STATE OF MINNESOTA
IN COURT OF APPEALS
A09-777

Lower Sioux Indian Community,
Appellant,

vs.

Kraus-Anderson Construction Company,
defendant and third party plaintiff,
Respondent,

vs.

LaDue Construction, Inc., third party defendant,
Respondent,

Rightway Caulking Company, third party defendant,
Respondent,

Century Construction Company, third party defendant,
Respondent,

United Glass, Inc., third party defendant,
Respondent,

EFCO Corporation, third party defendant,
Respondent,

Schwickert, Inc., third party defendant,
Respondent.

Filed March 2, 2010
Reversed; motions denied
Lansing, Judge

Renville County District Court
File No. 65-CV-08-271

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

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

LANSING, Judge

The Lower Sioux Indian Community appeals a district court's order that joins it as a necessary party in a breach-of-contract action and enjoins it from pursuing parallel tribal court litigation. Because we conclude that Lower Sioux is not a necessary party under Minn. R. Civ. P. 19.01, we reverse.

F A C T S

Lower Sioux Indian Community (Lower Sioux) hired Kraus-Anderson Construction Company in 1999 to act as general contractor in the completion of an addition to Lower Sioux's Jackpot Junction Hotel. LaDue Construction, Inc., Rightway

Caulking Company, Century Construction Company, Inc., United Glass, Inc., EFCO Corporation, and Schwickert, Inc. were subcontractors for the project.

Some years after the project was completed, Lower Sioux became aware of water intrusion in the hotel addition. Lower Sioux initiated litigation against Kraus-Anderson, asserting that the water intrusion resulted from "defective construction; improper application of the [external insulation finish system]; failure to properly flash the windows, doors and other fenestrations; lack of caulking around the windows, doors, and other fenestrations; and window failure."

Lower Sioux initiated the litigation in both the Lower Sioux Indian Community Court (tribal court) and the Renville County District Court. Through correspondence, counsel for Lower Sioux advised counsel for Kraus-Anderson that the district court complaint was served "simply to avoid any potential issues with respect to any applicable statutes of limitations" and that Lower Sioux intended to proceed in tribal court. Through the same correspondence, Lower Sioux gave Kraus-Anderson an indefinite extension of time to respond to the district court complaint. Accordingly, Kraus-Anderson answered the tribal court complaint but did not answer the district court complaint.

Both the tribal court and district court actions were dormant for nearly two years while Lower Sioux pursued water-intrusion claims against a different general contractor and at least one of the subcontractors who had worked on a separate addition to the Jackpot Junction Hotel. Proceedings on the current litigation resumed when Kraus-Anderson served and filed a third-party complaint, alleging breaches of the subcontracts and seeking contribution and indemnity in the event that Kraus-Anderson was found

liable to Lower Sioux. Kraus-Anderson also filed a third-party complaint in the tribal court proceedings. But Kraus-Anderson did not file an answer to the district court complaint.

Several of the subcontractors moved the district court to enjoin the parallel tribal court proceedings. The subcontractors asserted that they were not subject to tribal court jurisdiction and that an injunction against parallel proceedings was warranted. Kraus-Anderson joined the subcontractors' motion to enjoin the tribal court proceedings, although it disputed the subcontractors' jurisdictional arguments.

After the motions for injunctive relief were filed, but before they were heard by the district court, Lower Sioux served and filed a notice of dismissal of the district court action without prejudice under Minn. R. Civ. P. 41.01(a), which permits dismissal on plaintiff's notice "at any time before service by the adverse party of an answer or of a motion for summary judgment." Lower Sioux also opposed the motions to enjoin proceedings on substantive grounds. In reply, several subcontractors and Kraus-Anderson urged the district court not to accept the rule 41 dismissal. Their arguments relied on comments to the rule indicating that voluntary dismissals under rule 41 should be restricted to the early stages of litigation.

The district court opened the hearing on the motions for injunctive relief by asking counsel whether the court had any authority to enjoin Lower Sioux, which, by virtue of the notice of dismissal, apparently was no longer a party to the litigation. Counsel for the subcontractors and for Kraus-Anderson reiterated the request that the court reject the attempted dismissal. Lower Sioux argued that the dismissal was effective, under the

plain language of the rule, upon filing, and that the opponents' proper recourse was to seek vacation of the dismissal. The district court suggested that the opponents might have a valid argument to join Lower Sioux as a necessary party under Minn. R. Civ. P. 19.01. Kraus-Anderson and several subcontractors subsequently moved to vacate Lower Sioux's voluntary dismissal or alternatively, to join Lower Sioux as a necessary party.

Two months after the hearing, the district court entered an order granting the motion to enjoin the tribal court proceedings. The district court found that the rule 41.01(a) notice effectively dismissed Lower Sioux's claims, but also found that Lower Sioux was a necessary party under Minn. R. Civ. P. 19.01, reasoning that Kraus-Anderson's indemnification and contribution claims were brought "due to" Lower Sioux's claims against Kraus-Anderson and that, while the tribal court's jurisdiction over all parties was uncertain, all parties were subject to the jurisdiction of the district court. The court concluded:

> It is clear to the [c]ourt that the purported breaches of contract alleged by [Lower Sioux] against [Kraus-Anderson] will necessarily involve alleged defects in the construction completed by the Third Party Defendants who were, apparently, hired by [Kraus-Anderson] as sub-contractors on this project. In the interests of justice as defined [] as complete relief, this entire proceeding cannot successfully be completed in the absence of [Lower Sioux] who is alleging the defects and for which [Kraus-Anderson] seeks indemnification.

Lower Sioux appeals the district court's decision.

D E C I S I O N

We begin by observing that no party has challenged on appeal the effectiveness of Lower Sioux's voluntary dismissal of its claims under Minn. R. Civ. P. 41.01(a). Thus, it is undisputed that Lower Sioux was no longer a party to the litigation at the time that the court ruled on the motions to enjoin Lower Sioux from pursuing the parallel tribal court litigation. We further note that Lower Sioux's sole challenge to the injunctive relief is its assertion that the district court erred by (re)joining it as a necessary party under Minn. R. Civ. P. 19.01.

Kraus-Anderson and at least one of the subcontractors challenge the appealability of the district court's order and, particularly, the joinder determination. The appellate rules, however, expressly include within the scope of appealable orders "an order which grants, refuses, dissolves or refuses to dissolve, an injunction." Minn. R. Civ. App. P. 103.03(b). And once an appealable order is before us, this court can "reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require" including reviewing "any order affecting the order from which the appeal is taken." Minn. Civ. App. P. 103.04. In this case, the district court issued one order, simultaneously joining Lower Sioux as a party to the litigation and enjoining Lower Sioux from pursuing parallel litigation in tribal court. Absent the determination that Lower Sioux was a necessary party subject to joinder, the district court would not have had jurisdiction over Lower Sioux to enter the injunction. Under these circumstances, we conclude that the court's joinder decision falls within the scope of our review.

An abuse-of-discretion standard of review applies to both joinder decisions and injunction orders. *See Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 716 N.W.2d 366, 377 (Minn. App. 2006) (addressing joinder), *aff'd*, 736 N.W.2d 313 (Minn. 2007); *First State Ins. v. Minn. Mining & Mfg. Co.*, 535 N.W.2d 684, 687 (Minn. App. 1995) (addressing injunctions), *review denied* (Minn. Oct. 18, 1995). The improper application of a rule of civil procedure is an abuse of discretion. *See Whitaker v. 3M Co.*, 764 N.W.2d 631, 636, 640 (Minn. App. 2009) (holding that district court abused its discretion by failing to properly apply Minn. R. Civ. P. 23), *review denied* (Minn. July 22, 2009).

Lower Sioux asserts that the district court erred by finding that it was a necessary party subject to joinder under Minn. R. Civ. P. 19.01, which provides:

> A person who is subject to service of process shall be joined as a party in the action if (a) in the person's absence complete relief cannot be accorded among those already parties, or (b) the person claims an interest relating to the subject of the action and is so situated such that the disposition of the action in the person's absence may (1) as a practical matter impair or impede the person's ability to protect that interest or (2) leave any one already a party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

We agree that the situation presented here does not fall within the circumstances contemplated by rule 19.01. The district court appears to have relied on clause (a), concluding that Lower Sioux's presence was necessary to accord complete relief on Kraus-Anderson's claims against the subcontractor respondents. We disagree. Lower Sioux's absence does not preclude the district court from determining who—as between Kraus-Anderson and the subcontractors—is ultimately responsible for any damages

resulting from a breach of the general contract. Any determination on ultimate responsibility will be governed by the terms of the subcontracts and is separate from the issue of breach of the general contract. Although we agree that judicial efficiency would be advanced by having all parties in one proceeding, we cannot conclude that Kraus-Anderson's claims are incapable of complete adjudication in Lower Sioux's absence.

We are also unable to discern any appropriate basis for joinder under clause (b). Lower Sioux's interest is solely in recovering damages from Kraus-Anderson; it has no interest in whether Kraus-Anderson will be able to recoup some or all of those damages through contribution or indemnification by the subcontractor respondents. Thus, contrary to Kraus-Anderson's assertions, Lower Sioux's fault should not be at issue in the contribution and indemnification action. *See Trapp v. R-Vec Corp.*, 359 N.W.2d 323, 328 (Minn. App. 1984) ("[I]ndemnitors are bound by judgments against their indemnitees so long as they had the opportunity to participate in the third party's action against the indemnitee." (citing *Carlson v. Yellow Cab Co.*, 308 Minn. 293, 242 N.W.2d 86 (1976))).

Our conclusion that Lower Sioux is not a necessary party to the district court proceedings is consistent with decisions from other jurisdictions addressing the necessity of joinder in the context of contribution and indemnity claims. *See Nottingham v. Gen. Amer. Commc'ns Corp.*, 811 F.2d 873, 880 (5th Cir. 1987) ("Rule 19 does not require joinder of persons against whom [defendants] have a claim for contribution."); *Rochester Methodist Hosp. v. Travelers Ins. Co.*, 728 F.2d 1006, 1016 (8th Cir. 1984) (rejecting argument that party was necessary based on duty to indemnify: "[c]omplete relief can be granted as between [the plaintiff and defendant] without the presence of [the

indemnitor]"); *Alcoa Inc. v. ALcan Inc.*, 495 F. Supp. 2d 459, 465 (D. Del. 2007) (rejecting argument that city was necessary party to action determining liability for city-ordered remediation costs, explaining that underlying remediation order would not be called into question); *Babb v. Mid-America Auto Exch., Inc.*, No. 06-2230-CM, 2006 WL 2714273, at * 2 (D. Kan. Sept. 22, 2006) ("[A] defendant's potential right to contribution or indemnification from an absentee does not make the absentee necessary under [r]ule 19." (citing 4 James Wm. Moore et al., *Moore's Federal Practice* § 19.06(2) (3d ed. 1997))).

Kraus-Anderson relies by analogy on several cases in which courts have concluded that injured persons were necessary parties to insurance-coverage disputes arising from those injuries. *See, e.g.*, *Colony Ins. Co. v. Events Plus, Inc.*, 585 F. Supp. 2d 1148, 1157 (D. Ariz. 2008) (concluding that injured parties were necessary parties because resolution of coverage dispute "could affect [their] ability to recover damages should they prevail in the underlying suit"). A number of other cases, however, have reached the opposite conclusion. *See, e.g.*, *Coregis Ins. Co. v. Wheeler*, 180 F.R.D. 280, 283 (E.D. Pa. 1998) (holding that client who had asserted malpractice action was not necessary party to action challenging malpractice coverage); *Black Diamond Girl Scout Council v. St. Paul Fire & Marine Ins. Co.*, 621 F. Supp. 96, 97-98 (S.D. W.Va. 1985) (holding that plaintiff in wrongful death action was not necessary party to insurance-coverage dispute). We believe that the cases holding that an injured person is not a necessary party more appropriately apply the plain language of rule 19. These courts reasoned that (1) complete relief, i.e., a declaration of coverage, can be afforded in

absence of the injured party, and (2) the injured party has no legal interest in the scope of coverage. *E.g.*, *Coregis*, 180 F.R.D. at 283.

Because Lower Sioux is not a necessary party to this litigation, we reverse the district court's order joining Lower Sioux as a party and enjoining it from pursuing parallel tribal court litigation.

The determination that Lower Sioux is not a necessary party is dispositive. Thus, we need not reach and do not reach the parties' dispute over whether Lower Sioux waived its sovereign immunity, either contractually or by initiating the district court action. Nor do we take any position on the jurisdiction of the tribal court over the subcontractor respondents or whether the subcontractors may be joined as parties to the tribal court proceedings. Those determinations are for the tribal court. *See Klammer v. Lower Sioux Convenience Store*, 535 N.W.2d 379, 381 (Minn. App. 1995) (explaining that comity requires allowing tribal court to determine its own jurisdiction); Rule 12(c) of the Lower Sioux Community in the State of Minnesota Judicial Code Rules of Civil Procedure, *available at* http://maiba.org/pdf/LowerSioux.pdf (addressing standard for joinder in tribal court). We also deny as moot Kraus-Anderson's motions to modify the record and to strike portions of one respondent's brief because the disputes raised by the motions are relevant only to the issues that we have declined to reach.

Reversed; motions denied.