

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED
January 21, 2014
OFFICE OF
APPELLATE COURTS
OFFICE OF
APPELLATE COURTS
JAN 21 2014

FILED

In re Doug Mann,

ORDER

Petitioner

#A14-0026

Doug Mann,

Petitioner,

vs.

Minneapolis City Council,

Respondent.

Considered and decided by Cleary, Chief Judge; Kalitowski, Judge; and Kirk, Judge.

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

This is a petition for mandamus challenging an order filed in the district court on November 12, 2013, dismissing a petition for mandamus brought by Doug Mann in the district court. Judgment was entered on the order on November 14, 2013.

An order dismissing a petition for mandamus is appealable as a final order in a special proceeding, and an appeal may be taken from a judgment, if mandamus is granted. *Ullrich v. Newburg Twp. Bd.*, 648 N.W.2d 743 (Minn. App. 2002). The time to appeal a judgment expires 60 days after entry and the time to appeal any order issued

before entry of the judgment expires at the same time. Minn. R. Civ. App. P. 104.01, subd 1, .02. Accordingly, the deadline for appeal in this case was January 13, 2014.

This petition for mandamus was filed on January 9, 2014. But the petition does not address the adequacy of the ordinary remedy of a direct appeal. Mandamus will not lie when the party seeking relief has an ordinary legal remedy that is adequate. Minn. Stat. § 586.02 (2012). “Mandamus is not a substitute for, and cannot be used as, an appeal or writ of error.” *State ex rel. Gresham v. Delaney*, 213 Minn. 217, 219, 6 N.W.2d 97, 98 (1942). The mandamus statute specifically provides for appeals from the district court ruling to this court “as in other civil cases.” Minn. Stat. § 586.09 (2012). When the applicable statute authorizes an appeal, an aggrieved party is “not entitled” to seek relief by mandamus. *Gresham*, 213 Minn. at 219, 6 N.W.2d at 98. A party who had a statutory right to appeal, and who has allowed the time for appeal to expire, is not entitled to obtain review by mandamus. *Waters v. Putnam*, 289 Minn. 165, 183 N.W.2d 545 (1971). When there is a statute providing for appeal, “the express terms of [section] 586.02” preclude the issuance of a writ of mandamus. *Id.* at 171, 183 N.W.2d at 550.

Mann failed to bring a timely appeal and has not established that he lacked an adequate legal remedy. Accordingly, mandamus will not lie.

IT IS HEREBY ORDERED:

1. The petition for mandamus is denied.

2. Respondent's motion for expedited consideration or establishment of a surety bond is denied as moot.

Dated: January 21, 2014

BY THE COURT

A handwritten signature in black ink, appearing to read "E. J. Cleary", written over a horizontal line.

Edward J. Cleary
Chief Judge