STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0550

In re the Matter of Dahlgren Township, City of Carver and
the Commissioner of the Office of Administrative Hearings,
Minnesota Attorney General's Office

Filed December 18, 2017
Affirmed
Smith, Tracy M., Judge

Carver County District Court
File No. 10-CV-16-657

Lori Swanson, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, St. Paul, Minnesota (for appellant Minnesota Office of Administrative Hearings)

Robert T. Ruppe, Michael C. Couri, Couri & Ruppe, P.L.L.P., St. Michael, Minnesota (for respondent Dahlgren Township)

Matthew D. McDougall, R. Lawrence Harris, Melchert Hubert Sjodin, PLLP, Waconia, Minnesota (for respondent City of Carver)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and Smith, John, Judge.*

S Y L L A B U S

When parties to an orderly annexation agreement agree to a tax-reimbursement amount, Minn. Stat. § 414.036 (2016) does not restrict that amount.

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

O P I N I O N

SMITH, TRACY M., Judge

Appellant Office of Administrative Hearings (OAH) appeals the district court's order vacating portions of two OAH orders regarding the orderly annexation of a parcel of real property from respondent Dahlgren Township (the township) to respondent City of Carver (the city).

The district court concluded that (1) the tax-reimbursement provision of the city and the township's orderly annexation agreement (the agreement) was not preempted by Minn. Stat. § 414.036 and (2) OAH could not assess its costs in this matter to the city and the township, and, even if it could, it had failed to justify its particular allocation of costs. OAH argues that the district court erred in determining that the agreement was not preempted by Minn. Stat. § 414.036 and in holding that OAH could not assess its costs. OAH also asks this court to hold that the city and the township cannot make payment of tax reimbursement by a property owner a condition of annexation.

Because we agree with the district court on the ultimate outcome regarding the tax-reimbursement amount—although for a different reason—and the assessment of costs, and because we conclude that OAH's third request currently presents a nonjusticiable controversy, we affirm.

FACTS

In 2009, the city and the township entered into an orderly annexation agreement that sets out the terms and conditions by which an area of land within the township's borders can be annexed to the city. The agreement provides that the city will not annex any parcel

of property within the designated area "until such time as the Township has received reimbursement for the loss of such taxable property in the amount of $500 for each acre described in the City resolution to be annexed to the City. Tax exempt property at time of annexation is not subject to tax reimbursement." The agreement does not specify who must pay this reimbursement.

In February 2016, the Community Asset Development Group L.L.C. (CADG) decided to purchase and develop property owned by Diedrich and Jeanette Lenzen and located within the area designated for annexation (the property). CADG's planned usage required the extension of the city's utility service to the property, so the Lenzens petitioned the city for immediate orderly annexation. When the Lenzens submitted their petition to the city's city planner, the city planner told them that, in order to process the petition, "a fee of $500 per acre is to be paid to the Township." As a result, CADG, which had not yet purchased the property, issued a check to the township for $2,165. After the township received the payment, the city passed a resolution to annex the property.

The city's resolution and a filing fee were submitted to OAH with a request to issue an annexation order. OAH issued an order requiring the city or the township to supplement the record regarding the township's "practice of charging the property owner a fee of $500 per acre for tax reimbursement for the loss to the Township." This order did not approve the annexation. The township complied with OAH's order, and OAH issued an order approving the annexation on the condition that the township return the $2,165 payment to the Lenzens (OAH was unaware at this time that CADG, not the Lenzens, had paid the reimbursement), authorizing the township to collect from the city $247.61 (the amount the

Lenzens had paid in property taxes the previous year), and assessing the city and the township 50% each of OAH's costs for handling the matter. The city and the township sought amendment of that order, indicating to OAH for the first time that CADG, not the Lenzens, had paid the tax reimbursement. Based on this information, OAH issued a new order vacating the prior order and requiring the city or the township to supplement the record regarding CADG's interest in the property, which the city did.

On June 15, OAH issued an order (the first amended order) approving the annexation contingent on the city adopting a resolution in support of annexation correctly describing the property,[1] authorizing the township to collect $247.61 from the city, and assessing the city and the township 50% each of OAH's costs. This order did not require the township to repay the $2,165 to CADG as a condition of annexation; however, it did note that the township lacked authority to charge the Lenzens for tax reimbursement and that OAH had no jurisdiction to determine whether the township had any authority to charge non-property-owners for tax reimbursement. The city adopted a resolution correctly describing the property, and on June 21, OAH issued an order (the second amended order) that ordered annexation and kept all other terms and conditions of the first amended order in effect.

The city and the township both appealed the first and second amended orders to the district court. Although their appeals were not identical, both challenged the provisions of

[1] Between the time the city submitted its request for annexation and the time the first amended order was issued, the parties had discovered that the resolution for annexation did not correctly describe the property.

the orders that (1) limited the amount of the tax reimbursement to which the parties could agree and (2) imposed OAH's costs in this matter on the city and the township. After a hearing, the district court issued an order vacating both of the challenged provisions.

OAH appeals.

ISSUES

I. Does Minn. Stat. § 414.036 cap the amount of tax reimbursement to which parties to an orderly annexation agreement may agree?

II. Does OAH have the authority to assess its pre-appeal costs to the city and the township?

III. Is the authority of the city or the township to charge a property owner for tax reimbursement in connection with an annexation pursuant to their orderly annexation agreement a justiciable controversy?

ANALYSIS

I. Minn. Stat. § 414.036 does not cap the amount of tax reimbursement to which the city and the township may agree in their orderly annexation agreement.

OAH contends that the $500-per-acre tax-reimbursement amount in the agreement violates Minn. Stat. § 414.036 and that the statute controls. The district court concluded that the agreement's tax-reimbursement provision is not preempted by Minn. Stat § 414.036 and that the agreement controls. The district court based its preemption decision on Minn. Stat. § 414.0325, subd. 6 (2016), which states, in part, "The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so."

The city and the township argue that the district court correctly decided the preemption issue, but that, even if the district court erred on that issue, this court should

nevertheless affirm on an alternative ground they asserted to the district court—namely, that Minn. Stat. § 414.036 does not limit the amount of agreed-to tax reimbursement in the first place. We agree that, if Minn. Stat. § 414.036 does not prohibit the $500-per-acre tax reimbursement amount, we may affirm without considering whether that statute preempts the agreement pursuant to Minn. Stat. § 414.0325, subd. 6. *See Williams v. Nat'l Football League*, 794 N.W.2d 391, 395 (Minn. App. 2011) ("Appellate courts are free to affirm for reasons other than those on which a decision is based."), *review denied* (Minn. Apr. 27, 2011). We therefore begin with section 414.036.

Section 414.036 provides, in relevant part, "Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order." OAH argues that (1) "all or part of the taxable property annexed" means one year's property taxes and (2) the "unless otherwise agreed to" language merely permits parties to agree to an amount equal to or less than one year's property taxes. The city and the township, on the other hand, argue that the only limitation the statute imposes is that the topic of tax reimbursement must be addressed in an orderly annexation agreement, otherwise the order approving annexation must provide for reimbursement as outlined in the statute. We need not decide whether OAH is correct in its first proposition—that the amount described in the statute is one year's property taxes—if the city and the township are correct that the unless-otherwise-agreed-to proviso permits the parties to agree to an amount unrestricted by the statute.

Appellate courts review questions of statutory interpretation de novo. *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 139 (Minn. 2017). The goal of statutory interpretation is to ascertain the intention of the legislature. *Marks v. Comm'r of Revenue*, 875 N.W.2d 321, 324 (Minn. 2016); *see also* Minn. Stat. § 645.16 (2016). We read and interpret the statute as a whole. *City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 (Minn. 2017). When the language of the statute is unambiguous, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16.

OAH argues that the unless-otherwise-agreed-to proviso does not permit an agreement to reimbursement in excess of a year's property taxes because "limiting conditions cannot be used to *expand* the ambit of the provisions that they modify." *See* Minn. Stat. § 645.19 (2016) ("Provisos shall be construed to limit rather than to extend the operation of the clauses to which they refer."). According to OAH, because the clause to which this proviso applies sets the reimbursement amount at one year's property taxes, the proviso cannot be read to "extend" the range of permissible reimbursement amounts beyond that amount. Rather, according to OAH, the proviso permits parties to an orderly annexation agreement to "agree to reduce or eliminate the reimbursement fee . . . but it cannot possibly authorize them to impose a separate and larger payment."

We disagree. OAH's interpretation improperly equates a limitation on when an order approving annexation must provide for tax reimbursement with a limitation on the amount of reimbursement to which the parties may agree in an orderly annexation agreement. Properly read, section 414.036 addresses only when an order approving annexation must provide for tax reimbursement. The pertinent clause generally requires

an order approving annexation to provide for tax reimbursement, but the proviso then limits operation of that clause to situations where the parties have not agreed otherwise. When the parties have agreed otherwise regarding tax reimbursement, the order will not provide for it. This interpretation accords with the plain language of the statute and follows the principle that provisos limit, rather than extend, the operation of the clauses to which they refer. *See* Minn. Stat. § 645.19.

Moreover, OAH's interpretation of the proviso seeks to read into the statute words that are not there. In order for its interpretation to be correct, the statute would have to be reworked to read along the lines, "Unless *an amount less than that specified herein is* otherwise agreed to . . . ." However, this is not the text of the statute, and when the text of a statute is unambiguous, we will not read additional words into it. *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006).

Applying the plain-language interpretation of the statute to the facts of this case, we conclude that Minn. Stat. § 414.036 does not prevent the city and the township from agreeing to a tax-reimbursement rate of $500 per acre, even if that amount is more than what an order approving annexation would provide in the absence of their agreement. As a result, the district court did not err in vacating the portion of the first and second amended orders that limits the tax-reimbursement amount to $247.61 per acre. Because we affirm this decision by the district court on the basis of interpretation of Minn. Stat. § 414.036, we need not reach the question of preemption under Minn. Stat. § 414.0325, subd. 6.

II. OAH does not have the authority to assess its pre-appeal costs to the city and the township.

The district court vacated the portion of the first and second amended orders assessing OAH's costs on the grounds that (1) this was not a "contested boundary adjustment matter" and OAH had "set forth no legal authority" for assessing costs in an uncontested boundary adjustment matter such as an annexation pursuant to an orderly annexation agreement; and (2) even if OAH could assess its costs in an uncontested boundary adjustment matter, OAH had failed to justify the apportionment of costs used in this case. OAH argues that the district court erred because this matter constitutes a "contested case" under the Minnesota Administrative Procedures Act for which it may assess its costs under Minn. Stat. §§ 414.01-.12 (2016) and because it justified the allocation of costs in this case. OAH's authority to assess its costs requires construction of a statute, which we review de novo. *Poehler*, 899 N.W.2d at 139.

A. Minn. Stat. § 414.12, subd. 3(c), does not authorize OAH to assess costs in this matter.

The costs of administrative proceedings in municipal boundary adjustments are addressed in Minn. Stat. § 414.12, subd. 3. In the district court, OAH quoted and relied on part (c) of that subdivision as its authority for assessing and allocating costs. Part (c) states, "If the parties do not agree to a division of the costs before the commencement of mediation, arbitration, or hearing, the costs must be allocated on an equitable basis by the

mediator, arbitrator, or chief administrative law judge."[2] Because this case does not involve a mediation or arbitration, whether Minn. Stat. § 414.12, subd. 3(c), authorizes OAH to assess its costs to the city and the township turns on whether there was a "hearing" in this case. We conclude that there was not.

OAH cites to Minn. Stat. § 414.12, subd. 1(b) (2016), which authorizes the OAH to "conduct hearings and issue final orders related to the hearings." But even if OAH had authority to conduct a hearing in this case, the question is whether it did. Multiple sections of chapter 414 refer to hearings as having a "time and place." *See, e.g.*, Minn. Stat. §§ 414.02, subd. 2, .031, subd. 3, .0325, subd. 2, .041, subd. 4, .06, subd. 2 (2016); *see also* Minn. Stat. § 414.09, subd. 1(b) (2016) ("The place of the hearing shall be in the county where a majority of the affected territory is situated, and shall be established for the

---

[2] Parts (a), (b), and (d) of that subdivision state:

> (a) The parties to any matter directed to alternative dispute resolution under subdivision 1 must pay the costs of the alternative dispute resolution process or hearing in the proportions that they agree to.
> (b) Notwithstanding section 14.53 or other law, the Office of Administrative Hearings is not liable for the costs. . . .
> . . . .
> (d) The chief administrative law judge may contract with the parties to a matter for the purpose of providing administrative law judges and reporters for an administrative proceeding or alternative dispute resolution.

Because the city and the township neither (a) agreed to a division of OAH's costs, nor (d) contracted with OAH for it to provide services, only part (c) or (e) of Minn. Stat. § 414.12, subd. 3, could provide a basis for OAH to assess its costs in this case. Part (e) is discussed *infra* Section II(B).

convenience of the parties.").[3] OAH does not identify any hearing that was conducted, at any time or at any place. Because there was no "mediation, arbitration, or hearing," OAH had no basis for assessing its costs to the city and the township under Minn. Stat. § 414.12, subd. 3(c), and the district court did not err in vacating that part of OAH's orders.

The parties brief whether this matter was a "contested case" and whether subdivision 3(c) could ever apply to OAH's costs in connection with its review of an annexation resolution pursuant to an orderly annexation agreement under Minn. Stat. § 414.0325, subd. 1(h) (2016). We need not decide the meaning of "contested case," whether OAH may ever conduct a hearing in connection with its review of a resolution submitted pursuant to an orderly annexation agreement under Minn. Stat. § 414.0325, subd. 1(h), or whether Minn. Stat. § 414.12, subd. 3(c), would authorize assessments of OAH's costs in such a circumstance. Minn. Stat. § 412.12, subd. 3(c), provides for the assessment and allocation of costs of arbitrations, mediations, and hearings, and none of those events took place here.

B. We decline to consider whether OAH may assess its costs under Minn. Stat. § 414.12, subd. 3(e), because OAH did not make that argument in the district court.

On appeal, OAH argues for the first time that Minn. Stat. § 414.12, subd. 3(e), also authorizes it to assess its costs in this matter to the city and the township. Minn. Stat. § 414.12, subd. 3(e), addresses OAH's assessment of the "cost of services" and does not

[3] We note that, in federal administrative law, "submission[s] in written form only" may sometimes constitute a hearing, *see United States v. Fla. E. Coast Ry.*, 410 U.S. 224, 241, 93 S. Ct. 810, 819 (1973), and we do not foreclose the possibility that written submissions could substitute for a hearing in another case, but that is not what happened here.

refer to arbitrations, mediations, or hearings. "[A] party may not 'obtain review by raising the same general issue litigated below but under a different theory.'" *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). Rather, "litigants are bound in this court by the theory or theories, however erroneous or improvident, upon which the action was actually tried below." *Annis v. Annis*, 250 Minn. 256, 263, 84 N.W.2d 256, 261 (1957). OAH never argued that Minn. Stat. § 414.12, subd. 3(e), authorized it to assess the costs of its judicial services to the city and the township in the district court. Rather, in its district court briefing, OAH plainly relied upon only the Minnesota Administrative Procedure Act (specifically Minn. Stat. §§ 14.53-.55 (2016)) and Minn. Stat. § 414.12, subd. 3(b)-(c). Because OAH did not present this argument to the district court, we decline to consider it here.

III. The authority of the city or the township to charge a property owner for tax reimbursement is not justiciable.

OAH asks us to decide that the city and the township lack legal authority to charge a property owner for tax reimbursement under their orderly annexation agreement. The presence of a justiciable controversy is essential to the exercise of our jurisdiction. *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012).

> [A] justiciable controversy exists if the claim (1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.

Id. at 298-99 (quotation omitted). We may consider the issue of whether a justiciable controversy exists, even when the issue has not been raised by the parties. *Izaak Walton League of Am. Endowment, Inc. v. State, Dept. of Nat. Res.*, 312 Minn. 587, 589, 252 N.W.2d 852, 854 (1977).

Here, there is no "genuine conflict in tangible interests" impacted by whether the city or the township can impose a tax-reimbursement fee on a property owner. In its first amended order, OAH concluded that parties to an orderly annexation agreement may never require property owners within the area subject to annexation to pay the property-tax-reimbursement fee. However, this decision had *no* effect on the city, the township, or the property owners (the Lenzens). As the record makes clear, the tax-reimbursement fee was paid by a non-property-owner (CADG), and OAH specifically declined to reach the issue of whether a non-property-owner could be required to pay the tax reimbursement.

At oral argument to this court, OAH claimed that annexation was conditioned on township returning the funds to CADG. However, the facts indicate otherwise: nothing in the record states that OAH placed such a condition on approval of the annexation, both the city and the township consider the annexation to have taken place without the return of the funds, and the second amended order clearly states that the property is annexed effective June 21, 2016. Thus, regardless of whether we hold that the city or the township may charge a property owner the tax reimbursement, the effectiveness of the annexation will not be affected, nor will the township be obligated to return the funds to CADG. In short, no tangible interest would be affected by a holding on this issue.

OAH argues that it can nevertheless seek relief as an aggrieved party, because it is acting on behalf of the people of Minnesota to prevent townships from exacting a "ransom" from developers. We are unconvinced that this concern converts the issue of who may be required to pay the reimbursement into a justiciable controversy. Although it is true that a technically nonjusticiable case may nevertheless be heard when the case "presents an important question of statewide significance that should be decided immediately," such cases must still be "functionally justiciable." *Dean v. City of Winona*, 868 N.W.2d 1, 6 (Minn. 2015) (quotation omitted). Functional justiciability requires that "the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making." *Id.* (quotation omitted). Neither CADG nor any other developer sought relief in this case. We are not confident the record is sufficiently developed, in light of the fact that we lack input from any party that would have an actual stake in the outcome. Further, it does not appear this issue is of such significance that it must be decided immediately. *Cf. id.* (holding that although the right to rent one's property was an important property interest, it did not rise to the level of an issue of statewide significance requiring the application of the justiciability exception in question).

Because the issue of who may be charged does not involve a genuine conflict in tangible interests, and because the issue is not "technically justiciable" or of such statewide significance that it should be decided immediately, we decline to reach the issue of whether the city or the township may impose a tax-reimbursement fee on a property owner as a condition of annexation under their orderly annexation agreement.

D E C I S I O N

The district court did not err in vacating the portion of the first and second amended orders approving annexation that limited the tax-reimbursement amount to $247.61 per acre because the city and the township could agree to a reimbursement amount that is not limited by Minn. Stat. § 414.036. The district court did not err in vacating the portion of the orders assessing and allocating OAH's costs to the city and the township because assessment and allocation was not authorized under Minn. Stat. § 414.12, subd. 3(c). Finally, we do not address the issue of whether the city or the township could require a property owner to pay the tax-reimbursement fee as a condition of annexation because that issue is not a justiciable controversy in this case.

Affirmed.