STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0857

Northeastern Minnesotans for Wilderness,
Respondent,

vs.

Minnesota Department of Natural Resources, et al.,
Respondents,

Twin Metals Minnesota LLC, intervenor,
Appellant.

Filed December 27, 2021
Affirmed
Kirk, Judge[*]

Ramsey County District Court
File No. 62-CV-20-3838

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

Considered and decided by Slieter, Presiding Judge; Gaïtas , Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant Twin Metals Minnesota LLC (Twin Metals) challenges the district court's denial of its motion to dismiss this action under Minnesota Statutes section 116B.10 (2020) of the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2020), arguing that respondent Northeastern Minnesotans for Wilderness (NMW) lacks standing to challenge nonferrous-metallic-mineral-mining rules adopted by respondent Minnesota Department of Natural Resources (DNR). Because NMW has statutory standing, we affirm.

FACTS

On review of a district court's decision on a motion to dismiss, we accept the allegations in the complaint as true and construe them in favor of the plaintiff. *Forslund v. State*, 924 N.W.2d 25, 32 (Minn. App. 2019). The following facts are drawn from NMW's amended complaint.

This action involves rules promulgated in 1993 by the DNR regulating nonferrous-metallic-mineral mining.[1] *See* Minn. R. 6132.0100-.5300 (2019) (the nonferrous-mining rules). These rules ban nonferrous mining in the Boundary Waters Canoe Area Wilderness (the Boundary Waters), a buffer zone around the Boundary Waters, and other protected areas. The Boundary Waters are an undeveloped, federally protected wilderness that

[1] Nonferrous-metallic-mineral mining refers to mining rock from which iron is not the predominant metal extracted. Minn. R. 6132.0100, subp. 22 (2019).

provide and sustain plant and animal habitat, clean water, and many recreational and economic activities.

The nonferrous-mining rules do not, however, ban nonferrous mining in the Rainy River Headwaters (RRH), the waters of which flow into the Boundary Waters. Twin Metals holds two recently renewed federal mineral leases in the RRH. It proposed and submitted to the DNR a mine plan for a nonferrous mine (the proposed mine) within the RRH.

NMW, a nonprofit organization with a mission to "protect and preserve" and educate about "wilderness and wild places in Minnesota's Arrowhead region," alleges that the construction and operation of the proposed mine will result in several kinds of pollution. For example, NMW asserts that groundwater and surface water would carry pollutants from the proposed mine into the adjacent waters, through the RRH, and into the Boundary Waters. And NMW believes that the proposed mine will also cause air pollution and impair land resources. Several NMW members live, work, and recreate in the area near the proposed mine's location. NMW and its members fear that the proposed mine will interfere with their aesthetic, recreational, and economic uses of the Boundary Waters and surrounding areas.

NMW filed a complaint against the DNR under section 116B.10 of MERA, alleging that the nonferrous-mining rules are inadequate to prevent pollution, impairment, or destruction of the RRH, the Boundary Waters, and other areas downstream from the proposed mine. Under section 116B.10, a plaintiff may challenge an agency's rule as "inadequate to protect the air, water, land, or other natural resources . . . from pollution,

impairment, or destruction." Minn. Stat. § 116B.10, subd. 2. If the plaintiff makes a prima facie showing that the challenged rule is inadequate, the district court must remit the parties to the responsible agency for further administrative proceedings. *Id.*, subd. 3.

Twin Metals intervened in the case and filed a motion to dismiss NMW's claim for lack of standing and for failure to state a claim upon which relief can be granted. NMW and the DNR thereafter stipulated to remittitur under section 116B.10, subdivision 3.[2] Twin Metals objected to the stipulation and filed an amended motion to dismiss. NMW then filed an amended complaint, and Twin Metals renewed its motion to dismiss.

The district court denied Twin Metals' motion to dismiss and granted the stipulation to remit the parties to the DNR. It reasoned that NMW has standing because its members will suffer damages directly traceable to the proposed mine. In that same order, the district court also concluded that language in section 116B.10, subdivision 1, which limits lawsuits under that provision to challenges to rules "for which the applicable statutory appeal period has elapsed," does not apply in this case because the challenged rule here is not subject to a statutory appeal period. It stated that section 116B.10 does not violate separation-of-powers principles. And it determined that NMW made a prima facie showing that the nonferrous-mining rules are inadequate to protect the environment.

Twin Metals filed this direct appeal, arguing that NMW (1) lacked standing, and (2) failed to identify an "applicable statutory appeal period" which has elapsed for purposes

[2] Although the DNR did not admit that NMW made a prima facie showing that the nonferrous-mining rules are inadequate, it acknowledged that NMW's burden was relatively low and determined that it was not in the public interest to litigate the matter.

of section 116B.10, subdivision 1. We questioned our jurisdiction and, after briefing from the parties, accepted jurisdiction over the standing issue, the sole subject of this appeal.[3]

DECISION

Twin Metals argues that NMW lacks standing because NMW failed to allege a concrete, particularized, and imminent injury. It asserts that NMW must establish an injury even if NMW alleges statutory standing under section 116B.10, subdivision 1. NMW contends that that section does not require an injury at all, but instead grants broad standing regardless of injury. In light of the plain language of section 116B.10, subdivision 1, we agree with NMW.

We review de novo a district court's determination of whether a party has standing. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016). In order to establish standing, a party suing on a matter of public interest must show either (1) an injury different from that of the public or (2) express statutory authority to sue. *Stansell v. City of Northfield*, 618 N.W.2d 814, 818 (Minn. App. 2000), *rev. denied* (Minn. Jan. 26, 2001).[4] If a party establishes statutory standing, we need not undertake the

[3] The DNR "[took] no position on Twin Metals' appeal challenging [NMW's] standing" and "waive[d] briefing and oral argument" in this appeal.

We also note that, in our decision on jurisdiction, we explicitly limited this appeal to the narrow issue of standing. We therefore do not address Twin Metals' arguments regarding ripeness or whether NMW made a prima facie showing that the nonferrous-mining rules are inadequate.

[4] Minnesota recognizes associational standing, which allows an organization like NMW to sue if any one of its members would have standing to sue. *See State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 497-98 (Minn. 1996).

standing-doctrine analysis. *Gillette Children's*, 883 N.W.2d at 784 n.4. We therefore begin with whether NMW has statutory standing.

Whether NMW has statutory standing under section 116B.10 involves a question of statutory interpretation that we review de novo. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). "Our goal in interpreting a state statute is to ascertain and effectuate the intent of the Legislature." *Id.* (citing Minn. Stat. § 645.16 (2014)). We first determine whether the statute's language is ambiguous, meaning the language is susceptible to more than one reasonable interpretation. *Id.* In doing so, we give the statutory language its plain and ordinary meaning. *Id.* And if the statute is unambiguous, we must enforce its plain meaning and will not explore its spirit or purpose under the guise of statutory interpretation. *Id.* Only if a statute is ambiguous will we turn to other tools, such as the canons of statutory construction and legislative history, to interpret the statute. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017); *State v. Kirby*, 899 N.W.2d 485, 492 (Minn. 2017).

In relevant part, section 116B.10, subdivision 1 provides:

> [A]ny natural person residing within the state . . . or . . . organization . . . having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief against the state or any agency . . . where the nature of the action is a challenge to [a] . . . rule . . . promulgated or issued by the state or any agency.

The plain language of section 116B.10, subdivision 1, unambiguously confers standing on *any* organization with members in Minnesota. It contains no limiting language requiring

that the entity suing must be aggrieved by, interested in, or otherwise injured by the rule. *See* Minn. Stat. § 116B.10, subd. 1. Instead, the sole limitation is that the organization have members residing in Minnesota. *Id.*

A comparison between section 116B.10, subdivision 1, and other statutes granting statutory standing shows that section 116B.10 is extraordinarily broad in its grant of standing. *Compare id.*, *with* Minn. Stat. § 14.44 (2020) (allowing petitioner to challenge validity of rule if rule "interferes with or impairs . . . the legal rights or privileges of the petitioner"), *and* Minn. Stat. § 462.361 (2020) (allowing "[a]ny person *aggrieved*" by a municipal ordinance to seek review (emphasis added)); *see also Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. App. 2003) (requiring aggrieved person); *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 630 (Minn. 2007) (requiring injured person); *Minn. Pub. Int. Rsch. Grp. v. Minn. Dep't of Lab. & Indus.*, 249 N.W.2d 437, 438 (Minn. 1976) (requiring interested person).

Another helpful comparison is to *League of Women Voters v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012), in which our supreme court interpreted Minnesota Statutes section 204B.44 (2010). That statute provides that "[a]ny individual may file a petition in the manner provided in this section for the correction of any of the [listed] errors, omissions, or wrongful acts which have occurred or are about to occur."[5] *Id.* (quoting Minn. Stat. § 204B.44 (2010)); *see also* Minn. Stat. § 204B.44 (2020) (containing identical

[5] Twin Metals argues that the language "errors, omissions, or wrongful acts" in section 204B.44 shows that there must be injury. But this argument conflates standing—whether the plaintiff is the correct party to bring the lawsuit—with the merits of the lawsuit, or whether there is some culpability or error by the defendant.

language to 2010 version). The supreme court construed section 204B.44's grant of standing broadly, allowing standing even though an association challenging a ballot measure merely raised concerns without showing actual harm from the measure. *League of Women Voters*, 819 N.W.2d at 645 n.7. The language of section 116B.10, subdivision 1, is at least as broad as that of the statute in *League of Women Voters*.

Twin Metals argues that, as part of the plaintiff's burden to show standing under section 116B.10, subdivision 1, the plaintiff must make a prima facie showing that the rule at issue is inadequate to protect environmental resources from pollution, impairment, or destruction. But this argument conflates the standing analysis with the merits analysis under section 116B.10. Although showing some evidence that a rule is inadequate to protect the environment is necessary to show that a plaintiff will be injured, it does not mean that section 116B.10, subdivision 1, requires an injury in the first place.

In sum, we conclude that section 116B.10, subdivision 1, broadly grants standing irrespective of whether a party establishes an injury. Because NMW is an organization with members residing in Minnesota, it has standing under this section to challenge the nonferrous-mining rules. And because we conclude that NMW has statutory standing, we need not address whether NMW established a concrete, particularized, and imminent injury.

Affirmed.