STATE OF MINNESOTA

IN SUPREME COURT

A19-1425

Court of Appeals — McKeig, J.

Eric Reetz,

Respondent,

vs.

Filed: March 17, 2021
Office of Appellate Courts

City of Saint Paul,

Appellant.

Francis J. Rondoni, Christopher P. Renz, Gary K. Luloff, Chestnut Cambronne PA, Minneapolis, Minnesota, for respondent.

Lindsey M. Olson, City Attorney, Kyle J. Citta, Assistant City Attorney, Saint Paul, Minnesota, for appellant.

Susan L. Naughton, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, PA, Minneapolis, Minnesota, for amicus curiae Minnesota Police and Peace Officers Association Legal Defense Fund.

S Y L L A B U S

1. The court of appeals possessed jurisdiction by writ of certiorari over a municipality's quasi-judicial decision of whether to defend and indemnify an employee under Minn. Stat. § 466.07 (2020).

2. An off-duty police officer working as a private security guard at a homeless shelter was not "acting in the performance of the duties of the position" of a police officer when he allegedly failed to detect a knife that was banned only by the shelter's policies and he was therefore not entitled to defense and indemnification under section 466.07, subdivision 1.

Reversed.

O P I N I O N

McKEIG, Justice.

The question in this case is whether a municipality is obligated to defend and indemnify a police officer under Minnesota Statutes section 466.07 (2020), in connection with off-duty work. The City of Saint Paul concluded that its employee, Officer Eric Reetz, was not entitled to defense and indemnification when Reetz was sued for allegedly failing to detect a knife at a homeless shelter while working off duty as a private security guard. The court of appeals, by writ of certiorari, reversed in a split decision. The City petitioned for further review, asserting that the court of appeals misinterpreted section 466.07 and did not properly defer to the City's decision. Because we conclude that Reetz was not "acting in the performance of the duties of the position" of a police officer under section 466.07, subdivision 1, when he allegedly failed to detect the knife at the homeless shelter, the City

was not required to defend and indemnify him. We therefore reverse the decision of the court of appeals.

FACTS

Respondent Eric Reetz is a police officer employed by appellant City of Saint Paul. Reetz also worked part time as a private security guard at the Dorothy Day Center—a homeless shelter in Saint Paul—that is operated by Catholic Charities. Under Reetz's agreement with Catholic Charities, he was described as an independent contractor and his duties included assisting staff in examining clients' bags to ensure that "no weapons, alcohol, drugs, or other banned items are brought into the facility." Catholic Charities paid Reetz $40 per hour.

Under Saint Paul Police Department Policy 231.00, Reetz was required to have off-duty work approved by the Department. The policy also required Reetz to wear his uniform while working off duty and permitted him to use his patrol car with prior approval. The Department approved Reetz's off-duty work at the Dorothy Day Center, but was not a party to his agreement with Catholic Charities.

On the evening of December 30, 2016, Reetz was working at the shelter, allegedly in uniform and with his squad car present.[1] That evening, after Reetz's shift at the shelter ended, Timothy Dortch stabbed a woman—both clients of the shelter—with a knife that he

[1] Reetz admits that certain facts—including that he was wearing his uniform and had his squad car present—are not in the record, despite him having had an opportunity to submit such evidence to the City. He contends that the City was tasked with fact-finding and "should not be permitted to support its position by denying these extremely likely and undisputed facts." We ultimately need not consider these facts as they are not relevant to our conclusion.

smuggled in, allegedly during Reetz's shift. The victim sued Catholic Charities and Reetz for negligence, alleging that Reetz failed to detect Dortch's knife.

Reetz asked the City to defend and indemnify him under Minnesota Statutes section 466.07, subdivision 1. Section 466.07 provides that a municipality "shall defend and indemnify" its employees if they were "acting in the performance of the duties of the position" and are "not guilty of malfeasance in office, willful neglect of duty, or bad faith." The City asked Reetz to explain his rationale for why he qualified under the statute. Reetz, who was represented by counsel, responded by citing case law to assert that off-duty police officers who provide private security services can also be performing police duties because they "perform these duties while in uniform and maintain the arrest power" as if they were on duty. The City then invited Reetz to submit any further documentation to support his claim and offered him the opportunity to make his case in person to the City Attorney.

The City Attorney met with Reetz and his attorney, but Reetz did not submit any additional written materials for the City Attorney to consider. The City Attorney then wrote to Reetz two weeks later, explaining the City's conclusion that Reetz was not acting in the performance of his duties as a police officer while he was working off duty at the shelter. Specifically, the City concluded that Reetz was not performing any "law enforcement duties" at the time of the events in the victim's complaint and that he "was not present at the time of the assault." Accordingly, the City concluded that it was not required to defend and indemnify Reetz, and noted that its decision was final and appealable. Reetz requested that the City reconsider its decision, which it declined to do.

Reetz petitioned the court of appeals for a writ of certiorari. In a 2-1 decision, the court of appeals reversed, concluding that the City's decision was based on an erroneous interpretation of the law and that Reetz was acting in the performance of his duties as a police officer during his shift at the shelter on the day of the stabbing. *Reetz v. City of St. Paul*, No. A19-1425, 2020 WL 2703843, at *6 (Minn. App. May 26, 2020). The court of appeals concluded that Reetz was acting in a dual capacity as a police officer and a private security guard. *Id.* at 5 (citing *State v. Childs*, 269 N.W.2d 25, 27 (Minn. 1978)). The court of appeals decided that under the dual-capacity doctrine, Reetz's authority to arrest, even in the absence of an exercise of that authority, qualified him for defense and indemnification under section 466.07 because a private security guard would have no such authority. *Id.* at *4–5. The court noted that Reetz was "keeping the peace while in uniform . . . as a visible representative of the city and its police department." *Id.* at *5.

The dissent, in contrast, determined that Reetz was acting in a purely private capacity at the time. *Id.* at *6 (Smith, J., dissenting). In particular, the dissent emphasized that Reetz's "only authority to stop clients and search them for weapons was grounded in his role as a security officer enforcing the center's no-weapons policy, not in his role as a peace officer." *Id.*

The City petitioned for review, which we granted. After briefing concluded, we ordered supplemental briefing from the parties on whether the court of appeals possessed jurisdiction to review the City's decision by writ of certiorari.

ANALYSIS

This case presents two issues. First, whether the court of appeals possessed jurisdiction to review by writ of certiorari the City's decision not to defend and indemnify Reetz under Minnesota Statutes section 466.07. Second, if the court of appeals did possess jurisdiction, whether Reetz was "acting in the performance of the duties of the position" of police officer under section 466.07, subdivision 1, when he allegedly failed to detect a knife while performing off-duty security work at the Dorothy Day Center.

I.

We begin with the issue of jurisdiction. The court of appeals, citing its own precedent, stated that a municipality's "decision not to defend and indemnify an employee under Minn. Stat. § 466.07 is a quasi-judicial decision" subject to certiorari review. *Reetz*, 2020 WL 2703843, at *2 (citing *Anzures v. Ward*, 890 N.W.2d 127, 134 (Minn. App. 2017), *rev. denied* (Minn. Mar. 28, 2017)). Courts may address issues of subject matter jurisdiction sua sponte, and parties may not waive that jurisdiction. *See McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 585 (Minn. 2016). We review the court of appeals' jurisdiction de novo. *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005). Jurisdiction here depends on statutory interpretation and whether there is a quasi-judicial decision, each of which we review de novo. *Id.* at 428.

"When a statutory right to review a municipal body's quasi-judicial decision is lacking," certiorari is the exclusive method to seek judicial review. *Cnty. of Wash. v. City of Oak Park Heights*, 818 N.W.2d 533, 539 (Minn. 2012). A municipality's decision is

quasi-judicial if it involves "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Envtl. Advoc. v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999). "In general, quasi-judicial decisions 'affect the rights of a few individuals analogous to the way they are affected by court proceedings.' " *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 609 (Minn. 2016) (quoting *Interstate Power Co. v. Nobles Cnty. Bd.*, 617 N.W.2d 566, 574 (Minn. 2000)).

We conclude that the City's decision not to defend and indemnify Reetz under section 466.07 was quasi-judicial. There was a genuine dispute over whether Reetz was entitled to defense and indemnification under section 466.07, and the City gathered and weighed evidence to reach a decision on that issue. Moreover, the process used by the City—offering Reetz the opportunity to submit evidence, gathering evidence, affording Reetz an opportunity to state his case, and producing a decision based on the facts and law—resembles judicial proceedings. *See Handicraft Block Ltd. P'ship v. City of Minneapolis*, 611 N.W.2d 16, 20–21 (Minn. 2000). The City then considered the evidence and made a final decision that Reetz was not acting in the performance of his duties as a police officer when he allegedly failed to detect the knife at the Dorothy Day Center. Once the City Attorney issued a decision on defense and indemnification, there is no further right of review provided under the City's process and the City's decision was binding. *See Cnty. of Wash.*, 818 N.W.2d at 541; *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 662–63 (Minn. 2015). All three requirements for a quasi-judicial decision are therefore met and the City's decision was quasi-judicial.

Having concluded that the City's decision was quasi-judicial, we must now determine whether certiorari to the court of appeals was the exclusive mechanism to review the City's decision under section 466.07. Certiorari is not available if an alternate right of review is provided by statute or the appellate rules. *Nelson v. Schlener*, 859 N.W.2d 288, 292 (Minn. 2015). A comparison with the provision governing the defense and indemnification of state employees, Minn. Stat. § 3.736, subd. 9 (2020), is instructive. Section 3.736 provides that an employee is "conclusively presumed" to be acting within the scope of their employment if the employee's appointing authority issues a certificate declaring so. This determination, however, "may be overruled by the attorney general." *Id.* The statute then provides that the final determination "is a question of fact to be determined by a trier of fact based upon the circumstances of each case." *Id.* In *Nelson*, we relied on the plain language of section 3.736 to conclude that the "trier of fact" was neither the state agency nor the court of appeals. 859 N.W.2d at 294–95. A trier of fact, we held, "implies an objective determination by a neutral party weighing competing factual claims." *Id.* at 294. And we noted that it was "difficult to view the agency as an objective trier of fact when it made the scope-of-employment decision in the first instance." *Id.* Because the statute provided for a right of review, we concluded that certiorari was not available. *Id.* at 295.

In contrast, the defense and indemnification provision for municipal employees under section 466.07 does not contain the same, or indeed any, right of review like that in the statute governing the defense and indemnification of state employees. Nor does section 466.07 provide for any fact finder other than the municipality, unlike the provision for state

employees. Section 466.07 simply directs the municipality to defend and indemnify its employee when two conditions are met; it does not specify that the determination of those conditions must be made in the first instance by a court. Reetz asserts, however, that declaratory judgment in the district court provides a right of review. *See* Minn. Stat. § 555.01 (2020). But we have explicitly rejected the use of declaratory judgment under similar circumstances. *See Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 675 (Minn. 1990). We have based these decisions on the separation of powers, which "require[s] that the judiciary refrain from a de novo review of administrative decisions." *Id.* at 674.

Such deference is particularly appropriate here. The municipality will naturally have the best understanding of its employees' duties. And while Reetz raises a concern that the municipality will be biased as a decision maker, if there is any such evidence or the municipality produces a deficient record, we are confident that the court of appeals will, if appropriate, reverse and remand. *See Rochester City Lines, Co.*, 868 N.W.2d at 664–65.

The court of appeals' conclusion in *Anzures v. Ward* is therefore consistent with our analysis: a quasi-judicial decision by a municipality determining eligibility for defense and indemnification under section 466.07 may only be appealed by writ of certiorari. *See* 890 N.W.2d at 133. The court of appeals accordingly possessed jurisdiction to review the City's quasi-judicial decision here.

II.

We now reach the merits of whether Reetz is entitled to defense and indemnification under section 466.07. We review a quasi-judicial decision for whether it is "arbitrary,

oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (citation omitted) (internal quotation marks omitted). To decide whether the City's decision was based on an erroneous theory of law, we must first determine whether the City applied the correct interpretation of section 466.07.

We review statutory interpretation de novo. *Nelson*, 859 N.W.2d at 292. The goal of statutory interpretation is to ascertain and effectuate the intent of the Legislature. Minn. Stat. § 645.16 (2020). The first step in such an inquiry is to determine whether the statute's language, on its face, is unambiguous. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "[W]hen the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous and we must apply its plain meaning." *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020). If a statute does not define a word or phrase, we construe words or phrases according to their plain and ordinary meaning. *Id.* In determining the plain and ordinary meaning of a word or phrase, we may consider dictionary definitions. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016).

A.

A municipality must defend and indemnify its officers or employees if they were "acting in the performance of the duties of the position" and are "not guilty of malfeasance in office, willful neglect of duty, or bad faith." Minn. Stat. § 466.07, subd. 1. Only the former requirement is at issue here. We must then determine what it means for a municipal officer or employee—specifically an off-duty police officer—to act in the performance of the duties of the position of police officer.

The parties do not contend that the statute is ambiguous, but they do dispute the meaning of the word "acting" in section 466.07. The City asserts that a discrete act is required while Reetz contends that behavior alone is sufficient. But we "do not read words in isolation; the meaning of a word is informed by how it is used in the context of a statute." *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020); *see also Culver*, 941 N.W.2d at 140. The word "acting" is but one part of the entire phrase "acting in the performance of the duties of the position." Minn. Stat. § 466.07, subd. 1. We therefore look to the whole phrase to interpret section 466.07 "to harmonize and give effect to all its parts, presuming that the Legislature intended the entire statute to be effective and certain." *State v. Bakken*, 883 N.W.2d 264, 268 (Minn. 2016) (citation omitted) (internal quotation marks omitted).

Both parties assert that the dual-capacity doctrine is the proper framework for determining whether an off-duty police officer was "acting in the performance of the duties of the position" of police officer under section 466.07, subdivision 1. They disagree, however, on the contours of this doctrine. The City maintains that some discrete act that is unique to the authority of police officers is required, whereas Reetz argues that the mere authority to act as a police officer suffices, even if that authority is not specifically exercised.

We agree with the parties that the statute is not ambiguous. We first note that the Legislature has defined a police officer as someone "charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest." Minn. Stat. § 626.84, subd. 1(c) (2020); Minn. Stat. § 626.88,

subd. 1(b) (2020). A security guard is similarly defined as someone who prevents and detects crimes, *see* Minn. Stat. § 626.88, subd. 1(c), and can "enforce[] the policies and rules of the security guard's employer related to crime reduction." But unlike a police officer, a security guard does not have the "full power of arrest"[2] nor is a security guard charged with "enforcement of the general criminal laws." Minn. Stat. § 626.84, subd. 1(c). The Legislature has therefore unambiguously provided both a definition for the duties of a police officer and distinguished those duties from the duties of a private security guard. When determining whether a police officer working off duty as a private security guard "is acting in the performance of the duties of the position" of a police officer under section 466.07, we conclude that the off-duty officer must be performing some duty under their law enforcement authority, such as exercising the arrest power or conducting a search incident to an arrest.[3]

The dual-capacity doctrine supports this interpretation of section 466.07 in the context of a police officer performing off-duty private security services. This doctrine provides that an off-duty police officer working in a private capacity (such as private security) can "assume[] the additional role of a police officer" when exercising the statutory

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[2] Indeed, it is explicitly illegal for a person who is not a peace officer to "perform[] or attempt[] to perform an act, duty, or responsibility reserved by law for licensed [police] officers." Minn. Stat. § 626.863 (2020). And while private citizens may effectuate a warrantless arrest under certain circumstances, *see* Minn. Stat. § 629.37 (2020), it is not their *duty* to do so, unlike for a police officer.

[3] To the extent that an individual could be performing the duties of both a private security guard and a police officer with the same act, that case is not before us and we offer no opinion on the proper outcome.

authority of a police officer (such as effectuating a warrantless arrest based on probable cause). *State v. Childs*, 269 N.W.2d 25, 27–28 (Minn. 1978). The dual-capacity doctrine accordingly acknowledges that an off-duty officer retains the ability to act with the authority of a police officer when permitted by statute, while simultaneously recognizing that absent a specific act unique to the authority of a police officer, such as an arrest or search based on probable cause, an off-duty officer operates as a private individual. *Id.* at 27. In essence, the exercise of law enforcement powers is what sets apart a police officer from a private security guard. But authority alone, absent some exercise of that authority unique to a police officer, is insufficient to satisfy the doctrine and, by extension, the defense and indemnification statute.

Reetz maintains, however, that any actions by an off-duty police officer that *result* in preventing or detecting crime, *see* Minn. Stat. § 626.84, subd. 1(c)(1), or protecting the general welfare, *see State v. Ivy*, 873 N.W.2d 362, 368 (Minn. App. 2015), must qualify for defense and indemnification. We disagree. Section 466.07 focuses on whether the officer was "acting in the performance of the duties of the position," not whether the officer's actions achieved a particular result. The Legislature could have included results-oriented language in the statute, but it did not do so. And we "do not add words or phrases to unambiguous statutes." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014). Moreover, as we note above, a private security guard is similarly tasked with preventing and detecting crime. *See* Minn. Stat. § 626.88, subd. 1(c)(1)–(2). Because the focus under the statute is what the off-duty officer specifically did, not the results achieved, we similarly reject Reetz's results-oriented arguments.

Based on our analysis, we hold that the phrase "acting in the performance of the duties of the position" in section 466.07 as applied to a police officer working off duty as a private security guard means that, consistent with the dual-capacity doctrine, the off-duty officer must be effectuating their duties as a police officer, such as by exercising their lawful authority to arrest.[4]

B.

We now turn to the City's application of section 466.07 to the facts of this case. We review a quasi-judicial decision made by a municipality under a "limited and nonintrusive standard of review." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012) (citation omitted) (internal quotation marks omitted). We must uphold a municipality's quasi-judicial decision if it has explained "how it derived its conclusion" and if that conclusion "is reasonable on the basis of the record." *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 330 (Minn. 1983). However, we review questions of law de novo. *Dietz*, 487 N.W.2d at 240.

Reetz and the City disagree on the proper standard of review. Reetz insists that application of a statute to undisputed facts is a question of law that is reviewed de novo. The City counters that review of a quasi-judicial decision by a municipality is afforded deference. Essentially, we must determine if the issue of whether a municipal employee was "acting in the performance of the duties of the position" under section 466.07,

[4] Under the dual-capacity doctrine, which focuses on Reetz's actions, certain facts—for example, whether the Department approved his off-duty employment and whether he was wearing his uniform or using his squad car—are not relevant.

subdivision 1, is a question of fact, to which we give the municipality deference, or a question of law, which we review without deference.

Under the defense and indemnification provision for state employees, the question of whether an employee was acting within the scope of their employment is explicitly a question of fact. Minn. Stat. § 3.736, subd. 9. And when determining the vicarious liability of an employer, the issue of whether an employee was acting within the scope of their employment is also a question of fact. *See Snilsberg v. Lake Wash. Club*, 614 N.W.2d 738, 745 (Minn. 2000); *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11, 15 (Minn. 1979) ("No hard and fast rule can be applied to resolve the 'scope of employment' inquiry. Rather, each case must be decided on its own individual facts."). The question under the municipal employee statute is a somewhat narrower one than under the state employee statute. The Legislature has defined "scope of office or employment" to mean "the employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned by competent authority." Minn. Stat. § 3.732, subd. 1(3). Section 466.07, by contrast, contains no similar language requiring the employee to have been acting on behalf of the municipality.

The precise "duties" of a particular employee will necessarily differ from employee to employee. It seems to us that whether a municipal employee was "acting in the performance of the duties of the position" is better deemed a question of fact, to which we grant the municipality deference. "[B]ut when the evidence is conclusive on all the elements or there is no evidence to support a necessary element, there is no fact issue, and the scope of employment is determined as a matter of law." *Snilsberg*, 614 N.W.2d at 745.

Thus, when we interpret the meaning of the municipal employee defense and indemnification statute to contain a necessary element, and the undisputed facts before us show that a necessary element is missing, we may decide the issue as a matter of law. *See id.*

We have concluded that, in the context of a police officer, whose duties are defined in part by statute and who is working off duty as a private security guard, the plain meaning of section 466.07 requires some exercise of the officer's law enforcement authority. The facts undisputedly show that Reetz was not engaged in such law enforcement duties at the time he allegedly failed to detect the knife. Absent reasonable suspicion, a police officer generally has no authority to search a person's belongings at a private facility. *See Childs*, 269 N.W.2d at 27; *State v. Flowers*, 734 N.W.2d 239, 251–52 (Minn. 2007). Reetz, however, was searching persons and belongings for weapons and alcohol that, while not illegal, Catholic Charities prohibited on the premises. Reetz would have had no authority *as a police officer* to confiscate the knife from the client. He was instead acting in a purely private capacity at that time. *See Snilsberg*, 614 N.W.2d at 745.

We therefore conclude that, as a matter of law, Reetz was not acting in the performance of his duties as a police officer when he allegedly failed to detect a knife that was banned only by the shelter's policies. The court of appeals' decision to the contrary is accordingly reversed.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.