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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0029**

Irv's Boomin' Fireworks, LLC, et al.,
Appellants,

vs.

John J. Muhar, et al.,
Respondents.

**Filed August 24, 2020
Reversed and remanded
Bjorkman, Judge**

Itasca County District Court
File No. 31-CV-17-1538

Erick G. Kaardal, Vincent J. Fahnlander, Mohrman, Kaardal & Erickson, P.A.,
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Matti R. Adam, Itasca County Attorney, Michael J. Haig, Chief Assistant County Attorney,
Grand Rapids, Minnesota (for respondents)

Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Bratvold,
Judge.

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

BJORKMAN, Judge

Appellants challenge the dismissal of this action seeking a declaration that respondents may not prosecute them for selling explosive fireworks on tribal land, arguing that (1) separation-of-powers concerns do not deprive the district court of subject-matter

jurisdiction and (2) the complaint states an actionable claim. Because the district court has subject-matter jurisdiction, we reverse and remand.

FACTS

In June 2017, appellants Irv’s Boomin’ Fireworks LLC and Irving Seelye, its managing member, commenced this action seeking declaratory and injunctive relief against respondents Itasca County Attorney John J. Muhar,¹ Itasca County Attorney’s Office, and Itasca County (collectively, the county). Appellants seek to prevent respondents from threatening to criminally prosecute them for selling explosive fireworks on tribal land.

The complaint alleges that Seelye is Native American and an enrolled member of the Leech Lake Band of Ojibwe (the band). He owns Irv’s Boomin’ Fireworks, which is located within the band’s reservation. In 2015, the band issued a permit authorizing Irv’s Boomin’ Fireworks to sell all types of fireworks, including explosive fireworks. Minnesota law criminalizes the sale of explosive fireworks except “for shipment directly out of the state.”² Minn. Stat. §§ 624.21, .23 (2018). Irv’s Boomin’ Fireworks stopped selling explosive fireworks after ten days, when it learned that the county attorney intended to prosecute sales of explosive fireworks. In 2017, Irv’s Boomin’ Fireworks again obtained

¹ The current Itasca County Attorney is Matti R. Adam.

² Minnesota law defines fireworks as “any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation.” Minn. Stat. § 624.20, subd. 1(a) (2018). Explosive fireworks are “any fireworks that contain pyrotechnic or flash powder, gunpowder, black powder, or any other explosive compound constructed to produce detonation or deflagration.” *Id.*, subd. 2 (2018).

a permit from the band. It sought to sell explosive fireworks for that year's July 4 celebrations, on the premise that the statutory exception for sales "out of the state" permits sales to individuals who live anywhere outside of the reservation.

Appellants (hereafter Irv's) filed this action in anticipation of those celebrations and sought a temporary restraining order (TRO) to prevent prosecution or threats of prosecution. The district court denied the TRO, reasoning that (1) Public Law 280 permits the state to prosecute Irv's if it violates the fireworks statute,³ and (2) the exemption for sales of fireworks directly "out of the state" means sales to persons outside the State of Minnesota, not sales to persons outside of the reservation. Irv's appealed, and this court affirmed. *Irv's Boomin' Fireworks, LLC v. Muhar*, No. A17-1416, 2018 WL 1702862 (Minn. App. Apr. 9, 2018).

Meanwhile, the county moved to dismiss Irv's complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. After resolution of the TRO appeal, the district court granted the county's motion. Irv's again appealed, and we reversed because the district court had not conducted a hearing, depriving Irv's of a meaningful opportunity to respond to the motion. *Irv's Boomin' Fireworks, LLC v. Muhar*, No. A18-1930 (Minn. App. May 20, 2019).

³ The federal law commonly known as Public Law 280 grants Minnesota broad jurisdiction over certain criminal matters on certain Indian land within the state. See 18 U.S.C. § 1162 (2016) (recognizing state criminal jurisdiction over "[a]ll Indian country within the State"); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087 (1987).

On remand, the district court conducted a hearing and again dismissed the action for lack of subject-matter jurisdiction. The court reasoned that granting declaratory or injunctive relief would “usurp the prosecutor’s discretion and curtail the prosecutor’s charging authority,” in violation of the separation-of-powers doctrine. Irv’s appeals.

D E C I S I O N

A district court must dismiss an action if it lacks subject-matter jurisdiction. Minn. R. Civ. P. 12.02(a), 12.08(c). “Subject-matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought.” *Seehus v. Bor–Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). We review de novo whether a district court has subject-matter jurisdiction. *Linert v. MacDonald*, 901 N.W.2d 664, 667 (Minn. App. 2017).

Under the Uniform Declaratory Judgments Act (UDJA), a district court has “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Minn. Stat. § 555.01 (2018). When a person’s rights, status, or other legal relations are “affected by a statute,” the person “may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Minn. Stat. § 555.02 (2018). The UDJA “is not an independent source of jurisdiction,” but a district court has broad jurisdiction to determine justiciable controversies. *Anderson v. County of Lyon*, 784 N.W.2d 77, 80 (Minn. App. 2010), *review denied* (Minn. Aug. 24, 2010); *see* Minn. Const. art. VI, § 3 (granting district courts original jurisdiction in all civil and criminal cases).

Irv's argues that the district court has subject-matter jurisdiction because this court has already determined that the complaint presents a justiciable controversy. We agree that our April 2018 opinion affirming the denial of a TRO decided the question of justiciability:

The three-factor test for justiciability is satisfied here. First, appellants' declaratory-judgment action involves a definite and concrete assertion of a right (to sell fireworks) emanating from a legal source (the permit to sell fireworks). Second, the action involves a genuine conflict of interests between appellants, who claim a protectable property interest in the fireworks permit issued by the Band, and respondents, who are authorized to prosecute violators of Minnesota law. Third, this matter is capable of specific resolution by judgment because it involves the interpretation of a Minnesota statute.

Irv's Boomin' Fireworks, 2018 WL 1702862, at *2. That decision establishes the law of this case as to justiciability. See *State v. Miller*, 849 N.W.2d 94, 98 (Minn. App. 2014) (stating that legal determinations "continue to govern the *same issues* in subsequent stages of the *same case*"). But the district court did not dismiss this action for want of a justiciable controversy; it dismissed based on the separation-of-powers doctrine.

"Constitutional principles of separation of governmental powers forbid the interference of one governmental branch with another within their respective spheres." *Neighborhood Sch. Coal. v. Indep. Sch. Dist. No. 279*, 484 N.W.2d 440, 441 (Minn. App. 1992), *review denied* (Minn. June 30, 1992). The separation-of-powers doctrine imposes "prudential limits" on a district court's exercise of subject-matter jurisdiction. *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 173 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009). The doctrine does not necessarily deprive a court of

subject-matter jurisdiction “in the strictest sense” but may justify the court declining jurisdiction over a particular matter. *Id.* at 173-74.

The district court concluded that it could not exercise jurisdiction because deciding whether Irv’s proposed sale of explosive fireworks violates Minnesota law would infringe on prosecutorial discretion. We disagree. The separation-of-powers doctrine precludes judicial interference with “the prosecutor’s charging authority.” *State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005) (quotation omitted). A prosecutor has broad discretion to determine whether to file a charge, what charge to file, and whether to offer a plea agreement. See *Johnson v. State*, 641 N.W.2d 912, 917 (Minn. 2002); *State v. Strok*, 786 N.W.2d 297, 303 (Minn. App. 2010). Those decisions may be “based on many legitimate factors that are not subject to review by the judiciary.” *Strok*, 786 N.W.2d at 303. But prosecutorial discretion is not unfettered. A prosecutor “may only charge a crime when there is probable cause to believe the individual committed the crime.” *Bedeau v. Evans*, 926 N.W.2d 425, 434 (Minn. App. 2019), *review denied* (Minn. June 26, 2019). And it is the role of the court, not the prosecutor, to determine whether probable cause supports a particular charge. *Id.*

It is essentially this judicial determination that Irv’s seeks in this action. Irv’s requests a declaration that selling explosive fireworks to individuals who reside outside of the reservation does not violate the fireworks law as defined by the legislature and therefore cannot support a criminal charge. This legal determination requires consideration of the interplay between Public Law 280, the band’s ordinances, and the fireworks statutes—precisely the type of analysis that courts routinely perform. See *State v. Jones*, 729 N.W.2d

1, 4 (Minn. 2007) (reciting established analytical framework for determining whether the state has subject-matter jurisdiction under Public Law 280 to enforce its statutes against an enrolled tribal member residing on his reservation). Indeed, the county acknowledges that if Irv’s were actually charged with fireworks violations, the district court would have subject-matter jurisdiction to determine whether the interplay of those laws supports criminal charges.

Nor are we persuaded by the county’s argument that issuance of a declaratory judgment interpreting a criminal statute undermines prosecutorial immunity. Immunity protects prosecutors from actions seeking money damages to avoid “caus[ing] a deflection of the prosecutor’s energies from his public duties” and possibly “shad[ing] [the prosecutor’s] decisions instead of exercising the independence of judgment required by his public trust.” *Imbler v. Pachtman*, 424 U.S. 409, 423, 96 S. Ct. 984, 991 (1976). Neither of these concerns is implicated by a district court construing a criminal statute to resolve a justiciable controversy.

Moreover, the exercise of jurisdiction to clarify that particular conduct cannot sustain a particular criminal charge is consistent with the purpose of the UDJA—to provide certainty. Minn. Stat. § 555.12 (2018) (stating that the UDJA’s purpose is “to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations”); see *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 339 (Minn. 2011) (explaining that declaratory-judgment actions “allow parties to be relieved of an uncertainty and insecurity arising out of an actual controversy with respect to their legal rights before those rights actually have been invaded” (quotation omitted)). We must construe the UDJA “liberally”

to achieve that end. Minn. Stat. § 555.12. Certainty is provided when an individual facing potential criminal liability may obtain the court's interpretation of the applicable criminal statute before undertaking conduct that risks prosecution.

For that reason, many jurisdictions permit pre-prosecution declaratory-judgment actions to determine the construction or validity of criminal statutes. *See N.H. Hemp Council, Inc. v. Marshall*, 203 F.3d 1, 5 (1st Cir. 2000) (permitting declaratory action to determine whether industrial hemp production constitutes illegal marijuana production); *Zeitlin v. Arnebergh*, 383 P.2d 152, 155 (Cal. 1963) (permitting declaratory action to decide if proposed book sale falls within statutory obscenity ban); *Sendak v. Allen*, 330 N.E.2d 333, 336 (Ind. App. 1975) (permitting declaratory action to determine applicability of statute precluding police officers from running for public office); *Sun Oil Co. v. Dir. of Div. on Necessaries of Life*, 163 N.E.2d 276, 279 (Mass. 1960) (permitting declaratory action to decide whether gas station sign falls within statutory ban on signs relating to fuel price); *Am. Treasures, Inc. v. State*, 617 S.E.2d 346, 350 (N.C. App. 2005) (permitting declaratory action to determine whether use of game promotion attached to prepaid phone cards is an illegal gambling arrangement). “[I]n an otherwise proper case declaratory relief may be granted notwithstanding the fact that the declaration is as to the validity or construction of a statute having criminal or penal provisions.” W. E. Shipley, Annotation, *Validity, Construction, and Application of Criminal Statutes or Ordinances as Proper Subject for Declaratory Judgment*, 10 A.L.R.3d 727, § 2 (1966).

In sum, we conclude that addressing the merits of Irv's declaratory-judgment action does not offend separation-of-powers principles and is consistent with the purpose of the

UDJA. Accordingly, the district court erred by dismissing the complaint for lack of subject-matter jurisdiction.⁴

Reversed and remanded.

⁴ Irv's also argues that the complaint is legally sufficient and that it should prevail on the merits. But because the district court concluded it lacked subject-matter jurisdiction, it did not address those issues. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); see also *N. Star Int'l Trucks, Inc. v. Navistar, Inc.*, 837 N.W.2d 320, 325 (Minn. App. 2013) (noting this court's role as "an error-correcting court"). Because Irv's arguments are not properly before this court, we decline to address them.