

STATE OF MINNESOTA
IN THE COURT OF APPEALS

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

Appellant,
v.

**Respondent's Memorandum in
Opposition to Appellant's Motion for
An Injunction and Vacation of Order**

Court of Appeals No. A07-1431

Minneapolis Park and Recreation Board,

Respondent.

INTRODUCTION

On December 21, 2007, Appellant Peter Huxmann (Huxmann) served a motion to enjoin construction of the bike path and stay the proceedings and vacate the order of the district court granting summary judgment to Respondent Minneapolis Park and Recreation Board (Park Board). It appears that Huxmann is bringing this motion pursuant to Minn. R. App. P. 127. It is difficult, however, to ascertain the precise basis for this motion as it appears Huxmann is attempting to bring numerous issues before this court which are not germane. The court of appeals can decide, however, whether the district court retained jurisdiction in this matter after Huxmann lost his motion for a temporary injunction and appealed that issue to the court of appeals. To put it plainly, the issue should be: Did the district court have jurisdiction to hear and rule on the Park Board's motion for summary

judgment after Huxmann appealed the denial of his motion for an injunction? The Park Board briefed this issue for the district court prior to the district court deciding the Park Board's motion for summary judgment. The Park Board therefore edits and resubmits this brief for consideration by the court of appeals in response to Huxmann's motion.

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. In this case, Huxmann appealed to the court of appeals pursuant to Rule 103.03(b). Therefore, Huxmann was required to make a motion to the district court for a stay. *See* Minn. R. Civ. App. P. 108.01. But, the extent of any stay the district court might grant to Huxmann did not affect the district court's authority (jurisdiction) to rule on the Park Board'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. The Park Board's motion for summary judgment was a matter not affected by the court's order denying Huxmann's motion for a temporary

injunction. Thus, the district court could and did proceed with hearing and deciding the Park Board's summary judgment motion without running afoul of any rule of either civil procedure or civil appellate procedure. Indeed, the district court acted in conformance with these rules rather than adopting Huxmann's convoluted interpretation of what effect a stay might have on these proceedings.

In the underlying action, the Park Board 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 N.W.2d 875, 878 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). Therefore, the Park Board's motion for summary judgment was not affected by the district court's order denying Plaintiffs' motion for a temporary injunction, i.e. the basis of Huxmann's appeal. *See* Minn. R. Civ. App. P. 108.03. Thus, the district court retained jurisdiction over the matter and proceeded with hearing and deciding the Park Board's motion.

Huxmann contended, however, that he would be irreparably harmed¹ if the district court (and now the court of appeals) did not issue an injunction to "stay" the proceedings. Huxmann conveniently ignores the fact that he lost his motion for a temporary injunction. He failed to meet the *Dahlberg* standard for an injunction.

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

Nonetheless, he asked the district court to revisit the issue prior to a ruling on the issue by the court of appeals. The district court had no authority to do so.

Huxmann had presented this issue to the court of appeals, i.e. Did the district court err in denying Huxmann's motion for a temporary injunction? The court of appeals now has jurisdiction over that issue. *See* Minn. R. Civ. App. P. 108.01. It will decide whether the district court abused its discretion in denying Huxmann's motion for a temporary injunction.² The matter has been fully briefed by both Huxmann and the Park Board. The issue should be decided in the regular course of these appellate proceedings rather than by Huxmann's attempt to circumvent all rules of civil appellate procedure and come in the back door through motion practice to get a ruling on a case that he has lost.

CONCLUSION

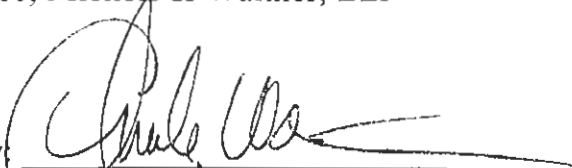
Huxmann has consistently misconstrued the applicable rules pertaining to stays. The district court had the authority and jurisdiction to decide the Park Board's motion for summary judgment. *See* Minn. R. Civ. App. P. 108.03. Therefore, Respondent Park Board respectfully requests that the court of appeals deny Huxmann's motion in its entirety.

Signature Page to Follow

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: December 26, 2007

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