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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0234**

Waterford Township,
Appellant,

vs.

City of Northfield,
Respondent.

**Filed August 12, 2019
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CV-18-2021

Michael C. Couri, Robert T. Ruppe, Couri & Ruppe, P.L.L.P., St. Michael, Minnesota (for appellant)

Robert T. Scott, Christopher M. Hood, Flaherty & Hood, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

In this annexation dispute, appellant township challenges the district court's grant of summary judgment to respondent city, arguing that it erred in determining that (1) the parties entered into an indefinite, rather than perpetual, agreement for annexation of

property; (2) the city did not breach the agreement when it ceased making tax-reimbursement payments to the township in 2010; (3) the city could unilaterally terminate the agreement; and (4) the agreement violates public policy. We affirm.

FACTS

In April 1980, appellant Waterford Township (Waterford) and respondent City of Northfield (Northfield) entered into a contract titled “Joint Resolution to be Presented to the Municipal Board as to the Orderly Annexation by the City of Northfield and Township of Waterford” (the agreement). Under the agreement, Waterford agreed to the annexation of 20 acres of the Sheldahl property from Waterford into Northfield. In exchange, Northfield agreed to annually share with Waterford set proportions of tax revenues it received from the Sheldahl property. Paragraph III(c) of the agreement (tax-reimbursement provision) provides, in relevant part:

[Northfield] will reimburse [Waterford] on an amount based on a mill rate of 1.902 for twenty acres which yields an amount of \$675 per year which is agreed upon by both parties . . . If [Waterford’s] mill rate increases, then the amount that [Waterford] will receive will be in direct proportion to the increase in the mill rate.

The parties also agreed to the restriction of future annexation, as set forth in paragraph III(e) of the agreement (no-future-annexation provision):

[Northfield] and [Waterford] [a]gree that there will be no future annexation in [Waterford] without the agreement of the [Northfield] Council and the Waterford Town Board.

After a hearing on the agreement, the Minnesota Municipal Board, which later became the Office of Administrative Hearings, issued an order authorizing the annexation

of the Sheldahl property from Waterford into Northfield. Because no legislation existed at the time authorizing tax-reimbursement payments pursuant to an annexation agreement, the parties sought and received special legislation authorizing the payments. The special legislation took effect in 1981.

Northfield made tax-reimbursement payments to Waterford from 1981 through 2010. In October 2010, Northfield adopted a resolution stating that, in Northfield's opinion, the agreement had expired and ceased to have legal effect. In accordance with its opinion, Northfield stopped making tax-reimbursement payments to Waterford, and has made no payments since 2010.

Waterford commenced this action against Northfield, asserting that Northfield breached the agreement by ceasing the tax-reimbursement payments because it is perpetual. Waterford moved for partial summary judgment and Northfield moved for judgment on the pleadings or, alternatively, summary judgment. The district court granted Northfield's motion for summary judgment and denied all other motions. This appeal follows.

D E C I S I O N

Waterford first argues that the district court erred in determining that the agreement is indefinite, with no set duration, *see Pine River State Bank v. Mettille*, 333 N.W.2d 622, 628 (Minn. 1983) (“When a contract is for an indefinite duration, the duration is not set”), rather than perpetual, continuing forever, *see Glacial Plains Coop. v. Chippewa Valley Ethanol Co.*, 912 N.W.2d 233, 237 (Minn. 2018) (explaining that perpetual contracts typically contain words such as “forever,” “perpetually,” or “permanently”), because

(1) Northfield’s counsel admitted that the language of the agreement is consistent with an intent for perpetual duration; (2) the plain language of the no-future-annexation provision evidences the parties’ intent for perpetual duration; and (3) the special legislation’s language indicates that the legislature designated the agreement to be perpetual. Each argument will be addressed in turn.

I. Northfield’s counsel’s statement is not dispositive of the duration issue.

Waterford argues that Northfield’s counsel’s “admission” that the language of the agreement is “consistent with an intent for perpetual duration” is dispositive of the issue of duration. We disagree.

The full text of Northfield’s counsel’s statement is as follows:

We have acknowledged in our materials, as [Waterford] has reminded you already, that *we do agree that [the no-future-annexation provision] is, I think, consistent with an intent for perpetual duration.* We do not agree that [it] is sufficient to create a perpetual obligation, and it is certainly not sufficient to apply to the entire agreement.

(Emphasis added.) Waterford’s omission of the second sentence above takes the statement out of context. The full statement demonstrates Northfield’s position that the no-future-annexation provision implies perpetuity but falls short of creating an explicit enduring obligation and that this provision does not apply to the entire agreement. Northfield’s statement is not dispositive of the duration issue.

II. The no-future-annexation provision is ambiguous at best and must be construed against perpetual duration.

Waterford contends that a plain reading of the words “no future annexation” means never in the future, and that this is clear evidence that the parties intended for this limit on annexation, and the agreement as a whole, to continue forever. We disagree.

We review de novo the question of whether contract language is plain or ambiguous. *Glacial Plains*, 912 N.W.2d at 236 (Minn. 2018). Contract language is ambiguous if it is susceptible to two or more reasonable interpretations. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). Because perpetual contracts are generally disfavored as a matter of public policy, we will only enforce such a contract if its terms unambiguously express an intent for perpetual duration. *Glacial Plains*, 912 N.W.2d at 236. “[W]e construe ambiguous language regarding duration against perpetual duration.” *Id.* Similarly, if a contract is silent as to duration, we construe the contract to be indefinite in duration, not perpetual. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 326 (Minn. 2004).

The agreement contains no express provision relating to duration or methods of terminating the agreement. Because the agreement is silent as to duration of the entire agreement, we must construe it against perpetual duration. A plain reading of the no-future-annexation provision makes clear that the provision applies only to itself, not the entire agreement. At best, the no-future-annexation provision—the only language in the agreement that suggests a durational term—is ambiguous. It is susceptible to two reasonable interpretations: either limiting future annexations for as long as the agreement

is in existence, or forever into the future. Either interpretation relies on some level of inference, and therefore fails to unambiguously express the parties' intent for perpetual duration of the provision itself, much less of the overall agreement. *See Glacial Plains*, 912 N.W.2d at 237.

Waterford argues that the district court incorrectly interpreted the “no-future-annexation” provision because it added the words “during the life of the agreement” to the phrase “no future annexation,” thereby “essentially read[ing] a time limit into the [agreement] that the parties did not themselves choose to include.” Under de novo review, we conclude that the no-future-annexation provision is susceptible to more than one interpretation, and we must, as did the district court, determine the duration of the provision.

Waterford also argues that the district court's ultimate determination that the agreement is of indefinite duration runs counter to the remaining language of the no-future-annexation provision, which provides that:

[Northfield] and [Waterford] recognize that in order for [Waterford] to survive as a township and a viable unit of government, [Waterford] must be very selective in its annexation policies. [Waterford] is in fact the smallest township adjoining [Northfield]. [Waterford] is less than 15 sections in size.

Waterford contends that this language implies a theme of protecting Waterford's financial interests into the future. It argues that this theme is further evidenced by the tax-reimbursement provision, which contemplates that Northfield will make annual payments to Waterford and that these payments shall increase as Waterford's mill rate increases.

Waterford's suggestion of a "theme" of perpetual financial protection fails to establish an unambiguous expression of the parties' intent for perpetual duration. Additionally, use of the word "annually" is facially indefinite as to duration. *See Hayes v. Northwood Panelboard Co.*, 415 N.W.2d 687, 691 (Minn. App. 1987) (concluding that contract language providing for annual purchases is indefinite as to duration), *review denied* (Minn. Jan. 28, 1988). The language regarding mill-rate increases is also inconclusive as to duration because it merely provides how to calculate the amount of tax Northfield must pay to Waterford. Because the language of the no-future-annexation provision is ambiguous, we must construe it against perpetual duration.

III. The special legislation provides no assistance in determining the duration of the agreement.

Waterford argues that, based on the language used in the special legislation, the legislature "designated" the agreement to be a perpetual contract. We are not persuaded.

The special legislation provides, in relevant part, that "the city may agree as a condition of the annexation that it will pay an *annual* sum of money to the town." (Emphasis added.) Waterford argues that this language shows the legislature recognized that the parties intended for Northfield to make perpetual, recurring payments to Waterford.

Waterford's argument fails. As Waterford notes, Minnesota courts define "annual" to mean "recurring, done or performed every year." This definition denotes frequency, not duration. For example, an agreement can provide for an *annual* payment for three years or thirty years. Therefore, the special legislation's language is not helpful in determining the duration of the agreement.

Because we conclude that the parties entered into an indefinite, rather than perpetual, agreement, we need not address Waterford's remaining three arguments as they are based on the presupposition that the agreement is perpetual in duration. Further, Waterford's equity argument fails to state under which equitable principle it relies, and cites no binding authority. We therefore decline to address this argument. *See* Minn. R. Civ. App. P. 128.02, subd. 1(d) (providing that appellant's argument must be accompanied by citations to relevant authority and analysis); *see also* *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (noting that relator's failure to support allegations with constitutional analysis or citation result in forfeiture of her arguments).

Affirmed.