STATE OF MINNESOTA

IN SUPREME COURT

A20-0076

Court of Appeals — Hudson, J.

In re Jeffrey Krogstad, M.D., et al.,
Petitioners,

Darrell Manselle,

Respondent,

vs.

Jeffrey Krogstad, M.D., et al.,

Appellants.

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S Y L L A B U S

Because the word "several" as used in the context of venue motions means "separate," two defendants may unite in a request under Minnesota Statutes section 542.10 (2020), to change venue when a civil action is brought in a county where one defendant resides but where the cause of action did not arise.

Reversed; writ of mandamus issued.

O P I N I O N

HUDSON, J.

Minnesota Statutes section 542.10 (2020), governs change of venue as of right. Appellants, the two defendants in this medical malpractice case, moved for a change of venue under Minn. Stat. § 542.10, which allows "several defendants residing in different counties" to compel the transfer of venue when the majority of them unite in the demand. The district court denied the motion, concluding that two defendants did not constitute "several defendants." The court of appeals agreed, and it therefore denied appellants' petition for a writ of mandamus. We granted review to decide the meaning of the word "several" in Minn. Stat. § 542.10. We conclude that "several" means "separate," and therefore we reverse the decision of the court of appeals and grant the petition for a writ of mandamus.

FACTS

Darrell Manselle, respondent, obtained medical treatment from appellant Dr. Jeffrey Krogstad at a medical clinic operated by appellant Lakewood Health System. Manselle alleged that because Dr. Krogstad did not timely refer him to a specialist for treatment of a

vascular condition in his left foot, Manselle suffered an avoidable partial amputation of his left leg. Manselle sued Dr. Krogstad and Lakewood Health for medical negligence. The clinic where Manselle obtained treatment from Dr. Krogstad is located in Todd County. Manselle is a resident of Kandiyohi County, as is Dr. Krogstad. There has been no finding concerning where Lakewood Health is located for purposes of venue.

Manselle sued appellants in Kandiyohi County, and both appellants joined in moving to transfer venue to Todd County under Minn. Stat. § 542.10.[1] Appellants also moved in the alternative for a change of venue, asserting *forum non conveniens* under Minn. Stat. § 542.11(4) (2020). The district court denied the change of venue on both grounds. The district court found that the second prong[2] of Minn. Stat. § 542.10 was not met, because two defendants could not be considered "several" defendants for purposes of this statute. The district court relied on dicta from a decision of the court of appeals, *Riddle v. Ringwelski*, 451 N.W.2d 372, 373 (Minn. App. 1990), to conclude that "several" generally means more than two.

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[1] "If the county designated in the complaint is not the county in which the cause of action or some part thereof arose and if there are several defendants residing in different counties, the trial shall be had in the county upon which a majority of them unite in demanding or, if the numbers be equal, in that whose county seat is nearest." Minn. Stat. § 542.10.

[2] To be entitled to a change of venue under the statute, defendants must establish two prongs. The first is that the "cause of action or some part thereof" did not arise in the county designated by the complaint. Minn. Stat. § 542.10. Neither party disputes that the original county—Kandiyohi County—is not the county in which "the cause of action or some part thereof arose." Thus, the first prong of section 542.10 is satisfied. The second prong, which requires agreement by the majority of "several defendants residing in different counties," contains the language giving rise to this appeal.

Appellants then sought a writ of mandamus, which the court of appeals denied. In a published special term opinion the court of appeals affirmed the district court's finding that two (and only two) defendants do not meet the statutory criteria of "several defendants" in section 542.10. *In re Krogstad*, 941 N.W.2d 750, 754 (Minn. App. 2020). The court of appeals concluded that "several" must mean "more than two." *Id.* at 753. Specifically, after consulting various dictionaries, the court of appeals concluded that there was more than one reasonable interpretation of "several" and therefore the language of the statute was ambiguous. Then, relying on the canon against surplusage, it concluded that "[b]ecause 'defendants' is already plural, interpreting 'several defendants' to include two separate defendants would give no distinct meaning to the word 'several.' Only by interpreting it to mean more than two does 'several' have a distinct meaning from defendants." *Id.* at 753.

ANALYSIS

Minnesota Statutes section 542.10, in relevant part, provides:

> If the county designated in the complaint is not the county in which the cause of action or some part thereof arose and if there are *several defendants* residing in different counties, the trial shall be had in the county upon which a majority of them unite in demanding or, if the numbers be equal, in that whose county seat is nearest.

(Emphasis added.) Determining the meaning of the emphasized text presents a question of statutory interpretation, which we review de novo.[3] *Sumner v. Jim Lupient Infiniti*,

[3] Mandamus is an extraordinary remedy, used to compel the performance of a duty clearly imposed by law. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006). We review de novo the court of appeals' decision to deny the petition

865 N.W.2d 706, 708 (Minn. 2015). Our goal in statutory interpretation is to "ascertain and effectuate the intention of the legislature." *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (citation omitted) (internal quotation marks omitted). Statutory interpretation begins by assessing whether the statutory language, on its face, is ambiguous. *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018). A word is ambiguous if it is "subject to more than one reasonable interpretation." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (citation omitted) (internal quotation marks omitted). We have cautioned, however, that simply "[b]ecause a word has more than one meaning does not mean it is ambiguous. The sense of a word depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise." *Bd. of Regents of Univ. of Minn. v. Royal Ins. Co.*, 517 N.W.2d 888, 892 (Minn. 1994).

In the absence of statutory definitions, we give words their plain and ordinary meaning. *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019). "We may consider dictionary definitions to determine the meaning of a statutory term." *Id*. Although the parties both contend that the word "several" is unambiguous, we are presented with three potential dictionary definitions of "several," with each party proffering a different definition in support of their position. *See The American Heritage Dictionary of the English Language* 1652 (3d ed. 1992) (defining "several" as "[b]eing of a number more than two or three but not many . . . . Single; distinct . . . ."); *cf. The Random House Dictionary of the English Language* 1754 (2d ed. 1987) (defining "several" as "being more

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for a writ of mandamus. *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017).

than two but fewer than many in number . . . . [I]ndividual . . . . [S]eparate"). Appellants' position is that the best definition is "separate," which they suggest is functionally equivalent to "two or more." Respondent's position is that "several" means "more than two." Neither party advocates for adopting the third option, "more than two, but fewer than many," but appellants contend that this definition is the only alternative to their proposed definition. Appellants point out that all dictionaries include "more than two, but fewer than many" as one definition, and argue that respondent is surgically separating a clause to create an artificial and incomplete definition.

To resolve whether the statute is ambiguous, we first address respondent's contention—upon which the court of appeals based its holding—that the word "several" must mean "more than two," or the term would be superfluous because the Legislature already pluralized the word "defendants" in the text of the statute. If "several defendants" could apply to two defendants, the argument goes, then "several" would be unnecessary. This argument relies on the canon against surplusage, which states that as a general rule, "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2020). Thus, each word must be given a distinct and non-identical meaning. *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017).

Initially, we observe that the canon against surplusage, "like all other canons, . . . must be applied with judgment and discretion, and with careful regard to context." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012). As Scalia and Garner explain, "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in

the ill-conceived but lamentably common belt-and-suspenders approach." *Id.* at 176−77. In other words, context matters.

First, Section 542.10 begins with one long block paragraph, which lists several rules for transfer of venue in single-defendant cases, before switching mid-paragraph from the singular to address transfer of venue in situations involving multiple defendants. Even if we were to apply the canon against surplusage, we conclude that the word "several" serves multiple purposes in this context and is thus not superfluous. First, the text of section 542.10 refers to a singular defendant four times—in three of the instances referring to "the defendant," emphasizing the singularity—before switching to "several defendants." Including the word "several" serves the purpose of demarcating and drawing attention to this transition. The transitional function of the word "several" highlights another point in favor of appellants' interpretation of the word as meaning "separate" or simply "more than one." It is most logical to read the word "several" as indicating a transition between the many rules for single-defendant cases and the rule for what happens in the case of more than one defendant. Even applying this canon would thus not compel us to adopt respondent's proposed definition outright.

Second, the Legislature has instructed us that "the singular includes the plural; and the plural, the singular." Minn. Stat. § 645.08(2) (2020). Under section 645.08(2), therefore, the phrase "defendants residing in different counties" could be interpreted to include "a defendant residing in a different county." It would not make sense to read this statute as "several defendant living in a different county." Under this canon, therefore, the addition of the word "several" clarifies that there must be more than one defendant living

in a different county. Otherwise, assuming the singular includes the plural, this statute would work interchangeably for one or multiple defendants, which would render it both illogical and useless.

Amicus Minnesota Association for Justice raises a counter argument. In two adjacent sections, Minn. Stat. §§ 542.09–.095, the Legislature uses the word "defendants" without first modifying it with "several."[4] According to the Association, this language suggests that the Legislature intentionally included the word "several" in section 542.10, while intentionally omitting it in related provisions, opting instead for simply pluralizing "defendants." We are not persuaded by this argument. The text of section 542.10 uses "defendants" quite differently than does the text of sections 542.09 and 542.095. The first sentence of section 542.09 reads: "All actions not enumerated in sections 542.02 to 542.08 and 542.095 shall be tried in a county in which one or more of the defendants reside when the action is begun or in which the cause of action or some part thereof arose." This is the only reference to "defendants" in the section. Similarly, section 542.095 is one sentence long and uses the phrase "the defendant or a majority of the defendants" only one time. In contrast, section 542.10 has one lengthy paragraph that uses the singular "defendant" four times before switching to the plural form of the word in the middle of the paragraph. Because the relevant portion of section 542.10 is a lengthy paragraph, it is different from

[4] "All actions not enumerated in sections 542.02 to 542.08 and 542.095 shall be tried in a county in which one or more of the defendants reside when the action is begun or in which the cause of action or some part thereof arose." Minn. Stat. § 542.09. Similarly, Minn. Stat. § 542.095 reads, "[An action] may be brought in the county where the action arose or in the county of the residence of the defendant or a majority of the defendants against whom the action is brought . . . ."

sections 542.09 and 542.095. It requires a demarcation of the transition, which was not required to make the Legislature's purpose clear in sections 542.09 and 542.095.

For their part, appellants identify the use of the word "several" in 257 Minnesota statutes and the Minnesota Constitution, arguing based on these uses that reading the word to mean "more than two, but less than many" would lead to absurd results in these provisions. Under the "more than two but less than many" interpretation, they contend, all of the statutes that use "several," and the governor's line item veto provision in the state constitution, would no longer apply when the provisions are applied to two of something (or for that matter, to "many"), be they items of appropriation,[5] defendants in an equitable action,[6] phases of a project,[7] or credit card numbers[8], to name a few examples given by appellants. For example, the governor would be able to veto portions of a bill that makes one appropriation of money, or three or more, but fewer than "many" appropriations, but not two. The issue we face in this case, of course, is limited to the interpretation of Minn. Stat. § 542.10; those other provisions are not before us. But this analysis of the word

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[5] *See* Minn. Const. art. IV, § 23 (stating that "[i]f a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill").

[6] *See* Minn. Stat. § 549.07 (2020) (providing that when there are "several" defendants in an equitable action, the court has discretion in awarding costs).

[7] *See* Minn. Stat. § 16E.03, subd. 1(g) (2020) (stating that breaking a project into "several phases" does not affect the cost thresholds, which must be computed on the full cost of all phases).

[8] *See* Minn. Stat. § 609.893, subd. 3(b) (2020) (when classifying an offense, allowing the aggregation of certain criminal offenses under a scheme or course of conduct involving "the same credit card number or several credit card numbers").

"several" across various statutes and the Minnesota Constitution suggests that this term is often used within the legal context to indicate separate subjects, and we thus need not be concerned with any potential grammatical redundancy.

Finally, and most persuasively, it appears highly improbable that the Legislature would include direction on proper transfer procedures in cases where there is only one defendant, three or more defendants, but not two defendants, especially if the omission is not made explicitly. Not only does the statute not compel the interpretation the court of appeals reached, it compels appellants' interpretation unambiguously. Thus, we conclude that "several" unambiguously means "separate."

Review of our precedents further supports our conclusion. Although we have never expressly defined the word "several," our case law provides useful insights into how we have interpreted other components of Minn. Stat. § 542.10. In *Dworsky v. Herbst*, 95 N.W.2d 19 (Minn. 1959), multiple defendants were sued to recover unpaid rent for a property in Anoka County. One defendant was served with the summons and complaint, and another was not. *Id*. at 20. The defendant who had not been served wished to join with the defendant who had been served in demanding a venue transfer. *Id*. at 21. The question before the court was the following: "What are the rights of a defendant named in a summons and complaint but not yet served with summons to join with a defendant who has been served in a demand for a change of venue under § 542.10?" *Id.*

We determined that the purpose of the statute was to give defendants a "measure of control over the place of trial." *Id*. at 25. Accordingly, we held that "the demand and affidavit are sufficient to comply with the statutory requirements if a defendant who has

not yet been served with a summons may join with one who has been so served." *Id*. at 23. Although we did not specifically address whether "several" means separate, there were only two defendants in *Dworsky*. *Id.* Thus, it is unlikely that *Dworsky* would have been decided as it was if "several" did not mean separate.

In *State ex rel. Johnson v. Mills*, 245 N.W. 431 (Minn. 1932), we were asked to define the word "majority" in the same statute.[9] We determined that "when there is *more than one* defendant the venue can be changed only by demand in which the majority unite." *Id*. at 431 (emphasis added). Additionally, we observed that "[t]he statute does not permit one *of two or more* defendants alone to change the venue." *Id*. at 432 (emphasis added). Both statements are examples of when we have treated the word "several" as inclusive of cases where there are only two defendants.

Amicus Minnesota Association of Justice argues that *Mills* is not binding because we were not asked to define "several," but instead, "majority." It asserts that because the court did not "apply its judicial mind" to the precise definition of "several," *Mills* is not instructive. *See Fletcher v. Scott*, 277 N.W. 270, 272 (Minn. 1938) (stating that the rule of stare decisis applies only when "the judicial mind has been applied to and passed upon the precise question"). While the Association is correct that our comments on these definitions were dicta in *Mills*, a clear understanding of the word "several" is highly relevant to what

[9] The relevant part of the statute at issue in *Mills* reads identically, with the exception of a comma, to the current version of section 542.10. *See* Mason's Minn. Stat. ch. 77, § 9215 (1927) ("If there are several defendants residing in different counties, the trial shall be had in the county upon which *a majority of them* unite in demanding, or, if the numbers be equal, in that whose county seat is nearest." (emphasis added)).

we have previously said is our understanding of the word "majority." Without a sense of the possibilities for the scope of "several," it would be difficult for us to be clear on what would ultimately constitute a majority for statutory purposes. Therefore, *Mills* provides strong persuasive authority that supports appellants' definition.

Our decision in *State ex rel. Williams v. District Court of Douglas County*, 245 N.W. 379 (Minn. 1932), is also instructive. In *Williams*, a district court transferred the venue of a case after one defendant purported to join with another defendant in demanding a change of venue under what is now section 542.10. *Id.* at 380. We held that the transfer was improper because the demand was made more than 20 days after the initially demanding defendant was served with the summons and therefore was not timely. *Id.* While we ultimately resolved the case on timeliness grounds, we discussed in dicta a hypothetical in which two defendants could make up a sufficient majority. *Id.* Specifically, we stated that the two defendants could have joined in a demand to transfer venue within 20 days after the first defendant was served with the summons. *Id*. Thus, while *Williams* is not dispositive, it reflects our history of treating the word "several" as including only two defendants.

Appellants and amicus also rely on *Misgen v. Herda*, 108 N.W.2d 624 (Minn. 1961), but *Misgen* is largely inapposite. There, we held that affidavits listing the county of residence for all defendants are required in a multiple-defendant case. *Id.* at 626. In so doing, we used the word "multiple" eight times throughout the opinion, even though the statutory word then, as now, was "several." *Id*. Appellants and amicus curiae Minnesota Defense Lawyers Association assert that *Misgen* demonstrates that "multiple" and

"several" each simply mean "more than one." Although *Misgen* provides some circumstantial support for this position, it is not dispositive because the issue in *Misgen* had nothing to do with defining the statutory language, but rather, whether an affidavit is required in a multiple-defendant case.[10]

For his part, respondent identifies two cases where we have used the word "several" interchangeably with the word "multiple." *See Donovan v. Dixon*, 99 N.W.2d 783, 785 (Minn. 1959); *First Nat'l Bank v. F.M. Distribs., Inc*., 124 N.W.2d 506, 508 (Minn. 1963) (quoting *Donovan*, 99 N.W.2d at 785). Respondent contends that our interchangeable use of these words represents a "numerical" interpretation that is commonly understood to mean "more than two." But *Donovan* and *First National Bank* are, likewise, not dispositive. Although we did use the word "multiple" in place of the word "several," it is not clear how this use precludes an interpretation that "several" simply means more than one defendant. "Multiple" is arguably more commonly understood to mean a pure multiplicity, which is consistent with appellants' definition of "separate."

Respondent, and the court of appeals, relies on dicta in *Riddle v. Ringwelski*, 451 N.W.2d 372 (Minn. App. 1990), to reinforce this numerical argument. *Riddle* does offer some support for respondent's argument because the court, citing to *Black's Law Dictionary* (5th ed. 1979), stated there that two defendants likely would not constitute "several" for purposes of section 542.10. *Id.* at 373 (noting that "several" means "more

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[10] Respondent characterizes his proposed definition as the "numerical" definition, but makes no attempt to explain how we should read appellants' definition if not numerically. Respondent's implication seems to be that the word "separate" suggests a divisible state of being, not a numerical descriptor.

than two"). But the court of appeals in *Riddle* was not asked to define "several," and it decided the case entirely on timeliness grounds. *Id.* Further, the entire definition from *Black's* reads, "[M]ore than two, often used to designate a number greater than one." *Black's Law Dictionary* (5th ed. 1979).[11] Thus, when read in its entirety, the definition weighs equally in favor of appellants' proposed definition. Consequently, *Riddle* offers little support for respondent's position.

Based on our analysis, we conclude that "several" means "separate." The statute unambiguously compels this interpretation, as the context confirms that it is the only reasonable interpretation. Further, a review of our precedents indicates that this interpretation is consistent with how we have interpreted the word "several" in venue statutes, albeit in dicta. We clarify today that "several" means "separate" for purposes of Minn. Stat. § 542.10.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and grant the petition for a writ of mandamus.

Reversed; writ of mandamus issued.

[11] This edition of *Black's Law Dictionary* also defines "several" as "Separate; individual; independent; severable."