STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0578

Alyssa K. Stepan, on behalf of herself and
all others similarly situated,
Appellant,

vs.

Edina Realty Title, Inc.,
Respondent.

Filed May 13, 2008
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-06-15132

Barry Reed, J. Gordon Rudd, David M. Cialkowski, Zimmerman Reed, P.L.L.P., 651 Nicollet Mall, Suite 501, Minneapolis, MN 55402; and

Hart L. Robinovitch, Zimmerman Reed P.L.L.P., 14646 North Kierland Boulevard, Suite 145, Scottsdale, AZ 85254 (for appellant)

Stanford P. Hill, Lewis A. Remele, Jr., Charles E. Lundberg, David A. Turner, Bassford Remele, a Professional Association, 33 South Sixth Street, Suite 3800, Minneapolis, MN 55402-3707 (for respondent)

Considered and decided by Lansing, Presiding Judge; Wright, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges the district court's holding that the filed-rate doctrine deprived it of subject-matter jurisdiction over her claims that her insurer charged her the wrong rate. Although we disagree that the district court lacked subject-matter jurisdiction, because we agree that the filed-rate doctrine precludes appellant's claims, we affirm.

FACTS

On July 26, 2002, appellant Alyssa K. Stepan purchased real property for which her mortgage lender required that she obtain a lender's title insurance policy. Appellant obtained a lender's policy from respondent Edina Realty Title, Inc., an exclusive agent of Chicago Title Insurance Company, its title-insurance underwriter.

Minnesota law requires all insurers to file their proposed rates with the Minnesota Department of Commerce (DOC) before the rates become effective. Minn. Stat. § 70A.06, subd. 1 (2006). Chicago Title filed the insurance rate at issue with the DOC, as follows, in pertinent part:

> Reissue Rate: When a title insurance policy is issued on any parcel of land, title to which has been insured by any Company prior to the date of the new application and upon presentation to the Company of satisfactory evidence thereof, the new policy shall be entitled to a reissue rate of 60% of the published rate for original insurance. Reissue rates shall apply to the face amount of the previous policy.

Appellant claims that respondent incorrectly charged her the full rate for title insurance rather than the discounted reissue rate to which she believes she was entitled.

Although appellant acknowledges that she did not present to respondent any evidence that the real property in question "ha[d] been insured by any Company prior to the date of the new application," she argues that because respondent knew that the real property had been subject to at least three prior first-lien mortgages and because all institutional lenders in Minnesota require title insurance as a precondition of funding and closing first-lien mortgages, Chicago Title had "satisfactory evidence" that title to the real property had been previously insured and that appellant was entitled to the reissue rate.

On behalf of herself and other similarly situated customers, appellant commenced a class action against respondent claiming multiple causes of action related to respondent's failure to provide the reissue rate to eligible customers. Respondent moved for dismissal on the grounds that the district court lacked subject-matter jurisdiction over the claims and that appellant lacked standing because title to her real property was not previously insured and therefore she was not eligible for the reissue rate. Without reaching the issue of appellant's standing, the district court granted respondent's motion for dismissal on the ground that it lacked subject-matter jurisdiction over appellant's claims on the basis of the filed-rate doctrine. In its order memorandum, the district court addressed the applicability of the principles of separation of powers, comity and justiciability. Appellant argues that the district court erred in dismissing her complaint for lack of subject-matter jurisdiction and seeks reversal of the judgment of dismissal.

D E C I S I O N

The United States Supreme Court has applied the filed-rate doctrine for more than a century. *Keogh v. Chicago & Nw. Ry. Co.*, 260 U.S. 156, 165, 43 S. Ct. 47, 50 (1922).

The filed-rate doctrine is a common-law rule that "forbids a regulated entity from charging its customers a rate other than the one duly filed with the appropriate regulatory authority." *Hoffman v. N. States Power Co.*, 743 N.W.2d 751, 755 (Minn. App. 2008), *review granted* (Minn. Apr. 15, 2008). "As a necessary corollary to this rule, customers are precluded from challenging in court the reasonableness of a filed rate." *Id.* (citing *Keogh*, 260 U.S. at 165, 43 S. Ct. at 50).

The Minnesota Supreme Court held that an action was barred based on the filed-rate doctrine in *Schermer v. State Farm Fire & Cas. Co.*, 721 N.W.2d 307, 316-17 (Minn. 2006). In *Schermer*, the supreme court concluded "that the legislative intent that the filed rate doctrine should apply to insurance rates is reflected in Minn. Stat. § 70A.11 (2004)" and that "the filed rate doctrine applies generally to rates filed with and approved by the DOC." *Id.* Minnesota's statutory system for the regulation of insurance rates is comprehensive and "specifically delegates to the DOC the responsibility to review all rates for reasonableness." *Id.* at 314. The Minnesota legislature has delegated to the DOC broad powers to regulate the insurance industry, including "the power to enforce all the laws of this state relating to insurance." Minn. Stat. § 60A.03, subd. 2 (2006). In holding that the filed-rate doctrine barred the plaintiff's challenge to State Farm's utilities rating plan, *Schermer* echoed the comments of the Wisconsin Supreme Court that "[u]nder the filed rate doctrine as enunciated in *Keogh*, the availability of such a regulatory remedy bars a private rate-related suit for damages," and that "[i]n order to uphold the regulatory scheme enacted by the Legislature," the agency empowered to regulate the insurance industry "serves as the plaintiff's sole source of relief." *Schermer*,

721 N.W.2d at 319 (quoting *Prentice v. Title Ins. Co. of Minn.*, 500 N.W.2d 658, 663 (Wis. 1993)). Because the regulation of insurance rates is a legislative, not a judicial function, and the filed-rate doctrine is based in part on separation-of-powers principles, if a court entertains a private claim that a regulated rate is unreasonable or unlawful, "it would necessarily have to second-guess the decisions of the agency to whom the legislature has delegated the responsibility to approve rates." *Id.* at 314. The *Schermer* court advises that a court's consideration of a rate-related claim could "interfere with the regulatory scheme established by the legislature and with the ratemaking functions of the DOC." *Id.*

Appellant first argues that *Schermer* should not preclude this court from adjudicating her claims because they merely require the court to enforce the reissue rate. But appellant's disputed interpretation of the reissue rate filed with the DOC lies at the root of each of appellant's claims. At issue here is the clause that requires "presentation to the Company of satisfactory evidence" of prior title insurance. Appellant argues that respondent should have known that title to the real property was previously insured because prior first-lien mortgages had encumbered the property. With this assertion, appellant apparently argues that any evidence *found by or known to* the insurer that title to the real property was previously insured satisfies this clause, which would obviate the language in the reissue rate that requires "presentation to the Company" by the applicant. Under appellant's interpretation, if an insurer somehow knew or should have known that title to the real property was previously insured, the insurance applicant need present nothing to the insurance company. In addition, respondent argues that the affirmative act

of presentation by an applicant saves work on the part of the title insurer and therefore justifies the discounted reissue rate.

We recently considered in *Hoffman* whether a court can interpret a filed rate in the context of power-utility rate regulation. 743 N.W.2d at 754. In this case, as in *Hoffman*, we reject the holdings of both *Brown v. MCI WorldCom Network Servs., Inc*., 277 F.3d 1166, 1171-72 (9th Cir. 2002) and *Lipton v. MCI WorldCom, Inc.*, 135 F. Supp. 2d 182 (D.D.C. 2001), that claims seeking to interpret or enforce the terms of a tariff do not implicate the filed-rate doctrine, because those holdings fail to address the separation-of-powers concerns that the *Schermer* court found important and fail to address how their holdings would interfere with the regulatory process. Here, because appellant's claims require interpretation of a filed rate, the DOC serves as appellant's sole source of relief. *See Schermer*, 721 N.W.2d at 319 (echoing the Wisconsin Supreme Court's holding that the regulating agency is the "sole source of relief" for insurance rate-related claims).

The district court concluded that the filed-rate doctrine deprived it of subject-matter jurisdiction over appellant's rate claims. "Subject-matter jurisdiction is a court's power to hear and determine cases of the general class or category to which the proceedings in question belong." *Bode v. Minn. Dep't of Nat. Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quotation omitted) (defining subject-matter jurisdiction), *aff'd*, 612 N.W.2d 862 (Minn. 2000). Matters of jurisdiction are subject to de novo review. *Handicraft Block Ltd. P'ship v. City of Minneapolis*, 611 N.W.2d 16, 19 (Minn. 2000). Neither respondent nor the district court cites cases supporting the conclusion that the filed-rate doctrine relates to subject-matter jurisdiction in the context of insurance rates in

Minnesota, and we find none. Where courts in other states have held that the filed-rate doctrine deprives a court of jurisdiction to hear a private rate-related claim, they have generally predicated this holding on a finding that the regulating agency had exclusive jurisdiction over such claims. *See, e.g., Centerpoint Energy, Inc. v. Miller County Circuit Court, Second Div.*, ___ S.W.3d ___, ___, 2007 WL 1630871, at *6 (Ark. June 7, 2007) (holding that the Arkansas General Assembly has endowed the Arkansas Public Service Commission with sole and exclusive ratemaking authority, and discussing cases in numerous states where an agency's exclusive jurisdiction over claims deprived courts of subject-matter jurisdiction); *QCC, Inc. v. Hall*, 757 So. 2d 1115, 1117 (Ala. 2000) (holding that because the Alabama legislature granted the Alabama Public Service Commission exclusive jurisdiction over a claim, a court "lacked jurisdiction over the subject-matter" of the claim); *see also Jenkins v. Entergy Corp.*, 187 S.W.3d 785, 801 (Tex. App. 2006) (holding that a court could hear a rate-related claim where the regulating utility did not have exclusive jurisdiction over the claim).

In Minnesota, the regulation of insurance rates is a comprehensive system that the DOC is charged to administer based on the legislature's delegation of broad powers. Minn. Stat. § 60A.03, subd. 2; *Schermer*, 721 N.W.2d at 317. But the legislature has not stated that the commerce department's power is exclusive. *See State ex rel. Hatch v. Am. Family Mut. Ins. Co.*, 609 N.W.2d 1, 4 (Minn. App. 2000), *review denied* (Minn. June 13, 2000) (holding that "the statutes dealing with the authority of [the DOC] and its commissioner to regulate insurance do not explicitly provide that the commissioner's authority is exclusive."). And "the existence of a comprehensive regulatory scheme in an

area does not necessarily constrain the authority of others." *Id.* Because there is no legal support for the principle that the filed-rate doctrine deprives Minnesota courts of subject-matter jurisdiction over claims related to insurance rates and because the jurisdiction of the DOC in this area is not exclusive, we cannot agree with the district court on this issue. Rather, we conclude here, as we did in *Hoffman*, that the filed-rate doctrine precludes appellant's claims and that as such dismissal was appropriate.[1] 743 N.W.2d at 756 (reversing the district court's denial of a motion to dismiss). Therefore, we need not reach the issue of whether appellant has standing.

Affirmed.

[1] This court may affirm a district court's dismissal of a claim on different grounds. *Summers v. R & D Agency, Inc.*, 593 N.W.2d 241, 244 (Minn. App. 1999).