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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1688

Robert Atkinson,
Appellant,

vs.

Minnesota Department of Human Services,
Respondent,

and

Scott County Social/Human Services Agency,
Respondent.

Filed June 5, 21017
Affirmed
Johnson, Judge

Scott County District Court
File No. 70-CV-15-21321

Jennifer M. Moore, Moore Family Law, Plymouth, Minnesota (for appellant)

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Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

JOHNSON, Judge

Robert Atkinson's daughter, who has a developmental disability, received services through a state program that assesses a fee on parents based on their taxable income, using progressive rates. Atkinson experienced a spike in income in a single year because he received money from a lump-sum settlement of an employment-discrimination lawsuit. As a result, Atkinson paid fees on the lump-sum settlement at a higher rate than he would have paid if he had received that income over multiple years. He challenges the constitutionality of the statutory scheme by which the fee was calculated, arguing that the use of progressive rates in his particular circumstances violates his constitutional rights to substantive due process and equal protection. We conclude that the state's application of the governing statute does not violate Atkinson's constitutional rights. Therefore, we affirm.

FACTS

Atkinson and his wife have three children, including a daughter who was born in 1997 with Down syndrome. She requires constant supervision and assistance with all aspects of daily life. When she was of eligible age, some of her "significant and expensive ongoing medical care" was provided by the state's Medical Assistance (MA) program. The cost of the MA-provided services that were not covered by insurance was approximately $75,000 per year.

Under state law, children with developmental disabilities are entitled to receive services through the MA program regardless of family income. *See* Minn. Stat. § 252.27, subd. 1 (2016). But the department of human services (DHS) is required to recoup a portion

of the costs of the program from parents of children receiving services. *See* Minn. Stat. § 252.27, subd. 2 (2016). A family's "ability to pay" is determined by reference to "the adjusted gross income of the natural or adoptive parents determined according to the previous year's federal tax form." *Id.*, subd. 2a(d) (2016). Using a parent's adjusted gross income (AGI), DHS calculates the parent's fee by applying a rate determined by statute, which is progressive in that parents with higher incomes are assessed fees at higher rates. *Id.*, subd. 2a(b). For example, a parent with income at the poverty level would pay a nominal fee of $4 per month, a parent with income of five times the poverty level would pay a fee equal to 7.5% of AGI, and a parent with income of ten times the poverty level would pay a fee equal to 12.5% of AGI. *See* Minn. Stat. § 252.27, subd. 2a(b)(1)-(4) (2012). During the relevant period, the federal poverty guidelines provided that a family of five would be in poverty below an AGI of $27,010. Annual Update of the HHS Poverty Guidelines, 77 Fed. Reg. 4034 (Jan. 26, 2012); *see also* 42 U.S.C. § 9902(2) (2012).

Parents of children receiving services through the program may reduce their income for purposes of the parental-fee calculation in three specified circumstances. First, a parent's AGI is adjusted downward by $2,400 if the disabled child lives in the parent's home. Minn. Stat. § 252.27, subd. 2a(b). Second, a parent may apply for a "[v]ariance for tax status" if the parent can show that "there is a gross disparity between the amount of income . . . allocated to the parents and the amount of cash distributions made to the parents." Minn. R. 9550.6230, subp. 2 (2013). And third, a parent may receive a "[v]ariance for undue hardship" if certain expenditures were made to accommodate a disabled child and were not reimbursed. *Id.*, subp. 1a.

In some years in the late 1990s and early 2000s, when the Atkinsons' AGI was approximately $50,000, they were assessed parental fees of only $25 per month (or $300 per year). In fiscal years 2007 through 2010, the Atkinsons were assessed parental fees of approximately $950 per month (or $11,400 per year) based on AGI numbers of approximately $150,000. In fiscal year 2011, the Atkinsons were assessed a parental fee of $1,638 per month (or $19,656 per year) based on an AGI of approximately $194,000.

In November 2010, a class-action employment-discrimination lawsuit was commenced against Atkinson's former employer. The complaint alleged claims under the federal Age Discrimination in Employment Act (ADEA) and the Minnesota Human Rights Act (MHRA). The lawsuit was resolved by a settlement in 2012. Because he was a member of the class, Atkinson received a lump-sum settlement payment of $195,149, which increased the family's 2012 AGI to $355,774.

In January 2015, DHS gave notice to the Atkinsons that their parental fee for fiscal year 2014 (which ran from July 1, 2013, to June 30, 2014) would be $3,681 per month (or $44,172 per year) based on the family's 2012 AGI. Atkinson pursued an administrative appeal. A DHS judge conducted four hearings over a period of approximately four months. Atkinson provided amended tax returns, which resulted in a recalculation of the parental fee, reducing it somewhat to $3,367 per month (or $40,400 per year). Atkinson argued, in part, to the DHS judge that the settlement proceeds were "a one-time anomaly" that should not be attributed to his income. DHS argued in response that the governing statute required the agency to include the settlement proceeds in Atkinson's income. In August 2015, the DHS judge issued an order that states, "There is no legal authority to exclude the settlement

income." Accordingly, the DHS judge recommended that Atkinson's parental fee be upheld. The commissioner of DHS adopted the DHS judge's recommendation. Atkinson requested reconsideration, which was denied.

In October 2015, Atkinson commenced an action in the district court to seek judicial review of the commissioner's order. *See* Minn. Stat. § 256.045, subd. 7 (2016). Atkinson argued to the district court that the commissioner's decision was arbitrary and capricious and that including the settlement proceeds in his income violated his constitutional rights to substantive due process and equal protection. He requested a recalculation of his parental fee for fiscal year 2014 based on his 2012 AGI without the settlement proceeds. The district court reasoned that "[t]he settlement proceeds clearly qualify as income under the statutory definition" and that "DHS did not act arbitrarily or capriciously by following this clear statutory definition." The district court also rejected Atkinson's argument that DHS's inclusion of the settlement proceeds in his income violated his constitutional rights. Accordingly, the district court affirmed the commissioner's decision. Atkinson appeals.

D E C I S I O N

Our review in a case of this type is authorized by the Minnesota Administrative Procedure Act. *See* Minn. Stat. § 14.63 (2016); *Mammenga v. State Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989); *Kaplan v. Washington Cty. Cmty. Soc. Servs.*, 494 N.W.2d 487, 489 (Minn. App. 1993). When we review a district court's decision to affirm or reverse an agency determination, we independently examine the agency's decision. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). We may reverse or modify the agency decision if the agency exceeded its authority in making the

decision or based the decision on unlawful procedure, if the decision was affected by an error of law or was not supported by substantial evidence, or if the decision was arbitrary, capricious, or in violation of the constitution. Minn. Stat. § 14.69 (2016); *Estate of Atkinson v. Minnesota Dep't of Human Servs.*, 564 N.W.2d 209, 213 (Minn. 1997).

Atkinson argues that DHS's method of calculating his income for purposes of his 2014 parental fee violates his constitutional rights to due process and equal protection. His arguments are focused on the progressive nature of the rates that are used to determine the parental fee in light of his irregular income. More specifically, he contends that he paid an unduly large parental fee in fiscal year 2014 because his income in 2012 was increased by his receipt of a lump-sum settlement, which was intended to compensate him for lost income in multiple prior years, thereby causing more of his income to be subject to a higher rate than if he had received a more consistent income stream during the relevant time period. Atkinson does not attempt to quantify the specific amount by which he was disadvantaged, but the district court did not dispute his assertion that he was disadvantaged, and there is no such dispute on appeal. We note that "Minnesota statutes are presumed constitutional." *State v. Fitch*, 884 N.W.2d 367, 373 (Minn. 2016). We apply a *de novo* standard of review to a district court's ruling on the constitutionality of a statute. *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 719 (Minn. 2007).

I. Due Process

Atkinson first argues that DHS's method of calculating his income for purposes of his 2014 parental fee violates his constitutional right to due process. He contends that the progressive rate structure of the statute is "unfair" because it amplifies the effect of the age

discrimination that he asserts was remedied by the lump-sum settlement. He does not base his argument on the procedures used by DHS when determining his 2014 parental fee. Accordingly, we construe his argument to be an assertion of his right to substantive due process, as he argued below, not his right to procedural due process.

The doctrine of substantive due process is based on the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See* U.S. Const. amend. XIV, § 1. The doctrine "protects individuals from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (quotations omitted). In the context of a state program conferring benefits on a person, "due process demands that a statute not be an unreasonable, arbitrary or capricious interference and requires at minimum that the statute bear a rational relation to the public purpose sought to be served." *Obara v. Minnesota Dep't of Health*, 758 N.W.2d 873, 879 (Minn. App. 2008) (quotation omitted).

The first step of the analysis is to ask whether there is a fundamental right at stake. *See Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). If so, "the state must show that its action serves a compelling government interest." *Id.* (citing *In re Blodgett*, 510 N.W.2d 910, 914 (Minn. 1994)). If there is no fundamental right at stake, we ask whether the statute has a rational basis, which requires the state to show only that the statute "is a reasonable means to a permissive object." *State v. Bernard*, 859 N.W.2d 762, 773 (Minn. 2015) (quotation omitted), *aff'd sub nom.*, *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). The supreme court recently stated that it is "reluctant to expand the concept of substantive due process because guideposts for

responsible decision-making in this unchartered area are scarce and open-ended." *State v. Hill*, 871 N.W.2d 900, 905-06 (Minn. 2015) (quotation omitted); *see also Gustafson v. Commissioner of Human Servs.*, 884 N.W.2d 674, 683 (Minn. App. 2016).

The district court reasoned that the "right to have certain funds exempt from a fee sharing calculation is not a fundamental right" and applied rational-basis review. Atkinson does not challenge that part of the district court's reasoning. Accordingly, the question is whether DHS's method of calculating Atkinson's income for purposes of his 2014 parental fee is "a reasonable means to a permissive object." *See Bernard*, 859 N.W.2d at 773.

The district court reasoned that, in general, the parental-fee statute serves the public purpose of "limiting the overall cost of the program by collecting a fee from those who benefit from the program" and that a progressive fee structure ensures that "all disabled children are able to receive the services they need" while requiring each family to pay an amount that it can afford. Atkinson does not challenge the district court's reasoning insofar as it justifies a parental fee and the use of federal tax law to determine a parent's income.

The district court also reasoned, more specifically, that using a parent's AGI is "rationally related to a public purpose" because "[t]he State should not have to reinvent the wheel when there are already thousands of pages of federal code determining what should be counted as income." Atkinson challenges this part of the district court's reasoning. He contends that the statute is unconstitutional because it does not contain a "mechanism to mitigate th[e] effect" of progressive rates on a person whose income over a multi-year period is recognized for tax purposes in a single year.

The district court's reasons for rejecting Atkinson's argument are valid. The legislature and DHS created a limited number of exceptions to the AGI-based formula for a limited number of unusual situations. *See* Minn. Stat. § 252.27, subd. 2a (2016); Minn. R. 9550.6230, subp. 1a. Atkinson essentially questions the judgment of the legislature and DHS in not going further by creating additional exceptions. As the district court reasoned, it would be impractical, if not impossible, for the legislature or DHS to anticipate all possible situations that might be encountered by parents of disabled children. The creation of an exception for every unusual situation is not a constitutional imperative under the doctrine of substantive due process. As this court has noted, "a statute is not rendered unconstitutional simply because it 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Doll v. Barnell*, 693 N.W.2d 455, 463 (Minn. App. 2005) (quoting *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970)), *review denied* (Minn. June 14, 2005). In this particular case, the absence of additional exceptions is "a reasonable means to a permissive object." *See Bernard*, 859 N.W.2d at 773.

Thus, the district court did not err by concluding that DHS's method of calculating Atkinson's income for purposes of his 2014 parental fee does not violate his right to substantive due process.

II. Equal Protection

Atkinson also argues that DHS's method of calculating his income for purposes of his 2014 parental fee violates his constitutional right to equal protection. He contends that

DHS's method treats him differently than it treats parents who did not receive a lump-sum settlement as compensation for previous lost income.

The Equal Protection Clause of the United States Constitution provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 2. The federal and state equal-protection doctrines are "analyzed under the same principles." *State v. Johnson*, 813 N.W.2d 1, 11 (Minn. 2012) (quotation omitted). Neither doctrine absolutely "'forbid[s] classifications'"; both doctrines "'keep[] governmental decisionmakers from treating differently persons who are in all relevant aspects alike.'" *Id.* at 12 (quotation omitted). In short, "similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive." *State v. Garcia*, 683 N.W.2d 294, 298 (Minn. 2004) (quotation omitted).

A threshold requirement of an equal-protection claim is that two classes of persons are similarly situated but treated differently. *Johnson*, 813 N.W.2d at 12; *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 656 (Minn. 2012). A challenger's failure to satisfy the threshold requirement is dispositive. *Schatz*, 811 N.W.2d at 656-57; *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011); *Doll*, 693 N.W.2d at 462-63; *cf. In re Guardianship of Durand*, 859 N.W.2d 780, 784 & n.3 (Minn. 2015). If the threshold requirement is satisfied, we ask whether there is a "rational basis" for the different treatment, unless the statute implicates a "suspect classification or a fundamental right." *Garcia*, 683 N.W.2d at 298.

The district court reasoned that Atkinson did not satisfy the threshold requirement because the statute treats "all individuals the same by basing their fee on the adjusted gross income reflected in their most recent year's tax return" and he "is not being treated differently than any similarly situated individual." On appeal, Atkinson appears to argue that victims of employment discrimination who succeed in recouping damages from an employer are similar to persons who are not victimized by employment discrimination. DHS argues in response that Atkinson and persons like him are not similar to parents who have not experienced lost income due to discrimination because the two classes of persons receive income at different times, which means that they have a dissimilar ability to pay a parental fee in the following fiscal year. If income over a longer, multi-year period were the inquiry, Atkinson might be able to show that the two classes of persons he has identified are similarly situated. But the parental fee is calculated annually, based on income in the prior tax year. *See* Minn. Stat. § 252.27, subd. 2a. Given that method, Atkinson is not situated similarly to a person who is continuously employed at relatively consistent levels of income. Thus, Atkinson cannot satisfy the threshold requirement, which is a sufficient reason to reject his equal-protection argument.

Even if Atkinson could satisfy the threshold requirement, he would need to demonstrate that the state's dissimilar treatment of similarly situated classes of persons is not justified. "We apply strict scrutiny to a legislatively-created classification that involves a suspect classification or a fundamental right." *Greene v. Commissioner of Minnesota Dep't. of Human Servs.*, 755 N.W.2d 713, 725 (Minn. 2008). Under strict scrutiny, the classification must be narrowly tailored to further a compelling government interest. *Id.*

But if no suspect classification or fundamental right is involved, the statute need only have a rational basis for the dissimilar treatment. *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002). The district court reasoned that Atkinson's proposed classification is not a suspect classification, apparently because age is not a suspect classification. *See In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986) (citing *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312-13, 96 S. Ct. 2562, 2566 (1976) (other citation omitted)). On appeal, Atkinson does not challenge this part of the district court's reasoning. Accordingly, the question would be whether DHS's method of calculating Atkinson's income for purposes of his 2014 parental fee has a rational basis.

Under Minnesota law, a statute has a rational basis if:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991) (quotation omitted). In this case, the statute would satisfy the first requirement of this test because the distinctions between parents who receive income consistently over a multi-year period and parents who receive income in a lump-sum settlement are not "manifestly arbitrary or fanciful" but, rather, are "genuine and substantial." *See id.* The state's use of AGI provides an objective measure by which the state can readily calculate a parent's ability to pay a fee. The statute also

would satisfy the second requirement because the means of classification are genuine and directly relevant to the purpose of the law in that there is a direct connection between AGI and a parent's ability to pay a fee. *See id.* In addition, the statute would satisfy the third requirement because the purpose of the statute (to recover the costs of the program from parents according to their ability to pay) is one that the state may "legitimately attempt to achieve." *See id.* In short, Atkinson cannot satisfy any of the requirements of Minnesota's rational-basis test. *Accord Brainerd Area Civic Ctr. v. Commissioner of Revenue*, 499 N.W.2d 468, 470-72 (Minn. 1993) (concluding that graduated gross receipts tax on gambling revenues did not violate right to equal protection). Thus, even if Atkinson were able to satisfy the threshold requirement, his claim nonetheless would fail because the statute has a rational basis.

Thus, the district court did not err by concluding that DHS's method of calculating Atkinson's income for purposes of his 2014 parental fee does not violate his right to equal protection.

Affirmed.