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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0258

Andrew Ellis,
Appellant,

vs.

David A. Herberholz, in his official capacity, et al.,
Respondents.

Filed September 10, 2018
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-16-18271

Andrew Ellis, Minneapolis, Minnesota (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, George N. Henry, Assistant City Attorney, Minneapolis, Minnesota (for respondents)

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

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

ROSS, Judge

The City of Minneapolis fined Andrew Ellis $100 for failing to dispose of yard waste in compostable bags and storing items in the area designated for garbage removal. Ellis sued the city seeking damages for alleged tort, constitutional, and ordinance violations. The district court dismissed the complaint for lack of jurisdiction due to Ellis's

failure to exhaust his administrative remedies. Ellis argues on appeal that the city never provided adequate notice to trigger the administrative process. Because we conclude that the city's notice was sufficient and Ellis cannot bring a civil action before exhausting the available administrative remedies, we affirm.

FACTS

After the City of Minneapolis fined Andrew Ellis $100 for violating the city's ordinance provision regulating yard-waste disposal and prohibiting debris storage in the area designated for garbage removal, Ellis filed a civil complaint in district court. The complaint alleges that Ellis owns a rental duplex at 2102 and 2104 16th Avenue South. It asserts that the city's director of solid waste and recycling sent Ellis a letter addressed to "2102-210*6*," not "2102-210*4*." The letter explained that "there was a problem with either the contents of the cart(s) or [a problem] at the Solid Waste Collection Point (SWCP) along [his] alley or curb line. This could include items such as: Uncontained Household Garbage, Building Material, Litter, Carpet, Yard Waste, Hazardous Waste, Large Items, Tires and Auto Parts." The letter continued with a directive:

> Yard Waste must be in compostable bags. Brush must be 3 inches or less in diameter, tied in bundles with twine or rope and weigh 40 pounds or less. Solid Waste Collection Point (SWCP) must not be used as a storage area. Please cleanup the area within 20 feet of your alley or curb SWCP. If this is not done by 6 a.m. 11/16/2015, City crews will do so and a fee will be added to your Minneapolis utility bill in accordance with city ordinance #225.690. No matter what the origin of the debris, you are responsible to clean the area.

According to Ellis's civil complaint, the person responsible for the debris was Ellis's next-door neighbor and Ellis promptly directed his property manager to gather the debris

and replace it onto the neighbor's property. Two city employees moved the debris back onto Ellis's property near the garbage bins and photographed the bags. The city sent Ellis another letter, fining him:

> On 11/09/15, you were notified that garbage and rubbish were in the area around the Solid Waste Collection Point (SWCP) along your alley or curb line . . . , and that you were given until 6:00 a.m. on 11/16/15 to clean this area. Since you did not clean the area, the clean-up was done by city crews. This is in accordance with the city of Minneapolis Ordinance 225.690.
>
> The charge for this clean-up service is $100.00. This amount will be added to the City of Minneapolis utility (water) bill . . . .
>
> You are responsible for keeping the area within 20 feet of your alley or curb line clean and containing all rubbish and garbage in the 90-gallon garbage cart. Uncontained rubbish and garbage outside your cart is a nuisance condition that threatens public health and safety, and detracts from the livability of the neighborhood.
>
> If you have any questions concerning this matter, please do not hesitate to call us at 612-673-2917.

The city included the $100 fine on Ellis's utility bill, which also directed Ellis to call a specified phone number "for an explanation of the charges shown on your bill" and invited him to "notify the Utility Billing Office in writing" if he wished "to dispute any charge(s)." Ellis did not call for an explanation or notify the city in writing to dispute the charge.

The city moved the district court to dismiss Ellis's complaint for failure to exhaust the administrative procedures available through the utility-bill challenge process. The district court granted the motion. Ellis appeals.

DECISION

Ellis challenges the district court's rule-12.02(a) dismissal of his civil complaint. We review a district court's rule-12.02(a) dismissal de novo. *See Egan v. Hamline United Methodist Church*, 679 N.W.2d 350, 353 (Minn. App. 2004).

The district court based its dismissal on its lack of subject-matter jurisdiction. Whether subject-matter jurisdiction exists is a question of law that we also review de novo. *Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015). The district court lacks jurisdiction over claims that can be remedied through, but have not been addressed in, an administrative process. *Minnesota Exp., Inc. v. Travelers Ins. Co.*, 333 N.W.2d 871, 872 (Minn. 1983). Whether a person must avail himself of administrative remedies before bringing a civil action is a question of law we address de novo. *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 74 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). Ellis maintains that he was not required to contest the fine in the administrative process before filing his civil complaint for two reasons. First, he maintains that the city never performed any action that would invoke the administrative process and trigger his duty to exhaust administrative remedies. Second, he maintains that he is excused from the exhaustion requirement because his civil complaint raises declaratory, monetary, and constitutional claims that the city's administrative process could not resolve. The arguments fail.

We reject Ellis's contention that the city never triggered an administrative process. The doctrine of exhausting administrative remedies "presupposes that some action has been taken by the administrative agency." *State ex rel. Sholes v. Univ. of Minn.*, 54 N.W.2d 122, 126 (Minn. 1952). Ellis maintains that the city never triggered the doctrine because the

city's notices were incorrectly addressed, directed to the wrong party, and failed to specifically describe the violations. But the warning letter was addressed to Ellis, and it informed him of "a problem with either the contents of the cart(s) or at the Solid Waste Collection Point" near the "alley or curb line." And the violation letter informed him that the city concluded that "garbage and rubbish were in the area around the Solid Waste Collection Point . . . along your alley or curb line." Finally, the utility bill included the fine and announced precisely how Ellis could administratively challenge it. The city's code requires only that the notice "[i]nclude a description of the real estate sufficient for identification." Minneapolis, Minn., Code of Ordinances § 244.150(b) (2018). That the warning letter was off by one digit for one of the duplex addresses (and correct for the other one) did not cause the notice to fail to reach Ellis. He received it and promptly took responsive action, sending his property manager to investigate.

Ellis argues that a letter should have also been sent to his neighbor, whom he claims was the source of the debris. But the city based the violation on what it discovered on Ellis's property, not on the neighbor's. The code requires that the notice "[b]e served upon the owner, or the operator, or the occupant, as the case may require." MCO § 244.150(e) (2018). Ultimately, whether or not *the neighbor* received notice has no bearing on the relevant issue, which is whether *Ellis* received notice sufficient for him to make an administrative challenge.

The city's code outlines the steps that would have followed. Had Ellis raised his dispute administratively as directed, the city's billing office would have first attempted to resolve his challenge informally. *See* MCO § 509.920(a) (2018). If Ellis was not satisfied,

he could have formalized his complaint, which would have resulted in a formal decision. *Id.* (a), (b) (2018). If Ellis disagreed with that formal decision, he could have then appealed it to an impartial hearing officer. *Id.* (c) (2018). The hearing officer would have taken evidence, heard testimony, made fact findings, and notified Ellis of the final decision. MCO § 509.930 (2018). That final decision would have constituted the end of the administrative process, and Ellis's claims would be ripe for judicial review. *Id.* (f) (2018) ("A bill payer, customer or applicant who disagrees with the hearing officer's decision may thereafter seek any judicial remedy provided by law."). Because Ellis, who was fully informed, never took the first step, he never reached the end of the plainly triggered, administrative-review process.

Ellis argues that he is exempt from the exhaustion requirement because he included constitutional and other claims that the city's administrative process could not resolve. The argument is unavailing. Vague assertions of constitutional deprivations, like Ellis's generalized complaint that he was deprived of his constitutional rights because the $100 fine was a taking, and his complaint that his due process rights were infringed when city employees moved the debris, do not escape the administrative-exhaustion requirement. *See McGrath v. State*, 312 N.W.2d 438, 441–42 (Minn. 1981). After the administrative process has run its course, "[t]he alleged constitutional violations may be raised at the time of judicial review." *Id.* at 442.

We also conclude that Ellis cannot escape the administrative-exhaustion requirement on the theory that raising an administrative challenge would have been futile. When administrative proceedings would be futile, a party need not exhaust administrative

remedies before filing a civil suit. *Starkweather v. Blair*, 71 N.W.2d 869, 884 (Minn. 1955). Futility is too narrow a concept to help Ellis. Exhaustion is futile when "nothing can be accomplished by resort to administrative remedies." *Id.* For example, when a city's administrative process cannot provide *any* of the relief requested by a challenger, the administrative process can fairly be described as futile. *See McShane v. City of Faribault*, 292 N.W.2d 253, 256 (Minn. 1980). Or when an administrative body "has no intention of ever" granting any relief sought by a plaintiff, that too makes the process futile. *See Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 71–72 (Minn. 1984). But Ellis's complaint chiefly challenges the $100 fine, and relieving him of some or all of the fine fits squarely among the administrative remedies that were available to him. We reject Ellis's futility argument.

Ellis contends that the district court did not apply the correct standard of review when it granted the city's motion to dismiss. We need not linger on this argument. Even if the district court applied the wrong standard (and we do not think it did), our assessment of the issue is de novo, or, in English, anew. We have reviewed all the legal issues anew, without deference to the district court, and we reach the same conclusion it reached: the district court lacked subject-matter jurisdiction over Ellis's civil complaint because Ellis failed to exhaust his administrative remedies.

Affirmed.