STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1055

In the Matter of the Pensioners and Beneficiaries
of the Former Minneapolis Police Relief Association

Filed January 27, 2014
Affirmed
Bjorkman, Judge

Public Employees Retirement Association of Minnesota
File No. 2-3600-22791-5

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Considered and decided by Stauber, Presiding Judge; Bjorkman, Judge; and Minge, Judge.*

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

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

BJORKMAN, Judge

Relators challenge a decision by respondent Public Employees Retirement Association (PERA) denying their claims for benefits that were the subject of previous litigation between the Minneapolis Police Relief Association (the MPRA) and respondent City of Minneapolis. Because PERA did not err by concluding that relators were in privity with the MPRA in that litigation and thus are precluded from relitigating their right to benefits, we affirm.

FACTS

Relators are a group of individuals who were members of the MPRA.[1] The MPRA administered a pension fund (the MPRA fund) for Minneapolis police officers until December 30, 2011. On that date, the MPRA fund was consolidated with the police and fire plan administered by PERA.

Up until the consolidation, members received benefits from the MPRA fund, which was created and administered under Minn. Stat. §§ 423B.01-.23 (2010). *See generally City of Minneapolis v. Minneapolis Police Relief Ass'n*, 800 N.W.2d 165 (Minn. App. 2011) (*MPRA*), *review denied* (Minn. Aug. 24, 2011). Benefits were calculated by multiplying the number of units, based on years of service, by a "unit value," which was defined by statute as "1/80 of the current monthly salary of a first

[1] Members of the former MPRA included active and retired members of the Minneapolis Police Department and their surviving spouses. Minn. Stat. § 423B.04 (2010), *repealed by* 2011 Minn. Laws 1st Spec. Sess. ch. 8, art. 7, § 19, at 1140. Although individual relators have not been identified during appeal proceedings, submissions to the MPRA identify 25-26 individual claimants.

grade patrol officer." Minn. Stat. §§ 423B.01, subd. 20, .09, subd. 1(a). The statute did not define "salary." Respondent City of Minneapolis was required to make annual contributions to the fund. Minn. Stat. § 69.77, subds. 4, 6 (2010).

Past litigation

Twice in the past 20 years, the city and the MPRA litigated the appropriate unit-value calculation, disagreeing both times over the components of officer compensation and/or benefits to be included in determining salary. *See MPRA*, 800 N.W.2d at 170-72 (describing history of litigation). The parties settled a 1995 lawsuit by entering into an agreement requiring the MPRA to amend its bylaws to expressly define "salary" to include particular items. *Id.* at 170. The city commenced a second lawsuit in 2006, after the state auditor opined that the MPRA was improperly including certain items in its salary calculation. *Id.* at 171.

The MPRA moved to dismiss the 2006 action for failure to join its individual members as indispensable parties. *Id.* at 171. The district court denied the motion and this court affirmed, holding that the MPRA represented its individual members in the litigation and that the litigation was "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." *City of Minneapolis v. Minneapolis Police Relief Ass'n*, No. A07-420, 2008 WL 1747923, at * 4 (Minn. App. Apr. 15, 2008), *review denied* (Minn. June 25, 2008). The case returned to district court.

Following summary-judgment proceedings and a bench trial, the district court entered judgment declaring that the MPRA (1) violated the Police and Firefighters' Relief

Association Guidelines Act, Minn. Stat. § 69.77 (2010) (the guidelines act), by including certain items in the salary calculation without amending its bylaws and (2) improperly calculated other salary items. *MPRA*, 800 N.W.2d at 171-72. The district court ordered the MPRA to recoup from its members the overpayments resulting from these errors. *Id.* at 172.

The MPRA appealed, and the district court entered a stipulated order staying recoupment and ordering the MPRA to freeze benefit levels and withhold post-retirement benefit payments pending the appeal. Two individual MPRA members sought to intervene in the appeal; this court denied that request, but allowed the members to participate as amici curiae.

In a May 31, 2011 decision, we reversed the district court's ruling that the MPRA violated the guidelines act, but affirmed the determination of other calculation errors and the recoupment remedy, and remanded for further proceedings. *Id.* at 179. In affirming the recoupment remedy, we relied on our earlier determinations that the MPRA represented the interests of all of its members. We also noted the "commonality of interests" between the MPRA and its members "is demonstrated by the members who are before this court as amici curiae, who take the same positions in this appeal as the [MPRA]." *Id.* at 178.

On remand, the MPRA moved to modify the stipulated stay order to allow the MPRA to make a new unit-value calculation and to adjust benefit levels accordingly and to pay a post-retirement benefit known as the "13th check." The district court denied the motion, explaining during the hearing that the benefits would remain frozen until the

extent of the recoupment was determined. The district court in particular addressed the 13th check, which was to be paid if there was excess investment income in the MPRA fund at the end of the previous calendar year. *See* Minn. Stat. § 423B.15. The court reasoned that the amount of any 13th check could be impacted by the salary recalculations and recoupment of the city's overpayment. The district court made clear that the stay would remain in effect for back payments of benefits as well, until the proper recoupment amount was determined.

The MPRA and the city eventually settled the 2006 litigation. As part of the settlement, the parties agreed to propose legislation to merge the MPRA fund with the police and fire plan administered by PERA (the PERA fund). The parties also agreed that the unit value used to calculate benefits would remain at $86.71 until the merger took effect, but would increase to $104.651 in 2012, $109.011 in 2013, $114.825 in 2014, and $124.031 in 2015. And they agreed that the MPRA would not make any back payments, or issue any 13th check.

The 2011 legislation

In July 2011, the legislature passed, and the governor signed, a bill allowing for the voluntary consolidation of the MPRA fund into the PERA fund. *See* 2011 Minn. Laws 1st Spec. Sess. ch. 8, art. 7, §§ 1-19, at 1126-1140. The legislation contained a December 30, 2011 effective date, conditioned upon approval by the MPRA board and membership, the PERA board, and the city, and upon the successful consolidation of the Minneapolis Firefighters Relief Association fund into the PERA fund. *Id.* § 19, at 1140.

The MPRA board and membership voted to merge with PERA, and the other prerequisites were met, so the MPRA fund ceased to exist and PERA assumed its liabilities, on December 30, 2011. *See* Minn. Stat. § 353.665, subd. 5a(c) (Supp. 2013). That same day, the district court issued a stipulated order dismissing the 2006 litigation.

The statutes now in effect provide, consistent with the settlement, specific unit values for calendar years 2011-2014, and a new formula for determining unit values beginning in 2015. Minn. Stat. § 353.01, subd. 10b (2012). As relevant here, the statute provides: "'[u]nit value,' for a member of the public employees police and fire retirement plan who was a member of the former Minneapolis Police Relief Association . . . is $86.71 for calendar year 2011 . . . ." *Id.*

Administrative proceedings

On December 22, 2011, relators submitted written claims to the MPRA for payment of "amounts due under Minnesota Statutes, Chapter 423B, but not paid by the MPRA from December 1, 2009 through December 31, 2011." Relators asserted that they are entitled to receive (1) the 13th check that would have been due on June 1, 2011, and (2) the balance of properly calculated benefits from December 1, 2009, to December 31, 2011. The MPRA did not make these payments during the relevant time period because of the district court stay, and the MPRA agreed, as part of the settlement, not to pay these amounts. The MPRA forwarded relators' claims to PERA, which denied them.

On March 16, 2012, relators submitted a petition for review of PERA's denial of the claims. Pursuant to Minn. Stat. § 356.96 (2012), PERA referred the matter to the office of administrative hearings for a fact-finding conference before an administrative

law judge (ALJ). The city intervened. Both PERA and the city moved for summary disposition, which the ALJ recommended granting. The ALJ reasoned that the relators were in privity with the MPRA, such that collateral estoppel barred their present claims:

> The undisputed facts are that all of the current Pensioners were members of the MPRA. The MPRA was an association created by the legislature to oversee and manage the members' pension program. . . .
>
> Seven of the nine members of the governing board of MPRA were beneficiaries of the fund. The MPRA had no other purpose but the creation, maintenance, and administration of the fund. The 2006 lawsuit was between the City and the MPRA. . . . Admittedly, the City and the District Court acknowledged that the suit was not against individual members of the MPRA. That, however, does not mean that their interests were not at stake, nor that their interests were in any way divergent from the association that represented them.

The ALJ further determined that the other collateral-estoppel elements are met: the issues litigated are the same, there was a full and fair opportunity to litigate, and there was a final judgment on the merits. The ALJ also concluded that relators' claims are precluded by the merger legislation and the terms of the settlement agreement, and under the doctrine of accord and satisfaction.

PERA adopted the ALJ's findings and conclusions in their entirety, and denied relators' request for reconsideration. This certiorari appeal follows.

D E C I S I O N

This appeal is not subject to the Minnesota Administrative Procedures Act. *See* Minn. Stat. § 356.96, subd. 13 (providing for review of pension plan rulings through writ

of certiorari under Minn. Stat. § 606.01 (2012) and Minn. R. Civ. App. P. 115). Accordingly,

> we examine the record to review questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

Anderson v. Comm'r of Health, 811 N.W.2d 162, 165 (Minn. App. 2012) (alteration in original) (quotation omitted), *review denied* (Minn. Apr. 17, 2012).

"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) (citing Minn. R. 1400.5500(K) (2003)). On appeal, this court reviews de novo whether there are any disputed issues of fact and whether summary disposition was appropriate as a matter of law. *Id.* And we apply a de novo standard of review to determinations that res judicata or collateral estoppel apply. *See Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011) (res judicata); *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (collateral estoppel).

Relators challenge PERA's determination that relators' claims are barred by collateral estoppel. As an initial matter, we note that the doctrine both PERA and the parties refer to as collateral estoppel is more aptly described as res judicata. Both finality doctrines are premised on the notion that "a right, question or fact distinctly put in issue and directly determined by a court . . . cannot be disputed in a subsequent suit between the same parties or their privies." *Hauschildt*, 686 N.W.2d at 837 (quotation omitted).

But while the terms collateral estoppel and res judicata "are sometimes used interchangeably, each doctrine is distinct in its effect." *Id.*

> Res judicata, also known as "claim preclusion," while based on the same principle as collateral estoppel, is the broader of the two and applies more generally to a set of circumstances giving rise to entire claims or lawsuits. Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories. Collateral estoppel, . . . "a miniature of res judicata," applies to specific legal issues that have been adjudicated and is also commonly and accurately known as "issue preclusion."

Id. (citations and quotations omitted).

PERA and the city do not seek to preclude relators from challenging particular issues litigated in the 2006 litigation. Rather, they assert that relators may not pursue further litigation concerning their entitlement to MPRA benefits because of the judgment in the 2006 litigation. Accordingly, we conclude that res judicata is the appropriate doctrine to apply and we consider whether it bars relators' claims.

Res judicata applies when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007) (quotation omitted). Relators argue that they are not bound by the judgment in the 2006 litigation because they were not in privity with the MPRA. We disagree.

"There is no prevailing definition of privity which can be automatically applied . . . ." *Margo-Kraft Distribs. Inc. v. Minneapolis Gas Co.*, 294 Minn. 274, 278, 200 N.W.2d 45, 47 (1972). Rather, privity "expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties." *Id.* (quotation omitted). Privity has generally been recognized: (1) when an individual controls an action, (2) when an individual's interests are represented by a party to the action, and (3) when an individual is a successor in interest to a derivative claim. *Id.* at 278, 200 N.W.2d at 48. Determining whether privity exists requires a careful examination of the facts of each case. *Id.* at 278, 200 N.W.2d at 47.

Alignment of interests alone is not sufficient to establish privity. *See Pirrotta v. Indep. Sch. Dist. No. 347*, 396 N.W.2d 20, 22 (Minn. 1986). But privity exists when the parties' interests are aligned and "either the party understood [him- or] herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty." *Taylor v. Sturgell*, 553 U.S. 880, 900, 128 S. Ct. 2161, 2176 (2008). These circumstances exist here. First, in the 2006 litigation, the MPRA denied the city's contention that MPRA members had received benefits to which they were not entitled and that recoupment was required. Relators' participation in that action, including the arguments presented in an amicus brief to this court, demonstrate that their interests were aligned with the MPRA's. Second, the MPRA clearly understood that it was representing

relators in the 2006 litigation. The district court denied the MPRA's motion to dismiss for lack of joinder based on the MPRA's representative capacity.

Relators argue that privity is lacking because the MPRA did not adequately represent them in the 2006 litigation. We are not persuaded. Relators rely on cases in which courts concluded that representation was inadequate because of conflicting interests. *See, e.g.*, *Pirrotta*, 396 N.W.2d at 22 (holding that teacher was not adequately represented by school district in previous litigation addressing the relative seniority of two teachers because "the school district was pursuing its own interests in the [initial] litigation, acting in its own behalf and without any accountability to [the teacher]"). This case involves no such conflict. The MPRA's only purpose in the 2006 litigation was to represent the interests of its members. There were no claims asserted against the MPRA board or staff members. Rather, the city's claims against the MPRA impacted all of its members, with each member facing possible reduction in benefits and recoupment claims. In short, the record reveals no conflict in interests among the MPRA members or between the MPRA entity and its members. *See*, *e.g.*, *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1082 (2003) (stating "if there is no conflict between the organization and its members, and if the organization provides adequate representation on its members' behalf, individual members not named in a lawsuit *may* be bound by the judgment won or lost by their organization"); *see generally* 18A Charles Alan Wright et al., *Federal Practice & Procedure* § 4456, at 497-98 (2d ed. 2002) (explaining that more recent decisions "allow representation by an association to

bind members in matters that do not center on relationships within or through the association").

Relators next assert that privity is lacking because certain of the issues that they now raise were not fully adjudicated in the 2006 litigation and because the judgment was based on a settlement agreement. These arguments conflate privity with the other elements of res judicata. But even if relators had challenged PERA's determinations with respect to these other elements, their assertions are without merit. With respect to the issues relators now raise, the relevant inquiry is whether the claims arise out of the same factual circumstances. *Brown-Wilbert*, 732 N.W.2d at 220. We conclude that they do. Both the 2006 litigation and relators' claims address the amount of money—whatever the basis—that relators were entitled to receive from the MPRA fund in the years leading up to the merger into PERA. With respect to the nature of the judgment, we observe that caselaw has generally treated consent judgments as final judgments. *See In re Application of Schaefer*, 287 Minn. 490, 494, 178 N.W.2d 907, 910 (1970) (holding that voluntary dismissal following settlement constituted judgment on the merits based on court's conclusion, "upon the extensive record of negotiations in this case, that it may be fairly said that the parties intended that the dismissal was to serve as a final determination of the issues in dispute"); *Pangalos v. Halpern*, 247 Minn. 80, 84-85, 76 N.W.2d 702, 706 (1956) (explaining that the fact that attorney-fees order was "entered by consent or upon the agreement of the parties does not lessen its force or effect" for res judicata purposes). Thus, the fact that the judgment in the 2006 litigation followed a settlement does not alter its preclusive effect against parties in privity with the settling parties. *See*,

e.g., *Monahan v. New York City Dep't of Corr.*, 214 F.3d 275, 285-88 (2d Cir. 2000) (individual employee's claim challenging sick-leave policy was precluded by consent judgment in previous suit asserted by union president in his official capacity); *United States v. Int'l Bhd. of Teamsters*, 931 F.2d 177, 184-87 (2d Cir. 1991) (local affiliates were bound by consent decree entered in action to which national union was a party).

Based on our review of the record, we conclude that relators were in privity with the MPRA in the 2006 litigation and res judicata bars their present claims. Accordingly, we need not address PERA's alternative determinations that relators' claims fail as a matter of law because of the settlement agreement and the 2011 legislation.

Affirmed.