This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0585

Reed Aronow,
Appellant,

vs.

State of Minnesota, et al.,
Respondents.

Filed October 1, 2012
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. 62-CV-11-3952

John Meyer (pro hac vice), Cottonwood Environmental Law Center, Bozeman, Montana; and

Marc Fink, Duluth, Minnesota (for appellant)

Lori Swanson, Attorney General, Kathleen L. Winters, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, 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 dismissal of his declaratory- and injunctive-relief claims based on his allegation that respondents violated the public-trust

doctrine. Because the district court did not err by concluding that appellant's complaint fails to state a claim upon which relief can be granted, we affirm.

FACTS

Appellant Reed Aronow commenced this action against respondents State of Minnesota, Governor Mark Dayton, and the Minnesota Pollution Control Agency for declaratory and injunctive relief under the Minnesota Environmental Rights Act and the public-trust doctrine. Only the public-trust-doctrine claim is at issue on appeal.

In his complaint, Aronow alleges that: (1) "[t]he best available science shows that to protect Earth's natural systems, average global peak surface heating must not exceed 1°C this century"; (2) "[t]o prevent global heating greater than 1°C, concentrations of atmospheric [carbon dioxide] must decline to less than 350 ppm within this century"; (3) "[t]o reduce [carbon dioxide] in the atmosphere to 350 ppm by the end of the century, the best available science concludes that [carbon dioxide] emissions must not increase and must begin to decline at a global average of at least 6% each year, beginning in 2013, continuing through 2050"; (4) "[respondents] are committed, through the Next Generation Energy Act of 2007 (Minn. Stat. § 216H.02), to a 15% reduction in Minnesota's [green-house gas] emissions by 2015"; and (5) "[t]his falls far short of the reductions necessary to reduce atmospheric carbon to 350 ppm by the end of the century." In summary, Aronow claims that respondents have "not adequately discharged [their] public trust duty through enactment and enforcement of [Minn. Stat.] § 216H.02." Aronow's claim is premised on his allegation that the public-trust doctrine applies to the atmosphere.

Aronow's request for relief includes a declaratory judgment "that the atmosphere is protected by the Public Trust Doctrine" and "that [respondents] have violated and are in violation of the Public Trust Doctrine." Aronow also requests that the district court "[c]ompel [respondents] to take the necessary steps to reduce the State's carbon dioxide output by at least 6% per year, from 2013 to 2050, in order to help stabilize and eventually reduce the amount of carbon dioxide in the atmosphere."

Respondents moved the district court to dismiss Aronow's claims under Minn. R. Civ. P. 12.02, arguing, in relevant part, that Aronow's public-trust-doctrine claim fails to state a claim upon which relief can be granted. After a hearing, the court dismissed Aronow's claim, concluding that, under Minnesota law, the public-trust doctrine applies only to navigable waters, not to the atmosphere, and that Aronow's complaint therefore fails to state a claim upon which relief can be granted.

This appeal follows.

D E C I S I O N

"We review de novo decisions on motions to dismiss for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). The question before us is whether the complaint sets forth a legally sufficient claim for relief." *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826 (Minn. 2011), *cert. denied,* 132 S. Ct. 2682 (U.S. 2012). A pleading must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. When conducting our review, we consider only the facts alleged in the complaint, accept those facts as true, and "constru[e] all reasonable inferences in

favor of the non-moving party." *In re Individual 35W Bridge Litig.*, 806 N.W.2d at 826–27. "But a legal conclusion in the complaint is not binding on [an appellate court]." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

The public-trust doctrine provides that "[t]he state, in its sovereign capacity, as trustee for the people, holds all navigable waters and the lands under them for public use." *Nelson v. De Long*, 213 Minn. 425, 431, 7 N.W.2d 342, 346 (1942). A private citizen's riparian rights are subordinate to the state's needs as the state manages the navigable waters held in the public trust. *Id.* In *State v. Longyear Holding Co.*, the Minnesota Supreme Court discussed the origin of the doctrine, the purpose of the trust, and the state's duty under the trust:

> [W]e have repudiated the doctrine that the state has any private or proprietary right (as had the king) in navigable waters, but that it holds them in its sovereign capacity, as trustee for the people, for public use.
>
> . . . .
>
> In the exercise of its trust, it cannot be seriously doubted that the state has the power, and, in fact, the duty rests upon it, to use such lands for the greatest public good, and, where they can be put to productive use, not to permit them to lie waste and unproductive. In so doing, of course, it cannot parcel or alienate them or otherwise interfere with the public purposes of the trust in which they are held.

224 Minn. 451, 473, 29 N.W.2d 657, 670 (1947) (quotation omitted). The "primary purposes" of the state's trust are "to maintain such waters for navigation and other public uses." *Id.* More recently, in *Larson v. Sando*, this court declined to expand the scope of the public-trust doctrine, holding that the doctrine applies only to the state's management

of waterways, not to the state's management of land. 508 N.W.2d 782, 787 (Minn. App. 1993), *review denied* (Minn. Jan. 21, 1994).

Aronow argues that the public-trust doctrine applies to the atmosphere but provides no legal support for his argument, and we are aware of no caselaw from Minnesota, or any other jurisdiction, in which a court has expanded the scope of the public-trust doctrine to include the atmosphere. Aronow asks this court as a matter of first impression to expand the common-law public-trust doctrine to include the atmosphere.

"This court, as an error correcting court, is without authority to change the law." *Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). The function of this court is not to establish new causes of action. *Stubbs v. N. Mem'l Med. Ctr.*, 448 N.W.2d 78, 81 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990). The Minnesota Supreme Court "has the power to recognize and abolish common law doctrines," and "[i]t is also the province of the legislature to modify the common law." *Larson v. Wasemiller*, 738 N.W.2d 300, 303 (Minn. 2007). The authority to create new law rests not in this court but in the legislature and supreme court. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

We do not consider Aronow's argument, made for the first time on appeal, that "even if the Public Trust Doctrine in Minnesota could be limited only to navigable waters, [Aronow] has adequately stated such a claim for relief under notice pleading." Aronow argues that his complaint alleges that respondents are "degrading the waterways of Minnesota to his detriment and those of future generations," and "these waterways are

no longer usable to the same extent they were previously." But a reading of Aronow's complaint does not support this characterization. His complaint repeatedly alleges only that the atmosphere is included in the natural resources protected by the public-trust doctrine and that respondents' failure to protect the atmosphere is a violation of its obligation under the public-trust doctrine.[1]

Because no Minnesota appellate court has held that the public-trust doctrine applies to the atmosphere, we conclude that the district court properly dismissed Aronow's complaint under rule 12.02(e) for failure to state a claim upon which relief can be granted. Based on our conclusion, we need not consider respondents' alternative arguments in support of affirmance.

Affirmed.

---

[1] Aronow also argues that a letter, dated July 10, 2010, from the Minnesota Department of Natural Resources Commissioner Mark Holsten to President Barack Obama, demonstrates that respondent "Minnesota Pollution Control Agency has asserted its Public trust authority in contexts beyond navigable waters." But the letter is not controlling authority and does not pertain to action that respondent Minnesota Pollution Control Agency took under the public-trust doctrine. Rather, the letter pertains to action taken by the agency on behalf of the public as a co-trustee of Minnesota's natural resources for purposes of the Clean Water Act and the Oil Pollution Act of 1990.