IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-MI-372

ResCare Health Services, Inc.,
Appellant (Plaintiff below),

–v–

Indiana Family & Social Services Administration – Office of Medicaid Policy and Planning,
Appellee (Defendant below).

Argued: October 21, 2021 | Decided: April 5, 2022

Appeal from the Marion Superior Court
No. 49D03-1908-MI-32821
The Honorable Gary Miller, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-MI-1025

Opinion by Justice Massa

Chief Justice Rush and Justices Slaughter and Goff concur.
Justice David concurs in result.

Massa, Justice.

After being denied Medicaid reimbursement for over-the-counter medicines prescribed to its patients, ResCare Health Services, Inc. unsuccessfully sought administrative and judicial review, including a request for declaratory judgment. But the trial court concluded the request was insufficiently pleaded and ResCare's patients needed to be added to the litigation. Without determining whether the issue was sufficiently pleaded, the Court of Appeals affirmed, agreeing that the patients needed to be added before a declaratory judgment could be issued.

While we summarily affirm the disposition of ResCare's other arguments, we disagree that its declaratory judgment request should not be considered on the merits. Under Indiana's notice pleading standards, ResCare sufficiently pleaded its declaratory judgment request. And its' patients need not be sued for ResCare to seek declaratory relief blocking a government enforcement action. We reverse and remand for the trial court to consider the declaratory judgment request on the merits.

Facts and Procedural History

ResCare operates private intermediate care facilities across Indiana for individuals with intellectual disabilities. These facilities are reimbursed for the care provided to Medicaid recipients at a per diem rate, which "includes all services provided to patients by the facility." 405 Ind. Admin. Code 1-12-21(b) (2014). The per diem rate is subject to adjustments based on annual cost reports submitted by facilities to the Indiana Family & Social Services Administration's Office of Medicaid Policy and Planning (FSSA). For its 2014 cost report, ResCare sought to include the cost of over-the-counter medicines, like allergy relief tablets, that had been prescribed to its patients. But these medicines are not included on the FSSA's Over-the-Counter Drug Formulary, the list of pre-approved medicines and doses that pharmacies use to seek compensation under the Medicaid program. Because the pharmacy did not get reimbursed by Medicaid when dispensing the allergy relief tablets and other over-the-counter medications, it billed ResCare. ResCare included this amount—

approximately $40,000—in its cost report to the FSSA. The FSSA's auditor adjusted the cost reports to prevent ResCare from recovering costs for the over-the-counter medicines. ResCare unsuccessfully requested administrative reconsideration.

ResCare then petitioned for administrative review of the adjustment and "asked for a determination that it could charge patient accounts if the agency determined that [over-the-counter] drugs could not be included in the per diem rate." Appellant's App. Vol. II, p.8. After both parties moved for summary judgment, the administrative law judge, or ALJ, found that only pharmacy providers may seek reimbursement under Medicaid for over-the-counter medicines, and even they may not seek reimbursement for drugs not included on the Drug Formulary. And because the ALJ concluded that over-the-counter medicines are not included in the list of services that may be covered by the per diem rate under 405 I.A.C. 5-13-3, the ALJ recommended granting summary judgment to the FSSA on that issue and "declined to address the second issue regarding declaratory judgment." *Id.* ResCare appealed, and the final agency authority affirmed the ALJ and agreed that costs for the non-Formulary over-the-counter medicines could not be included in ResCare's per diem rate. The FSSA also concluded it could not rule on whether ResCare could charge its patients for the unreimbursed costs for those medicines because the issue was not ripe, and a declaratory judgment was beyond the scope of an administrative proceeding.

ResCare petitioned for judicial review, arguing it should be reimbursed for the over-the-counter medicines through the per diem rate, and it would be subject to an unconstitutional taking if the costs are not included in that rate unless it is permitted to charge its patients' personal accounts for these costs. The trial court affirmed the agency's final decision, concluding that non-Formulary, over-the-counter medicines are not reimbursable under Indiana's Medicaid rules. It also rejected ResCare's takings claim. And even though ResCare requested the declaratory judgment, the trial court declined to issue it because ResCare only sought judicial review, "which did not include a separate claim for a declaratory judgment." *Id.*, p.12. Moreover, the trial court found the "issue of whether or not ResCare may bill its [patients'] personal accounts

inherently affects the interests of those [patients], and they are not parties to this action." *Id.*

ResCare appealed, and the Court of Appeals affirmed. The panel found that "state-run facilities are explicitly authorized to be reimbursed for pharmaceutical products," while the authorization for private facilities like ResCare only has the "broad-sweeping encompassing language of 'all medical and nonmedical supplies and equipment' without further differentiation." *ResCare Health Servs., Inc. v. Ind. Fam. & Soc. Servs. Admin.*, 169 N.E.3d 864, 870 (Ind. Ct. App. 2021). If the term had been intended to include pharmaceutical products like over-the-counter medicines, "there would be no need to separately include these as a permissible per diem component for state-owned facilities." *Id.* at 871. Thus, the over-the-counter medicines were excluded from the per diem rate of private facilities like ResCare. *Id.* The panel also rejected ResCare's takings claim because it "voluntarily undertook the obligations and costs of participating in Indiana's Medicaid program." *Id.* at 873. And finally, "[w]ithout deciding whether ResCare's request for declaratory judgment was sufficiently pleaded," the panel affirmed the trial court's denial, because ResCare "did not join the [patients] as parties to the current litigation." *Id.* at 874.

ResCare sought transfer, which we granted. *ResCare Health Servs., Inc. v. Ind. Fam. & Soc. Servs. Admin.*, 172 N.E.3d 275 (Ind. 2021). Indiana Mentor, another healthcare provider for individuals with intellectual disabilities, filed an amicus brief supporting ResCare.

Standard of Review

"We may set aside an agency action only if, relevant here, it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Culver Cmty. Tchrs. Ass'n v. Ind. Educ. Emp. Rels. Bd.*, 174 N.E.3d 601, 604 (Ind. 2021) (quoting Ind. Code § 4-21.5-5-14(d)(1) (2014)). Ordinarily, the party seeking judicial review has the burden of demonstrating the action's invalidity. I.C. § 4–21.5–5–14(a). Here, ResCare also requested a declaratory judgment. A trial court's decision whether to

allow a declaratory judgment to proceed is typically reviewed for an abuse of discretion. *KLLM, Inc. v. Legg*, 826 N.E.2d 136, 144 (Ind. Ct. App. 2005), *trans. denied*. However, the trial court's decision was not made on the merits, but rather because it concluded other parties needed to be joined. We also review trial court decisions on the required joinder of parties for an abuse of discretion. *Ball State Univ. v. Irons*, 27 N.E.3d 717, 722 (Ind. 2015).

Discussion and Decision

While we summarily affirm the Court of Appeals on the first two issues, *see* Ind. Appellate Rule 58(A)(2), we write to address the declaratory judgment issue. As its alternative argument, ResCare requested a declaratory judgment stating that it could charge patient accounts for the costs of the over-the-counter drugs that fell outside Medicaid. Despite the trial court acknowledging that ResCare "request[ed]" this declaratory judgment, it declined to issue one because ResCare did not file a separate complaint, the declaratory judgment claim was not sufficiently pleaded, and the patients should have been joined to the litigation. Appellant's App. Vol. II, p.12. We first address whether ResCare needed to file a separate complaint for a declaratory judgment, and, if not, then whether it sufficiently pleaded its declaratory judgment claim. Because we ultimately conclude ResCare did not need to file a separate complaint and it sufficiently pleaded its declaratory judgment claim, we then turn to whether ResCare's patients need to be joined. We conclude they do not, so we reverse and remand.

I. ResCare did not need to file a separate complaint for a declaratory judgment.

The trial court denied ResCare's declaratory judgment request, in part, because ResCare did not file a separate complaint for a declaratory judgment. The FSSA argued the trial court's review in a "judicial action is limited to a review of the administrative proceedings," and the trial court does not have the authority to issue relief, like a declaratory judgment,

that "the agency was not authorized to issue." Appellant's App. Vol. III, pp. 231–32. Under that argument, ResCare could never obtain a declaratory judgment without filing a separate complaint, which would likely be consolidated with its judicial review petition. While the FSSA is correct that it cannot issue a declaratory judgment, it is incorrect that the trial court cannot. *See* I.C. § 34-14-1-1. The suggestion that ResCare needed to file a separate complaint is flawed, and in direct opposition to our judicial system's principles of judicial economy and the avoidance of multiple lawsuits where possible.

Indiana generally disfavors multiple lawsuits involving similar issues. *Farm Bureau Gen. Ins. Co. of Mich. v. Sloman*, 871 N.E.2d 324, 332 (Ind. Ct. App. 2007) (citing *Ind. Ins. Co. v. Noble*, 148 Ind. App. 297, 323, 265 N.E.2d 419, 435 (1970)), *trans. denied*. Parties and trial courts should "join actions when at all possible." *Carpenter v. Campbell*, 149 Ind. App. 189, 199, 271 N.E.2d 163, 169 (1970). "[T]he intent behind many of our Rules of Trial Procedure is the avoidance of multiple lawsuits," which along with judicial economy and efficiency, has "always been of significant concern in the development of our legal principles." *Sloman*, 871 N.E.2d at 332–33. In furtherance of these principles, our Trial Rules encourage liberal joinder of claims and remedies. This philosophy is evidenced by the broad scope of Trial Rule 18(A), which allows a "party asserting a claim for relief . . . [to] join, either as independent or as alternate claims, as many claims, whether legal, equitable, or statutory as he has against an opposing party." Once a person is a party, "the joinder of claims is unfettered." *Jones v. Jones*, 641 N.E.2d 98, 99 (Ind. Ct. App. 1994).

While a party typically can only obtain judicial review of issues raised before an agency, ResCare was not seeking judicial review of this issue—it was seeking a declaratory judgment. A petition for review is analogous to a complaint and allows a party to include other claims that were previously unavailable on administrative review. *See Ind. Dep't of Highways v. Dixon*, 541 N.E.2d 877, 880 (Ind. 1989); *Midwest Ent. Ventures, Inc. v. Town of Clarksville*, 158 N.E.3d 787, 792 (Ind. Ct. App. 2020), *trans. denied*. Nothing in the Administrative Orders and Procedures Act suggests parties seeking judicial review are barred from adding additional claims that were previously unavailable on administrative review. *See* I.C. § 4-

21.5-5-1; T.R. 18(A). While ResCare could have filed this declaratory judgment request as a separate action, it did not **have** to do so. To hold otherwise would needlessly incentivize numerous lawsuits on related issues.

II. Under Indiana's notice pleading requirements, ResCare sufficiently pleaded its declaratory judgment claim.

Indiana is a notice-pleading state and only requires that pleadings contain "a short and plain statement of the claim showing that the pleader is entitled to relief." T.R. 8(A)(1). Plaintiffs do not have to "set out in precise detail the facts upon which the claim is based, [but they] must still plead the operative facts necessary to set forth an actionable claim." *Trail v. Boys and Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 135 (Ind. 2006). So "although 'highly desirable,' a precise legal theory in a pleading—a principle connecting a claim to the relief sought—'is not required.'" *Bayer Corp. v. Leach*, 147 N.E.3d 313, 315 (Ind. 2020) (quoting *State v. Rankin*, 260 Ind. 228, 231, 294 N.E.2d 604, 606 (1973)).

"The purpose of notice pleading is to inform a defendant of a claim's operative facts so the defendant can 'prepare to meet it.'" *Id.* (quoting *Noblesville Redevelopment Comm'n v. Noblesville Ass'n Ltd. P'ship*, 674 N.E.2d 558, 564 (Ind. 1996)). "A complaint's allegations are sufficient if they put a reasonable person on notice as to why a plaintiff sues." *ARC Constr. Mgmt., LLC v. Zelenak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012). Within the context of pleading declaratory judgments, our Court of Appeals' decision in *Myers v. Deets* is instructive. 968 N.E.2d 299 (Ind. Ct. App. 2012). "While not expressly seeking a declaratory judgment," the plaintiff "sufficiently stated facts that would support a declaratory judgment action." *Id.* at 303. The panel found this complaint sufficient to seek relief by way of a declaratory judgment, and the adequacy of the notice was evinced by the defendant refuting the issue in its answer. *Id.*

Unlike the *Myers* plaintiff, ResCare has expressly requested a declaratory judgment at every stage of these proceedings. During the

administrative proceedings, ResCare requested this declaratory judgment from the ALJ, who declined to rule on the issue.[1] ResCare appealed the ALJ's decision to the final agency authority, and the FSSA concluded it could not rule on the issue because it was not ripe and issuing a declaratory judgment "was beyond the authority of the ALJ and agency review." Appellant's App. Vol. II, pp. 22–23. In response to ResCare's objections to the ALJ's order, the FSSA argued this issue was "more akin to a declaratory judgment request, which is well beyond the purview of this administrative forum." *Id.*, p.92. Then in ResCare's petition for judicial review, it stated one of the two issues raised during administrative review was "whether ResCare could charge the unreimbursed costs for such drugs to the personal funds account of the client." *Id.*, p.17. ResCare argued the FSSA erred in concluding the issue was not ripe, and to the extent the agency's order rested on the concern that it "could not issue a declaratory judgment regarding the reimbursement from personal funds accounts, this Court does have the authority to do so." *Id.* at 18–20 (citing I.C. § 34-14-1-1; T.R. 57).

In their briefing before the trial court, both parties argued over the merits of the declaratory judgment. ResCare again argued the issue was ripe and within the trial court's authority and explained why it believes it is entitled to this declaratory judgment. The FSSA again acknowledged that "ResCare's request for a decision on the issue was equivalent to a request for declaratory judgment, which was beyond the scope of agency review." Appellant's App. Vol. III, p.216. The trial court declined to issue a declaratory judgment, even though ResCare "request[ed]" one from the court, because ResCare did not file a separate complaint or claim for a declaratory judgment. Appellant's App. Vol. II, p.12. On appeal, ResCare

[1] As previously explained, the FSSA does not have any authority to issue the requested declaratory judgment. So, while nothing prohibits a party from requesting it before an agency, not requesting it before the agency does not waive the claim for judicial review. We include these requests and arguments from the administrative proceedings only to show the FSSA's notice of ResCare's intent to seek a declaratory judgment. But even if ResCare had not raised the declaratory judgment issue during administrative review, it still could have raised it for the first time in its petition for judicial review.

argued that its complaint "put the FSSA on notice that ResCare was seeking a declaratory judgment, a fact the FSSA did not deny before the trial court." Appellant's Br. at 29. In response, the FSSA focuses on the brief insertion of the declaratory judgment reference in ResCare's complaint, claiming that this is not a "request" to the trial court to issue a declaratory judgment in its favor. Appellee's Br. at 31–32.

While explicitly referencing the declaratory judgment in ResCare's prayer for relief may have been "highly desirable," it was not necessary under our notice pleading standards. *Rankin*, 260 Ind. at 606, 294 N.E.2d at 606. All that was required was pleading the operative facts necessary to set forth an actionable claim, which ResCare did, in addition to its express requests for a declaratory judgment and legal arguments about why it deserved one. *Trail*, 845 N.E.2d at 135. This express request is evinced by the trial court itself referencing ResCare's "request[]" for the declaratory judgment. Appellant's App. Vol. II, p.12. Indeed, ResCare pleaded its declaratory judgment request far more expressly and thoroughly than the plaintiff in *Myers*, who still sufficiently pleaded a declaratory judgment request because he "sufficiently stated facts that would support a declaratory judgment action." 968 N.E.2d at 303. Compared to the pleadings in *Myers*, and under our notice pleading standards, we have no trouble concluding the FSSA was sufficiently notified of ResCare's request for a declaratory judgment. At every level of these proceedings, ResCare argued for and requested the declaratory judgment, and the FSSA has argued against it. Like the defendants in *Meyers*, the adequacy of the notice was shown by the defendants' pleadings. *Id.* Here, the FSSA consistently refuted the issue in its responsive pleadings, proving it was on notice.

Notice pleading developed "as a reaction to the archaic and overly technical pleading standards of the common law" and code pleading regimes. James V. Bilek, Twombly, Iqbal*, and Rule 8(C): Assessing the Proper Standard to Apply to Affirmative Defenses*, 15 Chap. L. Rev. 377, 379 n.20 (2011). Indeed, our notice pleading system mandates that all pleadings be "construed as to do substantial justice, lead to disposition on the merits, and avoid litigation of procedural points." T.R. 8(F). And "whenever possible, 'we prefer to resolve cases on the merits instead of on

procedural grounds.'" *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (quoting *Roberts v. Cmty. Hosps. of Ind., Inc.*, 897 N.E.2d 458, 469 (Ind. 2008)). The trial court's denial on these technical grounds is what our notice pleading system seeks to avoid. The FSSA has long been informed of the declaratory judgment issue, which satisfies our notice pleading system.

III. ResCare's patients do not have to be joined to the litigation before ResCare's declaratory judgment request can be considered.

The trial court also declined to issue the requested declaratory judgment "because the issue of whether or not ResCare may bill its [patients'] personal accounts inherently affects the interests of those [patients], and they are not parties to this action." Appellant's App. Vol. II, p.12. ResCare argues the "purpose of the declaratory judgment is to ascertain whether **the FSSA** has the right to bring an enforcement action if ResCare charges directly for [over-the-counter] drugs." Pet. to Trans. at 20. In response, the FSSA argues ResCare can file a complaint seeking a declaratory judgment and join its patients to the litigation. While we have already disposed of the notion that ResCare needs to file a separate complaint, we now address whether ResCare must sue its patients before it can seek a declaratory judgment on whether the FSSA can penalize ResCare for Medicaid violations if it charges patients directly.

The purpose of the Uniform Declaratory Judgment Act is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." I.C. § 34-14-1-12. But the Act does not open the courts to resolving hypothetical cases; it still "requires a justiciable controversy or question." *Ind. Dep't of Env't Mgmt. v. Twin Eagle, LLC*, 798 N.E.2d 839, 843 (Ind. 2003)). To satisfy this requirement, it is enough that the "ripening seeds" of a controversy exist and that the plaintiff has "a substantial present interest in the relief sought." *Ind. Educ. Emp. Rels. Bd. v. Benton Cmty. Sch. Corp.*, 266 Ind. 491, 497 365 N.E.2d 752, 755 (1977). "When considering a motion for declaratory judgment, 'the test to be applied is whether the issuance of a declaratory judgment will

effectively solve the problem, whether it will serve a useful purpose, and whether or not another remedy is more effective or efficient.'" *Dible v. City of Lafayette*, 713 N.E.2d 269, 272 (Ind. 1999) (quoting *Volkswagenwerk, A.G. v. Watson*, 181 Ind. App. 155, 160, 390 N.E.2d 1082, 1085 (1979)). "The determinative factor is whether the declaratory action will result in a just and more expeditious and economical determination of the entire controversy." *Watson*, 181 Ind. App. at 160, 390 N.E.2d at 1085.

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest that would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." I.C. § 34-14-1-11. Declaratory judgment claims are subject to our Trial Rules, which provide for a person to be joined as a party if complete relief cannot be accorded among those already joined in that person's absence, or if that person claims an interest regarding the action and is "so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest." T.R. 19(A). "The rule governing joinder of parties does not set forth a rigid or mechanical formula for making the determination, but rather is designed to encourage courts to apprise themselves of the practical considerations of each individual case in view of the policies underlying the rule." *Rollins Burdick Hunter of Utah, Inc. v. Bd. of Trs. of Ball State Univ.*, 665 N.E.2d 914, 920 (Ind. Ct. App. 1996). And the burden of proving joinder is necessary rests with the party asserting as such. *Id.*

Examples of required parties are helpful, and show these parties have some legally cognizable interest or right at issue. Our Court of Appeals concluded a father was a necessary party to the name change proceeding of his minor child, as both parents shared equal legal rights in naming their child. *In re Change of Name of Fetkavich*, 855 N.E.2d 751, 755 (Ind. Ct. App. 2006). The Court of Appeals also concluded injured motorists, who had a legally vested interest in automobile insurance policy proceeds, were required parties that should have been joined to a declaratory judgment action between the insurance company and the insured tortfeasor. *Am. Fam. Mut. Ins. Co. v. Ginther*, 803 N.E.2d 224, 230–31 (Ind. Ct. App. 2004). In *LBLHA, LLC v. Town of Long Beach*, the State should have been joined to a declaratory judgment action between lakefront property

owners and a town regarding boundaries of a lakefront area because the owners claimed they owned area below the ordinary high-water mark, and the State has absolute fee title up to this boundary. 28 N.E.3d 1077, 1090 (Ind. Ct. App. 2015). And in *River Ridge Development Authority v. Outfront Media, LLC*, this Court determined a billboard company's employee who was individually listed as the applicant for a billboard permit "had an interest that would be affected by a declaration that the billboards were improperly permitted." 146 N.E.3d 906, 918 (Ind. 2020).

However, joinder is not required when a party is tangential to the dispute. Our decision in *Ball State University v. Irons* is illustrative; there, a woman sought to join Ball State University as a necessary party in a dispute with her former husband over college expenses for their daughter. 27 N.E.3d at 722. But Ball State was not necessary to resolve the amount of unpaid fees owed to it, nor was it necessary to determine future education expenses, especially considering the daughter had already transferred universities. *Id.* Here, the patients' joinder is not necessary to determine whether ResCare violates Medicaid regulations by directly charging the patients for non-covered, over-the-counter medicines. ResCare's concern is with the FSSA, and it "only seeks protection from a later enforcement action by the FSSA." Pet. to Trans. at 19. Requiring ResCare to sue its patients before it can obtain "relief from uncertainty and insecurity" about the legality of its proposed solutions is inapposite to the purpose of declaratory judgments. *Watson*, 181 Ind App. at 159, 390 N.E.2d at 1085. Adding ResCare's patients, who are individuals of limited means with intellectual disabilities, to the litigation when they have no legally cognizable interest at issue, nor any role in a potential enforcement action by the FSSA for Medicaid violations, is neither "just" nor "economical." *Id.* at 160, 390 N.E.2d at 1085. We conclude the FSSA did not carry its burden

to prove joinder was required, and the trial court abused its discretion in declining to issue the declaratory judgment on this basis.[2]

Conclusion

While we summarily affirm the Court of Appeals on the statutory interpretation and takings issues, we reverse and remand for the trial court to consider ResCare's declaratory judgment request on the merits.

Rush, C.J., and Slaughter and Goff, JJ., concur.
David, J., concurs in result.

[2] Even if ResCare's patients were required parties, the proper procedure would not be to decline to issue the requested declaratory judgment altogether. "An action need not be dismissed merely because an indispensable party was not named." *LBLHA, LLC v. Town of Long Beach*, 28 N.E.3d 1077, 1086 (Ind. Ct. App. 2015). "Where an indispensable party subject to process is not named, the correct procedure calls for an order in the court's discretion that he be made a party to the action or that the action should continue without him." *Id.* Moreover, a declaratory judgment is not guaranteed on remand, nor would it prejudice the rights of ResCare's patients in the event they are being charged and want to challenge this practice. *See* Ind. Code § 34-14-1-11 ("[N]o declaration shall prejudice the rights of persons not parties to the proceeding.").

ATTORNEY FOR APPELLANT

Mark J. Crandley
Barnes & Thornburg LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Aaron T. Craft
Benjamin M. L. Jones
Office of the Attorney General
Indianapolis, Indiana

ATTORNEY FOR AMICUS CURIAE INDIANA MENTOR

Paul L. Jefferson
McNeelyLaw, LLP
Indianapolis, Indiana