STATE OF MINNESOTA
IN COURT OF APPEALS
A11-860

Paul Wotzka,
Appellant,

vs.

Minnesota Department of Agriculture,
Respondent.

Filed November 21, 2011
Affirmed as modified
Worke, Judge

Hennepin County District Court
File No. 27-CV-09-7357

John A. Fabian, David H. Redden, Fabian May & Anderson, PLLP, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Kimberly J. Middendorf, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Hudson, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant challenges the judgment entered against him in his suit against respondent Minnesota Department of Agriculture for allegedly violating the Minnesota Government Data Practices Act, arguing that the district court erred in determining that

his request for copies of documents triggered his obligation to pay for the search-and-retrieval costs of the documents and in determining that his obligation to pay was not conditioned upon actual receipt of the copies. Because the district court correctly determined appellant's obligation to pay, but prematurely entered judgment, we affirm as modified.

FACTS

In March 2008, appellant Paul Wotzka requested a vast quantity of information from respondent Minnesota Department of Agriculture pursuant to the Minnesota Government Data Practices Act (act). In August, respondent advised appellant that it completed the first search-and-retrieval phase, which compiled approximately 11,000 documents. Respondent indicated that "530.5 person hours" had been spent searching and retrieving the documents appellant requested and assessed a fee of $18,565.50 if appellant wanted copies of all of the documents. Respondent notified appellant that he could view the documents at no cost, but each requested copy of a document would cost $1.67.

In December, respondent informed appellant that retrieval was completed and that he could view the entirety of his request at that time. In January 2009, appellant inspected the documents. He then requested copies of 3,477 documents for which he was assessed a fee of $5,806.59. Respondent did not give appellant the copies after he asserted that the fee assessed was unreasonable and refused to pay. Appellant filed a complaint, alleging, among other things, that respondent violated the act by requiring him

to pay "exorbitant and unreasonable fees" for copies. The parties sought a determination of the reasonable fees for the requested copies.

The district court concluded that the $1.67 per-document cost was reasonable,[1] and that appellant must pay $5,806.59 for the 3,477 copies he requested. Appellant's attorney sought clarification whether appellant was obligated to pay regardless of whether he received the copies. The district court ordered that appellant must pay the costs incurred for the copies he requested and that his obligation to pay was triggered by his request and not by the receipt of the copies. The district court entered judgment in the amount of $5,806.59.

Appellant moved to vacate the district court's judgment against him, arguing that the district court improperly determined that appellant was obligated to pay respondent because it was not raised or argued in any pleading. The district court denied appellant's motion to vacate, and this appeal followed.

D E C I S I O N

Statutory Interpretation

Appellant argues that the district court erred in interpreting the act to create an obligation to pay for copies of documents when the request for the documents is made. Statutory interpretation is a question of law, which we review de novo. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 358 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to

[1] Appellant does not challenge the district court's determination that the fee is reasonable.

give effect to all its provisions." Minn. Stat. § 645.16 (2010). "We construe statutes to effect their essential purpose but will not disregard a statute's clear language to pursue the spirit of the law." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007). "We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

Under the applicable statute, upon a request, "a person shall be permitted to inspect and copy public government data." Minn. Stat. § 13.03, subd. 3(a) (2010). "If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data." *Id.* But

> [i]f a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data . . . but may not charge for separating public from not public data.

Id., subd. 3(c). Thus, if appellant sought only to inspect the data, respondent would not have been permitted by statute to require him to pay an inspection fee. But appellant requested copies of over 3,000 documents after he learned that the cost for the search and retrieval of the information he requested was $1.67 per document. The statute permits respondent to require payment for the actual costs of searching for and retrieving the requested data.

The district court ruled that appellant's obligation to pay for the copies was triggered upon his request for the copies and not upon his receipt of the copies.

Appellant argues that he is not obligated to pay for the copies because the plain language of the statute provides that an individual may be charged for copies, but not for inspection. Appellant contends that if he is required to pay for copies that he does not actually receive, then he is being charged for inspection, in violation of the act. However, the statute reads: "*Upon request* . . . a person shall be permitted to inspect and copy public government data." *Id.*, subd. 3(a) (emphasis added). "If a person *requests copies* or electronic transmittal of the data . . . the responsible authority may require the *requesting person* to pay the actual costs of searching for and retrieving government data." *Id.*, subd. 3(c) (emphasis added). Thus, the district court properly interpreted the statute as creating an obligation to pay when the request is made.

Appellant is incorrect in suggesting that a person is impermissibly required to pay an inspection fee, because arguably a person will only request copies of documents after inspection and a determination by the person that he or she wants copies of the inspected documents. That is what occurred here. Appellant was afforded an opportunity to inspect over 11,000 documents and he narrowed his request for copies to approximately 3,000 documents. When he was informed that the documents were ready for inspection, he was told that the cost per document copied would be $1.67. Thus, appellant knew what the cost of a copied document would be prior to him making his request.

Finally, appellant asserts that the district court erred in determining that he was obligated to pay regardless of whether he received the copies. Appellant did not receive the copies because he refused to pay for them; appellant would have received the copies had he paid for them. If respondent failed to provide appellant his requested copies after

he paid for his request, respondent would be in violation of the act. *See id.* The district court did not err in interpreting the statute to trigger appellant's obligation to pay for copied documents when he requested the copies.

Vacate Judgment

Appellant next argues that the district court's judgment is void because the court acted outside of its authority by addressing an issue not raised in the pleadings or tried by consent of the parties. A district court "is required to base relief on issues either raised by the pleadings or litigated by consent." *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983).

> Issues litigated by either express or implied consent are treated as if they had been raised in the pleadings. Consent is commonly implied either where the party fails to object to evidence outside the issues raised by the pleadings or where he puts in his own evidence relating to such issues. The question must, of necessity, be decided on the particular facts of each case.

Roberge v. Cambridge Coop. Creamery Co., 243 Minn. 230, 234, 67 N.W.2d 400, 403 (1954).

The district court improperly entered a judgment in this matter. Appellant raised only the issue of whether the $1.67 per-document fee was reasonable. The district court erred in requiring appellant to pay respondent when the parties did not consent to litigate the payment issue. Therefore, we affirm the district court's decision, but vacate the judgment entered against appellant.

Affirmed as modified.