This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0051

Farm Bureau Financial Services,
Appellant,

vs.

Dah Eh Ray, et al.,
Respondents.

Filed August 2, 2021
Affirmed in part, reversed in part, and remanded
Ross, Judge

Dakota County District Court
File No. 19HA-CV-20-519

Richard S. Stempel, Kevin C. Beach, Stempel & Associates, PLC, Excelsior, Minnesota (for appellant)

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Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Five automobile occupants sought insurance benefits for injuries after a crash, and the insurer denied their claims. An arbitrator considering one of the occupant's claims granted the request only as to the occupant who was party to the arbitration and conditioned on the insurer's paying that occupant's prior medical expenses. After the occupant

prevailed in the arbitration on his insurance claim, the insurer brought a declaratory-judgment action against all five occupants asking the district court to declare that they breached their contractual duty to submit to examination under oath and that the arbitrator exceeded his authority by imposing a condition on the insurer's right to examine one of the occupants. The district court dismissed the suit and confirmed the arbitration award. On appeal, the insurer contends that the district court erred by dismissing the suit for lack of a justiciable controversy, by refusing to treat the suit as a motion to vacate the arbitration award, and by confirming the award in the absence of a motion to confirm it. We affirm in part, reverse in part, and remand for further proceedings. We affirm the district court's refusal to treat the insurer's suit as a motion to vacate the arbitration award because the insurer neither formally captioned nor informally treated its complaint as a motion to vacate. We affirm the district court's decision to dismiss the civil complaint as to three of the occupants because their claims have been finally adjudicated through arbitration and the insurer cannot collaterally attack the adjudications through a civil suit. But we reverse as premature the district court's decision to confirm the arbitration award because confirmation requires a motion and none was made, and we reverse the dismissal as to the two occupants whose claims were not finally adjudicated by arbitration because no justiciability concern forecloses a declaratory-judgment action regarding them.

FACTS

The five respondents—Dah Eh Ray, Dah Dah Ray, Lay Sen Lay, Paw Law, and Kyaw Teh—were occupants in a car involved in an April 2018 collision. The car was insured under a policy that one of them (Lay Sen Lay) had with Farm Bureau Financial

Services. All five sought chiropractic treatment and all claimed no-fault insurance benefits to cover their treatment costs. Relying on a clause in the insurance policy, in June 2018 Farm Bureau asked all of them to submit to examinations under oath. All refused, and Farm Bureau denied their insurance claims based on that refusal.

The story gets a bit complicated here. One year after Farm Bureau denied the insurance claims, four of the occupants (all but Kyaw Teh) petitioned to arbitrate their claims. But one of the four (Dah Eh Ray) was already incarcerated for having murdered another (Dah Dah Ray). Farm Bureau did not object to arbitration and, during the arbitration of Dah Eh Ray's claim, Farm Bureau moved the arbitrator to require Dah Eh Ray to submit to an examination under oath. The arbitrator granted the motion on the condition that Farm Bureau pay all of Dah Eh Ray's expenses incurred before Farm Bureau first asked him to submit to examination under oath. Farm Bureau did not object to that condition but did not examine Dah Eh Ray (who did not appear during the arbitration, presumably because of his incarceration). The arbitrator awarded Dah Eh Ray a significant portion of his claim for chiropractic expenses. In a separate arbitration, an arbitrator similarly granted most of the deceased Dah Dah Ray's claim for chiropractic expenses. And in a third arbitration, an arbitrator likewise granted most of Paw Law's claim for chiropractic expenses. Policyholder Lay Sen Lay withdrew his petition to arbitrate his claim without saying why. And the record suggests that Kyaw Teh took no action on his claim after refusing to submit to examination under oath.

Farm Bureau sued all five respondents in a November 2019 civil complaint styled as a declaratory-judgment civil action in district court, asking the district court to declare

that the respondents' refusal to submit to Farm Bureau's request for their examination under oath in June 2018 constituted a breach of contract. As a remedy, Farm Bureau's complaint asked the district court to dismiss the respondents' insurance claims or alternatively order them to submit to examination under oath. It also asked the district court to determine that the arbitrator in Dah Eh Ray's case exceeded his authority by conditioning Farm Bureau's right to examine Dah Eh Ray on its paying much of his chiropractic claim. Finally, the complaint asked the district court to vacate Dah Eh Ray's arbitration award.

The district court dismissed Farm Bureau's complaint on justiciability grounds, holding that Farm Bureau failed to move the district court to vacate the arbitration awards and that "there is no genuine conflict between the parties because the matter came to a conclusion when the arbitrator issued the award without objection." It also confirmed Dah Eh Ray's award after the respondents' memorandum of law requested that it do so. Farm Bureau appeals.

DECISION

Farm Bureau raises three primary arguments on appeal. It maintains that the district court erred by refusing to treat its civil complaint as a motion to vacate the arbitration award or to allow it to present a motion to vacate before dismissing the complaint. It also contests the justiciability-based dismissal and argues that a declaratory-judgment action was the appropriate means to raise its challenge. And it finally challenges the district court's decision confirming Dah Eh Ray's award without a motion. We address each argument in turn.

I

We reject Farm Bureau's argument that the district court improperly refused to treat its civil complaint as a motion to vacate Dah Eh Ray's arbitration award. We review de novo the district court's construction of a civil complaint, "look[ing] at the essence of the allegations contained in the complaint, and not at the legal concepts advocated by counsel" to determine "the gravamen of the complaint." *D.A.B. v. Brown*, 570 N.W.2d 168, 170–71 (Minn. App. 1997) (rejecting "counsel's creative characterizations" and concluding that "this case is a malpractice action," not one for breach of fiduciary duty). Before analyzing and construing the complaint here, we first explore what is at stake in the construction.

Whether the complaint is a civil complaint or a motion to vacate the arbitration award determines whether it is a proper vehicle to undo the arbitrator's award favoring Dah Eh Ray's insurance claim. The Uniform Arbitration Act (UAA), codified in Minnesota Statutes sections 572B.01–.31 (2020), governs arbitration proceedings in Minnesota. And under that act, "an application for judicial relief under sections 572B.01 to 572B.31" (which includes a request to vacate an award based on an arbitrator's exceeding his powers, Minn. Stat. § 572B.23(a)), "must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions." Minn. Stat. § 572B.05(a)); *see also* Minn. R. No-Fault Arb. 38 (stating that section 572B.23 governs the procedure to vacate a no-fault-insurance arbitration award). Timing matters here as well as substance, because the act allows a motion to vacate only if it is filed within 90 days after the moving party receives notice of the arbitration award. Minn. Stat. § 572B.23(b); *Wacker v. Allstate Ins. Co.*, 251 N.W.2d 346, 349–50 (Minn. 1977). So

unless Farm Bureau's complaint, which was filed within 90 days after Dah Eh Ray's arbitration award, was a motion to vacate the award, it is not the mechanism by which Farm Bureau could challenge the award.

Farm Bureau's complaint was not a motion to vacate. Civil complaints and motions are separate animals under the procedural rules. *See* Minn. R. Civ. P. 7.01 ("There shall be a complaint and an answer."); *Id.* 7.02 ("An application to the court for an order shall be by motion."). A "complaint" seeking a civil judgment informs a defendant of claims in a legal action, and the complaint includes the title of the action in its caption. *Id.* 7.01, 10.01. By contrast, a written "motion" informs the opposing party of a proceeding seeking an order, and it similarly requires a writing designating itself as a motion by express description in its caption. *Id.* 7.02(a), (b), 10.01. Farm Bureau expressly captioned its submission as a civil "COMPLAINT FOR DECLARATORY RELIEF," not as a motion. The complaint expressly announced that Farm Bureau "now brings this declaratory judgment action pursuant to Minn. Stat. § 555.01" (the statute that permits an action for declaratory judgment), not that it brings a motion under section 572B.23 (the statute that permits a motion to vacate an arbitrator's award). Farm Bureau followed none of the formal or procedural requirements of a motion in district court but all of the formal and procedural requirements of a civil action. The pleading included a civil cover sheet, which is required of civil complaints but not generally of motions. *See* Minn. R. Gen. Prac. 104 (listing the particulars that a party must include when "filing a civil case"). To the extent a civil cover sheet may be required of a motion to vacate an arbitration award when a motion is the initiating document in district court, Farm Bureau's civil cover sheet described the action

as a "Declaratory Judgment," not as a motion. It included a summons, which is required of civil complaints but not usually of motions. *See* Minn. R. Civ. P. 3.01 (requiring service of a summons to commence a civil action); Minn. R. Gen. Prac. 115.03(a) (listing documents a party must serve prior to a motion hearing and not including a summons). And the summons here expressly notified the respondents, "The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons." Farm Bureau's summons notified the respondents that they must provide "a written response called an Answer within 20 days," a requirement for civil complaints, not of motions. *See* Minn. R. Civ. P. 12.01 (requiring an answer within 21 days after service of a summons); Minn. R. Gen. Prac. 115.03(b) (listing responsive documents required for a motion and not including an answer). Motions require the moving party to obtain a hearing date, Minn. R. Gen. Prac. 115.02, and to serve on opposing counsel a notice of motion, a proposed order, and a memorandum of law, *id.* 115.03. Farm Bureau obtained no hearing date and served none of the papers that must accompany a motion.

Although the complaint mentions vacation as one of its asserted remedies, Farm Bureau simply did and said nothing that might have suggested that it either believed or wanted the court or the respondents to believe that its civil complaint was a motion to vacate the arbitrator's award under Minnesota Statutes section 572B.23. In fact, Farm Bureau did not even attempt to recast its complaint as a motion to vacate until August 2020, nine months following the arbitration award. This was after nine months of litigation over the complaint as a civil action and after the respondents and the district court raised the concern that Farm Bureau never brought a motion to vacate the award. These

circumstances alert us to the supreme court's admonition in the analogous case of *Haekenkamp v. Allstate Ins. Co.*: "The filing of a petition with the district court by appellant without setting a prompt hearing date opens the entire judicial process to manipulation and abuse and the practice is to be condemned." 265 N.W.2d 821, 824 (Minn. 1978) (overlooking the omission only after concluding that "there is no showing respondent was prejudiced in any way in this case since he immediately filed his motion to confirm the arbitration award and had it promptly heard"). We add that Farm Bureau's complaint named all five occupants and that most of their claims had not yet been arbitrated at the time Farm Bureau served it; they therefore could not have been the subjects of a motion to vacate. The district court did not mistreat the filing as a civil complaint rather than a motion.

Farm Bureau's argument to the contrary is unavailing. It relies chiefly on *Eide v. State Farm Mut. Auto. Ins. Co.* for the proposition that an exception to the motion requirement exists and applies here. 492 N.W.2d 549 (Minn. App. 1992). We can assume without determining that *Eide*, which we decided before the legislature amended the act to use the term "motion" as the exclusive method to seek vacation of an arbitration award, remains binding and provides for an exception in the appropriate case. The *Eide* exception clearly would not apply here.

In *Eide*, we held that an insurer's failure to "formally file a motion for vacation of the arbitration award" did not preclude the district court from reviewing the award de novo, *Id.* at 554–55, but we did so in a unique procedural setting that differs materially from the circumstances here. The question of potential vacation of the arbitrator's eventual award had already been presented in the district court even before the arbitration occurred. *Id.* at

552–53. The insured in *Eide* had moved the court to compel arbitration despite an alleged settlement agreement resolving the claim, the insurer had responded by opposing arbitration, and the district court resolved the dispute by ordering arbitration despite the insurer's objection but expressly reserving the authority to review any consequent award de novo. *Id.* The arbitration was essentially an interlocutory proceeding while the district court maintained jurisdiction over the dispute about the arbitrator's authority in the face of the settlement agreement. And within 90 days after the arbitration when the insured presented the case to the district court for the review previously contemplated, the insured expressly invoked the district court's prior order reserving its review authority. *Id.* at 553. *Eide* does not stand for the broad proposition that an insurer can seek to vacate an arbitration award by some vehicle other than a motion. We read *Eide* to teach instead that an insurer may effectively ask the district court to vacate an arbitration award without a motion if the question of the arbitrator's authority was already before the district court and the district court retained jurisdiction to review the question. Nothing remotely close to those circumstances exists here, where the insurer voluntarily engaged in arbitration and questioned the arbitrator's exercise of authority only after the arbitrator rendered a decision unfavorable to the insurer.

It is true, as Farm Bureau mentions, that Minnesota courts prefer to resolve cases on the merits. But although we might construe *court* technical rules liberally in favor of substance over form to advance this policy, *see, e.g.*, *Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 310 (Minn. 2005), we have no power allowing or policy enticing us to override express *legislative* limits on the court's authority to consider a matter, like

the procedural limit imposed by Minnesota Statutes section 572B.05. For the same reason, we reject Farm Bureau's related contention that the district court should have treated the complaint as a motion to vacate under Minnesota Rule of Civil Procedure 8.05, which states, "No technical forms of pleading or motions are required." Farm Bureau's error was not a mere technical failure while forming a motion but a failure to attempt to form a motion. We conclude that Farm Bureau's civil complaint did not trigger the district court's authority to vacate the arbitration award. The complaint asserts that the arbitrator exceeded his power by imposing the payment precondition on Farm Bureau's opportunity to examine Dah Eh Ray and therefore required the district court to vacate the award. The district court properly rejected this claim because Farm Bureau failed to file the prerequisite motion to vacate the award, as required by the statute.

Farm Bureau contends finally that the district court should have granted it leave to file a motion to vacate. We reject the argument as unsupported procedurally and factually. Procedurally, the rules of civil procedure do not require a party to obtain the district court's leave to file a motion. And factually, even if it they did, Farm Bureau never asked for or was denied leave to file a motion.

II

We turn to Farm Bureau's contention that the district court improperly dismissed its complaint for lack of a justiciable controversy. The district court dismissed the complaint on the grounds that Farm Bureau's claim for a declaration that the respondents breached the contract was unripe because the arbitration decisions finally resolved the fact issue underlying Farm Bureau's claim. We will not reverse a district court's decision if we may

affirm on a different theory. *In re Senty-Haugen*, 583 N.W.2d 266, 268 (Minn. 1998). For the following reasons, we affirm the dismissal, in part, on a related ground that the respondents raised to the district court.

We believe that Farm Bureau's complaint failed to state a claim on which relief could be granted as it regards three of the respondents. The respondents presented the argument in the district court under Minnesota Rule of Civil Procedure 12.02(e). We decide the issue de novo, accepting the complaint's allegations as true and construing all reasonable inferences in the complainant's favor. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). A complaint is sufficient if, based on those allegations and inferences, a court could grant relief. *Id.* at 603. We conclude that the district court could not grant Farm Bureau relief on most of its legal claims.

The complaint alleges essentially that the respondents' insurance claims were the product of fraud and that they lost the right to insurance proceeds when they improperly refused to be examined under oath about whether they were in the car at all and whether they legitimately received the chiropractic services underlying their claims. As a result, the complaint maintains, the arbitrator exceeded his authority by conditioning Farm Bureau's right to examine Dah Eh Ray under oath on the payment of most of his claim and the district court should vacate the Dah Eh Ray arbitration award. We must answer whether these facts support a viable claim of relief under Farm Bureau's theory of the case.

They do not. A party cannot use a declaratory-judgment action to collaterally attack a prior adjudication. *Bengtson v. Setterberg*, 35 N.W.2d 623, 627 (Minn. 1949). An arbitration award is a final adjudication, may be challenged only through a motion to

vacate, and cannot be challenged after the 90-day deadline has passed. *Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 651 (Minn. 1990); *Wacker*, 251 N.W.2d at 349–50; Minn. Stat. § 572B.23(a)–(b) (2020). Farm Bureau's complaint is primarily a collateral attack on the Dah Eh Ray arbitration decision. It claims that he breached the insurance contract by failing to submit to an examination, that the arbitrator should not have imposed the condition on Farm Bureau's right to examine Dah Eh Ray, and that the arbitration award should be vacated. These are all attempts to undermine the final adjudication collaterally. The district court properly dismissed the complaint as it regards Farm Bureau's claims against Dah Eh Ray.

For a related reason, we hold that the district court also properly dismissed the claims against Paw Law and Dah Dah Ray. Those claims are moot. A court may adjudicate only justiciable controversies. *Izaak Walton League of Am. Endowment, Inc. v. State, Dep't of Nat. Res.*, 252 N.W.2d 852, 854 (Minn. 1977). A justiciable controversy requires a definite and concrete assertion of a legal right threatened in a genuine conflict between parties with adverse, tangible interests, and the conflict must be capable of resolution by judgment. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 336 (Minn. 2011). Mootness is an aspect of justiciability. *See Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). An issue is moot unless a party's tangible interest in the conflict exists throughout the litigation. *Id.* An issue on appeal is moot if, pending the appellate decision, an event occurs that makes a merits decision unnecessary or effective relief impossible. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 291 (Minn. App. 2007). Paw Law and Dah Dah Ray's arbitration awards make a merits decision on the declaratory claims unnecessary, rendering

those claims moot. Because those claims have already been awarded, a merits decision is wholly unnecessary as to whether these respondents breached the insurance policy by refusing to be examined or whether their insurance claims arose from fraud. And the relief sought—the dismissal of their insurance claims—is no longer a viable remedy. Farm Bureau's legal claims against Paw Law and Dah Dah Ray are moot.

We emphasize the procedural rather than substantive basis of our decision. Farm Bureau accurately asserts that an insurance contract may require a claimant to attend an examination under oath if the examination is "reasonably necessary" for the insurer to investigate and resolve the claims. *W. Nat. Ins. Co. v. Thompson*, 797 N.W.2d 201, 206 (Minn. 2011) (interpreting Minn. Stat. § 65B.56, subd. 1 (2010)). A claimant may refuse only an insurer's unreasonable examination request without breaching the contract. *See id.* at 206–07. No-fault insurance arbitrators have authority to decide the reasonableness of an insurer's request and the reasonableness of a claimant's refusal. *Id.* at 208. By granting Farm Bureau's request to examine Dah Eh Ray, the arbitrator necessarily determined both that Farm Bureau's request to examine Dah Eh Ray was reasonable and that Dah Eh Ray's refusal to be examined was not. The respondents do not identify any legal authority for an arbitrator to restrict or condition an insurer's right to conduct a reasonably necessary examination. Our decision affirming the dismissal therefore should not be read as endorsing an arbitrator's decision to impose a condition on the insurer's right. We say only that Farm Bureau's approach to the dispute prevented the district court from reaching the issue.

This leaves only the declaratory-judgment claims against Kyaw Teh and Lay Sen Lay. Our holding that Farm Bureau's civil complaint is not a motion to vacate Dah Eh Ray's arbitration award does not prevent it from serving as it was captioned—as a declaratory-judgment complaint. In that complaint, Farm Bureau seeks a judicial determination as to whether Kyaw Teh and Lay Sen Lay breached the policy by refusing to present themselves for examination and whether they are now subject to examination. These issues are not resolved by our holding or the district court's rationale. We reverse the district court's dismissal of the complaint against those two respondents, and we remand for further proceedings.

III

Farm Bureau correctly argues that the district court improperly confirmed Dah Eh Ray's arbitration award without receiving a motion to confirm. The party prevailing at arbitration "may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or corrected . . . or is vacated." Minn. Stat. § 572B.22. A district court may also confirm an award "[i]f a motion to vacate an award is denied and a motion to modify or correct the award is not pending." Minn. Stat. § 572.23(d). Dah Eh Ray did not move to confirm his arbitration award, instead requesting confirmation only in a memorandum responding to the justiciability issue raised by the district court. Confirming the award without a motion was error.

Affirmed in part, reversed in part, and remanded.