STATE OF MINNESOTA

IN SUPREME COURT

A20-0053

Workers' Compensation Court of Appeals

McKeig, J.
Took no part, Moore, J.

Scott Koehnen,

Respondent,

vs.

Filed: August 12, 2020
Office of Appellate Courts

Flagship Marine Company and
Auto Owners Insurance Company,

Respondents,

and

Keith Johnson, D.C.,

Relator.

Blake Bauer, Fields Law Firm, Minnetonka, Minnesota, for respondent Scott Koehnen.

Michael R. Johnson, Natalie K. Lund, Cousineau, Waldhauser & Kieselbach, P.A., Mendota Heights, Minnesota, for respondents Flagship Marine Company and Auto Owners Insurance Company.

David C. Wulff, Law Office of David C. Wulff, Roseville, Minnesota, for relator.

Kristen L. Ohlsen, Amy M. Byrne, Aafedt, Forde, Gray, Monson & Hager, P.A., Minneapolis, Minnesota; and

Katie H. Storms, João C.J.G. de Medeiros, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Defense Lawyers Association.

S Y L L A B U S

A health care provider who voluntarily declines to intervene in a pending workers' compensation proceeding after receiving timely and adequate notice of the right to intervene cannot initiate a collateral attack on the compensation award under Minn. Stat. §§ 176.271, .291 (2018), or Minn. R. 1420.1850, subp. 3B (2019).

Affirmed.

O P I N I O N

MCKEIG, Justice.

This case asks us to decide whether a health care provider, who did not intervene after receiving adequate notice of an employee's pending workers' compensation proceeding, can collaterally attack an Award on Stipulation under Minn. Stat. §§ 176.271, .291 (2018), or Minn. R. 1420.1850, subp. 3B (2019). Because we conclude that the provider cannot do so, we affirm the decision of the Workers' Compensation Court of Appeals.

FACTS

Respondent Scott Koehnen suffered a back injury on May 30, 2017, while working within the course and scope of his employment for his employer, respondent Flagship Marine Company. The employee received chiropractic treatment and supplies from relator Keith Johnson at Johnson Chiropractic Clinic between June 2017 and February 2018, resulting in medical bills totaling $9,476.01. Johnson submitted his charges to respondent Auto Owners Insurance Company, the workers' compensation insurer for Kohenen's employer, requesting payment. At that time, however, the employer and insurer

(collectively, Flagship Marine) denied liability for Koehnen's injury. Koehnen had no other forms of insurance. Thus, Johnson's bills were not paid.

On September 25, 2017, Koehnen filed a claim petition seeking workers' compensation benefits relating to his back injury, including payment of the treatment that he had received from Johnson (among other providers). That same day, Koehnen, through his attorney, mailed a letter to Johnson entitled "Notice to Potential Intervenors," informing Johnson of his right to intervene under Minn. Stat. § 176.361 (2018).

Johnson received Koehnen's notice but "chose to exercise his right to *not* intervene." (Emphasis added) Accordingly, he did not move to intervene under Minn. Stat. § 176.361, subd. 2 (allowing a person who wants to intervene in pending proceedings, including "a health care provider," to file a written motion). The proceeding continued without him. Although Johnson initially contested the adequacy of the notice, he has since conceded that the notice that he received was timely and adequate as a matter of law.

In April 2018, Koehnen and Flagship Marine entered into a settlement agreement, which resolved Koehnen's claim for benefits, settled the interests of an intervening health care provider, and extinguished the claims of the potential intervenors who received adequate notice but did not intervene, including Johnson. The settlement agreement did not resolve the liability dispute between Koehnen and Flagship Marine. At the time of settlement negotiations, Koehnen and Flagship Marine were aware of Johnson's "unpaid balance for the treatment he rendered" to Koehnen. Koehnen and Flagship had the information necessary to contact Johnson, but no settlement offer was communicated to Johnson.

The Stipulation for Settlement provided:

> The parties further stipulate and agree that Johnson Chiropractic Clinic . . . [was] served with Notice of Right to Intervene, by letter dated September 25, 2017 . . . . Johnson Chiropractic Clinic . . . [has] failed to intervene within 60 days of the notice [it] received, and pursuant to Minn. Stat. § 176.361, [its] failure to intervene shall result in [its] claims being extinguished and prohibit [it] from collecting or attempting to collect the extinguished interest from the Employee, Employer, Insurers, or any government program.

On April 23, 2018, the compensation judge approved the Stipulation for Settlement and issued an Award on Stipulation. The Award on Stipulation provided: "More than 60 days has expired and pursuant to Minn. Stat. § 176.361, subd. 2, any potential interest[] of Johnson Chiropractic Clinic . . . [is] hereby extinguished." The Office of Administrative Hearings mailed a copy of the Award on Stipulation to Johnson on April 25, 2018.

More than 8 months later, on January 2, 2019, Johnson filed a Petition for Payment of Medical Expenses with the Office of Administrative Hearings, pursuant to Minn. Stat. §§ 176.271, .291, which address the initiation of workers' compensation proceedings by petition, and Minn. R. 1420.1850, subp. 3B, which addresses the remedies available to intervenors. Johnson's petition alleged that Koehnen and Flagship Marine failed to comply with Minn. Stat. § 176.521 (2018). Johnson further asserted that because he was "completely excluded from all settlement negotiations," he was entitled to automatic reimbursement of his charges for Koehnen's treatment, with statutory interest, in accordance with *Brooks*. *See Brooks v. A.M.F., Inc.*, 278 N.W.2d 310, 315 (Minn. 1979) (holding that "an intervenor who is excluded from participating in negotiations resulting in a final settlement and who is not a party to the settlement stipulation should, on principles

of equity and public policy, be awarded full reimbursement by the settlement award"). Finally, regarding the April 2018 Award on Stipulation, Johnson asserted that the compensation judge lacked the authority to extinguish his interests and, in the alternative, that any statute purporting to grant a compensation judge this authority was invalid and unenforceable.

Koehnen and Flagship Marine moved to dismiss Johnson's petition. The compensation judge granted their motions, holding that Johnson's interest was properly extinguished under Minn. Stat. § 176.361, subd. 2, and that Johnson lacked standing to assert an independent claim for payment in the absence of a pending claim asserted by the employee. The Workers' Compensation Court of Appeals (WCCA) affirmed. *Koehnen v. Flagship Marine Co.*, No. WC19-6287, 2019 WL 7580063 (Minn. WCCA Dec. 27, 2019). Johnson filed a timely petition for writ of certiorari.

ANALYSIS

This appeal requires that we determine whether a potential intervenor, who did not intervene after receiving adequate notice of an employee's pending workers' compensation proceeding, can initiate a proceeding to collaterally attack the validity of a final award on stipulation under Minn. Stat. §§ 176.271, .291, and Minn. R. 1420.1850, subp. 3B. Thus, we must interpret the language of the relevant statutes and rules, which is a question of law subject to de novo review. *See J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 4–5 (Minn. 2016). If the language is unambiguous, we apply its plain meaning. *Id*.

I.

Medical providers who treat injured employees for work-related injuries are entitled to reimbursement from the employer. *See* Minn. Stat. § 176.135, subd. 1(a) (2018). To assert that right, the medical provider may intervene in the proceedings initiated by the employee under Minn. Stat. ch. 176 (2018).[1] *See Gamble v. Twin Cities Concrete Prods.*, 852 N.W.2d 245, 248 (Minn. 2014); *see also Brooks*, 278 N.W.2d at 314 (stating that "procedures were instituted" after the decision in *Tatro v. Hartmann's Store*, 204 N.W.2d 125 (Minn. 1973), "to ensure that interested parties would be notified of their right to intervene").

Johnson insists, however, that regardless of the intervention procedures set out in Minn. Stat. § 176.361, he may collaterally attack an existing settlement award by filing a claim for reimbursement under Minn. Stat. §§ 176.271, .291, and Minn. R. 1420.1850, subp. 3B. Thus, we turn to these statutes and the rules to determine whether a potential intervenor who chooses not to intervene after receiving adequate notice of a proceeding may initiate a collateral attack under chapter 176. "When interpreting a statute to determine if it creates a cause of action, we do not ask whether the statute imposes a limitation on an otherwise unlimited claim, but instead determine whether the statute

[1] Written notice must be given within 60 days after a petition is served to anyone who has "provided benefits or services to the employee," notifying the provider "of its right to petition for intervention and reimbursement" and identifying the consequences of failing to file a timely motion to intervene. *See* Minn. R. 1415.1100, subps. 1–3 (2019). There is no dispute in this case that Johnson received a timely notice of his right to intervene in Koehnen's pending proceeding and that the notice fulfilled the requirements of Rule 1415.1100.

actually *provides* a cause of action to a particular class of persons." *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 863 (Minn. 2010). This is a question of law that we review de novo. *Id.* at 861.

Johnson initiated this proceeding by filing a petition under sections 176.271 and 176.291. Section 176.271 states:

> Unless otherwise provided by this chapter or by the commissioner, all proceedings under this chapter are initiated by the filing of a written petition on a prescribed form with the commissioner at the commissioner's principal office. All claim petitions shall include the information required by section 176.291.

See also Minn. Stat. § 176.291(b) (listing required elements of a section 176.271 petition). Johnson also contends that his claim for reimbursement presents a "dispute as to a question of law or fact" regarding Koehnen's compensation claim under section 176.291. *See* Minn. Stat. § 176.291(a). Although he insists that he was not a party to the prior proceeding, Johnson summarily asserts that he now qualifies as a "party" entitled to "file a petition with the commissioner" under section 176.291. *See id.* Our precedent, along with other sections of the Workers' Compensation Act, confirms that neither statute allows a potential intervenor to pursue a collateral attack when the potential intervenor knew of his right to intervene in an employee's pending proceeding but chose not to do so.

A.

We begin with Johnson's claim under section 176.271. *Tatro v. Hartmann's Store* is instructive. 204 N.W.2d 125 (Minn. 1973). In *Tatro*, insurers moved to intervene and also filed a joint claim petition seeking reimbursement under Minn. Stat. § 176.271 after the employee and employer had finalized a settlement award. 204 N.W.2d at 126–27.

Notably, the insurers in *Tatro* did not know of the workers' compensation proceeding while the claim was pending. Nevertheless, we held that the insurers' claim petition under section 176.271 was procedurally defective because they lacked standing to assert an independent claim. *Id.* at 128. Johnson insists that *Tatro* is inapposite because it "was based upon completely different statutory language." Johnson's argument fails for two reasons.

First, while we acknowledge that the Legislature has significantly amended portions of the Act in the 47 years since *Tatro*,[2] the statutory provision at issue in *Tatro* has remained substantially the same. *Compare* Minn. Stat. § 176.271 (2018), *with* Minn. Stat. § 176.271 (1971). The presumption that the Legislature intends to change the law when it amends a statute "will not apply where it appears on examination that the statutory amendment was only for the purpose of rearrangement, clarification, or to make a second statute applicable to a situation theretofore covered by another statute." *Washington Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emp., Council No. 91*, 262 N.W.2d 163, 168 n.5 (Minn. 1978). Here, the post-1971 amendments to section 176.271 direct the petitioner to "include the information required by section 176.291" in a petition filed under section 176.271 petition. *Compare* Minn. Stat. § 176.271 (2018), *with* Minn. Stat. § 176.271 (1971). These changes do not work any substantial change to the meaning of

[2] *See Kline v. Berg Drywall, Inc.*, 685 N.W.2d 12, 25 (Minn. 2004) (noting that "over the years, workers' compensation has become more complex, having gone through major reforms," resulting in separate sets of laws that apply according to the date of injury); *see generally* Douglas P. Seaton, Minn. House of Representatives Research Dep't, The Workers' Compensation Study Commission of 1977–79 and its Impact on Workers' Compensation Legislation (1981) (discussing changes made shortly after *Tatro*).

the statute regarding the issue of a potential intervenor's right to initiate a claim. *See* Minn. Stat. § 645.17(4) (2018) (instructing that when we have "construed the language of a law," the Legislature "intends the same construction" of that language "in subsequent laws on the same subject matter"); *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 172 (Minn. 2010) (concluding that amendments that merely clarified the law did not alter our prior construction of a statute).

Second, as we have repeatedly explained since *Tatro*, "[w]hile a health or disability insurer has a right of reimbursement, it cannot initiate a claim on its own. It can only intervene in an existing proceeding . . . ." *See Le v. Kurt Mfg.*, 557 N.W.2d 202, 204 (Minn. 1996); *Mann v. Unity Med. Ctr.*, 442 N.W.2d 291, 293 n.3 (Minn. 1989); *Freeman v. Armour Food Co.*, 380 N.W.2d 816, 820 (Minn. 1986); *Johnson v. Blue Cross & Blue Shield of Minn.*, 329 N.W.2d 49, 52 (Minn. 1983). Although these cases happened to involve insurers, not health care providers, for the reasons that follow, we conclude that their holdings apply with equal force to all potential intervenors, including the health care provider in this case.

"We are 'extremely reluctant to overrule our precedent under principles of stare decisis and require a compelling reason' before we will do so." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 230 (Minn. 2020) (quoting *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 645 (Minn. 2019)). Our longstanding precedent clearly provides that the right to intervene is not accompanied by the right to initiate a claim. To reach this conclusion, we have interpreted the statutory rights of potential intervenors—namely, insurers. *See, e.g.*, *Le*, 557 N.W.2d at 204. As we have often explained, "judicial

construction of a statute becomes part of the statute as though written therein." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012). For this reason, "[t]he doctrine of stare decisis has special force in the area of statutory interpretation because the Legislature is free to alter what we have done." *Schuette v. City of Hutchinson*, 843 N.W.2d 233, 238 (Minn. 2014).

The Act does not distinguish the rights of one category of potential intervenors from another. *See generally* Minn. Stat. § 176.361. By definition, the right to intervene depends on whether a person has an interest in a workers' compensation matter, "such that the person may either gain or lose by an order or decision." *Id.*, subd. 1. Here, the interest Johnson seeks to assert by initiating a proceeding for reimbursement is the same interest that he had the opportunity to protect through intervention. Johnson's choice to "exercise his right to *not* intervene" does not shield him from the reality that he was afforded the opportunity to intervene precisely because he had something to lose. Absent a compelling reason to overrule our precedent by carving out an exception to our well-established rule for a special subset of potential intervenors, Johnson's claim for reimbursement under Minn. Stat. § 176.271 must fail.

B.

Next, we consider Johnson's claim under section 176.291. Johnson admits that "[t]here is no statutorily established procedure for challenging an award on stipulation that includes a provision purporting to extinguish the legal rights of a potential intervenor" but argues that the language of Minn. Stat. § 176.291 "is broad enough to encompass the Petition [that he] filed." We disagree.

We have long held that when a conflict exists between two or more statutory provisions, the specific provisions control. *See Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (citing *Beck v. Groe*, 70 N.W.2d 886, 895 (Minn. 1955)). Although we commonly apply the "general/specific canon" to competing provisions of the same statute, the canon applies in equal force to separate statutes that are "interrelated and closely positioned" parts of a comprehensive scheme, existing side-by-side. *Id.* (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)). We are particularly inclined to consider the general/specific canon when, as here, the Legislature enacted a comprehensive scheme to "target[] specific problems with specific solutions." *Id.* Accordingly, we consider the general language of section 176.291 in the context of the workers' compensation scheme as a whole.

The Act specifically identifies health care providers as potential intervenors, and provides numerous mechanisms for intervenors to protect their interests and pursue payment, even when an employee chooses to settle a claim. *See generally* Minn. Stat. § 176.361 (defining the intervention rights of potential intervenors, including health care providers); Minn. Stat. § 176.521 (2018) (defining the procedures for settlements involving intervenors, including partial settlements that reserve an intervenor's interests).[3]

[3] Johnson additionally argued that the settlement was invalid because Minn. Stat. § 176.521 does not authorize the compensation judge to extinguish intervenors' rights via a settlement agreement. However, Johnson is not an intervenor precisely because he chose not to intervene; thus section 176.521 is inapplicable here. Additionally Minn. Stat. § 176.361, subd. 2 authorizes extinguishing the rights of someone who does not intervene.

For the reasons already discussed, Johnson's argument that the right to intervene must be coupled with the right to initiate a proceeding is fundamentally flawed. *See Freeman*, 380 N.W.2d at 820 ("[T]his is only a right to intervene. Chapter 176 does not give the [appellant] standing to initiate any . . . petition on its own."). If anything, we find that the specific reference to a provider's right to intervene draws attention to the omission of any specific right to petition under section 176.291. *See, e.g.*, *Krueger*, 781 N.W.2d at 863 ("When interpreting a statute to determine if it creates a cause of action, we do not ask whether the statute imposes a limitation on an otherwise unlimited claim, but instead determine whether the statute actually *provides* a cause of action to a particular class of persons." (emphasis added)).

The Act also specifies proper mechanisms for ensuring that providers receive prompt payments. *See* Minn. Stat. § 176.135, subd. 6 (2018) (requiring the employer or insurer to pay a provider any portion of an undisputed charge "as soon as reasonably possible, and no later than 30 calendar days after receiving the bill"); Minn. Stat. § 176.191, subd. 1 (2018) (resolving liability disputes when an injury is compensable). These provisions do not apply in this case, however, because the compensability of Koehnen's injury is unresolved. We recognize that if Koehnen had other forms of insurance, the Act would require his primary insurer to pay Johnson until a compensation judge determined whether the employer were liable for these claims. *See* Minn. Stat. § 176.191, subd. 3 (2018). But Koehnen is otherwise uninsured. The Legislature did not enact a parallel provision to provide for prompt payment when an injured employee has no other forms of

insurance. If this were an oversight, it would be one for the Legislature to fix. *Minn. Brewing Co. v. Egan & Sons Co.*, 574 N.W.2d 54, 62 (Minn. 1998).

We find the Legislature's reference to specific, alternative remedies that may be available to providers especially compelling. The section that addresses medical bills states that a provider must submit a claim for payment before the provider "collect[s], attempt[s] to collect, refer[s] a bill for collection, or commence[s] an action for collection against the employee, employer, or any other party." Minn. Stat. § 176.135, subd. 7 (2018). Significantly, filing a petition under section 176.291 is not included in this list. *Id.*; *cf.* Minn. Stat. § 176.137, subd. 6 (2018) (expressly providing, in contrast, that a proceeding to resolve renovation disputes "shall be initiated by petition under sections 176.271 and 176.291"); Minn. R. 1420.1820, subp. 3A (2019) (directing an intervenor to file a section 176.291 petition). The alternative remedies that are contemplated by section 176.135, subdivision 7, are governed by statutes that fall outside of the jurisdiction of a workers' compensation court, supporting our conclusion that the Legislature anticipated that providers would seek reimbursement for disputed claims in some other forum.[4]

[4] Because the issue is not properly before us, we decline to decide the effects, if any, of Minn. Stat. § 176.361, subd. 2 on these remedies. *See* Minn. Stat. § 176.361, subd. 2(a) ("Where a motion to intervene is not timely filed under this section, the potential intervenor interest shall be extinguished and the potential intervenor may not collect, or attempt to collect, the extinguished interest from the employee, employer, insurer, or any government program.").

In summary, Johnson's interpretation of the general language of section 176.291 overlooks its relationship to more specific provisions of the Act. When the general and specific provisions of the Act are read in harmony, Johnson's construction of the statute becomes unreasonable. Because we conclude that the general language of section 176.291 does not create a cause of action for health care providers, Johnson's petition was correctly dismissed.[5]

C.

Johnson insists that his claim survives as a collateral attack on a finalized award on stipulation because he was "completely excluded from all settlement negotiations." Read in harmony, the rules allow an *intervenor* to file a petition under Minn. Stat. § 176.291 "if [the] intervenor . . . claims to have been effectively excluded . . . from settlement negotiations." Minn. R. 1415.1100, subp. 4 (2019); *see* Minn. R. 1420.1850, subp. 3A.

Johnson's petition, which relies on subpart 3B, ignores the plain language of Minn. R. 1420.1850, subp. 3, which applies to intervenors only.[6] Minn. R. 1420.1850, subp. 3A provides:

> If the parties have not fully resolved the *intervenor* claim following the procedure in subpart 1 and there is no action pending at the office, a party must file a written petition under Minnesota Statutes, section 176.291, for a

[5] Because Johnson does not have a statutory right to assert, he lacks standing to invoke the original jurisdiction of a workers' compensation court; thus, we do not reach the merits of Johnson's constitutional claims. *See Larson v. Le Mere*, 18 N.W.2d 696, 699 (Minn. 1945) (discussing the appellate jurisdiction of our court over workers' compensation proceedings).

[6] Johnson concedes that Minn. R. 1420.1850, subp. 4, which applies to potential intervenors who are not notified of their right to intervene, does not apply to the facts of this case. *See* Minn. R. 1420.1850, subp. 4 (2019).

> hearing on the merits *of the intervening party's claim*. The petition must be filed *within 30 days* after an award on stipulation is served and filed.

(Emphasis added); *see also id.*, subp. 3B ("The *intervenor* may present evidence that the *intervenor* was effectively excluded from meaningful settlement negotiations through lack of an offer of settlement, lack of notice of the right to intervene, or an unreasonable or bad faith offer of settlement." (emphasis added)). Because Johnson chose *not* to intervene, he is not an intervenor and the procedural protections of subpart 3 do not apply. Accordingly, Johnson's collateral attack under Minn. Stat. § 176.291 and Minn. R. 1420.1850, subp. 3B fail as a matter of law.[7]

CONCLUSION

For the foregoing reasons, we affirm the decision of the Workers' Compensation Court of Appeals.

Affirmed.

MOORE, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

[7] In its brief, Flagship Marine requested attorney fees. The request is denied. *See* Minn. Stat. § 176.511, subd. 5 (2018).