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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1013**

In the Matter of the Petition of Loel Kuehne.

**Filed May 6, 2019
Affirmed
Halbrooks, Judge**

Teachers Retirement Association

Julie K. Swedback, Swedback Law, PLLC, Stillwater, Minnesota (for relator Loel Kuehne)

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Considered and decided by Halbrooks, Presiding Judge; Rodenberg, Judge; and
Smith, John, Judge.*

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Relator challenges the denial of her request for reinstatement of pension benefits following her ex-husband's death, arguing that (1) she is entitled to continuing benefits based on negligent misrepresentation, (2) equitable and promissory estoppel apply in this case, (3) her due-process rights were violated, and (4) she is entitled to damages under Minn. Stat. § 3.736 (2018). We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

On March 29, 1968, relator Loel Kuehne married Richard Kuehne. During the marriage, Richard Kuehne was employed by the Roseville Area Schools. As a result, he was a member of respondent Minnesota Teachers Retirement Association (TRA), which entitled him to a pension benefit after retirement. In 1996, Loel and Richard divorced. Prior to the divorce, Richard contacted TRA to request information about his retirement benefit. TRA sent Richard a letter that outlined the six available benefit plans. Three of the plans contained a full or partial survivor benefit for a designated beneficiary. The dissolution judgment and decree awarded Loel one-half of the TRA pension benefit. The judgment estimated that the pension benefit payment would be approximately \$1,462 per month, but did not specify the source of the estimate or reflect whether the Kuehnes had discussed the available plans.

In 1999, Richard retired from his position with the Roseville Area Schools. On February 4, 1999, he requested updated information about his retirement benefit. TRA sent him a letter describing the six available plans and providing updated payment estimates for each. Loel was not provided a copy of or made aware of the letter. On March 12, Richard applied for a retirement annuity benefit. He elected the Life Plan A-1. That plan provided for accelerated payments until he reached the age of 65 and did not include a survivor benefit.

Richard sent TRA a copy of the dissolution judgment and decree. In response, TRA sent him a letter stating that it was authorized to administer the paragraph of the decree dividing the pension benefit evenly. The letter further stated that “[b]y virtue of no

language to the contrary, you would be able to elect any of TRA's six annuity plan options and name anyone of your choosing as joint annuitant or beneficiary." Loel did not receive a copy of this letter.

On June 29, 1999, TRA sent Richard a letter confirming his election of the Life Plan A-1. The plan provided for accelerated payments of \$4,386 per month until he reached the age of 65, at which time the monthly payments would decrease to \$1,957 per month. The payments would be split evenly between Loel and Richard per the terms of the dissolution judgment and decree. On July 23, 1999, TRA sent Loel a letter explaining the payments that she would receive under the plan. The letter indicated that she would receive \$2,193 per month until July 2006, at which time the benefit would be reduced to \$979 per month. The letter stated "this amount will then continue for your lifetime." On January 24, 2001, TRA sent Loel a letter informing her that the payments would increase to \$2,416 until July 2006 and then decrease to \$1,222. The letter again stated that the lesser amount "will then continue for your lifetime." On April 24, 2006, TRA sent her a letter indicating that the accelerated payments would cease in July 2006 and that from that point on "[t]he new monthly payment for the life portion" of the benefit would be \$1,511 per month.

Richard passed away in August 2017. Following his death, TRA notified Loel that the pension benefit payments were only guaranteed for Richard's lifetime because the plan that he selected did not include a survivor benefit, and therefore the payment issued on August 1 would be the final payment made under the plan. On November 1, 2017, Loel's attorney sent a letter to Jay Stoffel, the Executive Director of TRA. The letter outlined the incorrect representations that TRA had made to Loel that stated that the pension benefit

payments would continue for her lifetime and requested that the payments be reinstated. The letter also detailed the multiple letters that TRA sent to Richard before he made his plan election that Loel did not receive.

On November 29, Stoffel sent Loel a letter denying her request to have the payments reinstated. He apologized on behalf of TRA for erroneously indicating that her payments would continue for her lifetime, but explained that TRA did not have the authority to make payments beyond those that were available under the plan that Richard elected. He further explained that because Richard elected the Life Plan A-1, and that plan did not provide for survivor benefits, the payments could not be reinstated. Following a review hearing, TRA denied her petition and request to have her payments reinstated. This certiorari appeal follows.

D E C I S I O N

On appeal, our standard of review of the TRA board's quasi-judicial decisions limits this court to determining whether the decision was arbitrary, oppressive, unreasonable, fraudulent, under erroneous theory of law, or without supporting evidence. *McDermott v. Minn. Teachers Ret. Fund*, 609 N.W.2d 926, 928 (Minn. App. 2000). A decision is not arbitrary and capricious so long as there is a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009).

I.

Loel argues that her pension benefit payments should be reinstated based on the principle of negligent misrepresentation. To prevail on a claim of negligent

misrepresentation, Loel must establish “(1) a duty of care owed by the defendant to the plaintiff; (2) the defendant supplies false information to the plaintiff; (3) justifiable reliance upon the information by the plaintiff; and (4) failure by the defendant to exercise reasonable care in communicating the information.” *Williams v. Smith*, 820 N.W.2d 807, 815 (Minn. 2012).

In her memorandum in support of her petition for review of the executive director’s decision, Loel asserted the claim of negligent misrepresentation but did not address the issue of whether TRA owed her a duty of care. She now asserts that TRA owed her the same duty of care that it owed Richard under Minn. Stat. § 356A.04 (2018). The statute provides that TRA owes a fiduciary duty to “the active, deferred, and retired members of the plan.” Minn. Stat. § 356A.04, subd. 1. But Loel was never a member of the plan. Richard, the member of the plan, did not elect a plan that designated Loel as a beneficiary with survivor benefits. Loel’s only interest in the plan stemmed from the dissolution decree. And the dissolution decree did not make her a member of the plan. It merely provided that she was entitled to one-half of the payments that Richard received. Accordingly, we conclude that TRA does not owe Loel a duty under the statute. Because Loel cannot establish the first element of negligent misrepresentation, her claim under this theory fails.

II.

Loel argues that TRA should be estopped from ceasing her benefit payments based on the principles of equitable and promissory estoppel. TRA determined that neither doctrine applies in this case because neither doctrine can be applied if doing so would cause

the governmental entity to act outside the scope of its authority. See *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299-300 (Minn. 1996) (stating that if an agency has no authority to act, then “agency action cannot be made effective by [promissory] estoppel”); *In re McGuire*, 756 N.W.2d 517, 520 (Minn. App. 2008) (stating that “regardless of the equities involved, a government agency’s unauthorized act cannot be made effective by estoppel”), *review denied* (Minn. Dec. 16, 2008).

TRA argues that it has no authority to administer pension benefit payments outside of what is required by the elected plan. Loel argues that this principle does not bar application in this case because TRA “did have authority to act.” She argues that TRA had the authority to act because it “had authority to administer the pension plan division” and the available options included plans with survivor benefits. She also argues that “TRA informed Richard that his plan election had to meet both the parties’ intentions” and that, because it failed to do so, TRA should be held accountable.

Loel does not cite to any statutory provision or caselaw to support the assertion that TRA has the authority to administer pension benefit payments beyond what is required under the elected plan. Under Minn. Stat. § 356A.04, TRA owes a fiduciary duty to members of the plan. Minn. Stat. § 356A.05(a) (2018), provides:

The activities of a fiduciary of a covered pension plan must be carried out solely for the following purposes: (1) to provide authorized benefits to plan participants and beneficiaries; (2) to incur and pay reasonable and necessary administrative expenses; or (3) to manage a covered pension plan in accordance with the purposes and intent of the plan document.

The plan documents include “a written document or series of documents containing the eligibility requirements and entitlement provisions constituting the benefit coverage of a pension plan, including any articles of incorporation, bylaws, [or] governing body rules and policies.” Minn. Stat. § 356A.01, subd. 21 (2018). These documents do not authorize the requested payments, and therefore the TRA does not have the authority to administer them.

In addition, the authority that Loel claims that TRA possesses does not relate to her requested relief. She is correct that TRA has the authority to administer the elected plan and that some of the plans available to Richard included survivor benefits. But her argument that TRA informed Richard that his election had to meet the parties’ intention misconstrues the letter from TRA. TRA informed Richard that it was “authorized to administer Paragraph 7 of the Order assuming it meets the intentions of both parties. The division of pension benefits would split the monthly annuity amount evenly with your former spouse.” It went on to state that “[b]y virtue of no language to the contrary, you would be able to elect any of TRA’s six annuity plan options.” Accordingly, TRA’s statement about meeting the intention of both parties relates to the administration of the plan benefits, not the election of the plan. Because the requested relief would require TRA to act outside its authority, Loel cannot establish a claim for promissory or equitable estoppel.

Addressing the merits of an equitable-estoppel claim, TRA determined that Loel failed to establish the elements. To establish a claim of equitable estoppel against a government entity a party must establish four elements. *City of North Oaks v. Sarpal*, 797

N.W.2d 18, 25 (Minn. 2011). First, the party must show wrongful conduct on the part of an authorized government agent. *Id.* Second, the party must show she reasonably relied on the wrongful conduct. *Id.* Third, the party must show she incurred “a unique expenditure in reliance on the wrongful conduct.” *Id.* Fourth, “the balance of the equities must weigh in favor of estoppel.” *Id.* TRA determined that Loel failed to establish that TRA’s actions constituted wrongful conduct.

The supreme court has established that wrongful conduct is not established by “simple inadvertence, mistake, or imperfect conduct.” *Bond v. Comm’r of Revenue*, 691 N.W.2d 831, 838 (Minn. 2005). Rather, it requires “some degree of malfeasance.” *Sarpal*, 797 N.W.2d at 25 (quotation omitted). Here, TRA inaccurately stated that the benefit payments would continue for Loel’s lifetime in letters in 1999 and 2001. But we are bound to follow this precedent, and the record does not reflect any malfeasance on the part of TRA. While the errors are most unfortunate, it does not appear that they rise above the level of simple inadvertence or mistake. They appear to be clerical errors that do not constitute wrongful conduct. On this record, TRA’s determination that equitable estoppel does not apply is not arbitrary or capricious.

III.

Loel next argues that her due-process rights were violated because she had a “vested interest” in the plan and was entitled to notification when Richard made his plan election. Under the statute, if a public-pension fund offers “optional retirement annuity forms which include a joint and survivor optional retirement annuity,” the executive director must provide a written statement summarizing the annuity options “to the spouse of the member

before the member's election of an optional retirement annuity." Minn. Stat. § 356.371, subd. 3 (1998). In contrast, Minn. Stat. § 356.80 (1998) provides a separate procedure for the "provision of information in the event of marriage dissolution." That section provides that parties to a marriage dissolution may make a written request for information about the plan benefits. Minn. Stat. § 356.80, subd. 1.

Notably, Minn. Stat. § 518.581, subd. 3 (1998), provides a distinct notice requirement for former spouses who are awarded interests in pension plans. The statute provides that a "pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan . . . a copy of the court order, including a withholding order, determining the former spouse's rights." Minn. Stat. § 518.581, subd. 3. The statute also requires that the former spouse file the name and last known address of both the employee and former spouse with the pension plan to be entitled to notice. *Id.* Loel did not file this information with TRA; Richard provided a copy of the dissolution decree after he applied for an annuity. TRA then determined that he was eligible to elect any of the six plans because there was no language to suggest otherwise. This interpretation of the decree is consistent with Minn. Stat. § 518.581, subd. 1 (1998), which provides that the district court "may, as part of the order, award a former spouse all or part of a survivor benefit." Here, the district court did not make such an award and the dissolution decree did not contain language limiting Richard's plan election.

IV.

Loel contends that she is entitled to damages under Minn. Stat. § 3.736, subd. 1.

The statute provides that the state

will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of an employee of the state while acting within the scope of office or employment . . . under circumstances where the state, if a private person, would be liable to the claimant, whether arising out of a governmental or propriety function.

Minn. Stat. § 3.736, subd. 1. TRA argues that the statute does not create an independent cause of action, but rather serves as a waiver of the state’s sovereign immunity against tort claims. Caselaw supports this assertion.

We have recognized that, in adopting the statute, the legislature “expressly waived the state’s sovereign immunity with respect to common-law tort claims.” *Nichols v. State, Office of Secretary of State*, 842 N.W.2d 20, 24 (Minn. App. 2014), *aff’d*, 858 N.W.2d 773 (Minn. 2015). And the supreme court has stated that “[a] statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication.” *Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007). Here, the statute does not, by its plain language, create an independent cause of action. Accordingly, the statute does not entitle Loel to damages independent of her other claims.

On this record and governed by our limited standard of review, TRA’s decision to deny Loel’s request to reinstate the benefit payments is not arbitrary and capricious. We therefore affirm the decision of TRA.

Affirmed.