exception to the mootness doctrine. A court "may exercise discretion to hear an issue that is functionally justiciable when the issue presents an important question of statewide significance that should be decided immediately." *Walz*, 985 N.W.2d at 284 (quotations omitted). The statewide-significance exception applies narrowly to urgent circumstances, such as issues impacting "the efficiency and validity of criminal proceedings across the state," "issues of life and natural death," or when there is "no inherent limitation on the time available for appeal." *Dean*, 868 N.W.2d at 7.

Puce has not persuaded us that he raised issues of comparable urgency that must be ruled upon immediately. Therefore, we decline to apply the exception.

D. Voluntary-cessation exception does not apply.

Fourth, Puce argues that his lawsuit should proceed because the voluntary-cessation exception applies. Under the voluntary-cessation exception, a defendant cannot moot "a challenge to [its] conduct by ceasing the challenged behavior to end the litigation, but then return[] to the allegedly wrongful conduct after the litigation is dismissed as moot." *Walz*, 985 N.W.2d at 288. The purpose of the voluntary-cessation exception is to prevent a defendant from engaging "'in unlawful conduct, stop when sued to have the case declared moot, then pick up where [it] left off, repeating this cycle until [it] achieves all [its] unlawful ends.'" *Id.* (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)).

This case became moot because Puce did not comply with the ordinance to record his plat within one year after the city approved his application. The city did not stop demanding that land developers contribute land or money for use as public parks, which is the conduct that Puce challenges. The city, therefore, never voluntarily ended the conduct that Puce challenges. If Puce applies again to develop his land, and the city approves his application, the city will again require Puce to provide land or money for public parks. Afterward, if Puce properly records his plat with Dakota County, and complies with any additional requirements, he would be able to challenge the park dedication fee in a second lawsuit without fear that the case could become moot. Thus, the voluntary-cessation exception to the mootness doctrine does not apply.

Although we conclude that none of the exceptions to the mootness doctrine apply, we are not unsympathetic to Puce's plight. The city council approved Puce's application—and imposed the disputed fee—in March 2019. The city ordinance required Puce to record

his plat with Dakota County within one year of the approval date or the city would consider his plat void. *See* Burnsville, Minn., Code § 11-2-4(D). Thus, by the terms of the ordinance, the city council's approval expired in March 2020 after Puce failed to record his plat. Had the city returned Puce's money in March of 2020, the issue would have become moot at that time, and the litigation would have ended.

Instead, the city did not identify the mootness issue until 2023—when the case was before the Minnesota Supreme Court. Had the city returned Puce's money after the one-year recording deadline passed, the parties would have avoided several months of discovery, a trial (that occurred after the one-year recording deadline had passed), an appeal to this court, an appeal to the supreme court, and a remand back to the district court. Nevertheless, we cannot create or adopt a new exception to mootness. *See J.P.-S.*, 880 N.W.2d at 873. Although mootness is a flexible doctrine, we cannot conclude that an exception applies to the facts of this case given the arguments that Puce presented.

Affirmed.