

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

JUDGE CONNOLLY

Case Type: Other Civil

Peter Huxmann, individually and
on behalf of all those similarly situated,

Plaintiff,

**Defendant's Memorandum in Opposition
to Plaintiff's Motion for a Stay**

v.

Case No. : 27-CV-07-7807

Minneapolis Park and Recreation Board,

Defendant.

INTRODUCTION

By order dated May 25, 2007, this court denied Plaintiffs' motion for a temporary injunction. In various correspondences, Plaintiffs responded to the court's order by attacking not only the order but the court itself. The court, however, instructed Plaintiffs of their right to appeal the denial of a temporary injunction to the Minnesota Court of Appeals. On July 24, 2007, Plaintiffs filed their appeal. Plaintiffs did not realize, however, that the filing of their appeal did not suspend the authority of this court to rule on Defendant's motion for summary judgment. Therefore, Plaintiffs have now brought a motion to stay the proceedings pursuant to Minn. R. Civ. App. P. 108. Plaintiffs are essentially asking this court to issue an injunction and not hear Defendant's motion for summary judgment. This court should deny Plaintiffs' motion in its entirety.

ARGUMENT

Minn. R. Civ. App. P. 108.01 provides, in pertinent part:

Except in appeals under Rule 103.03(b), or as otherwise provided by law, the filing of a proper and timely appeal suspends the authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.

Emphasis added. Plaintiffs in this case appealed to the court of appeals pursuant to Rule 103.03(b). Therefore, Plaintiffs were required to make a motion to this court for a stay. *See* Minn. R. Civ. App. P. 108.01. But, the extent of any stay this court might grant to Plaintiffs does not affect the court's authority to rule on Defendant's motion for summary judgment.

Minn. R. Civ. App. P. 108.03 specifically provides:

When a bond is filed as provided by Rule 108.01, it shall stay all further proceedings in the trial court upon the judgment or order appealed from or the matter embraced in it; **but the trial court may proceed upon any other matter not affected by the judgment or order from which the appeal is taken.**

Emphasis added. Defendant's motion for summary judgment is a matter not affected by the court's order denying Plaintiffs' motion for a temporary injunction. Thus, this court can proceed with hearing and deciding Defendant's motion without running afoul of any rule of either civil procedure or civil appellate procedure. Instead, the court would be acting in conformance with these rules rather than adopting Plaintiffs' convoluted interpretation of what effect a stay might have on these proceedings.

As the court knows, Defendant has brought a motion for summary judgment based on immunity. "The existence of governmental immunity is purely a question of law, distinct from a defense to the merits of a plaintiff's claim." *Unzen v. City of Duluth*,

682 Now.2d 875, 878 (Minn. App. 2004) *review denied* (Minn. Oct. 27, 2004).

Therefore, Defendant's motion for summary judgment is not affected by the court's order denying Plaintiffs' motion for a temporary injunction, i.e. the basis of Plaintiffs' appeal. *See* Minn. R. Civ. App. P. 108.03. Thus, this court can proceed with hearing and deciding Defendant's motion.

Plaintiffs, however, contend that they will be irreparably harmed¹ if this court does not issue an injunction to "stay" the proceedings. Plaintiffs' lost their motion for a temporary injunction. They failed to meet the *Dahlberg* standard for an injunction. They cannot ask this court to revisit the issue at this juncture. This court has no authority to do so; the court of appeals now has jurisdiction over that issue. *See* Minn. R. Civ. App. P. 108.01. It will decide whether the trial court abused its discretion in denying Plaintiffs' motion for a temporary injunction.²

CONCLUSION

Plaintiffs have misconstrued the applicable rules pertaining to stays. This court has the authority and jurisdiction to decide Defendant's motion for summary judgment. *See* Minn. R. Civ. App. P. 108.03. Therefore, Defendant respectfully requests that the court deny Plaintiffs' motion for a stay and proceed to hear and decide Defendant's motion for summary judgment.

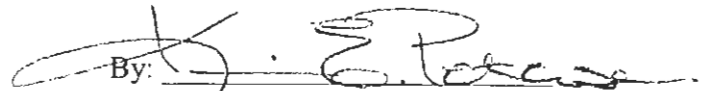
Signature page follows.

¹ Plaintiffs have consistently asserted they will be irreparably harmed if the sidewalk in front of their houses is expanded to ten feet. They have never offered anything more than this statement to support their claim. In order for injunctive relief to be granted, they had to offer more than a mere statement that they are suffering or will suffer irreparable injury. *See Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993).

² The court of appeals will, however, consider the facts in a light most favorable to the prevailing party. *Metro. Sports Facilities Comm'n v. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002) *review denied* (Minn. Feb. 4, 2002).

Date: 8-30-07

Rice, Michels & Walther, LLP

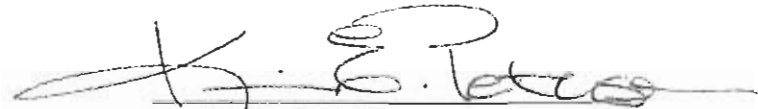
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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to
Minn. Stat. § 549.211, subd. 1.



Karin E. Peterson