

STATE OF MINNESOTA  
IN COURT OF APPEALS



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Friends of the Terrace, LLC,  
Appellant,

**ORDER**  
#A16-1518

vs.

BRE Non-Core 2 Owner B, LLC,  
Respondent,

Robbinsdale Economic Development  
Authority,  
Respondent.

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Considered and decided by Cleary, Chief Judge; Schellhas, Judge; and Bjorkman, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:**

Appellant brings this action under the Minnesota Environmental Rights Act (MERA), alleging that the Terrace Theater in Robbinsdale is a “historical resource” entitled to protection under MERA. *See* Minn. Stat. §§ 116B.02, subd. 4 (defining natural resources to include historical resources), .03, subd. 1 (authorizing civil action for declaratory or equitable relief for protection of natural resources, “whether publicly or privately owned”) (2014). The suit seeks (a) an injunction against demolition of the theater and (b) a declaration that the theater is a natural resource under MERA.

Appellant sought a temporary restraining order (TRO) enjoining demolition of the theater building, which the district court denied on September 19, 2016. Appellant appealed the denial of the TRO motion under Minn. R. Civ. App. 103.03(b), and sought a stay of demolition in district court pending this court's review of the TRO denial.

The district court granted appellant's motion for injunctive relief pending appeal under Minn. R. Civ. P. 62.02. To secure respondent owner's interests during the pendency of the appeal, the district court ordered appellant to post a \$2.875 million supersedeas bond by 4:30 p.m. on Friday, September 30. If the appellant fails to post the supersedeas bond by that time, the stay of demolition pending appeal will be lifted. To secure the public's interest during the pendency of this litigation, the district court also granted respondent economic development authority's motion for a \$3.5 million surety bond under Minn. Stat. § 469.044 (2014). The surety bond must also be posted by 4:30 p.m. on September 30, 2016. Failure to post a surety bond results in dismissal of the action with prejudice. *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 696 (Minn. 2015). Appellant now moves this court to reduce the supersedeas bond from \$2.875 million to \$1,000 and to reverse the district court's order requiring a surety bond.

Appellant argues that a \$2.875 supersedeas bond is "grossly excessive and improper due to MERA's purpose" and that the bond amount is not supported by the record. The district court has the discretion to grant injunctive relief pending appeal "upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." Minn. R. Civ. P. 62.02. This court reviews the district court's grant of such relief

for an abuse of discretion. Minn. R. Civ. App. P. 108.02, subd. 6; *State by Clark v. Robnan*, 259 Minn. 88, 90, 107 N.W.2d 51, 53 (1960). Similarly under MERA, injunctive relief may be granted if the district court orders “a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.” Minn. Stat. § 116B.07 (2014); *State by Drabik v. Martz*, 451 N.W.2d 893, 898 (Minn. App. 1990) (concluding that a temporary injunction under MERA requires security to protect a party who is wrongfully enjoined). Under both MERA and rule 62.02, the amount of a bond depends upon the enjoined party’s need for security. The bond amount does not depend upon the resources of the party seeking injunctive relief or the intentions underlying the litigation. *Cf. Pike v. Gunyou*, 491 N.W.2d 288, 291-92 (Minn. 1992) (affirming dismissal of action after plaintiff’s failure to post \$30 million *surety* bond despite important public concerns underpinning litigation).

Further, the cases relied upon by appellant do not support its argument that a supersedeas bond in an amount greater than \$1,000 would always be an abuse of discretion in MERA litigation. *See State by Archabal v. County of Hennepin*, 495 N.W.2d 416, 418 (Minn. 1993) (noting but not reaching challenge to district court’s denial of county’s motion for a *surety* bond); *Drabik*, 451 N.W.2d at 898 (holding that district court did not abuse its discretion by expediting trial and securing a temporary injunction with a \$1,000 bond in action challenging construction of a radio tower near a wilderness area).

Appellant also argues that the supersedeas bond amount should not exceed \$1,000 because MERA claims are brought on behalf of the public, “akin to” appeals taken by state

agencies. *See* Minn. R. Civ. P. 62.04 (“When an appeal is taken by the state . . . and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.”). But the existence of a bond requirement in Minn. Stat. § 116B.07 requires the conclusion that the legislature did not intend MERA claims to proceed “akin to that taken by a state agency.”

Appellant also argues that the record does not support the district court’s determination of the potential damages to respondent owner from a stay of demolition. The district court can credit respondent owner’s representations that the pending sale hinges on demolition of the theater building; that the value of the property is substantially diminished without demolition; and that the respondent owner will continue to incur substantial property taxes if the pending transaction does not close. As the district court noted, appellant provided no evidence to the contrary.

“The purpose of supersedeas bond conditions is to assure that, pending the outcome of an appeal, the economic risk of the appeal is not borne by the party that prevailed below.” *County of Blue Earth v. Wingen*, 684 N.W.2d 919, 923 (Minn. App. 2004). Appellant has failed to demonstrate that a supersedeas bond of \$1,000 would provide such assurance in this case. We therefore conclude that the district court did not clearly abuse its discretion in ordering the supersedeas bond.

Appellant also moves this court to reverse the district court’s order requiring appellant to post a \$3.5 million surety bond, arguing that there is no prospective harm to the public from the pendency of this litigation. Minn. Stat. § 469.044 (2014) dictates that a

public corporation (here the Robbinsdale Economic Development Authority) may move a court for an order requiring the plaintiff to post a surety bond. If the court determines that “loss or damage to the public or taxpayers may result from the pendency of the action or proceeding,” the court may require the plaintiff to give a surety bond to protect the public from loss or damage. Minn. Stat. § 469.045 (2014).

A surety-bond order is an interlocutory order and is not made appealable by statute or the appellate rules. *See* Minn. R. Civ. App. P. 103.03 (listing appealable orders); *see also Anderly v. City of Minneapolis*, 539 N.W.2d 816, 819 (Minn. App. 1995) (concluding that surety-bond orders are not immediately appealable), *rev'd on other grounds*, 552 N.W.2d 236 (Minn. 1996). Failure to post a surety bond results in dismissal of the litigation with prejudice. *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 696 (Minn. 2015). On appeal from a final judgment, appellate courts may review any order affecting the judgment. Minn. R. Civ. App. P. 103.04. Thus, a surety-bond order is reviewable on appeal from a final judgment dismissing the action for failure to post the bond, but not by motion in an appeal from the denial of a TRO.

Finally, we note that previous motions filed by appellant in this appeal have become moot due to intervening developments in the district court.

**IT IS HEREBY ORDERED:**

1. The motion to reduce the rule 62.02 supersedeas bond from \$2.875 million to \$1,000 is denied.
2. The motion to reverse the district court's surety-bond order is denied.

3. All other requests for relief are denied as moot.

**Dated:** September 29, 2016

**BY THE COURT**



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Edward J. Cleary  
Chief Judge