STATE OF MINNESOTA

IN SUPREME COURT

A20-0434

Court of Appeals — Gildea, C.J.

Madison Equities, Inc., et al.,

Respondents,

vs.

Filed: December 22, 2021
Office of Appellate Courts

Office of Attorney General,

Appellant.

William L. Moran, Lehoan T. Pham, HKM, P.A., Saint Paul, Minnesota, for respondents.

Keith Ellison, Attorney General, James W. Canaday, Deputy Attorney General, Jason Pleggenkuhle, Jonathan D. Moler, Assistant Attorneys General, Saint Paul, Minnesota, for appellant.

Heidi M. Silton, Kate M. Baxter-Kauf, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota; and

Karl A. Racine, Attorney General for the District of Columbia, Loren L. AliKhan, Solicitor General, Caroline S. Van Zile, Principal Deputy Solicitor General, Ashwin P. Phatak, Deputy Solicitor General, Thais-Lyn Trayer, Assistant Attorney General, Washington, D.C., for amici curiae District of Columbia, et al.

S Y L L A B U S

Because the Attorney General had a reasonable basis to believe wage laws were violated and the information sought is reasonably relevant to the investigation of suspected violations of those laws, the district court did not abuse its discretion in requiring 10 entities to provide information relating to hourly employees in response to the civil investigative demand issued by the Attorney General under Minn. Stat. § 8.31 (2020).

Affirmed in part, reversed in part, and remanded.

O P I N I O N

GILDEA, Chief Justice.

This case comes to us after the Minnesota Attorney General issued a civil investigative demand under Minn. Stat. § 8.31 (2020) ("Demand"), to Madison Equities, Inc. and nine of its subsidiary and related companies—collectively referred to in this opinion as "Madison Group"—to investigate allegations of wage theft.[1] The Madison Group, arguing that the Demand was overbroad, sought a protective order from the district court. For his part, the Attorney General moved to compel responses to the Demand. The district court denied the Madison Group's motion but granted the Attorney General's motion. The court of appeals affirmed in part and reversed in part, limiting the Demand to

[1] The Attorney General dubbed these nine related companies "M.E. Property Companies." The nine M.E. Property Companies are First Bank Building LLC, Alliance Center LLC, 375 Jackson Courtly LLC, 375 Jackson Willow LLC, Jackson Street Building LLC, Lowry Building LLC, Park Square Court Building LLC, Stadium Ramp LLC, and U.S. Bank Center LLC. For convenience, we refer to Madison Equities and the M.E. Property Companies together as the Madison Group, unless otherwise indicated.

information related to security guards from only four of the Madison Group entities. We agree in part with the court of appeals that the definition of "worker" in the Demand must be narrowed. But, because we conclude that the court of appeals erred in limiting the scope of the Demand to certain of the companies, we reverse in part, and because the district court did not adequately explain its rationale for ordering responses to two questions in the Demand, we remand to the district court for further proceedings consistent with this opinion.

FACTS

Madison Equities is a private real estate company that owns numerous properties in Ramsey County through wholly owned, closely held subsidiaries. In 2019, the Attorney General received complaints from security guards employed by Madison Equities who alleged that Madison Equities issued paychecks from multiple entities within its network of closely held subsidiaries to avoid paying required overtime.

According to affidavits filed by the Attorney General, the security guards worked for Madison Equities at seven physical properties that correspond to the names of the nine related Madison Group companies.[2] Some security guards worked at multiple properties, while at least one security guard performed all work at one property. Regardless of the

[2] At oral argument, counsel for Madison Equities asserted that the complaining security guards worked at only three physical locations. The district court found, however, that complaining security guards worked at (1) the First Bank Building, (2) the Alliance Center, (3) the building located at 375 Jackson, (4) the Lowry Building, (5) Park Square Court, (6) Stadium Ramp, and (7) U.S. Bank Center. And three of the Madison Group companies—375 Jackson Courtly LLC, 375 Jackson Willow LLC, and Jackson Street Building LLC—correspond to the 375 Jackson address.

location of their work, the security guards alleged that they wore the same uniform, received the same rate of pay, and were supervised by the same security director. The security guards were instructed to report no more than 40 hours per week on their time sheets and, after recording 40 hours, to clock in and out for additional hours using a work-issued cell phone associated with each property. When the security guards worked more than 40 hours per week, they were paid by multiple entities and did not receive an overtime premium. The entities that paid the security guards did not always correspond with the location where the work was performed.[3] Each complaining security guard filled out one W-4 but received multiple W-2s. One employee, identified as Employee E, alleged that maintenance workers also experienced similar pay practices.[4]

The Attorney General issued the Demand under Minn. Stat. § 8.31 to the Madison Group. The Demand asserted that the Attorney General had reasonable grounds to believe that the Madison Group had "failed to pay their workers—including but not limited to security guards—all wages required by state and federal law, including overtime wages." The Attorney General identified six specific wage statutes in Minnesota Statutes

[3] Employee A received payment from Madison Equities, First Bank Building LLC, and Alliance Center LLC. Employee B received payment from multiple entities "including from Madison Equities, First Bank Building LLC, and Alliance Center LLC." Employee E was paid by U.S. Bank Center LLC, First Bank Building LLC, and an unidentified restaurant associated with Madison Equities. Employee F was paid by Alliance Center LLC and Madison Equities. Employees C and D stated that they received multiple paychecks for the same time period but did not identify which specific entities paid them.

[4] At oral argument, the Attorney General asserted that Employee E had worked for Madison Equities as both a security guard and a maintenance worker. But according to the record, Employee E worked for Madison Equities for 4 years as a security guard.

chapters 177 and 181 that he claimed to have reasonable grounds to believe had been violated.[5]

Even though the Attorney General received complaints from only security guards, the Demand was not limited to security guards. Instead, the Demand asked for information about all workers employed by any of the Madison Group entities. The Demand defined "worker" to include "any individual who performed any work or service for Madison Equities and/or the [nine] M.E. Property Companies, whether classified as an employee or independent contractor."

The Demand contained 17 interrogatories and 14 requests for production of documents. The Demand sought information from the Madison Group about the structure, organization, and relationships with and among the related companies; how they pay their workers; all properties that they have an interest in and whether security guards work at those properties; security guard wages; and the identity of any worker who had complained to any one of these 10 entities about their pay practices.

Two interrogatories (numbers 6 and 17) sought information related to a broader set of 30 companies referred to as the "M.E. Related Companies."[6] Interrogatory 6 instructed

---

[5] The Demand stated that the Attorney General had reasonable grounds to believe that the Madison Group had violated or were about to violate Minn. Stat. §§ 177.25, 177.30, 181.101, 181.13, 181.14, and 181.032 (2020).

[6] The Demand excluded the nine M.E. Property Companies from the definition of M.E. Related Companies but did not otherwise identify the M.E. Related Companies by name. Rather, the Demand defined the M.E. Related Companies as those "companies that maintain their principal office address at either 29 S. Deep Lake Rd., North Oaks, MN 55127 or 375 Jackson Street, Suite 700W, Saint Paul, MN 55101." It appears from the

the Madison Group to "[d]escribe with particularity any relationship between Madison Equities or the [nine] M.E. Property Companies with any of the [30] M.E. Related Companies, including agreements, transactions, or shared workers." Interrogatory 17 asked for the identity of all non-salary workers who work for more than one of the 40 companies encompassed by the Madison Group and the M.E. Related Companies, and information about the positions of those shared workers.

The Madison Group did not provide any information in response to the Demand but instead moved for a protective order to quash the Demand in its entirety. The Attorney General filed a cross-motion to compel compliance with the Demand.

After a hearing on the parties' motions, the district court denied the motion for a protective order and granted the motion to compel in its entirety. The district court concluded that the security guards' complaints "provide a reasonable basis to believe the [Madison Group] may have violated the law" and that "the request is sufficiently tailored for the level of pre-complaint discovery that the Legislature contemplated." The district court recognized that the alleged unlawful activity depends on considering the Madison Group as one employer but declined to define what constitutes a single employer for purposes of wage law violations. In reaching these conclusions, the district court found that the Attorney General sought responsive data only from the 10 entities that issued paychecks to the complaining security guards or corresponded to the buildings where those guards worked, i.e., the Madison Group. But in granting the Attorney General's motion to

---

record, and the parties do not dispute, that an additional 30 closely held subsidiaries of Madison Equities meet this definition.

compel, the district court also required the Madison Group to respond to interrogatories 6 and 17, which sought information about the 30 M.E. Related Companies.

The Madison Group appealed. The court of appeals affirmed in part and reversed in part. *Madison Equities, Inc. v. Off. of Att'y Gen.*, No. A20-0434, 2021 WL 79337 (Minn. App. Jan. 11, 2021). The court of appeals held that the Attorney General had a reasonable basis to investigate only the four companies identified by name that paid the complaining security guards—Madison Equities, First Bank Building LLC, U.S. Bank Center LLC, and Alliance Center LLC—and that the district court abused its discretion by not limiting the scope of the Demand to those four entities. *Id.* at *2–3. The court of appeals also held that the district court abused its discretion by not limiting the definition of "worker" in the Demand to security guards because the Attorney General received complaints only from security guards. *Id.* at *3. The court of appeals agreed with the district court that the Attorney General "need not establish at this early stage of the proceedings whether the entities are joint employers" and that the Attorney General could "obtain information dating back three years from the filing of the [Demand]."[7] *Id.* at *4 & n.2.

We granted the Attorney General's petition for further review.

ANALYSIS

On appeal, the Attorney General argues that the court of appeals erred in limiting the scope of its Demand. Specifically, the Attorney General argues that the court of appeals erred in requiring information about only four of the Madison Group entities and

[7] The parties do not raise any issues on appeal to our court regarding the temporal scope of the Demand.

eliminating all workers from the scope of the Demand except for security guards. Noting that the proper standard of review is abuse of discretion, the Attorney General contends that the court of appeals improperly substituted its judgment for that of the district court. The Madison Group urges us to affirm.

We review the district court's decision to deny the protective order and grant the motion to compel for an abuse of discretion. *Minn. Twins P'ship v. State ex rel. Hatch*, 592 N.W.2d 847, 850 (Minn. 1999) (noting that "[a] district court has broad discretion 'to issue discovery orders' and will be reversed on appeal only upon an abuse of such discretion" (quoting *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990))). A district court abuses its discretion when it makes "findings unsupported by the evidence or by improperly applying the law." *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). But to the extent that the parties' arguments depend on the interpretation of Minn. Stat. § 8.31, we review statutory interpretation issues de novo. *In re GlaxoSmithKline PLC*, 732 N.W.2d 257, 264 (Minn. 2007).

A.

We turn first to the Attorney General's contention that the court of appeals erred in limiting the scope of the Demand to just the four named companies from which the complaining security guards received paychecks. In reaching this holding, the court of appeals relied on *Roberts v. Whitaker*, where we said that "a government agency is not licensed to engage in a general fishing expedition into the affairs of private parties on the mere hope that some useful information will be disclosed." 178 N.W.2d 869, 877 (Minn. 1970). The court of appeals' reliance on *Roberts* is misplaced because *Roberts* did not

involve the scope of a civil investigative demand under Minn. Stat. § 8.31. *Roberts* dealt with the public examiner's statutory authority to investigate, which was limited to "the powers possessed by courts of law." Minn. Stat. § 215.16 (1971);[8] *see Roberts*, 178 N.W.2d at 874. Section 8.31 contains no similar limitation. Rather, we have said that section 8.31 gives the Attorney General "broad and comprehensive authority to investigate" potential violations of state law and "conduct discovery." *Curtis v. Altria Grp., Inc.*, 813 N.W.2d 891, 898 (Minn. 2012).

Roberts also specifically distinguished the public examiner's authority from "a government regulatory agency in its attempt to supervise commercial transactions and operations." 178 N.W.2d at 875–76. Here, the Legislature explicitly granted the Attorney General power to use section 8.31 to enforce the wage laws of chapters 177 and 181—the laws that are implicated in the instant investigation. *See* Minn. Stat. §§ 177.45, 181.1721 (2020).

In sum, *Roberts* is inapposite to the question of the proper scope of a civil investigative demand under section 8.31. To determine the appropriate scope, we begin with the language of the statute.

Section 8.31 contains both an investigative mandate and an investigative tool. Subdivision 1 requires that the Attorney General "investigate violations of the law of this

[8] The public examiner's "powers, duties and responsibilities" were transferred to the state and legislative auditors in 1973. *See* Act of May 21, 1973, ch. 492, § 7, 1973 Minn. Laws 1081, 1085. The state auditor now has the power to investigate with "the powers possessed by courts of law." Minn. Stat. § 6.52 (2020).

state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade." Minn. Stat. § 8.31, subd. 1.

In terms of the investigative tool, subdivision 2 authorizes the Attorney General to obtain discovery "without commencement of a civil action and without leave of court" via civil investigative demands. *Id.*, subd. 2. Specifically, "[w]hen the attorney general has information providing a reasonable ground to believe that any person has violated, or is about to violate," statutes that regulate "unfair, discriminatory, and other unlawful practices in business, commerce, or trade," the Attorney General has the "power to investigate those violations, or suspected violations." *Id.*, subds. 1–2.

And section 8.31 gives the Attorney General the power to "obtain discovery from any person regarding any matter, fact or circumstance, not privileged, which is relevant to the subject matter involved in the pending investigation." *Id.*, subd. 2. We have explained that "relevance" in this context "should be given a liberal interpretation, with the recognition that relevancy limits would be more circumscribed at any subsequent trial." *Kohn v. State by Humphrey*, 336 N.W.2d 292, 298 (Minn. 1983).[9] This standard requires that "[t]he scope of the inquiry must be within the authority of the Attorney General, the information requested must be 'reasonably relevant,' and the demand for documents 'not

[9] We discussed the relevance requirement of section 8.31 in *Kohn* as part of our analysis of whether the civil investigative demand at issue in that case was a search in violation of the Fourth Amendment. *See* 336 N.W.2d at 297. There is no argument made here that the Demand results in a search under the Fourth Amendment, but both parties cite *Kohn* and neither argues that we should depart from the statutory analysis we did there.

too indefinite.' " *Minn. Twins P'ship*, 592 N.W.2d at 851 (quoting *Kohn*, 336 N.W.2d at 297).[10]

Therefore, section 8.31 sets two parameters for a valid civil investigative demand. One, the Attorney General must have a reasonable basis to believe that a law has been or will be violated, and two, the information sought must be reasonably relevant to the subject matter involved in the alleged violation.

The security guards alleged that Madison Equities employed them but did not pay them in compliance with Minnesota law for work that they performed as security guards at properties within the Madison Group. These allegations are sufficient to give the Attorney General a reasonable basis to believe that all 10 entities may have violated the law. *See Kohn*, 336 N.W.2d at 296 ("It is enough to show, on the basis of information the Attorney General already has, that it is reasonable for the investigation to continue.").

Except for the four named entities that paid security guards, the Madison Group contends that the security guards' complaints do not have sufficient documentary support to give the Attorney General a reasonable ground to investigate. But, as we held in *Kohn*, the Attorney General does not need to independently verify the information that provides the reasonable ground for the investigation. *Id.* Rather, the purpose of the civil

---

[10] Section 8.31, subdivision 2, states that "[t]he applicable protective provisions of rules 26.02, 26.03, and 30.04 of the Rules of Civil Procedure" apply to discovery sought under the statute. Rule 26.02 provides that a party may obtain discovery that is "proportional to the needs of the case." The proportionality requirement in Rule 26.02 could potentially limit the appropriate scope of a civil investigative demand. But the Madison Group did not present a proportionality argument on appeal. We therefore do not reach the question of whether the proportionality requirement in Rule 26.02 affects the broad discovery standard otherwise embodied in section 8.31.

investigative demand "is to ascertain if there is any substance to the . . . complaints from the party who is perhaps in the best position to know, namely, the party against whom the complaint is made." *Id.*

In terms of the relevancy parameter, the Madison Group does not make a separate argument grounded in the specifics of any of the interrogatories or requests for documents that would support the conclusion that the information sought is not reasonably relevant to the Attorney General's investigation of potential wage law violations. The court of appeals likewise did not focus on the specific interrogatories or requests in limiting the Demand to just the four entities. Rather, the court of appeals' analysis focused on the reasonable-ground-to-believe parameter of the statute. *Madison Equities, Inc.*, 2021 WL 79337, at *2–3. The district court based its relevancy analysis on its finding that the Demand was focused on the 10 entities affiliated with properties where the complaining security guards worked or that paid them, and the time frame of the requests. In light of the record on appeal, we cannot say that the district court abused its discretion in concluding that the Demand was reasonably relevant to the Attorney General's investigation of whether the Madison Group violated state wage laws.

Because the district court did not abuse its discretion when it concluded that the Attorney General had information providing a reasonable ground to believe that the Madison Group violated the law and that the information sought from these entities is reasonably relevant to the suspected violations of the law, we hold that the court of appeals

erred when it limited the civil investigative demand to just the four named companies that paid security guards.[11]

There are still the other 30 M.E. Related Companies, however. The district court made no finding of reasonable grounds in connection with the 30 M.E. Related Companies. Rather, the district court found that the civil investigative demand "is sufficiently tailored for the level of pre-complaint discovery that the Legislature contemplated under Minnesota Statutes § 8.31." Conversely, the court of appeals concluded that, because the complaining security guards made no allegation of wage theft against any of the 30 M.E. Related Companies, "the attorney general had no reasonable basis to investigate" the 30 M.E. Related Companies. *Madison Equities, Inc.*, 2021 WL 79337, at *3. The Attorney General argues that the information sought concerning the 30 M.E. Related Companies was reasonably relevant to determine the extent of any unlawful scheme and whether joint employer liability exists between Madison Equities and those entities.

[11] In its analysis, the district court noted that the potential violations of law that support the Attorney General's investigation "rest on whether the Entities were acting as a single employer that owed its employees overtime wages," but the district court declined "to define what constitutes a 'single employer' at this pre-complaint, discovery stage." The court of appeals agreed with this analysis, *Madison Equities, Inc.*, 2021 WL 79337, at *4 n.2, but limited the civil investigative demand to only the four entities that paid the complaining security guards. *Id.* at *3. The Attorney General argues that the district court did not abuse its discretion in concluding that he had a reasonable ground to believe that the Madison Group violated the law under a joint employer theory. We have not addressed or specifically recognized joint employer liability in the context of wage laws. Nevertheless, all parties concede that some form of joint employer liability exists under Minnesota law, and we agree with the district court that it is not necessary to define the precise contours of joint employer liability to resolve this matter.

When addressing the scope of entities subject to the civil investigative demand in its discussion of reasonable relevance, the district court acknowledged that "there are at least forty entities registered to the 29 S. Deep Lake Rd., North Oaks, MN 55127, or 375 Jackson Street, Saint Paul, MN 55101" addresses but then found that the Attorney General "seeks responsive data regarding only ten of those entities that relate to buildings where complainants either assert they worked or received a paycheck from." This analysis is not consistent with the language of the Demand, at least as to interrogatories 6 and 17, because these interrogatories sought information about the 30 M.E. Related Companies as well. Accordingly, we conclude that the district court abused its discretion by failing to make adequate findings as to the 30 M.E. Related Companies, and we remand to the district court for further proceedings consistent with this opinion as to these 30 companies.

B.

We turn next to the Attorney General's argument that the court of appeals erred in limiting the definition of "worker" in the civil investigative demand to security guards—the class of workers who complained to the Attorney General. *See Madison Equities, Inc.*, 2021 WL 79337, at *3. The definition of "worker" in the Demand broadly encompasses "any individual who performed any work or service for Madison Equities and/or the M.E. Property Companies, whether classified as an employee or independent contractor." In granting the motion to compel and denying the protective order, the district court only tangentially addressed the scope of workers covered by the Demand, noting an allegation in one of the complaints that maintenance workers also were subject to the alleged wage theft practices. The court of appeals, in contrast, concluded that this definition was

"overbroad," and limited the definition of "worker" to security guards because the Attorney General received complaints only from security guards. *Id.* at *3

We agree with the court of appeals that the definition of "worker" in the Demand is too broad, but we disagree with the court's limitation to just security guards. Two categories of hourly workers are implicated in the underlying complaints: security guards and maintenance workers. Under the broad "reasonably relevant" standard we adopted in *Kohn*, 336 N.W.2d at 298, because multiple categories of hourly workers are implicated, the district court did not abuse its discretion in concluding that the treatment of all hourly workers is reasonably relevant to the Attorney General's investigation of alleged wage theft by Madison Equities.

But, the Madison Group argues, the court of appeals was correct in limiting the Demand to security guards because the "statutes [alleged to be violated] and the factual statements supporting" the Attorney General's "suspected violations of those statutes set the outer bounds of" the Attorney General's "authority under Section 8.31." We addressed and rejected a similar argument in *Kohn*. The party to whom the investigative demand was directed in *Kohn* argued that the Attorney General did not have a reasonable basis to believe that the party violated the law because only a small proportion of its customers complained. 336 N.W.2d at 297. But we held that simply because not all customers filed complaints did not mean that those "who did not file complaints were necessarily content." *Id.* The same could be said here about the Madison Group's hourly employees. Because section 8.31 empowers the Attorney General to seek information that is relevant to the *subject matter* of the investigation, not just information about harm to specific

complainants, the court of appeals erred in limiting the definition of "worker" to just security guards.

Importantly, though, the laws at issue that require overtime payment are aimed primarily at hourly employees. *E.g.*, Minn. Stat. §§ 177.25 (overtime), 177.30 (record keeping) (2020); *see* Minn. Stat. § 177.23, subd. 7 (2020) (excluding individuals "employed in a bona fide executive, administrative, or professional capacity" from the definition of "employee" in the Minnesota Fair Labor Standards Act); *Erdman v. Life Time Fitness, Inc.*, 788 N.W.2d 50, 58 (Minn. 2010) ("Under the MFLSA, executives, administrators, and professionals are exempt from overtime pay requirements if they perform managerial duties and receive a salary, rather than an hourly wage."). And the Attorney General received no information regarding or even implicating non-hourly workers. Thus, while we agree that the definition of worker must be narrowed, we reverse the court of appeals in part and hold that, for purposes of the Demand, the definition of "worker" should be limited to hourly employees.

C.

We address one final matter. While we remand this matter to the district court for further findings regarding the 30 M.E. Related Companies, the balance of the information requested in the Demand must be produced promptly in accord with the statutory time periods. Specifically, upon entry of judgment in this appeal, the stay in the district court should be lifted, and the Madison Group must provide responses to the requests for

production of documents within 15 days, *see* Minn. Stat. § 8.31, subd. 2(b), and responses to interrogatories within 20 days, *see id.*, subd. 2(a).[12]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals in part, reverse in part, and remand to the district court for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

[12] After oral argument, the Attorney General filed a motion for security under Minn. R. Civ. App. P. 108.03, asking us to grant "equitable tolling of the applicable statute of limitations related to the alleged violations of law [the Attorney General] seeks to investigate." The question of equitable tolling was also before the district court in considering whether to stay enforcement of the court's order granting the Attorney General's motion to compel. The district court, however, deferred decision on the tolling question, concluding that it lacked jurisdiction due to the pending appeal. We deny the Attorney's General motion for security, without prejudice, to further proceedings in the district court on equitable tolling.