STATE OF MINNESOTA
IN COURT OF APPEALS
A07-420

City of Minneapolis,
Respondent,

vs.

Minneapolis Police Relief Association, et al.,
Appellants.

Filed April 15, 2008
Affirmed
Willis, Judge

Hennepin County District Court
File No. 27-CV-06-11454

John M. LeFevre, Jr., Corrine H. Thomson, Mary D. Tietjen, Kennedy and Graven, Chtd., 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402; and

Peter W. Ginder, City of Minneapolis, City Attorney's Office, 300 Metropolitan Centre, 333 South Seventh Street, Minneapolis, MN 55402 (for respondent)

Brian F. Rice, Karin E. Peterson, Rice, Michels & Walther, L.L.P., 10 Second Street Northeast, Suite 206, Minneapolis, MN 55413; and

Robert D. Klausner (pro hac vice), Klausner & Kaufman, P.A., 10059 Northwest First Court, Plantation, FL 33324 (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Willis, Judge; and Wright, Judge.

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

WILLIS, Judge

In this action for injunctive relief and a declaratory judgment, appellants challenge a district-court order denying their motion to dismiss, arguing that the district court lacks subject-matter jurisdiction and that they are entitled to immunity. We affirm.

FACTS

Appellants Minneapolis Police Relief Association and Minneapolis Firefighters Relief Association (the associations) administer pension funds for retired Minneapolis police officers and firefighters, and their beneficiaries. *See* Minn. Stat. §§ 423B.04, subds. 1, 2, 423C.02, subd. 1 (2006). Under both pension plans, member benefits are based on accrued "units." The value of a unit is based on the current salaries of active-duty police officers and firefighters. Minn. Stat. §§ 423B.01, subd. 20, 423C.01, subd. 28 (2006). The associations calculate current salaries on a yearly basis to determine unit values and members' benefits. The associations then use these figures to determine their yearly financial requirements and the municipality's minimum funding obligation. Minn. Stat. § 69.77, subd. 4 (2006).

In 1995, following a dispute between the associations and respondent City of Minneapolis (the city) regarding the associations' calculations, the parties entered into a settlement agreement, which specifically defined the items of compensation included in the determination of "salary" for purposes of calculating pension units.

In 2004 and 2005, the office of the state auditor issued several letters to the associations indentifying possible improprieties in the associations' calculations of

current salaries. In response, the associations reviewed their determinations and each association released findings, conclusions, and determinations, establishing the current salary amounts used to calculate pension benefits.

The city brought this action against the associations seeking (1) a declaration that the associations recent determinations of "salary" were not calculated according to law and the 1995 settlement agreement; (2) an injunction requiring the associations to recalculate the salary amounts; and (3) an order directing the associations to refund to the city or credit the city with amounts overpaid to the associations based on improper calculations. The associations moved to dismiss the action, arguing that they are immune from suit and that the district court lacks subject-matter jurisdiction. The district court denied the motion, and this appeal follows.

D E C I S I O N

Ordinarily, the denial of a pretrial motion is not appealable until entry of a final judgment. *See* Minn. R. Civ. App. P. 103.03 (providing generally that appeals may only be taken from final judgments and orders that effectively determine an action). But an order denying a motion to dismiss for lack of jurisdiction is immediately appealable. *M.A. Mortenson Co. v. Minn. Comm'r of Revenue*, 470 N.W.2d 126, 128 (Minn. App. 1991). The denial of an immunity defense is also immediately appealable. *See Anderson v. City of Hopkins*, 393 N.W.2d 363, 364 (Minn. 1986). The existence of subject-matter jurisdiction and immunity are questions of law reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (jurisdiction); *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996) (immunity).

I. The associations' calculations of unit values are not quasi-judicial decisions.

The associations argue that the district court lacks subject-matter jurisdiction over this action because the associations' calculations of pension-unit values are quasi-judicial decisions of an administrative agency, which are judicially reviewable exclusively by this court on a writ of certiorari. *See Micius v. St. Paul City Council*, 524 N.W.2d 521, 522 (Minn. App. 1994) ("Unless otherwise provided by statute or appellate rule, to obtain judicial review of an administrative agency's quasi-judicial decision, a party must petition the court of appeals for a writ of certiorari."). We disagree.

A quasi-judicial decision is "'the product or result of investigation, consideration and deliberate human judgment based upon evidentiary facts of some sort commanding the exercise of [an agency's] discretionary power.'" *City of Shorewood v. Metro. Waste Control Comm'n*, 533 N.W.2d 402, 404 (Minn. 1995) (quoting *Oakman v. City of Eveleth*, 163 Minn. 100, 108-09, 203 N.W. 514, 517 (1925)). Here, the formula for calculating the value of a unit is established by law as one-eightieth of the current monthly salary of a first-grade patrol officer or one-eightieth of the maximum monthly salary of a first-grade firefighter. Minn. Stat. §§ 423B.01, subd. 20, 423C.01, subd. 28 (2006). And under the 1995 settlement agreement, the specific items of compensation to be included in and excluded from the definition of "salary" are provided. The associations have identified no area in which they utilize deliberate human judgment or exercise discretionary power in compiling the compensation data and applying the formula. Accordingly, we conclude that the calculations are not quasi-judicial decisions. *Cf. City of Shorewood*, 533 N.W.2d at 404 (holding that an agency's apportionment of

sewage treatment costs was quasi-judicial because the relevant statue "d[oes] not set a precise formula" and the apportionment "requires the exercise of a great deal of discretion").

II. The associations are not entitled to immunity.

A. *Official immunity*

The associations argue that they are entitled to vicarious official immunity. We disagree. Official immunity generally prevents a public official from being held liable for damages arising out of the performance of the official's duties if those duties call for the exercise of the official's judgment or discretion. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 505 (Minn. 2006). And "when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity." *Id.* at 508. But official immunity does not apply when the duty at issue calls for the execution of ministerial, rather than discretionary, acts. *Id.* at 505. "A discretionary decision involves professional judgment balancing several factors, while a ministerial decision is absolute and certain, and involves the mere execution of a specific duty under designated facts." *Hyatt v. Anoka Police Dep't*, 700 N.W.2d 502, 507 (Minn. App. 2005). The mere existence of some degree of judgment does not necessarily confer official immunity; the focus of the inquiry is on the nature of the act at issue. *Schroeder*, 708 N.W.2d at 505.

Here, the associations have identified no aspect of their duties that requires or permits the exercise of discretion. In calculating the value of a pension unit, the associations gather salary data from the city's payroll records and the members'

collective-bargaining agreements and determine the amounts that are one-eightieth of the salaries for the statutorily designated positions. Minn. Stat. §§ 423B.01, subd. 20, 423C.01, subd. 28. Rather than exercising professional judgment, the associations execute a specific duty under designated facts. Accordingly, the calculations are ministerial duties and the associations are not entitled to official immunity.

B. ***Statutory immunity***

The associations argue that Minn. Stat. § 356.401, subd. 1 (2006), provides them with immunity from suit. Again, we disagree. We read the words of a statute according to their plain and ordinary meaning. *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007). The statute provides that "[n]one of the money" in the associations' pension funds "is assignable either in law or in equity or subject to state estate tax, or to execution, levy, attachment, garnishment, or other legal process." Minn. Stat. § 356.401, subd. 1.

The associations assert that section 356.401 "provides that [the pension] benefits are immune from suit." But nothing in the text of the statute provides that the associations are immune from suit. Had the legislature intended such a meaning, the legislature could have conveyed it in express terms. *Cf.* Minn. Stat. § 466.03, subd. 1 (2006) (providing that, except as otherwise provided, "every municipality shall be immune from liability"); Minn. Stat. § 317A.257, subd. 1 (2006) (providing that a person who serves as an unpaid volunteer at a nonprofit organization "is not civilly liable for an act or omission . . . within the scope of the person's responsibilities").

III. There are no administrative remedies available to the city under Minn. Stat. § 69.77.

The associations argue that the city's failure to exhaust its administrative remedies under Minn. Stat. § 69.77 (2006) deprived the district court of subject-matter jurisdiction. *See Med. Servs. Inc. v. City of Savage*, 487 N.W.2d 263, 266 (Minn. App. 1992) (stating that generally a party aggrieved by an administrative decision must exhaust all administrative remedies before seeking judicial review). We conclude that there are no administrative remedies available to the city under Minn. Stat. § 69.77.

Section 69.77 provides, in relevant part:

> The officers of the relief association shall submit the determination of the . . . minimum obligation of the municipality to the governing body [of the municipality] . . . . The governing body . . . must ascertain whether or not the determinations were prepared in accordance with law.
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> . . . .
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> If the municipality does not include the full amount of the minimum obligation of the municipality in the levy that the municipality certified to the county auditor in any year, the officers of the relief association shall certify the amount of any deficiency to the county auditor. Upon verifying the existence of any deficiency in the levy certified by the municipality, *the county auditor shall spread a levy . . . in the amount of the deficiency certified to by the officers of the relief association*.

Minn. Stat. § 69.77, subd. 5, 7(c) (emphasis added). The associations argue that these provisions create an administrative procedure by which a dispute between the city and the associations over the proper calculation of the city's obligation is to be submitted to the county auditor for resolution. But the statute does not authorize the county auditor to

resolve any such dispute. Instead, the statute provides that, upon verifying the existence of a deficiency in the amount certified by the city, "the county auditor shall spread a levy . . . in the amount of the deficiency certified to by the officers of the relief association." Minn. Stat. § 69.77, subd. 7(c). Thus, the county auditor is required to levy whatever amount is certified by the association and cannot provide the city with a remedy.

IV. The city is not required to join the individual members of the associations as parties.

The associations argue that their individual members are indispensible parties to this litigation and that the city's failure to join the individual members deprived the district court of subject-matter jurisdiction. We disagree.

The Uniform Declaratory Judgments Act, as enacted in Minnesota, provides that "all persons shall be made parties who have or claim any interest [that] would be affected by [a] declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Minn. Stat. § 555.11 (2006). The supreme court has held that this provision establishes a jurisdictional prerequisite. *Frisk v. Bd. of Education*, 246 Minn. 366, 382, 75 N.W.2d 504, 514 (1956); *but cf. Doerr v. Warner*, 247 Minn. 98, 105, 76 N.W.2d 505, 512 (1956) (holding that under the Minnesota Rules of Civil Procedure, "the joinder of all indispensible parties is not a prerequisite to the acquirement of jurisdiction by the [district] court").

Minnesota law recognizes that an organization can litigate the interests of its members. *See No Power Line, Inc. v. Minnesota Envtl. Quality Council*, 311 Minn. 330,

334, 250 N.W.2d 158, 160 (1976) (holding that an organization has standing to assert rights of its members). Here, the associations are maintained by "[t]he active and retired members of the police department of the city of Minneapolis and their surviving spouses," Minn. Stat. § 423B.04, subd. 1, and by "[t]he active and retired members of the [Minneapolis] fire department and their surviving spouses," Minn. Stat. § 423C.02, subd. 1 (2006). All of the individuals whose interests could be affected by a declaratory judgment are represented by the associations. And we agree with the district court's observation that this case is primarily "a dispute between the contributor to and the administrators of the pension funds about the proper method of calculating the contributor's minimum obligation." The individual members of the associations are not indispensible parties.

Affirmed.