

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0787**

In the Matter of the Revenue Recapture of Robert P. Webber.

**Filed November 28, 2022
Reversed and remanded
Kirk, Judge***

Office of Administrative Hearings
File No. OAH 22-6224-38004

Robert P. Webber, Shorewood, Minnesota (attorney pro se)

Mark Metz, Carver County Attorney, Patrick J.W. Conness, Assistant County Attorney,
Chaska, Minnesota (for respondent Carver County)

Considered and decided by Gaitas, Presiding Judge; Segal, Chief Judge; and Kirk,
Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this certiorari appeal from an administrative-law judge's (ALJ) order granting respondent Carver County's (the county) summary-disposition motion based on mootness, relator Robert P. Webber argues that a hearing is necessary to determine the validity of the county's debt claim. Because the county may still collect on the debt, the issue is not moot. Accordingly, we reverse and remand for proceedings consistent with this opinion.

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

FACTS

On January 28, 2020, the county filed a Child in Need of Protection or Services (CHIPS) petition regarding relator's son. Son was initially removed from relator's care on January 24 pursuant to an emergency-removal order, and at the January 29 emergency-protective-care hearing the district court determined that out-of-home placement was "still necessary." On November 30, 2020, the district court held a trial on the matter and determined that son should remain in the custody of the county and that son needed "protection or services." Relator did not appear at trial, and the district court found him "in default." The CHIPS case was dismissed in May 2021, and son was returned to relator.

While son was in the county's custody, relator incurred a debt of \$16,957.91 resulting from the cost of son's care during his out-of-home placement. Because relator refused to pay the debt, the county used the revenue-recapture process and took the \$16,957.91 from relator's tax refund. After receiving relator's November 2021 letter requesting a hearing on the debt, the county initiated an action with the Office of Administrative Hearings. In two installments, occurring in October 2021 and March 2022, the county returned to relator the funds it acquired via revenue recapture.

The county then moved for summary disposition, and relator opposed. The ALJ granted the county's motion for summary disposition and dismissed the matter as moot because "no effective relief remain[ed] to be granted" to relator. Relator appeals.

DECISION

“Summary disposition is the administrative equivalent of summary judgment.” *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004). Appellate courts review a grant of summary disposition de novo to determine “whether there are any genuine issues of material fact and whether there was an error in applying the law to the facts.” *Id.*

The Revenue Recapture Act (RRA) allows the Department of Revenue, upon request by a claimant-agency, to apply a debtor’s tax refund to the debt owed to the claimant-agency. Minn. Stat. § 270A.06 (2020). The RRA provides debtors the opportunity for a hearing to contest a claim upon which the withholding of a tax refund is based. Minn. Stat. § 270A.09, subd. 1 (2020).

Here, the ALJ determined that because the county returned to relator the funds it took via revenue recapture, relator’s challenge to the validity of the county’s debt claim was moot. *See* Minn. R. 1400.5500 (2021) (providing that an ALJ shall “recommend dismissal where the case or any part thereof has become moot”). The mootness doctrine considers “whether there is a live controversy that can be resolved” or whether an event occurred making “a decision on the merits unnecessary or an award of effective relief impossible.” *In re Minnegaso*, 565 N.W.2d 706, 710 (Minn. 1997). Mootness is an issue of law that appellate courts review de novo. *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015).

Relator argues that the validity of the debt claim is not moot because the county can still “seek to collect against the claim.” We agree. The county does not indicate that it

returned relator's tax refund based on the invalidity of its debt claim. In briefing and oral argument, the county also failed to provide assurance that it will not again utilize revenue recapture to satisfy the debt. Thus, regardless of whether the county returned the funds it initially withheld from relator's tax refund, there remains a live controversy over the validity of the debt.¹

Because relator's challenge to the validity of the county's debt claim is not moot, we reverse and remand to the ALJ to reopen the case for further proceedings.

Reversed and remanded.

¹ While relator may challenge the validity of the county's debt claim, he is precluded from raising a previously litigated issue at the hearing. Minn. Stat. § 270A.09, subd. 2 (2020). Because the district court issued a final judgment on the merits in the CHIPS case, relator cannot challenge the validity of the county's debt claim by relitigating the necessity of his son's out-of-home placement. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) ("A judgment on the merits constitutes an absolute bar to a second suit for the same cause of action, and is conclusive between parties and privies, not only as to every matter which was actually litigated, but also as to every matter which might have been litigated therein." (quotation omitted)).