STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1545

Cristina Berrier,
Respondent,

vs.

Minnesota State Patrol,
Appellant.

Filed June 12, 2023
Reversed and remanded
Gaïtas, Judge

Steele County District Court
File No. 74-CV-19-2217

Jeremy R. Stevens, Grant M. Borgen, Bird, Stevens & Borgen, P.C., Rochester, Minnesota (for respondent)

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Considered and decided by Gaïtas, Presiding Judge; Larson, Judge; and Rodenberg, Judge.*

SYLLABUS

Minnesota Statutes section 347.22 (2022), which makes a dog owner strictly liable for injuries caused by the dog during an unprovoked attack, does not apply if the dog owner

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

is the State of Minnesota because the statute does not waive the state's sovereign immunity for such claims.

OPINION

GAÏTAS, Judge

In this interlocutory appeal, we consider whether Minnesota's dog-bite statute, Minnesota Statutes section 347.22, applies when the owner of the dog is a state agency. Respondent Cristina Berrier sued appellant Minnesota State Patrol (state patrol), alleging that a state patrol dog seriously injured her during an unprovoked attack. State patrol moved the district court to dismiss Berrier's strict-liability claim under section 347.22, arguing that, as a state agency, it was entitled to sovereign immunity for such claims. The district court denied the motion to dismiss, determining that section 347.22 waived sovereign immunity for dog-bite cases brought under the statute.

State patrol now challenges the district court's denial of its motion to dismiss. It argues that sovereign immunity bars Berrier's section 347.22 claim. Additionally, state patrol contends that Berrier's complaint did not sufficiently plead such a claim.

We conclude that Berrier cannot sue state patrol under section 347.22 because the legislature did not waive sovereign immunity for claims brought under the statute. Accordingly, we reverse the denial of state patrol's motion to dismiss Berrier's section 347.22 claim and remand to the district court for further proceedings on Berrier's additional claim of ordinary negligence.

FACTS

The factual allegations in Berrier's complaint, which we must accept as true,[1] are as follows. Berrier worked at a car dealership in Owatonna that serviced state patrol vehicles. On March 15, 2019, a state patrol officer, accompanied by a service dog, brought an official vehicle to the dealership for servicing. The officer failed to maintain control of the dog, which attacked Berrier without provocation. Berrier was seriously injured during the attack, and some of her injuries are permanent.

Following the incident, Berrier sued state patrol. Her complaint alleges that, "[a]s a direct and proximate result of the negligence of [state patrol], [Berrier] sustained serious injuries, pain and suffering, disability, emotional distress, and doctor, hospital, and other medical expenses past, present and future." The complaint does not cite section 347.22, Minnesota's dog-bite statute, which imposes strict liability on a dog owner for injuries resulting from an unprovoked attack.

Shortly before trial, Berrier confirmed that she intended to pursue two alternative theories of liability against state patrol—strict liability under the dog-bite statute and ordinary negligence. State patrol moved to dismiss Berrier's section 347.22 claim. It argued that, as a state agency, it is immune to claims under the dog-bite statute. State patrol also argued that Berrier's complaint failed to provide adequate notice of the statutory claim because it did not cite the statute.

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[1] *See Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020) (stating that, when reviewing a district court's order denying a motion to dismiss, the appellate court must consider only the facts alleged in the complaint, and it must accept those facts as true).

The district court denied state patrol's motion to dismiss. It concluded that the legislature waived sovereign immunity for claims brought under section 347.22 and that Berrier's complaint adequately pleaded the statutory claim.

State patrol appeals the district court's order denying its motion to dismiss.

ISSUE

Is the State of Minnesota immune from liability for claims brought under the dog-bite statute, Minnesota Statutes section 347.22?

ANALYSIS

State patrol argues that the district court erred in denying its motion to dismiss Berrier's claim under the dog-bite statute because, first, a state agency is immune from such claims under the doctrine of sovereign immunity, and second, Berrier's complaint did not cite the statute. We agree with state patrol that a state agency cannot be sued under the dog-bite statute, and we do not reach state patrol's second argument.

Ordinarily, a party cannot immediately appeal a district court's denial of a motion to dismiss. *Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018). However, immediate appellate review is available when, as here, the district court denies a motion to dismiss brought on the ground of government immunity. *Id.* Appellate courts review the legal question of whether government entities are protected by immunity de novo. *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

The type of immunity at issue here is sovereign immunity. At common law, "the doctrine of sovereign immunity prevented lawsuits against the state, including its subdivisions, without its consent." *Nusbaum v. County of Blue Earth*, 422 N.W.2d 713,

717-18 (Minn. 1988) (detailing the history of sovereign immunity in Minnesota). Sovereign immunity "serves to protect the fiscal stability of government." *Nichols v. State*, 858 N.W.2d 773, 775 (Minn. 2015); *see also Lienhard v. State*, 431 N.W.2d 861, 867 (Minn. 1988). The Minnesota Supreme Court "abolished" sovereign immunity for common-law tort claims, but it has recognized that "the doctrine remains effective in many forms, including from liability created by statute, which is, of course, subject to waiver by the Legislature." *Nichols*, 858 N.W.2d at 775 (citing *Nieting v. Blondell*, 235 N.W.2d 597, 603 (Minn. 1975)).

To protect the legislative branch's role in deciding issues of public policy—such as the state's liability for certain acts—the legislature retains the power to waive sovereign immunity by statute "if the statute demonstrates the Legislature's express intent to allow suit against the State." *Nichols*, 858 N.W.2d at 776; *Johnson*, 553 N.W.2d at 43. The legislature has adopted a statute, Minnesota Statutes section 645.27 (2022), as a "rule of construction . . . for interpreting whether a separate statutory provision waives sovereign immunity." *Nichols*, 858 N.W.2d at 776 (quotation omitted). Section 645.27 identifies two ways in which the legislature drafts a statute to show its intent to waive sovereign immunity: (1) the statute explicitly names the state in the statute or (2) the words of the statute are "so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature."

To decide whether the state is immune from lawsuits under the dog-bite statute, section 645.27 instructs that we must interpret the statute to discern whether it evinces the

legislature's intent to waive immunity. The interpretation of a statute presents a legal question that an appellate court reviews de novo. *Nichols*, 858 N.W.2d at 775.

"The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2022); *see also State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004) (applying Minn. Stat. § 645.16 (2002)). "When interpreting a statute, [appellate courts] must look first to the plain language of the statute." *Jackson v. Mortg. Elec. Registration Sys., Inc*., 770 N.W.2d 487, 496 (Minn. 2009). "When a statute's language is plain, the sole function of the courts is to enforce the statute according to its terms." *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). If the language of the statute is ambiguous as to the legislature's intent, those "ambiguities in the statutory language are to be construed in favor of immunity." *FAA v. Cooper*, 566 U.S. 284, 290 (2012); *see also Nichols v. State*, 842 N.W.2d 20, 25 (Minn. App. 2014) (relying on *Cooper* and stating that Minnesota caselaw on sovereign immunity is "consistent" with federal caselaw), *aff'd*, 858 N.W.2d 773 (Minn. 2015.

The dog-bite statute provides:

> If a dog, without provocation, attacks or injures any person who is acting peaceably in any place where the person may lawfully be, the owner of the dog is liable in damages to the person so attacked or injured to the full amount of the injury sustained. The term "owner" includes any person harboring or keeping a dog but the owner shall be primarily liable.

Minn. Stat. § 347.22.

The district court determined that section 347.22 waives sovereign immunity. It noted that the term "the owner" is "clear and absolute in a way that allows for little ambiguity," necessarily encompassing "all who own dogs." It observed that the Minnesota Supreme Court previously decided that an "owner" under section 347.22 could mean "bodies politic," including municipalities. *See Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826-27 (Minn. 2005). And it recognized that, if section 645.27—the rule of construction—is to mean anything at all, *some* statutes that do not expressly name the state must satisfy the alternative method for waiving sovereign immunity by being "so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." The district court decided that section 347.22 is such a statute.

State patrol argues that the district court's decision is wrong. It contends that section 347.22 does not plainly, clearly, and unmistakably signal the legislature's intent to waive sovereign immunity.

To support its argument, state patrol directs us to the Minnesota Supreme Court's decision in *Nichols*. There, the supreme court considered whether the legislature intended to waive sovereign immunity when it enacted statutes that proscribe the use of false statements to induce employment and authorized a corresponding cause of action. *Nichols*, 858 N.W.2d at 775-76; Minn. Stat. §§ 181.64, .65 (2014). The plaintiff in *Nichols* argued that the legislature revealed its intent to waive sovereign immunity by prohibiting an "organization of any kind" from using false statements to induce a prospective employee. 858 N.W.2d at 776-77 (quoting Minn. Stat. § 181.64, which provides that "any person, partnership, company, corporation, association, or *organization of any kind*, doing business

in this state" that violates the statute may be liable (emphasis added)). According to the plaintiff, the expansive term "organization of any kind" provided clear evidence of the legislature's intent to include the state within the ambit of the statutes. *Id.* at 777. The supreme court rejected this rationale. *Id.* It determined that merely using a broad term that *could* include the state is not a "plain, clear, and unmistakable" sign that the legislature intended to subject the state to liability. *Id.* The supreme court therefore concluded that the legislature did not waive sovereign immunity by allowing a plaintiff to sue an "organization of any kind." *Id.*

State patrol argues that the district court's rationale disregards the basis for the supreme court's decision in *Nichols*. By relying on the expansiveness of the term "the owner" in the dog-bite statute to find legislative intent to waive sovereign immunity, state patrol contends that the district court engaged in the very analysis that *Nichols* rejected.

But Berrier and amicus curiae Minnesota Association for Justice (MAJ) attempt to distinguish the statutes at issue in *Nichols* from section 347.22. MAJ notes that the Minnesota Supreme Court has already interpreted the term "the owner" in section 347.22 to mean "the legal, registered owner" of a dog. *Anderson v. Christopherson*, 816 N.W.2d 626, 632 (Minn. 2012). It contends that the supreme court's interpretation is essentially grafted onto the text of section 347.22. *See Wynkoop v. Carpenter*, 574 N.W.2d 422, 425 (Minn. 1998) (stating that once the supreme court "has construed a statute, that interpretation is as much a part of the statutory text as if it had been written into the statute originally"). And, according to MAJ, by subjecting a legal, registered owner of a dog to liability, without qualification, the legislature manifested an intent to include the state.

MAJ also draws our attention to the legislature's use of the word "the" in conjunction with the word "owner" in section 347.22. It notes that the article "the" is "a word of limitation that indicates a reference to a specific object." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 637 (Minn. 2019) (quotation omitted); *see also State v. Struzyk*, 869 N.W.2d 280, 286 (Minn. 2015) ("It is textually significant that the Legislature used 'the,' rather than 'an' . . . ."); *Clark v. Ritchie*, 787 N.W.2d 142, 149 (Minn. 2010) ("Use of the definite article 'the' to modify 'appointment' indicates that the drafters were referring to a specific appointment . . . ."). According to MAJ, by referring to "*the* owner" the legislature showed its intent to include the dog's owner, without qualification, which necessarily could include the state if the state is the legal, registered owner of a dog. MAJ contrasts the legislature's use of the article "the" in the dog-bite statute, which functions as a word of limitation, with the language at issue in *Nichols*. It notes that "any . . . organization" could refer to any number of entities, and accordingly, the term would not necessarily include the state.

Making a related argument, Berrier observes that the term "organization" is "ambiguous," while the term "owner" is not. Berrier contends that "the person that owns a possession is necessarily the owner."

We agree with state patrol that the district court erred when it applied the same analysis that the supreme court rebuffed in *Nichols* to conclude that the dog-bite statute waives sovereign immunity. In *Nichols*, the supreme court held that the legislature's reference to a broad group that *could* include the state, without more, is not a plain, clear, and unmistakable sign that the legislature intended to waive sovereign immunity. 858

N.W.2d at 777. Likewise, the legislature's use of the term "the owner"—a term that could include the state—was, alone, insufficient evidence of the legislature's intent to waive sovereign immunity. Furthermore, we are not persuaded by arguments attempting to distinguish the statutes at issue in *Nichols* from the language used in section 347.22. These arguments rely on the same logic that the supreme court rejected in *Nichols*. A statute's broad applicability alone does not constitute clear, plain, and unmistakable evidence of the legislature's intention to waive sovereign immunity. *See Smallwood v. State, Dep't of Hum. Servs.*, 966 N.W.2d 257, 265 (Minn. App. 2021) ("It would be a much more difficult leap for us to hold that the legislature intended to include the state when it said 'a person' than it would have been for the *Nichols* court to conclude that the legislature wanted to include a state entity as an 'organization of any kind.'"), *rev. denied* (Minn. Nov. 16, 2021). Thus, the district court erred in determining that the legislature's use of the term "the owner" in the dog-bite statute was enough to waive the state's immunity from suit.

State patrol also argues that the district court erred in relying on the supreme court's decision in *Hyatt* to determine that the dog-bite statute waives sovereign immunity. In *Hyatt*, the supreme court considered whether a municipality was immune from liability under the dog-bite statute. 691 N.W.2d at 826. Examining the plain language of section 347.22, the supreme court noted that "[t]he term 'owner' includes 'any person' harboring or keeping a dog," and that "[t]he word 'any' is given broad application in statutes." *Id.* at 826 (quoting Minn. Stat. § 347.22). Then, relying on rules of statutory construction, the supreme court determined that the term "person" included "*bodies politic*." *Id.* (emphasis added) (quoting Minn. Stat. § 645.44, subd. 7 (2004), which provides that "person" may

apply to "bodies politic and corporate, and to partnerships and other unincorporated associations"). The supreme court went on to conclude in *Hyatt* that the phrase "any person" may "include 'bodies politic,' such as municipalities," and "that the plain meaning of the words used in the dog bite statute includes a municipal owner of a police dog." *Id.* at 826-27 (quoting section 347.22).

At first blush, *Hyatt* seems to provide compelling support for Berrier's position that the dog-bite statute also applies to the state. The district court extrapolated from *Hyatt* that the legislature showed "a clear intent to include *governmental entities* in the definition of 'person,' and thus 'owner.'" (Emphasis added.) But, for two reasons, we agree with state patrol that the rationale in *Hyatt* does not resolve the question of sovereign immunity here. First, *Hyatt* addressed only the question of whether a municipality could be subject to liability under the dog-bite statute. *Id.* The supreme court did not contemplate the *state's* exposure to liability. And more importantly, the supreme court did not consider the question of immunity. *Id.* at 831. Rather, in *Hyatt*, the supreme court decided, using only the basic tools of statutory construction, that a municipality could be a "person" for the purpose of the sentence in section 347.22 that "[t]he term 'owner' includes any person harboring or keeping a dog but the owner shall be primarily liable."[2] *Id.* at 826-27. Second,

[2] The *Hyatt* court remanded the case to this court to conduct an immunity analysis, which we did in *Hyatt v. Anoka Police Dep't*, 700 N.W.2d 502, 506 (Minn. App. 2005), *rev. denied* (Minn. Oct. 18, 2005). But the analysis there dealt with different types or sources of immunity for the municipality that are not applicable here. *Hyatt*, 700 N.W.2d at 506-07 (concluding that the city was not entitled to statutory immunity under the discretionary-function exception to tort liability provided for by Minn. Stat. § 466.03 (2002) (for municipalities), but that the city was entitled to vicarious official immunity for the decisions at issue made by its officers).

the term "bodies politic," which was essential to the supreme court's decision in *Hyatt*, does not include the state. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 69 (1989) ("[W]e disagree . . . that . . . the phrase 'bodies politic and corporate' was understood to include the States. Rather, an examination of authorities of the era suggests that the phrase was used to mean corporations, both private and public (municipal), and not to include the States." (citation and quotation omitted)); *see also State v. Lee*, 13 N.W. 913, 915, 916 (Minn. 1882) (discussing "bodies politic" in reference to municipalities and stating, "the legislature has the power to grant such chartered privileges to them as bodies politic without surrendering any of the jurisdiction of the state over offenses against it," implying that the state is not included in the definition of "bodies politic"). And *Hyatt* did not define "bodies politic" to include the state. *See Hyatt*, 691 N.W.2d at 826-27 ("[T]he word 'person' may be applied to include 'bodies politic,' *such as* municipalities." (emphasis added)). Thus, the district court also erred in relying on *Hyatt* to determine that section 347.22 waives sovereign immunity.

As the district court observed, section 645.27 contemplates a statute that waives sovereign immunity without expressly naming the state. And, in *Nichols*, the supreme court refused to "foreclose the possibility that a statute may waive sovereign immunity without explicitly naming the State." 858 N.W.2d at 779. But the dog-bite statute is not such a statute. Section 347.22 is not "so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." Minn. Stat. § 645.27. Because section 347.22 does

not plainly, clearly, and unmistakably waive sovereign immunity, the state is immune from liability under the statute.[3]

DECISION

The language of Minnesota Statutes section 347.22, Minnesota's dog-bite statute, is not "so plain, clear, and unmistakable as to leave no doubt" about the legislature's intent to waive sovereign immunity. Minn. Stat. § 645.27. Thus, when a dog owned by a state agency attacks or injures any person, the state is immune from absolute liability under section 347.22. Because the district court erred in concluding otherwise, we reverse and remand for further proceedings as to Berrier's remaining claim.[4]

Reversed and remanded.

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[3] We note that our decision here is consistent with *McClendon v. Roy*, No. A19-0528, 2019 WL 6112448 (Minn. App. Nov. 18, 2019), a nonprecedential case where we concluded that the dog-bite statute does not waive sovereign immunity. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions are not binding but can be used as persuasive authority). Berrier argues that her case is factually distinguishable from *McClendon*. But the question of whether the state is immune from lawsuits under section 347.22 is purely legal. We therefore are not persuaded by Berrier's attempt to differentiate her case from *McClendon* based on factual circumstances.

[4] State patrol conceded at oral argument that its appeal was limited to the applicability of section 347.22 and not to Berrier's claim of ordinary negligence.