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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1743**

Essar Global Fund Limited,
Appellant,

vs.

Alice Roberts-Davis, et al.,
Respondents.

**Filed June 15, 2020
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CV-19-1122

David R. Marshall, Leah C. Janus, Kyle W. Ubl, Fredrikson & Byron, P.A., Minneapolis,
Minnesota (for appellant)

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Minnesota (for respondents)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and
Schellhas, Judge.*

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the dismissal of its claims against respondents arising out of efforts by the Minnesota Department of Natural Resources (the DNR) to debar appellant and its affiliates from doing business with the State of Minnesota. Appellant asserts that the district court erred by determining that (1) appellant failed to exhaust administrative remedies before bringing a judicial action, (2) appellant's due-process claim under 42 U.S.C. § 1983 (2018) was not ripe, and (3) appellant was not entitled to attorney fees and costs under the Minnesota Equal Access to Justice Act (the MEAJA) as a prevailing party. We affirm.

FACTS

Essar Steel Minnesota LLC (Essar Steel) is a subsidiary of Essar Global Fund Limited (Essar Global), a corporation involved in the business of taconite ore mining and steel manufacturing. In 2008, Essar Global and Essar Steel entered into agreements with Itasca County relating to a taconite plant, a direct reduction iron production plant, and a steel plant on a common site located next to an iron ore mine near Nashwauk, Minnesota (the project). The completion date for the project was October 1, 2015. Itasca County agreed to build public infrastructure to support the plant, funded by grant money from the State of Minnesota. If the project was not finished by the completion date, Essar Global and Essar Steel agreed to reimburse Itasca County in the amount the county actually paid for construction, up to \$65.9 million.

Essar Steel did not finish the project by the October 2015 completion date. Essar Global and Essar Steel filed for bankruptcy protection in July 2016. Through Essar Steel's plan of reorganization, Chippewa Capital Partners LLC (Chippewa) became Essar Steel's successor and planned to complete the mining and steel production facility. Chippewa acquired Essar Steel, renamed the company Mesabi Metallica Company LLC (Mesabi), and negotiated a settlement of Essar Steel's defaults under the previous leases by entering into a master lease amendment. Mesabi emerged as Essar Steel's successor in December 2017, and currently owns the facility in Nashwauk. In December 2018, Essar Energy Solutions Ltd. (Essar Energy), an affiliate of Essar Global, purchased \$260 million in secured notes issued by Mesabi to its lenders.¹ All of Mesabi's assets serve as collateral for the debt owed to Essar Energy.

Essar Energy's position as a secured lender to Mesabi became public in January 2019. On January 28, the DNR sent a letter to Mesabi advising Mesabi that the DNR intended to debar² Essar Global and its affiliates from doing business in Minnesota because Essar Global was an "unreliable partner." On February 13, the DNR submitted a vendor performance report and petition to the Minnesota Department of Administration (the DOA), recommending that Essar Global and its affiliates be debarred from future contracts with the state. On February 19, the DNR provided a copy of the vendor report and petition to Essar Global.

¹ Essar Global, through its affiliate Essar Energy, later acquired Mesabi.

² "Debarment is a discretionary government sanction that excludes a contractor from contracting with the government for a reasonable, specified period." *OSG Prod. Tankers, LLC v. United States*, 82 Fed. Cl. 570, 577 (2008) (quotation omitted).

The next day, on February 20, Essar Global filed a complaint in district court against the DNR, the commissioner of natural resources Sarah Strommen, the DOA, and the commissioner of administration Alice Roberts-Davis (respondents). The complaint sought declaratory and injunctive relief related to the petition. Essar Global sought to enjoin the DOA from acting on the petition recommending debarment of Essar Global and its affiliates. Essar Global also asserted a due-process claim under 42 U.S.C. § 1983, alleging that it was unconstitutional to debar Essar Global without the benefit of a pre-debarment hearing. Lastly, Essar Global asserted a claim under the MEAJA seeking recovery of its attorney fees and costs.

Respondents filed a joint motion to dismiss the complaint under Minn. R. Civ. P. 12.02, arguing that the district court lacked subject-matter jurisdiction to consider Essar Global's claims and that Essar Global failed to state a claim upon which relief could be granted. Following a hearing, the district court dismissed Essar Global's complaint without prejudice. The district court determined that (1) it lacked subject-matter jurisdiction over Essar Global's declaratory-judgment claim, (2) Essar Global's due-process claim was not ripe, and (3) Essar Global was not entitled to attorney fees and costs under the MEAJA.

This appeal follows.

D E C I S I O N

I. Standard of Review

A district court may dismiss a civil action when it lacks subject-matter jurisdiction or when the pleadings fail to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(a), (e). "To determine whether a plaintiff's claim survives a motion to dismiss,

we look only to the facts alleged in the complaint, accepting those facts as true.” *Hansen v. U. S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 325 (Minn. 2019) (citation omitted). We also “construe all reasonable inferences from the facts in favor of the plaintiff.” *Id.* (citation omitted); *see also Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (discussing standard of review). We conduct a de novo review of a rule 12 dismissal. *Hansen*, 934 N.W.2d at 325. Whether the exhaustion-of-administrative-remedies doctrine applies is also a question of law, which we review de novo. *Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 177 (Minn. App. 2012).

II. The district court lacked subject-matter jurisdiction to consider Essar Global’s claim for declaratory relief because Essar Global failed to exhaust its administrative remedies.

“Subject-matter jurisdiction refers to a court’s authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision.” *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016) (citation and internal quotations omitted). Essar Global argues that the district court erred by determining that it lacked subject-matter jurisdiction over Essar Global’s claim for declaratory relief. Essar Global asserts that the DOA lacks authority to debar Essar Global and its affiliates from doing business with the State of Minnesota. The district court determined, in part, that it did not have subject-matter jurisdiction over the declaratory-relief claim because Essar Global failed to exhaust its administrative remedies.³ The district court found that:

³ The district court also determined that Essar Global failed to seek a certiorari appeal after an adverse decision. Because we determine that Essar Global did not exhaust its

Minnesota courts do not allow for judicial review of an agency decision until the adversely affected party has exhausted available administrative remedies. Here, the Court finds that Essar Global is required to exhaust its administrative remedies by participating in the potential suspension/debarment process that is currently underway within the [DOA].

....

Because Essar Global has not exhausted these remedies by allowing the [DOA] to investigate the allegations in the DNR's vendor report and determine whether suspension/debarment is appropriate, judicial review is not available.

(Citation omitted.)

For the reasons discussed below, we determine that the district court did not err by dismissing Essar Global's declaratory-relief claim because Essar Global has not exhausted the administrative remedies available to it in the event of an adverse decision, and the claimed exceptions to the exhaustion-of-remedies doctrine do not apply.

It is a "long-settled rule" that absent imminent and irreparable harm, "no one is entitled to injunctive protection against the actual or threatened acts of an administrative agency" until all administrative remedies have been exhausted. *Uckun v. Minnesota State Bd. of Med. Practice*, 733 N.W.2d 778, 785 (Minn. App. 2007) (citations omitted). This requirement has several purposes, one of which is "to protect the autonomy of administrative agencies created by the legislature to resolve particular problems, to promote judicial efficiency, to produce a record during the administrative process that

administrative remedies, we do not address the district court's alternative basis for dismissal.

facilitates judicial review, and to potentially reduce the need to resort to judicial review.”
Id. at 786 (citation omitted).

Minnesota statute vests the DOA commissioner with the rulemaking authority to debar or suspend vendors through an administrative review process. Minn. Stat. § 16C.03 (2018); Minn. R. 1230.0100-1230.4300 (2019). The Minnesota Rule addressing the DOA’s authority to debar or suspend vendors (1) sets forth the suspension process, (2) lists the debarment causes, (3) provides for written notice to the vendor, (4) provides for suspension or debarment appeals in the case of an adverse decision, (5) discusses the length of debarment, and (6) requires the DOA to maintain a master list of all suspensions and debarments. Minn. R. 1230.1150. Here, the DOA has not made a final decision on whether to act on the DNR’s petition recommending debarment. In January 2019, the DNR sent a letter to Mesabi revealing that it intended to seek debarment of Essar Global and its affiliates. The DNR submitted a vendor performance report and petition to the DOA about two weeks later, recommending that Essar Global and its affiliates be debarred from future contracts with the state. The next day, Essar Global filed its lawsuit before any proceedings in front of the DOA, and before the DOA decided the debarment petition. Essar Global has not exhausted *any* administrative remedies that may become available following an adverse decision, such as an internal appeal to the commissioner, explained below.

Essar Global argues, however, that it did not have to exhaust its administrative remedies because (1) any attempt to exhaust its remedies would be futile, (2) the DOA lacks jurisdiction over Essar Global, and (3) the DOA is violating Essar Global’s constitutional rights. We address each argument in turn.

a. Futility

Essar Global argues that there is not an adequate administrative process available. “[A]dministrative remedies need not be pursued if it would be futile to do so.” *Uckun*, 733 N.W.2d at 786 (citation omitted). If it would be futile to seek administrative remedies, a party may seek redress in the courts. *City of Richfield v. Local No. 1215*, 276 N.W.2d 42, 51 (Minn. 1979). The issue of futility presents a legal issue for appellate review. *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 74 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). Essar Global argues that it is futile to seek administrative remedies because there is not an administrative process available for a debarment under the DOA’s rules. This argument is puzzling. A debarred party may file an administrative appeal from a debarment decision to the DOA commissioner. The rules provide that:

If suspended or debarred, a person may file an appeal in writing with the commissioner of [the DOA] within 30 calendar days of receipt of a decision to suspend or debar. The commissioner shall, within 45 calendar days, decide whether the actions taken were according to statutes and regulations and were fair and in the best interest of the state.

Any person receiving an adverse decision from the commissioner may appeal in any appropriate court of the state.

Minn. R. 1230.1150, subp. 4.

The rules clearly provide for an administrative appeal of a debarment decision and state, further, that any party receiving an adverse decision from the DOA commissioner may appeal to the courts. *Id.* The DOA has not yet made a debarment decision. If the DOA decides to debar Essar Global and its affiliates, then Essar Global may follow the process set forth in Minnesota Rule 1230.1150, subpart 4, and appeal to the DOA

commissioner.⁴ If Essar Global is aggrieved by the commissioner’s decision, Essar Global may then seek judicial review. Because none of these eventualities has yet occurred, the district court did not err by determining that Essar Global must first await a decision from the DOA and then exercise its right to appeal to the appropriate court. The futility exception does not apply.⁵

b. Jurisdictional Challenge

Essar Global argues that the exhaustion-of-remedies doctrine does not apply because the DOA lacks jurisdiction over Essar Global. Essar Global asserts that the district court first should determine that Essar Global is not a “vendor” under Minnesota Statutes chapter 16C and therefore cannot be subject to debarment under an administrative process.⁶ Caselaw does not support this argument. “A party to an administrative proceeding is not entitled to judicial review of an administrative agency’s act or decision—even regarding its own jurisdiction—unless the party has exhausted its administrative remedies.” *S. Minn. Constr. Co. v. Minn. Dep’t of Transp.*, 637 N.W.2d 339, 344 (Minn. App. 2002)

⁴ Essar Global argues that while the DOA has an “informal and unwritten practice regarding debarments,” such informal practices are unenforceable and do not guarantee Essar Global access to an administrative remedy. This argument ignores the plain language of rule 1230.1150, which provides a vehicle for the appeal of an adverse debarment decision.

⁵ Essar Global also faults the district court for failing to advise Essar Global on the appropriate administrative remedy to take and for failing to identify “specific remedies” to exhaust. This argument is unsound. “Because the nature of judicial decision-making is to resolve disputes, the judicial function does not comprehend the giving of advisory opinions.” *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) (quotation omitted).

⁶ A “vendor” is defined as “a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.” Minn. Stat. § 16C.02, subd. 21 (2018).

(citing *Thomas v. Ramberg*, 60 N.W.2d 18, 20-21 (Minn. 1953)). If Essar Global challenges the DOA's jurisdiction to act, it must first make that argument in the administrative proceeding. *See id.*

Essar Global relies on *Elzie v. Comm'r of Pub. Safety*, to support its argument that it is not required to exhaust its administrative remedies when it challenges an agency's decision. 298 N.W.2d 29 (Minn. 1980). In that case, the plaintiffs filed declaratory-judgment actions challenging the notice-and-hearing procedures followed by the commissioner of public safety in suspending or cancelling driver's licenses. *Id.* at 31. The district court dismissed the complaints for failure to state a claim on which relief could be granted because, among other things, the court lacked subject-matter jurisdiction to consider a challenge to the commissioner's orders. *Id.* at 31-32. On appeal, the supreme court noted that the plaintiffs alleged that the commissioner "did not have jurisdiction over either them or the subject matter because he committed constitutional violations and the rules under which he acted were formulated in a manner contrary to law." *Id.* at 33. The supreme court reasoned that "[s]ince the court is required to accept as true the allegations in the complaint when ruling on a Rule 12.02 motion, for purposes of disposition of this issue on appeal, we must assume the truth of [the plaintiffs'] allegation that the Commissioner lacked subject matter jurisdiction." *Id.* (internal citation omitted). The supreme court reversed the district court's decision and remanded for trial. *Id.*

Elzie is distinguishable. In *Elzie*, the commissioner of public safety had already issued decisions to suspend or cancel the plaintiffs' driver's licenses. *Id.* at 31. Each plaintiff faced criminal prosecution for driving after suspension or cancellation, and alleged

that the commissioner's suspension and cancellation practices were constitutionally infirm. *Id.* at 31. The *Elzie* plaintiffs did not file a complaint challenging the commissioner's actions until *after* the commissioner exercised its authority and issued a decision. *Id.* Here, by contrast, the DOA has not yet decided or exercised its authority in any way. And unlike the *Elzie* plaintiffs, Essar Global is not seeking relief related to the debarment process itself. The *Elzie* plaintiffs brought a declaratory-judgment claim arguing that the administrative process by which the department of public safety cancelled or suspended driver's licenses was defective and did not provide for adequate due process. *Id.* at 31. Essar Global's complaint is not asserting that the debarment process is procedurally defective. Instead, Essar Global asserts that respondents lack the authority to debar Essar Global or its affiliates. *Elzie* does not apply.

Essar Global is currently a party to ongoing administrative proceedings with the DOA. The DOA has not yet taken any actions or issued any decisions. If the DOA decides to debar or suspend Essar Global, the company may then follow the process set forth in Minnesota Rule 1230.1150, subpart 4, and appeal to the DOA commissioner. If Essar Global receives an adverse decision from the commissioner, it may then "appeal in any appropriate court of the state." *Id.* To the extent that Essar Global maintains that the DOA lacks authority to continue its administrative process, it must first raise its jurisdictional challenge to the DOA and exhaust the administrative remedies available through that process. See *Minn. Constr. Co.*, 637 N.W.2d at 344; *Ramberg*, 60 N.W.2d at 20-21. Because Essar Global failed to exhaust its administrative remedies, the district court correctly determined that it lacks jurisdiction over Essar Global's claims.

c. Constitutional Challenge

Essar Global argues that it is not required to exhaust its administrative remedies because it asserted a constitutional challenge. A party need not exhaust its administrative remedies if “a clear and unambiguous violation of the complaining party’s constitutional rights is alleged.” *County of Hennepin v. Law Enf’t Labor Servs., Inc., Local No. 19*, 527 N.W.2d 821, 825 (Minn. 1995); *see also Elzie*, 298 N.W.2d at 32 (noting that where a complaint alleges constitutional violations, a rule 12 motion is subject to increased scrutiny to protect the public from “possible governmental overreaching”). Essar Global did not allege that the DOA took an action that clearly and unambiguously violated its constitutional rights. Instead, Essar Global asserts that a constitutional violation is apparent because the DOA “has not promulgated any rules providing the right to a hearing for a debarment in satisfaction of due process.” As discussed earlier, this assertion contradicts plain Minnesota law, which provides for an administrative remedy under Minn. Stat. § 16C.03, subd. 2(a)(3), and Minn. R. 1230.1150. Even accepting the facts alleged in the complaint as true, Essar Global has not alleged a clear or unambiguous constitutional violation. *See Bahr*, 788 N.W.2d at 80 (requiring appellate courts reviewing dismissal order to accept the facts alleged in the pleadings as true and construe all reasonable inferences in favor of the nonmoving party). Essar Global’s claimed exceptions do not apply.

III. Essar Global’s due-process claim under 42 U.S.C. § 1983 is not justiciable.

Essar Global argues that the district court erred by dismissing its due-process claim because it was not ripe. Ripeness issues raise a question of justiciability, which we review

de novo. *See Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015) (“Justiciability is an issue of law, which we review de novo.”); *see also In re Civil Commitment of Nielsen*, 863 N.W.2d 399, 401 (Minn. App. 2015) (characterizing ripeness as “a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies”).

Essar Global asserted a due-process claim and sought injunctive relief under 42 U.S.C. § 1983 for alleged violations of its constitutional rights. The United States and Minnesota Constitutions provide that the government shall not “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. Section 1983 furnishes a cause of action to persons against state officials who, acting under color of law, deprive an individual of “any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983.

Essar Global claimed that respondents did “not have lawful authority to debar Essar Global or its affiliates,” and that “Essar Global and its affiliates have a constitutional due process right to a hearing *before* being debarred from doing business with the State of Minnesota.” The district court dismissed the claim on ripeness grounds, reasoning that “there has not yet been a deprivation of property interests” because “[t]he [DOA] has not made a decision whether to debar Essar Global, and Essar Global has not yet been deprived of any property interests.”

We agree. *Zinermon v. Burch*, 494 U.S. 113, 110 S. Ct. 975 (1990) guides our analysis. *Zinermon* identifies three classes of section 1983 claims that may be asserted against the government under the due-process clause of the constitution: (1) “the specific

protections defined in the Bill of Rights,” such as the plaintiff’s rights to freedom of speech or freedom from unreasonable searches and seizures; (2) the “substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them”; and (3) procedural due process regarding “the deprivation by state action of a constitutionally protected interest in life, liberty, or property” without a fair procedure. *Id.* at 125, 110 S. Ct. at 983 (citations and internal quotations omitted). As for the first two types of claims, not alleged here, “the constitutional violation actionable under § 1983 is complete when the wrongful action is taken.” *Id.* (citation omitted). With respect to procedural due process, however, “[t]he constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process.” *Id.* at 126, 110 S. Ct. at 983.

Essar Global argues that the petition to pursue debarment was a taking in itself and violated section 1983. To state a procedural-due-process claim a plaintiff must allege that (1) it suffered a deprivation of a constitutionally protected interest in life, liberty, or property, and (2) the deprivation occurred without due process of law. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976); *see also Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (noting that Minnesota courts conduct a two-step analysis identifying whether the government deprived the individual of a protected interest and then determining whether the procedures used were sufficient). The party asserting a procedural-due-process claim must establish the existence of a protected liberty or property interest. *State v. Grigsby*, 818 N.W.2d 511, 517 (Minn. 2012).

Essar Global has not satisfied its burden. While Essar Global may appeal an “adverse decision” from the DOA under Minn. R. 1230.1150, there is no legal authority supporting a party’s right to file a pre-debarment appeal. Essar Global does not have a protectable property interest in preventing the DOA from considering the DNR’s petition. Moreover, assuming Essar Global suffered a deprivation of its rights, it has alleged no procedural defects that would support a procedural-due-process claim. Thus, even accepting the facts alleged in the complaint as true, *see Hansen*, 934 N.W.2d at 325, Essar Global’s due-process claim is premature. Thus, the district court did not err by dismissing Essar Global’s due-process claim on ripeness grounds.

IV. Essar Global’s attorney-fee claim under the MEAJA was properly dismissed.

Essar Global asserted a claim for attorney fees under the MEAJA, Minn. Stat. §§ 15.471-.474 (2018). The MEAJA provides that if a prevailing party in a civil action “shows that the position of the state was not substantially justified, the court . . . shall award fees and other expenses to the party unless special circumstances make an award unjust.” *Id.* at § 15.472(a). The party seeking fees bears the burden of proving that it prevailed and that the state’s position was not substantially justified. *Id.* The MEAJA is a limited waiver of sovereign immunity, and courts strictly construe its language. *City of Mankato v. Mahoney*, 542 N.W.2d 689, 693 (Minn. App. 1996) (citation omitted). Here, the district court determined that Essar Global was not a prevailing party. Because we affirm the district court’s dismissal of Essar Global’s claims for declaratory and injunctive relief, we agree. The district court’s dismissal of Essar Global’s attorney-fee claim is also affirmed.

Affirmed.