

SUPREME COURT OF MINNESOTA

Northern States Power Company v. Minnesota Metropolitan Council

684 N.W.2d 499 (Minn. 2004) · No. C4-03-67 · Decided August 5, 2004

SUMMARY

The Minnesota Supreme Court reviewed a mandamus petition seeking inverse-condemnation proceedings based on alleged impairment of access to an electrical substation during construction and operation of a light rail line. The court held that the district court improperly considered affidavits without converting the Rule 12.02 motion to a summary-judgment motion, but affirmed dismissal because the physical takings claim was premature and speculative and the failure to agree prospectively on access did not constitute a regulatory taking.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Page, Justice
JURISDICTION	Minnesota
DECIDED	August 5, 2004
DOCKET	C4-03-67
DISPOSITION	reversed
PROCEDURAL POSTURE	Xcel Energy petitioned for an alternative writ of mandamus in Hennepin County District Court, seeking to compel MnDOT and the Metropolitan Council to initiate inverse-condemnation proceedings based on alleged loss of access to an electrical substation. The district court dismissed the petition under Minnesota Rule of Civil Procedure 12.02 after considering affidavits. The court of appeals treated the motions as motions for summary judgment, reversed, and held that fact issues existed. The Minnesota Supreme Court granted review and reversed.
STANDARD OF REVIEW	On appeal from summary judgment, the court determines whether genuine issues of material fact exist and whether the lower courts correctly applied the law. Evidence is viewed in the light most favorable to the nonmoving party, but unverified and conclusory allegations or speculation about evidence that might be developed at trial do not defeat summary judgment. A Rule 12.02 motion supported

	by and decided upon matters outside the pleadings must be treated as a Rule 56 motion unless those matters are excluded.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Minnesota
PARTIES	Minnesota Metropolitan Council, Minnesota Department of Transportation, et al. v. Northern States Power Company, d/b/a Xcel Energy

TOPICS

[eminent domain municipal](#)
[writ of certiorari](#)
[summary judgment](#)
[mandamus immigration](#)
[civil procedure](#)

PRACTICE AREAS

[constitutional law](#)
[eminent domain](#)
[mandamus](#)
[summary judgment](#)
[civil procedure](#)
[municipal law](#)

QUESTIONS PRESENTED

1. Whether the district court improperly considered affidavits outside the pleadings without converting the Rule 12.02 motions to dismiss into a Rule 56 summary-judgment motion.
2. Whether the record established a genuine issue of material fact concerning whether the light rail system physically prevented Xcel from placing cranes on Fifth Street to repair or replace a transformer.
3. Whether the alleged failure of MnDOT and the Metropolitan Council to provide a prospective guarantee of access constituted a regulatory taking and supported mandamus relief.

HOLDINGS

1. When a court considers affidavits or other matters outside the pleading that is the subject of a Rule 12.02 motion to dismiss, the motion must be treated as one for summary judgment under Rule 56. Documents attached to or referenced in a motion are not thereby incorporated into the pleading being challenged.
2. Xcel's physical-taking claim was premature and speculative because the record contained no genuine issue of material fact showing that the light rail tracks, trains, catenary lines, or support poles would physically prevent Xcel from placing cranes on Fifth Street to repair or replace a transformer. Xcel therefore could not obtain mandamus relief on that claim.
3. The failure to reach a prospective access agreement does not constitute a denial of access or a regulatory taking, particularly where negotiations remain ongoing, no transformer has failed, no access request has been made, and no access has been denied.

KEY QUOTATIONS

“Thus, having considered the affidavit, it was error for the district court not to have treated the motion as one for summary judgment under Rule 56.” (684 N.W.2d at 502)

“Because the record does not contain any genuine issues of material fact that support Xcel's contention that the LRT line creates a physical barrier to the placement of cranes on Fifth Street for purposes of removing or

replacing transformers at its downtown electrical substation, we conclude, as did the district court, that Xcel's physical takings claim is both premature and speculative.” (684 N.W.2d at 506)

“The mere failure to reach a prospective agreement for access does not equate to a denial of access.” (684 N.W.2d at 507)

FACTUAL BACKGROUND

The Hiawatha Light Rail Transit line was constructed along Fifth Street in downtown Minneapolis near Xcel Energy's underground electrical substation. The substation contained four large transformers, and Xcel asserted that repair or replacement of a failed transformer would require placing large cranes on Fifth Street and temporarily removing the light rail catenary lines and support poles. MnDOT and the Metropolitan Council designed the light rail system using information supplied by Xcel concerning crane weights, clearances, and loading requirements. At the time of the petition, no transformer had failed, Xcel had not requested access to repair one, and neither defendant had denied such access.

PROCEDURAL HISTORY

The district court dismissed Xcel's mandamus petition, finding no taking of reasonable access and concluding that the claim was premature and speculative. The court of appeals held that the district court improperly considered an affidavit on a Rule 12 motion, applied the Rule 56 summary-judgment standard, and reversed based on purported factual issues concerning access and the existence of a taking. The Minnesota Supreme Court reversed the court of appeals, holding that the physical-taking claim failed under Rule 56 and that the regulatory-taking claim was properly dismissed.

DISPOSITION

reversed

CASES CITED

- N.S.P. Co. v. Minnesota Metro. Council, 667 N.W.2d 501, 506, 510-11 (Minn. App. 2003)
- N.S.P. Co. v. Franklin, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (Minn. 1963)
- Martens v. Minnesota Mining & Manufacturing Co., 616 N.W.2d 732, 739 n.7 (Minn. 2000)
- Bank Midwest, Minnesota, Iowa, N.A. v. Lipetzky, 674 N.W.2d 176, 179 (Minn. 2004)
- Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 672 (Minn. 2001)
- Wolfram v. State by Burnquist, 246 Minn. 264, 267 n.2, 74 N.W.2d 510, 512 n.1 (1956)
- State v. Pero, 590 N.W.2d 319, 323 (Minn. 1999)
- State ex rel. Coduti v. Hauser, 219 Minn. 297, 302, 17 N.W.2d 504, 507 (1945)
- Alevizos v. Metropolitan Airports Commission of Minneapolis & St. Paul, 298 Minn. 471, 496, 216 N.W.2d 651, 666-67 (1974)
- State ex rel. Currie v. Weld, 39 Minn. 426, 428, 40 N.W. 561, 562 (1888)
- Hendrickson v. State, 127 N.W.2d 165, 169 (Minn. 1964)

- Thornburg v. Port of Portland, 376 P.2d 100, 101 n.1 (Or. 1962)
- N.S.P. Co. v. Federal Transit Administration, 270 F.3d 586, 587 (8th Cir. 2001)
- N.S.P. Co. v. Federal Transit Administration, Civ. No. 01-295 (D. Minn. May 24, 2001) (memorandum opinion)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/minnesota-supreme-court-of-minnesota/2004/northern-states-power-company-v-minnesota-metropolitan-dkh45y8w>