STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1144

Goodin Company,
Appellant,

vs.

City of Prior Lake, Minnesota,
Respondent.

Filed March 9, 2015
Affirmed
Ross, Judge

Scott County District Court
File No. 70-CV-14-4031

James T. Martin, Gislason, Martin, Varpness & Janes, P.A., Edina, Minnesota (for appellant)

Richard F. Rosow, Margaret L. Evavold, Gregerson, Rosow, Johnson & Nilan, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

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

ROSS, Judge

The City of Prior Lake contracted Albers Mechanical Services to install a boiler in a city facility. Albers arranged to purchase a boiler from Goodin Company and installed it, but Albers filed for bankruptcy and failed to pay Goodin for the boiler. Goodin sued

the city for payment on the theory that the Public Contractors' Performance and Payment Bond Act makes the city liable to pay Goodin for Albers's debt. The district court dismissed Goodin's suit. Goodin appeals, arguing that a public body is liable to subcontractors and suppliers under the act whenever it fails to obtain a payment bond from the general contractor. Because the statute establishes municipal liability to third-party suppliers only when the statute requires a payment bond, and the statute required no bond in this case, we affirm.

FACTS

In October 2013, the City of Prior Lake contracted with Albers Mechanical Services to replace a boiler at the city's water-treatment facility. The city agreed to pay Albers $14,780 for the job. Albers received a $5,942 boiler from Goodin Company and installed it at the city's facility. The city paid Albers the amount due under its contract with Albers, but Albers did not in turn pay Goodin for the boiler. Albers filed for bankruptcy in December 2013.

Goodin demanded that the city pay Albers's debt for the boiler, but the city refused. Goodin sued the city in district court. It claimed that the city is liable to Goodin for the cost of the boiler under the Public Contractor's Performance and Payment Bond Act, Minn. Stat. §§ 574.26-.32 (2014), because the city had not required Albers to post a bond to cover any debts to suppliers that Albers might incur for unpaid-for materials. Goodin claimed alternatively that the city was liable under common-law contract principles because, according to Goodin, Goodin is an intended third-party beneficiary of

the general contract between the city and Albers. The district court dismissed the suit for failure to state a claim. Goodin appeals.

D E C I S I O N

Goodin challenges the district court's order dismissing its suit. We review de novo a district court's decision to dismiss for failure to state a claim under rule 12.02(e). *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). Goodin contends that it pleaded a valid statutory claim, relying on the Public Contractors' Performance and Payment Bond Act.

Under that act, a public body that purchases materials from a contractor must, in certain circumstances, obtain a payment bond from the contractor to protect third-party material suppliers. Minn. Stat. § 574.26, subd. 2. If a city does not secure a bond, a third-party supplier that the general contractor fails to pay can hold the city liable for the payment:

> If the state or other public body fails to get and approve a valid payment bond or securities in place of a payment bond *as required by the act*, the public body for which work is done under the contract is liable to all persons furnishing labor and materials under or to perform the contract for any loss resulting to them from the failure. The public body is not liable if the bond does not list the proper address of the contractor on whose behalf the bond was issued or of the surety providing the bond.

Minn. Stat. § 574.29 (emphasis added). The parties' competing positions take us to the statute's phrase, "as required by the act." According to the city, a public body is liable to third parties furnishing materials only when a payment bond is "required by the act." And, argues the city, the act requires a bond only when the estimated cost of the project

exceeds $100,000. *See* Minn. Stat. § 574.26, subd. 2. Because the city's contract with Albers was for a $14,780 project, it fell far below the $100,000 threshold that triggers a payment-bond requirement. *See* Minn. Stat. §§ 471.345, subd. 3, 574.26, subd. 2 (2014) (establishing that a contract between a contractor and a public body is invalid if the contractor failed to give a payment bond and the contract amounts to at least $100,000). According to the city, the statute "does not impose liability on a public body that fails to obtain or require a payment bond when the amount of the contract is less than $100,000." According to Goodin, however, the statute protects "suppliers of labor and materials on public work projects regardless of the amount involved."

Our answer depends on what is meant by the phrase, "as required by the act." We interpret this statutory phrase de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). Relying on the plain language of the act, we agree with the city and the district court that the act does not require a bond for municipal contracts under $100,000 and imposes no third-party liability on a public body when the act requires no bond.

Goodin accepts the district court's conclusion that the contracted project here, which cost only $14,780, was not rendered invalid by virtue of the lack of a payment bond. But Goodin contends that the statute is ambiguous. And it argues that the fact that a bond was not required for contract validity is not relevant to whether the city is liable to Goodin. This is because Goodin believes that a public body is liable to suppliers *whenever* it fails to obtain a bond from a contractor. Goodin insists that section 574.29 should be interpreted as requiring public bodies to choose either to obtain a bond to cover

supplier costs or to self-insure to cover supplier costs, regardless of whether section 574.26 requires a bond.

We are not persuaded by Goodin's reasoning. To reach its conclusion, Goodin emphasizes mainly the purpose of the supposedly ambiguous act, not its text. It reasons that the act aims primarily to protect laborers and suppliers who have provided services and material for public projects and who have no right to a mechanics lien. Gooding then contends that the statute should be liberally construed to achieve that purpose. We do not believe the statute is ambiguous, however, and when statutory text is unambiguous, we follow its plain language rather than its purpose. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999); *see also* Minn. Stat. § 645.16 (2014).

A statute is not ambiguous if it lends itself to only one reasonable interpretation. *Amaral*, 598 N.W.2d at 384. Goodin argues for an ambiguity because "as required by the act" could be interpreted as modifying only the words "securities in place of a payment bond." A paraphrase captures Goodin's proposed construction: *If the public body fails either to get and approve a valid payment bond, or to get and approve those securities in place of a payment bond that is required by the act, the public body is liable.* Alternatively, Goodin argues that "as required by the act" might be interpreted as modifying nothing—the phrase just reinforces the idea that the act always requires a payment bond. Neither of Goodin's proffered readings reasonable.

Goodin's first interpretation would violate the basic canon of construction that we should not treat any phrase as if it is "superfluous, void, or insignificant." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Goodin's notion that the phrase

modifies only the words "securities in place of a payment bond" would mean that the phrase is unnecessary; under this theory, the act contemplates municipal liability in *every* circumstance, not just when the public body has covered the potential losses with a payment bond or with securities instead of a payment bond. So whether or not the securities are "required by the act," the liability that the subdivision establishes would still exist and the modifier adds nothing. We reject the superfluous reading. And separately, if the legislature had really intended "as required by the act" to modify only "securities" and not "valid payment bond," it likely would have clarified this distinction by including a comma between these objects.

Another problem with Goodin's first proposed reading is that if "as required by the act" modifies only "securities," it would misleadingly imply that in some circumstances the statute requires securities instead of a payment bond, or, in other words, that a payment bond might be insufficient. Although provisions of the statute do provide alternatives to a bond, all of them are permissive, always leaving the option for a bond. *See, e.g.*, Minn. Stat. § 574.261, subd. 1 (allowing a contractor to deposit a certified or cashier's check in place of giving a bond for relatively small public contracts); Minn. Stat. § 574.264, subd. 1 (allowing several alternatives to a bond in the context of natural resource development projects). The act's various requirements for securities constitute a subset of the bond requirements, and they do not seem to ever exclude the option of posting a bond. Reading "as required by the act" to modify "securities" but not "valid payment bonds" is therefore implausible.

Likewise under Goodin's second interpretation, the notion that the phrase modifies nothing but is instead a mere parenthetical reminder that payment bonds are always required by the act adds little, if anything, to the subdivision. If "as required by the act" is merely an observation of existing fact, the words are superfluous. Additionally, common grammar usage again counters Goodin's proposed reading. A parenthetical or nonrestrictive clause is generally set off by commas. *See The Chicago Manual of Style* ¶¶ 6.30, .31 ("A nonrestrictive phrase, however, *should* be enclosed in commas or, if at the end of a sentence, preceded by a comma." (emphasis in the original)). But the legislature did not use a comma to offset "as required by the act" from the words that precede it. The grammar informs us that the words "a valid payment bond . . . as required by the act" mean the kind of payment bond *that is* required by the act, not a payment bond, *which is* in all circumstances required by the act.

If the legislature wanted to indicate that a public body must choose between a bond and self-insurance, as Goodin argues, we assume it would have done so by omitting "as required by the act" altogether. And if the legislature intended only to establish municipal liability to suppliers in every case, it could have done so with simpler language. The plain language is unambiguous, so we apply the ordinary meaning without considering Goodin's policy arguments purportedly favoring municipal liability and supplier protection. We observe, however, that even if we saw an ambiguity, the statute itself undermines Goodin's policy position. The second sentence of the statute indicates that even a technical defect in a bond—specifically, simply including the wrong address for the contractor—will excuse the public body from third-party liability. Minn. Stat.

§ 574.29. Given that the legislature mandates this harsh result from even this minor defect, the legislature does not seem to have intended a blanket policy of shifting nonpayment losses to public bodies.

Affirmed.