STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1453

Allison Schaber,
Respondent,

vs.

Ramsey County,
Appellant,
Minnesota State Retirement System, et al.,
Defendants.

Filed May 23, 2022
Reversed; motion granted
Reyes, Judge

Ramsey County District Court
File No. 62-CV-21-1228

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Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-county appeals the district court's denial of its motion to dismiss respondent-employee's claims, arguing that the district court lacks subject-matter jurisdiction because the claims are subject to an agreement to arbitrate under a collective bargaining agreement. We reverse.

FACTS

Respondent Alison Schaber has worked for appellant Ramsey County (the county) since 2012. As part of her employment with the county, Schaber participated in the Minnesota Deferred Compensation Plan (the plan). The plan allows employees to save for retirement through deferred compensation. Employers may choose to match employees' deferred-compensation contributions to the plan.

Schaber is a member and president of the Ramsey County Deputy Federation (the union), a union representing certain Ramsey County employees. Schaber is subject to a collective bargaining agreement (the CBA) entered into between the county and the Law Enforcement Labor Services union on January 1, 2018.[1] Article 25.10 of the CBA states that the county *will* provide a *matching* contribution to the employee's deferred compensation of up to $25 per month per contributing employee. The CBA also requires

[1] Schaber's current union was previously represented by the Law Enforcement Labor Services Union, but it voted to leave and form the current union in November 2020. At the time of this dispute, the county and the union were in the process of negotiating a new collective bargaining agreement, and the union remained subject to the 2018 CBA.

employee grievances to be resolved through a four-step procedure. Step 4 of the grievance procedure requires the grievance to be submitted to arbitration.

The county did not send the employer-match portion of Schaber's deferred-compensation funds to her deferred-compensation account. Instead, it remitted the "matching" funds directly to Schaber through her paycheck.

In May 2020, Schaber initiated a grievance under the CBA, alleging that the county violated article 25.10 of the CBA because the county failed to remit the matching funds directly to her deferred-compensation account. She went through the first three steps of the grievance process. At step 3, the county met with Schaber and union representatives to discuss the grievance. The union argued that the CBA's deferred-compensation-match provision is misleading because the county's matching contribution is made directly to the employee rather than the deferred-compensation account, resulting in a shortage of contribution to the account. On May 22, 2020, the county denied the union's step-3 grievance in a letter determining that it had not violated the CBA.

Nearly a year later, Schaber filed a putative class-action[2] complaint against the county, alleging that the county breached its fiduciary duties and breached the unilateral contract created by its online summary of employment policies (the policies) by failing to remit its employer-match contribution to employees' deferred-compensation accounts.[3]

[2] Schaber filed an initial complaint on March 18, 2021. She filed an amended complaint with the same claims on May 17, 2021. We refer to the amended complaint in this opinion.
[3] Schaber's complaint defines the putative class as "All individuals employed by [the county], who participated in and contributed to the Minnesota Deferred Compensation Plan, at any time in the six years prior until the filing of the original Complaint until the date of final judgment in this matter."

The policies state that full-time employees "are eligible to earn benefits." One of the listed benefits is "[d]eferred compensation." The policies further state that "*[m]ost* Ramsey County employees are eligible for an employer match." (Emphasis added.) However, the policies direct union employees, such as Schaber, to "check their bargaining agreement for information on the employer match." Schaber's complaint does not explicitly allege a breach of the CBA.

The county believed Schaber's original grievance was still open when Schaber filed the complaint. But Schaber confirmed in June 2021 that she considered the grievance process closed. Schaber and the union never attempted to move the grievance to step-4 arbitration.

The county moved to dismiss Schaber's claims, arguing that the district court lacks subject-matter jurisdiction because Schaber's claims are subject to the CBA's arbitration agreement. In the alternative, the county moved to dismiss for failure to state a claim, arguing that it does not have a fiduciary relationship with Schaber and that Schaber has not pleaded any policies with sufficiently definite terms to create a unilateral contract.

The district court denied the county's motions. It determined that, because Schaber's "causes of action are independent of—and liability can be determined without reference to—the CBA," Schaber's claims fall outside of the scope of the CBA's grievance procedure. It also determined that Schaber pleaded sufficient facts to proceed on her claims for breach of fiduciary duty and breach of a unilateral contract. This appeal follows.

DECISION

I. Schaber's motion to strike is granted.

Schaber moved this court to strike all references in the county's brief to a September 14, 2021 email exchange between Schaber and the county, arguing that the email is outside of the record. We agree.

The appellate record consists only of documents filed in the district court, offered exhibits, and transcripts of the proceedings. Minn. R. Civ. App. P. 110.01. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). We will strike references in a party's brief to matters outside of the appellate record. *See Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993). Motions to reconsider are prohibited except by permission of the district court. Minn. R. Gen. Prac. 115.11. A party may not use a motion for reconsideration to supplement the record on appeal. *Am. Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 206 (Minn. App. 2010).

The county submitted the September 14 email exchange to the district court to support its request for leave to file a motion for reconsideration. The district court did not respond to that request or grant permission to file the motion. Accordingly, the email attached to the request has not been properly received by the district court, and it is not part of the appellate record. We therefore strike any reference in the parties' briefs to the September 14 email and do not consider it in deciding the merits of this appeal.

II. Standard of review

The county argues that the district court lacks subject-matter jurisdiction because Schaber's claims must go through the CBA's grievance procedure, including arbitration.

"Subject-matter jurisdiction is a question of law that [appellate courts] review de novo." *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019). Subject-matter jurisdiction involves "a court's authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision." *Zweber v. Credit River Township*, 882 N.W.2d 605, 607 (Minn. 2016) (quotation omitted). When a plaintiff brings a putative class action, we evaluate whether the district court has jurisdiction over the named plaintiff's claims without regard to the court's jurisdiction over other potential class members. *See Ward v. Smaby*, 405 N.W.2d 254, 261-62 (Minn. App. 1987) (affirming district court's refusal to certify class action when named plaintiffs' claims were moot); *Pruell v. Caritas Christi*, 645 F.3d 81, 84 (1st Cir. 2011) (noting that when district court lacks jurisdiction over claim of class representative, it has no jurisdiction over class action). Courts will dismiss a case for lack of subject-matter jurisdiction when a plaintiff-employee fails to exhaust a grievance-procedure remedy provided under a collective bargaining agreement. *See Edina Educ. Ass'n v. Bd. of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306, 310 (Minn. App. 1997), *rev. denied* (Minn. June 11, 1997).

III. Under Minn. Stat. § 572B.06(b) (2020), the district court had authority to determine whether Schaber's claims fall within the scope of the CBA's arbitration agreement.

The county argues that, under Minn. Stat. § 572.06(b), the initial determination of whether Schaber's claims fall within the scope of the CBA's arbitration agreement must be made by an arbitrator, not the district court. We disagree.

Under section 572B.06(b), "The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate, *except in the case of a grievance arising under a collective bargaining agreement when an arbitrator shall decide.*" (Emphasis added.) The county argues that, when there is a question of whether a dispute falls within the scope of a collective bargaining agreement's arbitration provision, section 572B.06(b)'s grievance exception requires an arbitrator, not the district court, to decide the initial question of arbitrability. Schaber argues that the grievance exception does not apply here because her claims were not brought as a grievance and do not arise under the CBA.

The parties' arguments require us to interpret and apply section 572B.06(b). "The interpretation of a statute is a question of law that we review de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). When interpreting a statute, we first determine if the statute is ambiguous, meaning that it is subject to more than one reasonable interpretation. *Peterson v. City of Minneapolis*, 892 N.W.2d 824, 827 (Minn. 2017). In determining whether a statute is ambiguous, we construe the statute's words and phrases according to their plain meaning. *See A.A.A. v. Minn. Dep't of Hum. Servs.*, 832 N.W.2d 816, 819 (Minn. 2013). We interpret the statute as a whole, giving effect to all its parts

and leaving no phrase superfluous or insignificant. *See City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 (Minn. 2017).

We first note that section 572B.06(b) is a waivable provision of the revised Minnesota uniform arbitration act (MUAA), Minn. Stat. §§ 572B.01-.31 (2020), which parties may alter by agreement. *See* Minn. Stat § 572B.04(a) (stating that, other than certain listed exceptions, parties may waive or vary requirements of sections 572B.01 to 572B.31). But when, as here, the parties have *not* agreed otherwise, the first clause of section 572B.06(b) clearly establishes a general rule that the district court decides the initial question of arbitrability. The second clause of section 572B.06(b), however, provides an exception to that general rule for "*a grievance arising under a collective bargaining agreement, when an arbitrator shall decide.*" Reading both clauses together, we conclude that the statute is unambiguous. The exception applies only to a complaint proceeding through a grievance process.

Although the county agrees that the statute is unambiguous, the county argues for a broader reading of the exception and contends that the grievance exception "expressly requires an arbitrator to determine whether a controversy is subject to arbitration where a collective bargaining agreement is at issue." But that interpretation is not reasonable. The county appears to conflate the language of the first and second clauses. The grievance exception does not use the broader term *controversy* found in the first clause but rather refers to *a grievance*. This distinction is meaningful because the first clause *does* use the more general term "controversy" when describing the *court's* authority to determine the threshold question of arbitrability. *See Transp. Leasing Corp. v. State*, 199 N.W.2d 817,

819 (Minn. 1972) ("Distinctions of language in the same context must be presumed intentional and . . . applied consistent with that intent."). The legislature could have directed that an arbitrator shall decide whether a *controversy* is subject to an arbitration agreement in a collective bargaining agreement, but it did not.

Additionally, a plain reading of "a grievance" furthers the purpose of the statute, which is to clarify when the court has jurisdiction over the initial determination of arbitrability. The legislature enacted section 572B.06 in 2010 when Minnesota adopted the MUAA. *See Glacier Park Iron Ore Props., LLC v. U.S. Steel Corp.*, 948 N.W.2d 686, 691 (Minn. App. 2020), *aff'd*, 961 N.W.2d 766 (Minn. 2021). Before 2010, Minnesota courts used the "reasonably debatable" standard when deciding whether an arbitrator or the district court should determine arbitrability. *See id.* at 691-92. Under the "reasonably debatable" standard, if the intent of the parties was reasonably debatable as to the scope of the arbitration agreement, an arbitrator determined the threshold issue of arbitrability. *See id.* (explaining origin of "reasonably debatable" standard and listing cases applying it). But we concluded in *Glacier Park* that the MUAA superseded the "reasonably debatable" standard and that section 572B.06(b) now governs arbitrability. *Id.* at 692-93.

The plain language of section 572B.06(b) requires the court, not the arbitrator, to decide whether a controversy is within the scope of an arbitration agreement unless there is a grievance arising under a collective bargaining agreement. The exception allows an arbitrator to continue to have jurisdiction over a grievance that has been submitted to arbitration until the grievance process is complete and prevents two parallel actions from proceeding simultaneously.

Here, there are no overlapping proceedings. Schaber did not appeal the county's decision on the union's deferred-compensation grievance but instead filed separate claims at the district court. The grievance process ended. There is no arbitration proceeding and no arbitrator that has been appointed. There is not even a motion to compel arbitration. Because there is no grievance under the CBA, the grievance exception of section 572B.06(b) does not apply, and the district court had the authority to decide whether the dispute falls within the scope of the CBA's arbitration agreement.[4]

IV. The district court erred by denying the county's motion to dismiss for lack of subject-matter jurisdiction because an agreement to arbitrate exists and Schaber's claims are "a controversy . . . subject to an agreement to arbitrate."

The county argues that the district court should have dismissed Schaber's claims against it for lack of subject-matter jurisdiction because her claims fall within the scope of the CBA's arbitration agreement. We agree.

We review the interpretation of arbitration clauses de novo. *Glacier Park*, 948 N.W.2d at 690. Arbitration is a contract matter, and courts will not require a party to submit to arbitration a dispute which it has not agreed to arbitrate. *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995). To determine the scope of an arbitration clause, we examine the language of the agreement to ascertain the parties' intent. *Glacier Park*, 948 N.W.2d at 694. Because "Minnesota law clearly favors arbitration of disputes," any

[4] The county argues that the public policy underlying the Public Employment Labor Relations Act (PELRA), Minn. Stat. §§ 179A.01-.25 (2020), weighs in favor of concluding that the arbitrator must decide arbitrability when a dispute arguably involves a collective bargaining agreement. But the plain language of the MUAA governs here, and we do not consider public policy when the language of a statute is unambiguous. *See Firefighters Union Loc. 4725 v. City of Brainerd*, 934 N.W.2d 101, 109 (Minn. 2019).

"[d]oubts concerning the scope of arbitrable issues are resolved in favor of arbitration." *Minn. Teamsters Pub. & L. Enf't Emps.' Union, Loc. No. 320 v. County of St. Louis*, 611 N.W.2d 355, 358-59 (Minn. App. 2000) (quotations and citations omitted). When considering the arbitrability of a controversy or dispute, the court's inquiry is limited to (1) whether a valid arbitration agreement exists and (2) whether the controversy is subject to an arbitration agreement. *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993); Minn. Stat. § 572B.06(b).

First, the parties agree that the CBA's arbitration agreement is valid and that Schaber is subject to it as a union member. Second, to determine whether Schaber's claims are subject to the CBA's arbitration agreement, we must examine the language of the CBA. Section 7.4 states that "Grievances, as defined by Section 7.1, shall be resolved in conformance with" a four-step procedure. Section 7.4 describes those steps, including step 4: "A grievance unresolved in Step 3 and appealed to Step 4 by the Union shall be submitted to arbitration . . . ." Section 7.1 defines a "grievance" as "a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this agreement." Accordingly, if Schaber's claims constitute a "dispute or disagreement as to the interpretation or application of the specific terms and conditions" of the CBA, she must first assert them through the grievance procedure, including arbitration.

Schaber's complaint alleges that "[w]hether, and to what extent, an employer will match an employee's [deferred-compensation] contribution is set forth *in the employer's controlling* employment policies/*contracts*," citing Minn. Stat. § 356.24, subd. 3(d) (2020). (Emphasis added.) Although Schaber's complaint refers to "contracts" generally, section

356.24, subd. 3(d), specifies that "[e]nrollment in the plan is provided for in: (1) a personnel policy of the public employer; (2) *a collective bargaining agreement between the public employer and the exclusive representative of public employees in an appropriate unit*; or (3) an individual employment contract between a city and a city manager." (Emphasis added.) Schaber's complaint alleges that "According to [the county's] employment policies, participating employees *are entitled to* receive an employer match," citing the county's benefits-summary webpage. (Emphasis added.) But the policies do not support that allegation. The "Deferred Compensation" section of that webpage states:

> *Most* Ramsey County employees are eligible for an employer match. . . . *The match amount varies based on bargaining agreement.* Employees who are not represented by a union are eligible for a $35 per month employer match. *Employees covered by a union should check their bargaining agreement for information on the employer match for their group.*

(Emphasis added.) As a union employee, Schaber's entitlement to, and amount of, a deferred-compensation match is set forth in article 25.10 of the CBA:

> The Employer *will provide* a *matching contribution* to deferred compensation of $20.00 per month per contributing employee. Effective the first full pay period following January 1, 2014 the matching contribution will increase to *$25.00 per month*, per contributing employee. Contributions will be pro-rated for part-time employees.

(Emphasis added.)

Although Schaber's complaint does not explicitly reference the CBA, it refers to, and relies on, this CBA "matching" term: Schaber's complaint establishes her participation in the plan by stating that Schaber "was eligible to receive a match of *up to $25.00 per month*." (Emphasis added.) In other words, the CBA, not the policies, is the "controlling

contract" that answers Schaber's questions of "[w]hether, and to what extent, an employer will match an employee's contribution."

As her complaint makes clear, Schaber's claims involve a dispute or disagreement as to the interpretation or application of the CBA's deferred-compensation-match term. Accordingly, her claims fall within the scope of the CBA's grievance procedure, and she must go through that process, including step-4 arbitration, before the district court can exercise jurisdiction.

Schaber contends that her claims are not within the scope of the CBA's grievance procedure because her right to participate in the plan comes from her fulltime employment status, not from the CBA. But Schaber's complaint, which invokes the deferred-compensation-match term of the CBA multiple times, belies this contention. Schaber asserts that the CBA merely "documents" the match *amount*. But her complaint also disputes the basis for providing the match. And here, it is the CBA that requires the county to provide the match, as stated in article 25.10 of the CBA: "The employer *will* provide a matching contribution to deferred compensation . . . ."

Schaber further argues that the CBA need not be completely silent on a topic for an action to be outside the CBA's scope. But in the cases Schaber cites in support of this argument, plaintiffs were allowed to proceed with claims based in independent *statutory* rights. *See McDaniel v. United Hardware Distrib. Co.*, 469 N.W.2d 84, 88 (Minn. 1991) (concluding that retaliatory-discharge claim under Worker's Compensation Act did not require interpretation of collective bargaining agreement and thus was not preempted by federal law requiring exhaustion of contractual remedies); *Moe v. REO Plastics, Inc.*, No.

C7-97-814, 1997 WL 613656, at *1 (Minn. App. Oct. 7, 1997) (concluding employee's Minnesota Human Rights Act sexual-harassment claim did not arise out of collective bargaining agreement); *Vega v. New Forest Home Cemetery, LLC*, 856 F.3d 1130, 1134-35 (7th Cir. 2017) (concluding that employee need not arbitrate Fair Labor Standards Act claim when collective bargaining agreement did not explicitly require arbitration of *statutory* rather than contract rights). Here, Schaber's claims are not based in any independent statutory right.

Schaber argues that common-law claims may also fall outside the scope of a collective bargaining agreement, citing this court's decision in *Ferrell v. Cross*, 543 N.W.2d 111 (Minn. App. 1996), *aff'd*, 557 N.W.2d 560 (Minn. 1997). But *Ferrell* is similarly distinguishable. In *Ferrell*, we concluded that the district court had jurisdiction to hear a plaintiff-employee's state-law defamation and intentional-infliction-of-emotional-distress claims against her supervisor and coworker because those claims existed independent of any collective bargaining agreement. *Id*. at 116-17. Schaber's claims are not so independent of the CBA: in fact, she relies on the CBA's deferred-compensation-match term in her complaint to establish her claims against the county.

Schaber emphasizes that she is disputing *whether* the county provided a match, not the *amount* of the match. She argues that, because the CBA does not define "match," her claims do not involve an interpretation or application of the CBA's terms. While it is true that the CBA itself does not define "match," the union and the county negotiated for and agreed on union members' right to a deferred-compensation match and memorialized that agreement in article 25.10 of the CBA. Ultimately, when determining whether a party must

follow a grievance procedure, we consider whether the parties intended to grieve the dispute at issue based on the language of the agreement. *Cf. Minn. Teamsters*, 611 N.W.2d at 359 (stating that arbitration will not be compelled without evidence that parties intended to submit dispute to arbitration). That the parties here included a term in the CBA establishing union members' right to a deferred-compensation match indicates the parties' intent to resolve disputes over the county's provision of that match through the CBA's grievance process. We further note that Schaber does not dispute that she *did* initially bring her failure-to-provide-a-match claim against the county *as* a grievance under the CBA. Her grievance also required an interpretation of terms found in article 25.10 of the CBA that the county "will provide a matching contribution . . . per contributing employee." Schaber does not dispute that the CBA covered that controversy. Moreover, "[a]ny doubts about arbitrability should be resolved in favor of arbitration." *Kilcher v. Dale*, 784 N.W.2d 866, 870 (Minn. App. 2010).

In sum, the CBA requires any "dispute or disagreement as to the interpretation or application of the specific terms and conditions" of the CBA to proceed through the grievance process. Schaber's initial pursuit of the issue as a grievance under the CBA and the multiple references in her complaint to the article 25.10 match term lead us to conclude that Schaber's claims are, in fact, a controversy subject to the CBA's grievance procedure, including arbitration. The district court therefore lacked subject-matter jurisdiction and erred when it denied the county's motion to dismiss. *See Edina Educ. Ass'n*, 562 N.W.2d at 310 (noting that employee must exhaust administrative remedies provided under

collective bargaining agreement before bringing action derived from that agreement in district court).

Reversed; motion granted.