STATE OF MINNESOTA

IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS
MAR 28 2006
FILED

Bashir Moghul,

Relator,

vs.

City of Minneapolis,

Respondent

ORDER

A06-424

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Shumaker, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

This is a certiorari appeal from respondent's decision to demolish a property in which relator has an interest. Relator unsuccessfully applied to respondent for a stay of demolition pending appeal or for respondent to set the terms and conditions of a supersedeas bond that would suspend demolition pending appeal. Relator moves this court for relief and respondent opposes relator's motion.

In certiorari appeals, the body making the appealed decision may, pending appeal, stay enforcement of that decision pursuant to rule 108. Minn. R. Civ. App. P. 115.03, subd. 2(b). Under rule 108, appellate courts can review a decision regarding a stay pending appeal. Minn. R. Civ. App. P. 108.01. Here, the respondent did not issue a formal decision addressing relator's application. Also, respondent's papers in this motion proceeding do not explain its application of rule 108 or how respondent balanced the respective harms to the parties in making its decision. Therefore, we remand the question of whether and under what, if any, conditions demolition should be stayed pending appeal.

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IT IS HEREBY ORDERED:

1. Relator's motion for a stay pending appeal or, in the alternative, for the setting of a supersedeas bond allowing a stay of demolition pending appeal, is remanded.

2. On remand, respondent shall have discretion to reopen the record to receive evidence regarding whether and under what, if any, conditions demolition should be stayed pending appeal.

Dated: March 28, 2006

BY THE COURT

Edward Toussaint

Chief Judge

MK:mbs

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