STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1106

Brad Hammerberg, as Trustee for the Leonard J. and Margaret T. Schubert Irrevocable Trust dated June 23, 2005,
Respondent,

vs.

Jodie Harpstead, in her official capacity as Commissioner, Minnesota Department of Human Services,
Appellant.

Filed April 11, 2022
Reversed
Halbrooks, Judge[*]

Mille Lacs County District Court
File No. 48-CV-20-2067

Paul E. Darsow, Bradley W. Hanson, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent)

Keith Ellison, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Frisch, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant argues the district court erred in denying its motion to dismiss respondent's complaint. Because we conclude that the district court lacked subject-matter jurisdiction, we reverse.

FACTS

Appellant commissioner of the Minnesota Department of Human Services (DHS) challenges the district court's denial of its motion to dismiss respondent Brad Hammerberg's complaint. On review of a district court's denial of a motion to dismiss, we accept the facts alleged in the complaint as true. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). Those facts are as follows.

Leonard and Margaret Schubert were married and owned certain real property in Mille Lacs County. On June 23, 2005, the Schuberts created an irrevocable trust (the trust), naming Hammerberg as the sole trustee, and conveyed title of the real property to the trust. The trust provided that the Schuberts had the right to income from the trust and were "entitled to the use and possession of any real estate held in the trust." As trustee, Hammerberg had the discretionary power "to distribute some or all of the principal from the trust" to the Schuberts' living children while either or both Schuberts were living and, upon the death of the surviving Schubert, was obligated to distribute the trust property "to the then living descendants of [the Schuberts], per stirpes, subject to a limited power of appointment by the surviving [Schubert] to appoint trust property to . . . descendants of [the Schuberts]."

In 2016, Margaret Schubert applied to DHS for medical assistance (MA) and began receiving benefits. In 2017, Leonard Schubert died without having ever received MA benefits. In March 2018, DHS recorded a notice of potential claim against the trust property pursuant to Minn. Stat. § 256B.15, subd. 1c (2016) (the estate-recovery statute). Margaret died on March 28, 2019, having not exercised the trust appointment power. In October 2019, DHS recorded a notice of potential claim on the remainder of the trust property, again through the estate-recovery statute. Hammerberg, through counsel, requested by letter that DHS release the trust property from the notice of potential claim because, in part and primarily, Margaret did not have any ownership of the trust property at the time of her death. DHS did not release the claim.[1]

Hammerberg sued DHS and sought declaratory relief. Hammerberg argued, in relevant part, that (1) the estate-recovery statute is inapplicable because Margaret had no interest in the trust property at the time of her death and the statute lacks any retroactive effect, (2) retroactive application of the estate-recovery statute is an unconstitutional impairment of the vested property rights of the Schuberts' children and an unconstitutional interference with contract, (3) the estate-recovery statute is preempted by federal law to the extent that it allows DHS to recover MA benefits from the trust, and (4) DHS's recording of the notice of potential claim constitutes slander of title. DHS moved to dismiss the complaint pursuant to Minn. R. Civ. P. 12.02, arguing that (1) the district court lacks

[1] In his briefing to this court, Hammerberg asserts that DHS did not respond to his letter requesting that DHS withdraw the notice of potential claim. The complaint, however, alleges that "DHS refused to release the Notice of Potential Claim" without reference to whether DHS responded to the letter.

subject-matter jurisdiction over Hammerberg's claims because he did not exhaust the available administrative remedies prescribed by statute, and (2) Hammerberg nevertheless fails to state a claim upon which relief could be granted for a variety of reasons, including because statutory immunity protects DHS from the slander-of-title claim.

The district court denied DHS's motion to dismiss in its entirety. This appeal follows.

DECISION

As a threshold matter, it is important to delineate the scope of our review. The "general rule" is that "an order denying a motion to dismiss is not immediately appealable as of right." *Aon Corp. v. Haskins*, 817 N.W.2d 737, 739 (Minn. App. 2012). But "[i]mmediate appellate review is available . . . for orders denying a motion to dismiss for lack of subject matter jurisdiction, government immunity, or the nonjoinder of necessary parties." *Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018). The district court denied DHS's motion to dismiss based on its conclusions that (1) it had subject-matter jurisdiction and (2) DHS is not entitled to statutory immunity. Because we conclude the district court did not have subject-matter jurisdiction over Hammerberg's claims, we do not reach the statutory immunity issue. We review "[t]he existence of subject-matter jurisdiction" de novo. *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010).

I. The district court erred in concluding that it had subject-matter jurisdiction over Hammerberg's claims.

The federal Medicaid program "provides financial assistance to [s]tates that choose to reimburse certain costs of medical treatment for needy persons." S*chweiker v. Gray*

Panthers, 435 U.S. 34, 36 (1981) (quotation omitted); *see also Martin v. City of Rochester*, 642 N.W.2d 1, 9 (Minn. 2002) (stating that Medicaid "is a publicly funded program to ensure medical care to certain individuals who lack the resources to cover the costs of essential medical services" and that "[e]ach state administers its own program"). To receive federal Medicaid funds, Minnesota must, in relevant part, "comply with the provisions of [42 U.S.C. § 1396p] with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts." 42 U.S.C. § 1396a(a)(18) (2020). Under federal law, an "estate" subject to Medicaid recovery "shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law." 42 U.S.C. § 1396p(b)(4)(A) (2020). Federal law also allows states to expand the definition of "estate" to

> include, at the option of the State . . . any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

Id. (B) (2020).

Minnesota's Medicaid program is called Medical Assistance (as previously indicated, MA). *See generally* Minn. Stat. §§ 256B.01-.85 (2020). The estate-recovery statute identifies which assets are considered part of a person's estate and subject to recovery for repayment of MA benefits. Minn. Stat. § 256B.15; *see also In re Est. of Barg*, 752 N.W.2d 52, 71 (Minn. 2008) (holding that federal law only allows recovery of assets

in which the MA recipient had an interest at the time of their death). Prior to 2009, the estate-recovery statute did not include any reference to trusts. *See* Minn. Stat. § 256B.15, subd. 1a (2008) (referring only to the "estate" of the person in question).

In 2009, the Minnesota Legislature amended subdivision 1a(b) of the estate-recovery statute to specify which assets were included in a decedent's estate for the purposes of MA recovery. 2009 Minn. Laws ch. 79, art. 5, § 39, at 86. The 2009 amendment provided that a "person's estate" consisted of, among other things, "assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, or other arrangements." *Id.* Today, that language remains largely the same: a "person's estate" consists of, among other things, "assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, transfer-on-death of title or deed, or other arrangements." Minn. Stat. § 256B.15, subd. 1a(b) (2020).

The estate-recovery statute provides that DHS may record a "notice of potential claim" against the MA recipient's estate property in the records office of the applicable county. *Id.*, subd. 1c(a), (b). Such a notice constitutes a lien against the property. *Id.*, subd. 1d. DHS, as the lien claimant, can recover MA costs through varying mechanisms depending on the surviving status of the deceased recipient's relatives, if any. *See id.*, subds. 1h (estates of specific persons receiving medical assistance), 1i (estates of persons receiving medical assistance and survived by others), 1j (claims in estates of decedents survived by other survivors).

But "[a]ny holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the validity, extent, or amount of the lien."

Id., subd. 1f(c). The hearing on a notice of potential claim is an administrative hearing: it takes place before a human services judge, proceeds according to certain rules of conduct and evidentiary standards, and can be appealed to the district court. Minn. Stat. § 256.045, subds. 1, 3b, 4, 7. In turn, "[a]ny party aggrieved by the order of the district court may appeal the order as in other civil cases." *Id.*, subd. 9.

Here, it is undisputed that Hammerberg never requested an administrative hearing on the validity of the notice of potential claim as authorized by the estate-recovery statute. DHS argues the district court lacked subject-matter jurisdiction over Hammerberg's claims because he has failed to exhaust the available administrative remedies. The district court concluded that it had subject-matter jurisdiction because: (1) regardless of whether the trust was a recipient for the purposes of the estate-recovery statute, Hammerberg was not precluded from seeking declaratory relief; (2) the trust is not a recipient subject to the administrative-hearing process; and (3) even if the trust was a recipient, it would be futile for Hammerberg to seek relief from DHS through the administrative process. We discuss each conclusion in turn.

A. The district court erred in concluding that it had subject-matter jurisdiction over Hammerberg's claims under the Minnesota Uniform Declaratory Judgments Act.

The district court concluded that it had subject-matter jurisdiction through the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. §§ 555.01-.16 (2020) (the Declaratory Judgments Act), regardless of Hammerberg's failure to exhaust the available administrative remedies. The Declaratory Judgments Act provides "[c]ourts of record within their respective jurisdictions" with the "power to declare rights, status, and other

legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. A "person . . . whose rights, status, or other legal relations are affected by a statute . . . 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. The Declaratory Judgments Act is "remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered." Minn. Stat. § 555.12.

The district court, citing *Connor v. Township of Chanhassen*, 81 N.W.2d 789, 793-94 (Minn. 1957), reasoned that it had subject-matter jurisdiction through the Declaratory Judgments Act because it was presented with a controversy "that requires judicial interpretation" of the estate-recovery statute: whether Margaret had an interest in the trust property at the time of her death and, in turn, whether DHS had the authority to file the notice of potential claim on the trust property. DHS, citing *County of Pine v. State, Dep't of Nat. Res.*, 280 N.W.2d. 625, 629 (Minn. 1979), contends that this "judicial interpretation" exception to the general administrative-remedy-exhaustion requirement only applies to facial challenges to the constitutional validity of a statute, not as-applied challenges, as Hammerberg advances here.

DHS is correct on this issue. In 1942, in *Barron v. City of Minneapolis*, the supreme court stated that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate," but did not address whether that general statement included administrative remedies. 4 N.W.2d 622, 624 (Minn. 1942) (quotation omitted). In 1957, in *Connor*, the plaintiffs challenged a township zoning

ordinance as "wholly unconstitutional and invalid," and the township argued "that a declaratory judgment action was an incorrect method to raise the question" because "the plaintiffs should have exhausted their administrative remedies." 81 N.W.2d at 793. The supreme court relied on *Barron* and rejected this argument, concluding that the plaintiffs properly brought their claim under the Declaratory Judgments Act when the constitutional claim "presented . . . a controversy as to legal rights which requires judicial interpretation." *Id.* at 794. But, in 1979, again in response to a challenge to a zoning ordinance, the supreme court clarified that it "will address the constitutional issues raised" if the "facial constitutionality of the zoning ordinance is challenged," but "the aggrieved party must first exhaust available remedies" if "the challenge relates only to the constitutionality of the ordinance, as applied." *County of Pine*, 280 N.W.2d at 629.

Here, in his own words, "Hammerberg's complaint raises the issue of whether the Estate Recovery Statute is validly applied to the Trust and the Affected Property." He "challenges the Estate Recovery Statute's legal and constitutional application to the Trust and the Affected Property which the Trust owned when [Margaret] died. He does not challenge the facial validity of the notices of potential claim." Although the estate-recovery statute is not a zoning ordinance, the district court relied on *Connor* in concluding that Hammerberg need not exhaust his administrative remedies. But Hammerberg concedes that his constitutional challenges to the estate-recovery statute are limited to as-applied challenges. Therefore, his claims do not fit within the Declaratory Judgments Act's exception to the administrative-exhaustion requirement. As a result, the district court erred

in concluding that it had subject-matter jurisdiction over Hammerberg's claims under the Declaratory Judgments Act.

B. The district court erred in concluding that Hammerberg and the trust are not subject to the administrative-hearing process.

The district court also erred in holding that it had subject-matter jurisdiction over Hammerberg's claims because the trust is not a recipient subject to the administrative-hearing process. The estate-recovery statute does not limit access to the administrative-hearing process to "recipients"; instead, "[a]ny holder of an interest in property subject to [a] lien has a right to request a hearing." Minn. Stat. § 256B.15, subd. 1f(c). Hammerberg, through the trust, holds an interest in property subject to a lien created by the notice of potential claim under the estate-recovery statute. Therefore, Hammerberg, as the trustee of the trust that owns the property subject to the lien, is not excluded from the estate-recovery statute's administrative-hearing process merely because neither he nor the trust were recipients of MA benefits.

Hammerberg also asserts that his "complaint raises the issue of whether the Estate Recovery Statute is validly applied to the Trust and the Affected Property." To the extent that he does so on constitutional grounds, he again advances as-applied constitutional challenges that do not fit within the Declaratory Judgments Act exception to the exhaustion requirement. And to the extent that he does so because "[t]he Estate Recovery Statute's grant of administrative remedies to holders of an interest in property subject to [a] lien does not vest DHS with the authority to declare whether the Estate Recovery Statute is validly applied," he is incorrect. That is expressly the type of challenge to a notice of potential

claim that the administrative-hearing process is intended to determine. *See* Minn. Stat. § 256B.15, subd. 1f(c) (providing that "[a]ny holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the *validity*, extent, or amount of the lien" (emphasis added)). It would be contrary to the statutory language if Hammerberg were able to bypass the administrative-hearing process by arguing that the estate-planning statute is not validly applicable to him or the trust. The legislature has entrusted that threshold determination to the administrative-hearing process.

C. The district court erred in concluding that Hammerberg's exhaustion of the administrative remedies would be futile.

Finally, the district court determined that, even if Hammerberg was required to go through the administrative-hearing process, it had subject-matter jurisdiction over Hammerberg's claims because it would be futile for him to do so. The district court concluded as much because "DHS did not release the Notice of Potential Claim and failed to respond" following Hammerberg's letter requesting that DHS release the property from the claims. The district court thus reasoned that if it "is not allowed to intervene, then DHS's own failure to respond results in a favorable situation for itself." Hammerberg argues that the administrative-hearing process would be futile for two additional reasons: first, because DHS was legally obligated to respond to his letter and did not do so and second, because DHS lacks the authority to determine whether the estate-recovery statute "is validly applied."

As DHS points out, there is nothing in the complaint alleging that DHS did not respond to Hammerberg's letter requesting the claims be released. The complaint alleges

that Hammerberg, through counsel, "wrote a letter to DHS requesting that it release the [trust property] from the Notice of Potential Claim, informing DHS . . . that [Margaret] did not have any ownership of the [trust property] at the time of her death," and that "DHS refused to release the Notice of Potential Claim." To the extent that DHS "refused" to release the notice, the complaint suggests that DHS did respond, albeit, in the negative. There is nothing in the record, however, specifically addressing whether DHS responded to Hammerberg's letter; instead, the suggestion that it did not respond comes from Hammerberg's briefing to the district court and the district court's order denying DHS's motion to dismiss. And DHS, without specifically asserting that it did respond, merely notes that the complaint specifically alleges that DHS refused to release the claims.[2]

In support of his futility argument on appeal, Hammerberg states that the estate-recovery statute mandates that DHS respond to his letter, citing Minn. Stat. § 256B.15, subd. 1f(b). That subdivision provides, in part, that

> any holder of an interest in the property may apply to the lienholder for a statement of the amount of the lien *or for a full or partial release of the lien*. . . . The lienholder *shall* send the applicant by certified mail, return receipt requested, a written statement showing the amount of the lien, whether the lienholder is willing to release the lien and under what conditions, and inform them of the right to a hearing under section 256.045.

Minn. Stat. § 256B.15, subd. 1f(b) (emphasis added). On the first page of his letter, Hammerberg states: "This is a written request for your office to release the land from the

[2] At oral argument on appeal, the parties acknowledged that Hammerberg's counsel spoke on the phone with DHS after sending the letter. There is no indication in the complaint or elsewhere in the record that such a phone call took place.

Notice of Potential Claim." Hammerberg's letter therefore qualifies as a request for full or partial release of the lien that DHS was required to respond to per the estate-recovery statute. But the complaint only alleges that DHS refused to release the claims without mention of whether DHS responded, although Hammerberg repeatedly states in his briefing that DHS did not.

While this gap in the record is troubling at first glance, it is ultimately nondispositive. The supreme court has stated that exhaustion of administrative remedies is futile when "nothing can be accomplished by resort to administrative remedies." *Starkweather v. Blair*, 71 N.W.2d 869, 884 (Minn. 1955). By way of example, the supreme court has concluded that exhaustion would be futile when a city's administrative process cannot provide *any* of the relief requested by a challenger, *see McShane v. City of Faribault*, 292 N.W.2d 253, 256 (Minn. 1980), *abrogated on other grounds by DeCook v. Rochester Int'l Airport Joint Zoning Bd.*, 811 N.W.2d 610 (Minn. 2012)), or when an administrative body "has no intention of ever" granting any relief sought by a plaintiff, *see Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 71-72 (Minn. 1984). Mere "apprehension that the final outcome of the administrative proceedings will be prejudicial" is not sufficient to show futility. *Thomas v. Ramberg*, 60 N.W.2d 18, 20 (Minn. 1953).

Hammerberg fails to show that exhaustion of his administrative remedies would be futile. Even if DHS failed to respond to Hammerberg's letter as required, Hammerberg has not demonstrated how that failure mandates the conclusion that DHS has no intention of ever granting release of the claims against the trust property. Additionally, Hammerberg cannot show that nothing can be accomplished by resorting to the administrative remedies

available to him because, as discussed above, the legislature designed DHS's administrative-hearing process to adjudicate exactly what Hammerberg says it cannot: whether the estate-recovery statute is "validly applied" here. Minn. Stat. § 256B.15, subd. 1f(c).

In his briefing and at oral argument on appeal, Hammerberg expressed cynicism that an administrative hearing before a "DHS judge" would be "fair[] and impartial[]" because the commissioner has the power to appoint, control, and supervise such judges. We reject that argument as speculative and without any support in the record. If Hammerberg is dissatisfied with the outcome of the administrative hearing, the statute provides that he can then appeal to the district court and ultimately to an appellate court. Minn. Stat. § 256.045, subds. 1, 3b, 4, 7, 9 (2020).

We conclude that the district court erred when it determined that it had subject-matter jurisdiction through the Declaratory Judgments Act and that the trust is not subject to the administrative process. The district court further erred in determining that it had subject-matter jurisdiction over Hammerberg's claims because it would be futile for him to exhaust his administrative remedies. Because the district court lacked subject-matter jurisdiction over Hammerberg's claims, it erred in denying DHS's motion to dismiss the complaint.

Reversed.