

STATE OF MINNESOTA

COUNTY OF RICE

IN DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota, by Rice County
Land Use Accountability, Inc.,

Plaintiff,

vs.

Rice County, a political subdivision
of the State of Minnesota, and the
Rice County Board of Commissioners,

Defendants.

**ORDER DISMISSING
LAWSUIT AND
MEMORANDUM**

Court File No. C8-05-1032

On June 15, 2005, Plaintiff filed this lawsuit under the Minnesota Environmental Rights Act (MERA) alleging that Defendant Rice County has violated environmental rules on a number of occasions and requesting that the Court: (1) enter declaratory judgment that Rice County has violated environmental rules on 10 separate occasions; (2) ordering that due to Rice County's violations of environmental law, for a reasonable term of years Rice County shall not be designated Responsible Governmental Unit (RGU) for Environmental Review, and that the Environmental Quality Board shall be designated the RGU; (3) ordering remedial training for Rice County staff, Commissioners, and Planning Commissioners regarding Environmental Review; and (4) awarding Plaintiff reasonable costs and expenses, including attorneys' fees, necessary to bring the action. The Complaint does not request that any action of Rice County be set aside, nor does it request monetary damages.

On June 30, 2005, Defendant filed its Answer alleging, among other things: (1) lack of jurisdiction (paragraph VII); (2) that a MERA claim cannot be based on an alleged failure to follow the procedural requirements of the Minnesota Environmental protection Act (MEPA); and (3) that Rice County has followed all applicable environmental rules and regulations.

On August 29, 2005, Defendant filed a motion for dismissal pursuant to Minnesota Rules of Civil Procedure 12.02(e) alleging a failure to state a claim upon which relief can be granted.

A hearing was held on Defendant's motion to dismiss on September 23, 2005, before the Honorable Bernard E. Borene, Judge of District Court, at the Rice County Courthouse, Faribault, Minnesota. Plaintiff was represented by Carol A. Overland, Esq., Northfield, Minnesota, and Defendant was represented by Paul D. Reuvers, Esq., Bloomington, Minnesota. Defendant had filed a memorandum and reply memorandum prior to the hearing. Plaintiff filed a memorandum on the morning of the hearing. The Court took the matter under advisement.

The Court, having considered the motion, memoranda and statements of counsel,

DOES HEREBY ORDER:

1. Defendant's motion to dismiss pursuant to Minnesota Rules of Civil Procedure 12.02(e) for lack of jurisdiction is GRANTED (Defendant's motion to dismiss on other grounds is moot).
2. Plaintiff's lawsuit is DISMISSED.

3. Judgment is entered for Defendant for its costs and disbursements to be taxed herein.
4. The following MEMORANDUM is incorporated herein.

Dated this 24th day of October, 2005.

BY THE COURT:


Bernard E. Borene
Judge of District Court

MEMORANDUM

Plaintiff brought this action pursuant to Minn. Stat. Sec. 116B.01 – 116B.13, the Minnesota Environmental Rights Act (MERA). Minn. Stat. Sec. 116B.03, subd. 2, provides:

Subd. 2. **Service; notice.** Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the attorney general and the pollution control agency. Within 21 days after commencing such action, the plaintiff shall cause written notice thereof to be published in a legal newspaper in the county in which suit is commenced, specifying the names of the parties, the designation of the court in which the suit was commenced, the date of filing, the act or acts complained of, and the declaratory or equitable relief requested. The court may order such additional notice to interested persons as it may deem just and equitable (emphasis added).

Since the statute states that the Plaintiff “shall” comply with the notice requirements, compliance with the requirements is mandatory and jurisdictional. County of Dakota v. Lakeville, 559 N.W.2d 716 (Minn. App. 1997).

In Minnesota a lawsuit is "commenced" when the summons and complaint is served on the defendant. The court file does not contain a return of service from Plaintiff showing when Rice County was served, so the Court cannot determine when this lawsuit was commenced. For the purpose of this motion, however, the Court assumes that Rice County was served on or before the date that the lawsuit was filed on June 15, 2005.

Under the statute Plaintiff was required to serve the Minnesota Attorney General and the Minnesota Pollution Control Agency by June 22, 2005, at the latest. The affidavit of Carol A. Overland dated September 22, 2005, shows that they were both served on June 27, 2005. Service was not timely.

Under the statute Plaintiff was required to publish notice by August 6, 2005. The affidavit of publication attached to the affidavit of Carol A. Overland dated September 22, 2005, shows that the notice was published in the Faribault Daily News on September 24, 2005. Publication was not timely. The affidavit of Ms. Overland also contains an attached copy of an article that appeared in the Faribault Daily News on June 14, 2005, but the article does not include all information required in the published notice, and the article was not "caused" to be published by the Plaintiff as required by the statute. This lawsuit must be dismissed for lack of jurisdiction.

The remaining issues raised by Defendant in its motion to dismiss are moot, and it is not necessary for the Court to address them at this time.

Although this lawsuit is dismissed, the Court notes that the lawsuit does provide Rice County with an opportunity to fully review whether its present environmental review practices are fully in compliance with all environmental rules and regulations.

The Court also reminds Plaintiff that courts can only decide actual "cases and controversies." Under the constitutional separation of powers, absent a legitimate controversy, a court has no authority to dictate to an executive body, such as a county board, how it should conduct its business or to scold it if its procedures are alleged to be lacking.


Bernard E. Borene
Judge of District Court


COURT ADMINISTRATOR
OCT 25 2005
RICE COUNTY, MINN.
FILED