

STATE OF MINNESOTA
IN COURT OF APPEALS



In re Olson Property Investments,
Petitioner,
Olson Property Investments, LLC,
Petitioner,

ORDER
A20-1073

vs.

[REDACTED]

Respondent,

[REDACTED]

Respondent.

Considered and decided by Segal, Chief Judge; Ross, Judge; and Bjorkman, Judge.

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

Petitioner-landlord Olson Property Investments LLC seeks a writ of mandamus compelling the district court to issue a summons and proceed with an eviction action against respondent-tenants [REDACTED]. Petitioner relies on (1) exceptions in Emergency Executive Order (EO) Nos. 20-14, 20-73 suspending eviction proceedings and (2) Minn. Stat. § 504B.321 (2018). Respondents filed a response opposing the petition. With leave of court, petitioner filed a reply.

On March 23, 2020, Governor Tim Walz filed EO No. 20-14, suspending certain residential eviction proceedings during the peacetime emergency declared on March 13, 2020 due to the COVID-19 pandemic. As relevant here, EO No. 20-14 suspends residential eviction proceedings under Minn. Stat. §§ 504B.285 (holdover, breach of lease), .291 (nonpayment of rent), except when “based on cases where the tenant seriously endangers the safety of other residents or for violations of” Minn. Stat. § 504B.171, subd. 1 (certain unlawful activity) (2018). On June 5, 2020, Governor Walz filed EO No. 20-73, expanding exceptions to the suspension to include cases where the tenant seriously endangers the safety of others on the premises, if the serious endangerment is a material violation of the lease.

According to the petition, petitioner gave notice of nonrenewal of the parties’ residential lease on May 30, 2020 based on “illegal conduct by Tenants that seriously endangered the lives of another resident and the Landlord,” but petitioner “chose not to bring the eviction until the lease expired by its natural expiration” on July 31, 2020. On August 3, 2020, petitioner filed an eviction complaint against respondents alleging that respondents (1) harassed and threatened another tenant, causing that tenant to move out, (2) harassed petitioner’s agents, causing them to obtain ex parte harassment restraining orders (HROs) against respondents, and (3) made false allegations against petitioner’s agents. The complaint states that expedited proceedings are not requested. *See* Minn. Stat. § 504B.321, subd. 2(a) (2018)) (providing in relevant part that, in action based on tenant “causing a nuisance or other illegal behavior that seriously endangers the safety of other

residents,” the plaintiff “shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required”).

A district court employee notified petitioner’s counsel that the district court judge who reviewed the complaint determined that it did not meet the standard to proceed under EO Nos. 20-14, 20-73. Petitioner then filed this petition, seeking to compel the district court to issue a summons, schedule an initial hearing, and apply a rule 12.02(e) standard to determine whether the action can proceed immediately under EO Nos. 20-14, 20-73. Respondents filed a response, and, with leave of court, petitioner filed a reply.

Mandamus is an extraordinary equitable remedy, available only in the absence of an adequate remedy at law to compel the performance of a duty clearly required by law. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004); Minn. Stat. § 586.01 (2018). Petitioner argues that the district court has a duty imposed by Minn. Stat. § 504B.321, subd. 1, to issue a summons and schedule a first appearance.

Even under a rule 12.02(e) standard, which petitioner argues should be applied, speculative allegations are insufficient. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 558 (Minn. 2003) (rejecting as insufficient allegations that social security numbers are still being shared or are generally accessible because allegations were “mere speculation.”). And the district court need not accept as true, for purposes of a rule 12.02(e) motion, legal conclusions in the complaint. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014) (noting that courts are “not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure

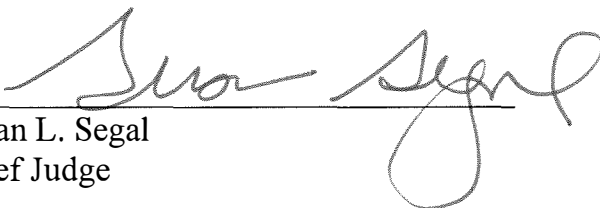
to state a claim”); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (“A plaintiff must provide more than labels and conclusions.”).

We construe the exception in EO Nos. 20-14, 20-73 for “cases where the tenant seriously endangers the safety of other residents” or “others on the premises” to contemplate circumstances in which physical safety is at current risk, warranting expedited processing. Assuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency under EO 20-14, 20-73, petitioner has not shown that the factual allegations against respondents in the amended complaint meet that threshold. We therefore conclude that petitioner has not shown that the district court had a duty clearly required by Minn. Stat. § 504B.321, subd. 1, to issue the summons to respondents and schedule a hearing on the amended complaint.

IT IS HEREBY ORDERED: The petition for a writ of mandamus is denied.

Dated: September 1, 2020

BY THE COURT



Susan L. Segal
Chief Judge