STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0221

Joel Jennissen, et al.,
Appellants,

vs.

City of Bloomington,
Respondent.

Filed October 29, 2018
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-16-10786

Gregory J Joseph, Joseph Law Office PLLC, Bloomington, Minnesota (for appellants)

George C. Hoff, Shelley M. Ryan, Hoff Barry, P.A., Eden Prairie, Minnesota (for respondent)

Susan L. Naughton, League of Minnesota Cities, St. Paul, Minnesota (for amicus curiae League of Minnesota Cities)

Considered and decided by Florey, Presiding Judge; Cleary, Chief Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

On remand from the supreme court for consideration of issues not addressed in this court's previous opinion, respondent argues that appellants' proposed city charter amendment is manifestly unconstitutional, and an improper referendum. We affirm.

FACTS

In late 2014, respondent City of Bloomington began the process under the Minnesota Waste Management Act (MWMA), Minn. Stat. §§ 115A.01-.99 (2016), to change from an open system of collection of solid waste to a system of organized collection. In an open system of collection, individual residents contract with city-licensed solid-waste collectors of their choice. In contrast, a system of organized collection allows a municipality to contract with a single solid-waste collector or an organization of collectors, who "collect from a defined geographic service area or areas." Minn. Stat. § 115A.94, subd. 1.

In March 2015, appellants Joel Jennissen et al., a group of city residents who opposed organized collection, petitioned the city for a ballot initiative on an ordinance that would require voter approval as a prerequisite to the city's adoption of organized collection. The city attorney rejected the ballot initiative because (1) the MWMA preempted appellants' proposed ordinance; and (2) it put an issue to the voters relating to an ordinance that the city had not yet passed, rendering the proposed ordinance premature.

Appellants initiated a civil action challenging the city attorney's decision not to approve the ballot initiative (the first lawsuit). In the meantime, the city held public

hearings on its proposal for organized collection. The city council then voted for organized collection, and in December 2015, adopted an organized-collection ordinance, effective December 31. The city then entered into a five-year contract with Bloomington Haulers, LLC, a consortium of garbage collectors. The contract detailed the types of waste to be collected, the dates and times of garbage pickup in specific city zones, and the rights and responsibilities of the parties. The contract also addressed the matter of the pending litigation and provided for termination or continuation of the contract depending on whether the district court ruled that the city's process of instituting organized collection was "proper and authorized" by state statute.

In April 2016, the district court granted summary judgment in favor of the city. The court determined that appellants' proposed initiative was neither a proper initiative nor a proper referendum because it did not actually propose a new ordinance or refer to an ordinance passed by the city council. The court concluded that appellants' goal of limiting the power of the city council could only be achieved through amendment of the city charter under Minn. Stat. § 410.12.

The next month, appellants submitted a petition to the city for a proposed charter amendment to be placed on a ballot. It read:

> Unless first approved by a majority of the voters in a state general election, the City shall not replace the competitive market in a solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designated districts. The adoption of this charter amendment shall supersede any ordinances . . . related to solid waste adopted by the City Council in 2015-2016.

The city council determined on June 27, 2016, that the proposed charter amendment was "manifestly unconstitutional" because it impaired the city's contract with Bloomington Haulers, interfered with the city's "lengthy and thoughtful legislative process," and was preempted by the MWMA. The city council therefore rejected the proposed charter amendment.

Appellants again sued the city, this time seeking to compel the city to place the proposed charter amendment on the next general-election ballot. The parties filed cross-motions for summary judgment. In an order dated January 11, 2017, the district court concluded that the proposed charter amendment did not impair the city's contract with Bloomington Haulers and therefore was not "manifestly unconstitutional on those grounds." But the court also determined that Minn. Stat. § 115A.94 preempted the proposed charter amendment by fully occupying the field of regulation of the process by which a city organizes collection. The court further noted that "in light of its findings," it need not address the city's additional argument "that the charter amendment is an improper referendum." The court therefore granted the city's motion for summary judgment and denied appellants' motion for summary judgment.

On appeal to this court, appellants argued that the district court erred by concluding that the MWMA preempts the proposed city charter amendment. The city filed a notice of related appeal challenging the district court's rejection of its arguments that the proposed charter amendment is manifestly unconstitutional and an improper referendum. This court affirmed, holding that "[s]ection 115A.94 of the MWMA occupies the field of legislation regarding the process that a city must follow to establish a system of organized collection

of solid waste," and that the district court therefore "properly determined that the MWMA preempts appellants' proposed city charter amendment to require advance voter approval of a municipality's statutory establishment of organized collection." *Jennissen v. City of Bloomington*, 904 N.W.2d 234, 243 (Minn. App. 2017) (*Jennissen I*). This court also determined that "[b]ecause we agree with the district court on the preemption issue, we do not address appellants' additional request for a mandatory injunction and the other issues raised by the city on cross-appeal." *Id.*

Upon review, the supreme court reversed the decision of this court, concluding that because "the Legislature did not intend to occupy the field of regulation of the process of organizing collection of solid waste," appellants' "proposed charter amendment is not preempted by state law." *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 462 (Minn. 2018) (*Jennissen II*). The supreme court also remanded to this court "for consideration of the remaining issues not previously addressed by the court of appeals." *Id.*

D E C I S I O N

A district court may "dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); Minn. R. Civ. P. 56.03.[1]

[1] Rule 56 was recently "revamped" to more "closely follow" the federal rules. Minn. R. Civ. App. P. 56 2018 advisory comm. cmt. When promulgating the amendments to rule 56, effective on July 1, 2018, and applicable to pending cases and those filed thereafter, the Minnesota Supreme court specifically indicated that the language describing the standard for granting summary judgment reflected recent caselaw. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar 13, 2018). Although the legal standard is unchanged, we cite to the former version of rule 56.03 because that was the version applied by the district court.

Where, as here, the material facts are undisputed, this court reviews de novo the district court's application of the law to those facts. *See Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010) (reviewing de novo district court's application of law to undisputed material facts).

I. Is appellants' proposed city charter amendment manifestly unconstitutional?

The legislature has set forth methods of charter amendment in Minn. Stat. § 410.12, including a certification process for amendments proposed by a citizens' petition. *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995). Amendments meeting the statutory requirements "shall be submitted to the qualified voters at a general or special election and published as in the case of the original charter." Minn. Stat. § 410.12, subd. 4 (2016). But "when a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot." *Keefe*, 535 N.W.2d at 308. A city council must have this power because placing a manifestly unconstitutional charter amendment on a ballot "would amount to a futile election and a total waste of taxpayers' money." *Davies v. City of Minneapolis*, 316 N.W.2d 498, 504 (Minn. 1982).

The United States and Minnesota Constitutions both prohibit state laws impairing the obligations of contracts. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. I, § 11. "A law impairs the obligations of a contract when it renders those obligations invalid or releases or extinguishes them." *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 435 (Minn. 2014). The United States Supreme Court has "adopted a three-part test to evaluate whether a statute unconstitutionally impairs contractual obligations." *In re Individual 35W Litig.*,

806 N.W.2d 820, 834 (Minn. 2011) (citing *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411–13, 103 S. Ct. 697, 704–05 (1983)). First, the court "considers whether the state law has, in fact, operated as a substantial impairment of a contractual obligation." *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872 (Minn. 1986). Second, "if a substantial impairment exists, those urging the constitutionality of the legislative act must demonstrate a significant and legitimate public purpose behind the legislation." *Id.* And third, "the legislature's action is examined in the light of this public purpose to see whether the adjustment of the rights and liabilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the law's adoption." *Id.*

The city argues that the proposed charter amendment is unconstitutional because it impairs the city's contract with Bloomington Haulers. Conversely, appellants contend that the contract is not materially impaired because "[b]y its plain terms, the Contract no longer exists." Appellants argue therefore that the district court properly concluded that the proposed charter amendment is not manifestly unconstitutional.

The arguments require us to interpret the contract between the city and Bloomington Haulers. "The primary goal of contract interpretation is to determine and enforce the intent of the parties." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). The corollary to this principle is that "the intent of the parties is determined from the plain language of the instrument itself," provided that the agreement is unambiguous. *Travertine Corp. v. Lexington–Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). When the language of the contract is clear and unambiguous, the

reviewing court enforces the "agreement of the parties as expressed in the language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). The interpretation of an unambiguous contract is a question of law. *Staffing Specifix*, 913 N.W.2d at 692.

Here, neither party claims that the contract between the city and Bloomington Haulers is ambiguous. And the contract explicitly addressed the first lawsuit and provided for contingencies based on the outcome of the case. Specifically, the contract provided:

> An action has been commenced against the city entitled Jennissen, et. al. vs. City of Bloomington . . . seeking, among other things, declaratory relief and an injunction which is currently pending and awaiting the Court's decision on cross summary judgment motions. In the event a court determines that the City's process of organizing Solid Waste Collection was proper and authorized by Minnesota Statute 115A.94(a), on or before February 29, 2016, the Agreement shall proceed as written. In the event the court determines that the City's process of organizing Solid Waste Collection was improper or not authorized by Minnesota Statute 115A.94(a), this Agreement shall immediately terminate upon written notice by either party. In the event the court does not either rule that the process is proper or improper, or authorized or unauthorized by February 29, 2016, the parties agree to suspend all efforts to organize and perform under this Agreement for up to twelve (12) months, at which time the Agreement will automatically terminate.

No party disputes that the district court in the first lawsuit did not decide the summary judgment motions until April 2016. As a result, the suspension clause was implicated because no ruling was made by February 29, 2016. Under these circumstances, the contract provided that:

> During the twelve (12) month suspension period, if the court rules that the process is proper and authorized, the Agreement shall proceed as written. During the twelve (12) month suspension period, if the court rules that the process is

> improper or not authorized, this Agreement shall immediately terminate upon written notice by either party.

Appellants argue that although the district court in the first lawsuit issued a decision in favor of the city, that decision did not determine whether the city's process of organized collection was "proper, improper, authorized, or unauthorized." Appellants also contend that the district court did not resolve this question in its January 11, 2017 order. Appellants claim that because this question was never resolved by "any court," the contract's "express terms" mandated that it "ceased to exist on March 1, 2017," twelve months after the suspension clause was implicated on February 29, 2016. We agree.

The district court in the first lawsuit concluded that the proposed initiative was not a proper ordinance; the court did not resolve the question of whether the city's process of organized collection was proper, improper, authorized, or unauthorized. Similarly, that question was not resolved by the district court in this action. Rather, the court determined that the proposed charter amendment was preempted by Minn. Stat. § 115A.94. Under the plain language of the contract, it would "automatically terminate" 12 months after February 29, 2016, if a court made no ruling on whether the city's process was "proper and authorized" or "improper or not authorized." No court has made such a ruling. In fact, the city agrees that the district court in the first lawsuit "did not rule that the process was either proper or improper, or authorized or unauthorized." The contract therefore terminated on March 1, 2017. Because the parties do not have rights under the contract between the city and Bloomington Haulers, any charter amendment cannot be manifestly unconstitutional as it would not impair on contractual rights.

The city argues that the termination section "ceased to have any relevance upon the court's full and final resolution of [the first lawsuit]." But the city misconstrues the district court's order in the first lawsuit. No "full and final resolution" has occurred in relation to the contract because the district court never reached the merits regarding whether the city's process was proper and authorized, and it left open the possibility of a charter amendment as being a proper measure to constrain the city council.

The city also claims that the contract only allows termination during the suspension period if no decision is made during that period. The city argues that because a decision was made within the twelve-month suspension period, the only way termination could occur is if the court ruled the city's process "improper and unauthorized." We disagree. The city misconstrues the plain language of the contract. The contract "automatically terminates" after the twelve-month suspension period, unless there is a ruling within that twelve-month suspension period that the city's process was "proper and authorized." This never happened. Consequently, the contract terminated on March 1, 2017.

Because the city's contract with Bloomington Hauler's terminated, it is not impaired by the proposed charter amendment. The district court therefore did not err by concluding that the proposed charter amendment was not manifestly unconstitutional. *See Jacobsen*, 392 N.W.2d at 872 (stating that the first step in determining whether a contractual impairment is unconstitutional is if the "law has, in fact operated as a substantial impairment of a contractual obligation").

II. Is appellants' proposed city charter amendment an improper referendum?

The city contends that appellants' proposed charter amendment is an "improper referendum." Although this issue was raised below, the district court concluded that it "need not address" the issue "in light of its findings." Generally, this court will not consider issues not decided by a district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts will not consider a legal question on appeal even though the question was raised below, if it was not decided by the district court). But the well-established exception to *Thiele* allows us to consider an issue that is plainly decisive of the entire controversy when the lack of a district court ruling causes no plausible advantage or disadvantage to either party. *See Wesely v. Flor, DDS*, 806 N.W.2d 36, 40–41 (Minn. 2011) (considering argument not addressed by the district court "in the interests of judicial economy" because the parties "fully briefed this *legal issue*" (emphasis added)); *Woodhall v. State*, 738 N.W.2d 357, 363 n.6 (Minn. 2007) (addressing the constitutionality of a statute questioned for the first time in the supreme court "[b]ecause a statute's constitutionality is a purely legal issue and because the state briefed the issue, we do not prejudice the state by considering the constitutionality of [the statute]"); *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687–88 (Minn. 1997) (deciding an issue on appeal where it was a novel issue of first impression, statute-based theory, and involved undisputed facts). Because these circumstances are presented here, we will address this purely legal issue on the merits.

The City of Bloomington is a home-rule charter city under Minnesota Statutes chapter 410. The city's charter reserves for its citizens the power to bring forth ballot

initiatives, referenda, and amendments to the city charter. Bloomington, Minn., City Charter (BCC) §§ 5.01-.12 (2018); *see* Minn. Stat. § 410.12 (2016) (establishing city charter amendment procedures). An argument requiring the interpretation of local ordinances presents a legal question that is subject to de novo review. *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 469–70 (Minn. 2016); *see City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008) ("The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo.").

Appellants' proposed charter amendment reads: "The adoption of this charter amendment shall *supersede any ordinances* . . . related to solid waste." (Emphasis added.) This language effectively would repeal the city council's 2015 ordinance instituting organized collection. But the city charter already provides a mechanism to repeal an ordinance whereby the city's voters may petition to place a referendum on the next election ballot. BCC, § 5.10. Such a petition needs the signatures of 15% of registered voters in the city and it must be submitted within 15 days after an ordinance takes effect. *Id*. In contrast, a charter amendment only needs the signatures of 5% of the city's registered voters. Minn. Stat. § 410.12, subd. 7; BCC, § 5.09.

The city is correct that the repealing language in the proposed charter amendment is a "referendum" by definition. A "referendum," is the process by which a small percentage of voters may compel officials to submit legislation to the voters for approval or rejection. *St. Paul Citizens for Human Rights v. City Council of City of St. Paul*, 289 N.W.2d 402, 404 n.2 (Minn. 1979). The repealing language in the proposed charter amendment is an attempt to submit the organized-collection ordinance to the voters.

> The right to . . . revoke, as given by the referendum . . . is an extraordinary power which ought not unreasonably to be restricted or enlarged by construction. It must be confined within the reasonable limits fixed by the charter. . . . Where a power so great as the suspension of an ordinance or of a law is vested in a minority, the safeguards provided by law against its irregular or fraudulent exercise should be carefully maintained.

Aad Temple Bldg. Ass'n v. City of Duluth, 160 N.W. 682, 684–85 (Minn. 1916).

Here, the proposed charter amendment is an "irregular" exercise of the referendum power and it would unreasonably enlarge the right to referendum. Voters could simply ignore the referendum process described in the city charter and submit a referendum disguised as a charter amendment. Further, a statute should be interpreted to give effect to all of its provisions: "no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). Allowing a disguised referendum to make it to the ballot by way of the less-stringent requirements of a charter amendment, would render the words of the city referendum ordinance superfluous, void, and insignificant. We therefore conclude that appellants' charter amendment is an improper referendum.

Affirmed.