STATE OF MINNESOTA

IN SUPREME COURT

A21-0300

Court of Appeals — Chutich, J.

Minnesota Department of Corrections,

Respondent,

vs.

Filed: June 29, 2022
Office of Appellate Courts

Nathan Knutson,

Appellant,

Bureau of Mediation Services,

Appellant.

Keith Ellison, Attorney General, Leah M. Tabbert, Joseph Weiner, Assistant Attorneys General, Saint Paul, Minnesota, for respondent.

Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, PA, Minneapolis, Minnesota, for appellant Nathan Knutson.

Keith Ellison, Attorney General, Lindsay K. Strauss, Megan McKenzie, Assistant Attorneys General, Saint Paul, Minnesota, for appellant Bureau of Mediation Services.

S Y L L A B U S

1. The appellant employee and the Minnesota Department of Corrections were not parties to an agreement to arbitrate that triggers the appeal procedures of the Minnesota Revised Uniform Arbitration Act.

2. The decision of a Bureau of Mediation Services arbitrator appointed under the grievance procedures for state managers and employees under Minnesota Statutes section 43A.33, subdivision 3 (2020), is a quasi-judicial decision subject to certiorari review.

3. The Bureau of Mediation Services is not a proper party to this appeal.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

CHUTICH, Justice.

This appeal requires us to determine the appropriate method of judicial review for decisions made under Minnesota Statutes section 43A.33, subdivision 3 (2020), a statutory provision allowing certain state employees to appeal adverse employment actions to the Bureau of Mediation Services (Bureau) for a hearing before an arbitrator. Appellant Nathan Knutson used this provision to successfully appeal his discharge from employment at the Minnesota Department of Corrections (Department). When the Department sought certiorari review of the arbitrator's decision at the court of appeals, Knutson challenged whether the court of appeals had jurisdiction. In a precedential opinion, the court of appeals held that determinations under section 43A.33 are quasi-judicial administrative decisions subject to certiorari review by the court, and that the Bureau was a proper party to the appeal.

Knutson now challenges this decision, contending that the Minnesota Revised Uniform Arbitration Act (Uniform Arbitration Act), Minnesota Statutes Chapter 572B, mandates that review be undertaken in the district court because he is a party to a unilateral

arbitration agreement with the Department. The Department argues that certiorari review at the court of appeals is required because it did not agree to arbitration with Knutson and no other avenue for judicial review exists. The Bureau agrees that certiorari review is appropriate but asserts that it is not a proper party to the Department's certiorari appeal. We conclude that (1) Knutson and the Department did not agree to arbitrate so the Uniform Arbitration Act does not apply, (2) the section 43A.33 decision is reviewable by certiorari because it is a final, quasi-judicial disposition of the rights of Knutson and the Department that is not otherwise reviewable, and (3) the Bureau is not a proper party to the certiorari appeal. Accordingly, we affirm the decision of the court of appeals in part but on different grounds, reverse in part, and remand to the court for consideration of the merits of the Department's appeal.

FACTS

Nathan Knutson worked for many years for the Minnesota Department of Corrections in a managerial role. Early in 2020, the Department investigated Knutson for alleged employee misconduct. The Department concluded that Knutson had committed employee misconduct and terminated his employment. In his managerial role, Knutson was not covered by a collective bargaining agreement. Minn. Stat. § 43A.18, subd. 3(c) (2020). He was entitled to statutory civil-service protection, however, under Minnesota Statutes, sections 43A.001–.55 (2020), and the State of Minnesota's Managerial Plan. The Managerial Plan is a handbook prepared by Minnesota Management & Budget, as required by Minnesota Statutes, section 43A.18, subdivision 3, to establish the "total compensation and terms and conditions of employment" for all managerial employees.

Minnesota Statutes section 43A.33, subdivision 3, provides a grievance procedure in the event of certain adverse employment actions. Specifically, if an employee is not covered by a collective bargaining agreement, subdivision 3(b) entitles the employee to contest a discharge, suspension, or demotion by filing a notice of appeal with the Bureau of Mediation Services. Upon receipt of the employee's written notice of appeal, subdivision 3(d) requires the Commissioner of the Bureau to provide a list of potential arbitrators to hear the appeal "according to the rules of the Bureau of Mediation Services."

Knutson timely filed a notice of appeal with the Bureau of Mediation Services, and the Bureau provided a list of potential arbitrators. The parties selected arbitrator Richard A. Beens from the list. Beens reviewed the Department's investigation, found that Knutson's termination was not supported by just cause, and concluded that Knutson's behavior only warranted a suspension.[1] Beens accordingly reduced Knutson's discharge to a one-month suspension and ordered that he be reinstated with back pay.

The Department of Corrections sought certiorari review of this decision at the court of appeals.[2] Knutson argued that the court of appeals did not have jurisdiction to hear the

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[1] Because Knutson is an employee covered by Minnesota Statutes section 43A.33, the Department of Corrections may not terminate him absent "just cause." Minn. Stat. 43A.33, subd. 1.

[2] The Department sought review under Rule 115 of the Minnesota Rules of Civil Appellate Procedure and Minnesota Statutes section 606.01. Rule 115 provides a mechanism of review via writ of certiorari. It states in pertinent part:

> Review by the Court of Appeals of decisions of the Department of Employment and Economic Development *and other decisions reviewable by certiorari* and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari. The

appeal because certiorari review only applies to final agency decisions, and the decision was not an agency decision. Moreover, Knutson contended that the decision was an arbitration decision for which judicial review should first be sought in district court according to the Uniform Arbitration Act. The Department disagreed, asserting that the decision by Beens "is a final quasi-judicial administrative decision . . . reviewable by writ of certiorari." The Department also asserted that the Uniform Arbitration Act did not apply to the decision because the Act applies only to *agreements* to arbitrate, and Knutson and the Department had not agreed to arbitrate his claim. The Bureau contended that the decision by Beens was not attributable to it; the Bureau further asserted that it was not a proper party to the appeal because its only role was to provide a list of potential arbitrators and the rules of the proceedings.

The court of appeals considered whether a decision of an arbitrator appointed under section 43A.33 is a final decision of an agency subject to certiorari review under Minnesota Statutes section 606.01. *Minn. Dep't of Corr. v. Knutson*, 963 N.W.2d 503, 504–05 (Minn. App. 2021), *rev. granted* (Minn. Oct. 19, 2021). The court of appeals analyzed

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> appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

Minn. R. Civ. App. P. 115.01 (emphasis added). Section 606.01 clarifies the procedural requirements under which parties may seek a writ, stating that:

> No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. The party shall apply to the court of appeals for the writ.

Minn. Stat. § 606.01 (2020).

section 43A.33 and noted that (1) the statute provides a right of appeal *to* the Bureau of Mediation Services, (2) the Commissioner of the Bureau provides the list of potential arbitrators, and (3) the hearing proceeds according to the rules of the Bureau. *Id.* at 506. Construing these statutory provisions as a whole, the court of appeals concluded that the decision of an arbitrator appointed under section 43A.33 is "unambiguously . . . a decision of the [Bureau of Mediation Services] for the purposes of obtaining judicial review." *Id.* To conclude otherwise, the court noted, would deprive parties of *any* review because section 43A.33 was not an agreement to arbitrate that triggered the application of the Uniform Arbitration Act. *Id.*

Knutson sought review of the decision of the court of appeals, asking us to consider whether a decision of an arbitrator appointed under section 43A.33 is a final agency decision subject to certiorari review. We granted Knutson's petition for review. We also granted the petition of the Bureau for cross-review, which asks us to address whether the Bureau is a proper party to this appeal.

ANALYSIS

Whether a court has subject-matter jurisdiction is a question of law, *Seehus v. Bor-Son Const., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010), and we review questions of law de novo, *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007). This appeal also raises issues of statutory interpretation subject to de novo review. *J.D. Donovan, Inc. v. Minn. Dept. of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016). Finally, this appeal involves issues of contract interpretation, which we likewise review de novo. *Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 504 (Minn. 2018).

I.

We first address whether Knutson and the Department were parties to an arbitration agreement that invokes the judicial review procedures of the Uniform Arbitration Act. *See* Minn. Stat. § 572B.22–.28 (2020). Knutson argues that the arbitrator's decision reinstating his employment occurred under an agreement to arbitrate, and judicial review could have been sought under the Uniform Arbitration Act. Because a writ of certiorari provides an avenue of judicial review "[w]here no right of discretionary review has been provided by statute," *Matter of Haymes*, 444 N.W.2d 257, 259 (Minn. 1989), Knutson asserts that the availability of review under the Uniform Arbitration Act precludes a writ of certiorari.

We begin by looking to the terms of the Uniform Arbitration Act to assess its applicability. In interpreting a statute, this court first looks to the plain language of its provisions. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). If the language of a statute is unambiguous, it controls. *Id.* Here, the plain language of the Uniform Arbitration Act shows that it only applies to *agreements* to arbitrate contained in a *record*, i.e., agreements that are written or similarly stored in electronic form.[3]

In a section governing the validity of an agreement to arbitrate, the Act provides in pertinent part:

> An *agreement contained in a record* to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.

[3] The Act reinforces this coverage limitation by defining an "arbitrator" as an "individual appointed to render an award in a controversy between persons who are *parties to an agreement to arbitrate*." Minn. Stat. § 572B.01(2) (2020) (emphasis added).

Minn. Stat. § 572B.06(a) (2020) (emphasis added). The Uniform Arbitration Act defines a "record" as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." Minn. Stat. § 572B.01(7) (2020). Consequently, to be an enforceable "agreement to arbitrate" under the Uniform Arbitration Act, the agreement must be "inscribed on a tangible medium" or "stored in an electronic or other medium" that is "retrievable in perceivable form." *See id.*; Minn. Stat. § 572B.06(a); *see also Correll v. Distinctive Dental Servs., P.A.*, 607 N.W.2d 440, 445 (Minn. 2000) (interpreting a previous version of section 572B.06(a) and noting that "the arbitration act renders enforceable all *written* agreements to arbitrate") (emphasis added).[4]

Moreover, an agreement to arbitrate must be enforceable according to principles of contract law for the Uniform Arbitration Act to apply. We have previously noted that "the right to arbitrate is governed by contract." *Grover-Dimond Assocs. v. Am. Arb. Ass'n*, 211 N.W.2d 787, 788 (Minn. 1973). The Uniform Arbitration Act explicitly states that an agreement to submit to arbitration "is valid, enforceable, and irrevocable *except* upon a ground that exists at law or in equity for the revocation of contract." Minn. Stat. § 572B.06(a) (emphasis added); *see also Freeman v. Duluth Clinic, Ltd.*, 334 N.W.2d 626, 629 n.3 (Minn. 1983) (noting that the Uniform Arbitration Act "allows attack upon an arbitration agreement upon such grounds as exist at law or in equity for the revocation of

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[4] Knutson suggests that, in the absence of a written agreement to arbitrate, this court should conclude that the parties entered into an oral, common-law agreement to arbitrate. This argument is unavailing because the Uniform Arbitration Act only applies to agreements to arbitrate that are recorded on a tangible or similar electronic medium.

any contract such as fraud in the inducement, lack of consideration or contravention of public policy" (emphasis omitted)). Accordingly, to fall under the Uniform Arbitration Act, Knutson and the Department of Corrections must be parties to a contractually enforceable agreement to arbitrate that is recorded in writing or similar electronic form.

Knutson argues that the statutorily imposed Managerial Plan, which set forth the terms of his employment with the Department, is a written, contractually enforceable agreement to arbitrate sufficient to invoke the appeals procedures of the Uniform Arbitration Act. In so contending, Knutson cites previous cases in which we have held that an employee handbook can function as a unilateral offer of employment that an employee can accept by agreeing to work according to the terms of the handbook.

Most notably, in *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 625 (Minn. 1983), we considered whether "a personnel handbook, distributed after employment begins, [can] become part of an employee's contract of employment." We concluded that an employee handbook could form a unilateral offer "of employment on particular terms" provided it is "definite in form" and "communicated to the offeree." *Id.* at 626. If the "outward manifestations of the parties" establish that the handbook is meant as an offer, we concluded that "[t]he employee's retention of employment [after distribution of the handbook] constitutes acceptance of the offer" because "by continuing to stay on the job, although free to leave, the employee supplies the necessary consideration for the offer." *Id.* at 626–27.

Here, Knutson and the Department focus on the Managerial Plan, contesting whether it forms a unilateral, contractual agreement to arbitrate. The Managerial Plan, by

its explicit terms, "establishes the compensation, terms, and conditions of employment for all [managerial employees]." It contains policies pertaining to work schedules, holidays, vacation, salary, and many other facets of Knutson's employment. Notably, in a section governing resolution of disputes, the Managerial Plan explicitly states that Knutson "may appeal an unpaid suspension, demotion . . . or discharge at any step of the Dispute Resolution Procedure to the Bureau of Mediation Services as provided under M.S. 43A.33, subdivision 3." Focusing on this language, Knutson contends that he and the Department of Corrections are parties to a unilateral contract in which they agreed to arbitrate this dispute.

Although an employee handbook may be an offer to enter a unilateral contract, we have also previously held that "[a] promise to do something that one is already legally obligated to do . . . does not constitute consideration" and therefore does not give rise to an enforceable contract. *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 857 N.W.2d 695, 701–02 (Minn. 2014). In other words, "[a] promise to do something that one is already legally obligated to do provides no benefit and thus is a 'mere naked promise' "—unenforceable as a matter of contract law. *Id.* at 701 (quoting *Hilde v. Int'l Harvester Co. of Am.*, 207 N.W. 617, 618 (Minn. 1926)).

The existence of laws imposing obligations on parties to a contract will not *always* preclude contract formation, however. When parties to a contract conclude an agreement that *exceeds* existing legal requirements, such agreements will be supported by consideration and be contractually binding. In *Avera Marshall*, for instance, we considered whether medical staff bylaws could form an enforceable contract between employees and

a hospital when Minnesota administrative rules *required* the hospital to adopt the bylaws. 857 N.W.2d at 700–01. The hospital contended that, because existing law required it to adopt bylaws, consideration was "lacking" and therefore the bylaws were unenforceable as a matter of contract law. *Id.*

We disagreed. We first noted that the administrative rules requiring bylaws were cursory and only required the hospital to approve "bylaws, rules, regulations, and policies for the proper conduct of its work," leaving it to the hospital and its employees to "determine the specifics of the bylaws, rules, regulations, and policies." *Id.* at 702 (citation omitted) (internal quotation marks omitted). We acknowledged that a naked promise is unenforceable, but nevertheless noted that "[b]ylaws which *exceed* the minimum standards required under state law satisfy the consideration requirement." *Id.* (citation omitted) (internal quotation marks omitted). Because the bylaws in *Avera Marshall* exceeded the modest requirements of the law, we concluded that the bylaws were supported by consideration. *Id.*

Here, by contrast, the Managerial Plan states that Knutson "may appeal an unpaid suspension, demotion . . . or discharge at any step of the Dispute Resolution Procedure to the Bureau of Mediation Services" as provided under Minnesota Statutes section 43A.33, subdivision 3. This bare recitation of a preexisting statutory right does not "exceed" the requirements of section 43A.33. Consequently, mere references to Knutson's appeal rights under section 43A.33 are unsupported by consideration,[5] and are therefore unenforceable

[5] Here, we need not decide whether other portions of the Managerial Plan might be contractually binding. *Cf. Hall v. City of Plainview*, 954 N.W.2d 254, 261 (Minn. 2021)

as a unilateral agreement to arbitrate.[6] We therefore conclude that Knutson and the Department were not parties to an agreement to arbitrate, and the review procedures of the Uniform Arbitration Act do not apply.

II.

We next consider whether the decision of an arbitrator appointed according to Minnesota Statutes section 43A.33, subdivision 3, is reviewable by writ of certiorari at the court of appeals. In its opinion, the court of appeals concluded that section 43A.33 attributes an arbitrator's decision to the Bureau of Mediation Services. *Knutson*, 963 N.W.2d at 506–07. Accordingly, the court held that the decision of an arbitrator appointed under Minnesota Statutes section 43A.33 is "a quasi-judicial decision by an administrative agency" and therefore "subject to judicial review . . . by certiorari" at the court of appeals. *Id.*

Knutson maintains that because Minnesota administrative rules limit the role of the Bureau of Mediation Services in section 43A.33 proceedings "to matters relating to the appointment of persons to and removal or referral of names from the arbitrator roster," a section 43A.33 arbitrator's decision is not attributable to the Bureau. Minn. R. 5530.0400

(noting that "individual portions of an employee handbook may create contractual rights even if other portions of the handbook do not").

[6] Knutson makes an alternative argument in his reply brief that he "offered" to arbitrate by triggering the appeal and the DOC "accepted" by proceeding with the appeal. Because section 43A.33 *requires* the Department of Corrections to proceed with the appeal, however, the Department's acquiescence to its statutory responsibilities is not an enforceable agreement for the same reasons that the Managerial Plan itself is not an enforceable arbitration agreement. Namely, neither is supported by consideration.

(2021). He therefore contends that the decision of an arbitrator in a section 43A.33 appeal is not an "agency" decision and, consequently, is not reviewable via writ of certiorari. The Department takes a position similar to that adopted by the court of appeals, asserting that the plain language of the statute clearly attributes the decision of a section 43A.33 arbitrator to the Bureau. The Bureau, for its part, accepts that certiorari review is proper here, but maintains that the arbitrator's decision is not attributable to the Bureau.

We conclude that the arbitrator's decision is not attributable to the Bureau, but it is nevertheless subject to certiorari review. Certiorari review is appropriate for "*all* questions of law in judicial or quasi judicial proceedings of inferior tribunals, involving the merits of a controversy, and affecting the substantial legal rights of the parties." *State ex rel. Bd. of Comm'rs of Saint Louis Cnty. v. Dunn*, 90 N.W. 772, 773 (1902) (emphasis added); *see also County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 539 (Minn. 2012) (citing *Dunn* to hold that certiorari is the appropriate manner to review quasi-judicial decisions by government entities). Minnesota Statutes section 606.01 and Rule 115.01 of the Minnesota Rules of Civil Appellate Procedure provide a right of certiorari review of quasi-judicial decisions if "no right of discretionary review has been provided by statute." *Matter of Haymes*, 444 N.W.2d at 259 (Minn. 1989).

Although the court of appeals commonly exercises certiorari review over agency decisions, those decisions are not the only proceedings subject to certiorari review. In fact, we have routinely applied certiorari review to decisions by single officers lacking the ratification of an "agency." *See, e.g.*, *Festler v. Wallach*, 71 N.W.2d 836, 839 (Minn. 1955) (exercising certiorari review over a determination by the Commissioner of Agriculture to

disallow certain default claims); *State ex rel. Kinsella v. Eberhart*, 133 N.W. 857, 860 (Minn. 1911) (stating that certiorari review is the proper remedy to review a gubernatorial decision to remove a county attorney); *State ex rel. Bd. of Comm'rs of Carlton Cnty. v. Iverson*, 122 N.W. 165, 165–66 (Minn. 1909) (exercising certiorari review over a taxation determination by the State Auditor).

Simply put, the writ of certiorari "is designed to bring up for review the final determination of an inferior tribunal which, if unreversed, would constitute a final adjudication of some legal rights of the relator." *Youngstown Mines Corp. v. Prout*, 124 N.W.2d 328, 351 (Minn. 1963). Here, the Legislature has explicitly designated an inferior tribunal—a Bureau of Mediation Services arbitrator—to adjudicate the legal rights of Knutson and the Department. Minn. Stat. 43A.33, subd. 3(d). Notably, the Legislature did not explicitly provide for a right of discretionary review in the statute. Absent certiorari review, the arbitrator's decision is final. In evaluating an appeal under section 43A.33, the arbitrator promulgates precisely the kind of quasi-judicial adjudication of legal rights that the writ of certiorari is designed to review. Accordingly, we hold that the decision of an arbitrator appointed according to Minnesota Statutes section 43A.33 is a quasi-judicial determination of an inferior tribunal reviewable via writ of certiorari at the court of appeals under Rule 115.01 of the Minnesota Rules of Civil Appellate Procedure and Minnesota Statutes section 606.01.[7]

[7] The parties did not ask us to determine what standard of review applies to a certiorari appeal of the decision of an arbitrator appointed under section 43A.33. Accordingly, we decline to address that issue here.

III.

Finally, we address whether the Bureau of Mediation Services is a proper party to this appeal. We have previously noted that a party is "a proper party to [an] appeal" if it "has a legal or equitable interest in the . . . proceedings." *City of Shakopee v. Kopp & Assocs., Inc.*, 159 N.W.2d 901, 903 (Minn. 1968).

The Bureau has consistently maintained that it is not a proper party to this appeal, and we agree. In a proceeding under Minnesota Statutes section 43A.33, the Bureau has no power to compel arbitration, enforce an agreement, require the appearance of parties, alter the decisions of arbitrators, or demand the payment of fees and expenses. Minn. R. 5530.0400. Minnesota's administrative rules explicitly state that "[t]he role of the bureau under this chapter is limited to matters relating to the appointment of persons to and removal or referral of names from the arbitrator roster." *Id.* In fact, the parties have not specified how certiorari review of a section 43A.33 award will affect the Bureau's rights or obligations in any way.

In short, the Bureau has no legal or equitable interest in the outcome of this appeal. Consequently, we hold that the Bureau is not a proper party.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals in part but on different grounds, reverse in part, and remand to the court of appeals for consideration of the merits of the Department's appeal.

Affirmed in part, reversed in part, and remanded.