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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A08-0244

A08-0554

Steven E. Boynton,
Respondent (A08-0244),

Jerold O. Nelson,
Respondent (A08-0554),

vs.

Douglas J. Nill, et al.,
Appellants (A08-0244),

Douglas J. Nill,
Appellant (A08-0554).

Filed March 17, 2009
Affirmed; motion denied
Larkin, Judge

Hennepin County District Court
File No. 27-CV-07-17720, 27-CV-05-016733

Scott B. Lundquist, Lundquist Law Office, 510 Grain Exchange Building, 400 South Fourth Street, Minneapolis, MN 55415 (for respondent Boynton)

Douglas J. Nill, Douglas J. Nill, LLC, 1100 One Financial Plaza, 120 South Sixth Street, Minneapolis, MN 55402-1802; and

David F. Herr, Bradley M. Orschel, Maslon Edelman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4140 (for appellants)

Lewis A. Remele, Jr., Charles E. Lundberg, Paula M. Semrow, Bassford Remele, Professional Association, 33 South Sixth Street, Suite 3800, Minneapolis, MN 55402-3707 (for respondent Nelson)

Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellants assert that Hennepin County District Court erred by determining that it has subject-matter jurisdiction over respondents' lawsuits. In the underlying lawsuits, respondents claim that appellants owe respondents a share of attorney fees awarded to appellants in a Norman County class-action lawsuit. Appellants claim that Norman County District Court has exclusive jurisdiction over respondents' claims. Because Hennepin County District Court has subject-matter jurisdiction over respondents' claims, we affirm.

FACTS

Appellant Douglas J. Nill is an attorney who served as co-counsel on a class-action lawsuit, *Peterson v. BASF Corp.*, initiated and tried in Norman County District Court. During the course of the litigation, appellant Nill entered into separate agreements with respondents Steven E. Boynton and Jerold O. Nelson wherein respondents agreed to advance funds to Nill for expenses associated with the class-action litigation, in exchange for a percentage share of Nill's future attorney-fee award, in the event the class of plaintiffs won the lawsuit. After a jury verdict, the Norman County District Court issued findings of fact, conclusions of law and an order for judgment in the class-action lawsuit in favor of the plaintiffs in the amount of \$45 million, plus interest and attorney fees.

The Norman County District Court also approved an award of \$29 million in attorney fees, of which Nill received \$14.5 million. Boynton and Nelson each seek to collect a percentage of that \$14.5 million under their respective agreements with Nill (one percent for Boynton and ten percent for Nelson). Nill has refused to pay, and Boynton and Nelson initiated separate actions in Hennepin County District Court.¹

Boynton alleged breach of contract, fraud, promissory estoppel, unjust enrichment, quantum meruit, and fraudulent transfer. Nill moved for judgment on the pleadings, declaratory judgment, and summary judgment against Boynton. The Hennepin County District Court denied all motions in an order filed on December 17, 2007. The district court held that it has subject-matter jurisdiction over the parties' dispute and that "the written agreement between the parties is ambiguous and reasonably susceptible to more than one interpretation, precluding a grant of summary judgment or dismissal."

Nelson commenced a declaratory judgment action asking the court to determine the parties' rights under the Nelson-Nill agreements. Nill moved the district court to order Nelson to accept \$30,933.66 "as repayment in full" for the 1999 loan and to dismiss Nelson's action with prejudice. The district court granted Nill's motion, concluding that "the agreements between [Nelson] and [Nill] can only be construed as a loan" and ordered Nelson to accept repayment in full. Nelson appealed.

On appeal, we concluded that there was a genuine issue of material fact regarding the nature of the parties' agreement. *Nelson v. Nill*, No. A06-852, 2007 WL 446933, at

¹ Nelson's action is against appellant Douglas J. Nill. Boynton's action is against appellants Douglas J. Nill, and Douglas J. Nill, P.A., d/b/a FarmLaw. This opinion refers to appellants collectively as Nill.

*2 (Minn. App. Feb. 13, 2007) (concluding that the parties' agreement is ambiguous because "the contract language is neither a straightforward loan agreement nor a recognizable attorney fee retainer" and therefore, a genuine issue of material fact existed), *review denied* (Minn. Apr. 17, 2007). Accordingly, we reversed the district court's award of summary judgment in favor of Nill and remanded to the district court. *Id.*

During a rule 16 teleconference with the district court in Nelson's case in January 2008, Nill raised the issue of subject-matter jurisdiction. Minn. R. Civ. P. 16. But Nill did not file a motion to dismiss for lack of subject-matter jurisdiction. On January 25, 2008, the district court issued an order holding that it retains jurisdiction over the dispute because the question of the parties' arrangement arose entirely in Hennepin County and involves an attorney-fee award that the class-action court has already distributed.

Nill did not ask Hennepin County District Court to transfer respondents' cases to Norman County District Court, and Nill did not ask Norman County District Court to assert jurisdiction over the cases. Instead, Nill appealed both district court orders concerning subject-matter jurisdiction. In file A08-244, Nill challenges the district court's December 17, 2007 order. In file A08-554, Nill challenges the district court's January 25, 2008 order. Nill filed related petitions for discretionary review, seeking to expand the scope of the interlocutory appeals. Special term panels of this court denied both petitions. And by order of the special term panel, we limited the scope of the appeal in A08-554 to the January 25 order. Because both appeals concern subject-matter

jurisdiction and the arguments in each appeal are substantially similar, we consolidated the appeals.

DECISION

Before we begin our analysis, it is important to note that we are concerned with only one issue in this appeal: whether Hennepin County District Court has subject-matter jurisdiction over respondents' lawsuits or, as Nill contends, whether Norman County District Court has exclusive jurisdiction over the lawsuits because they involve the distribution of attorney-fees awarded in the Norman County class-action lawsuit. Legal issues related to a determination of whether respondents are entitled to a portion of Nill's attorney-fee award are not before this court for review. We are simply called upon to determine whether Hennepin County District Court has subject-matter jurisdiction to hear respondents' lawsuits. We conclude that it does.

“Because subject matter jurisdiction goes to the authority of the court to hear a particular class of actions, lack of subject matter jurisdiction may be raised at any time. . . .” *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995) (citing Minn. R. Civ. P. 12.08(c)), *review denied* (Minn. May 31, 1995). If the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Minn. R. Civ. P. 12.08(c). A district court's determination that it has subject-matter jurisdiction is immediately appealable. *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995); *see also* Minn. R. Civ. App. P. 103.03(j) (establishing that an appeal may be taken to the court of appeals “from such . . . orders or decisions as may be appealable . . . under the decisions of the Minnesota appellate courts”). Subject-matter

jurisdiction is a question of law which this court reviews de novo. *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

The Minnesota Constitution provides that the district court shall have “original jurisdiction in all civil and criminal cases.” Minn. Const. art. VI, § 3. Minnesota law provides that the district courts shall have original jurisdiction in all civil actions within their respective districts. Minn. Stat. § 484.01, subd. 1(1) (2006). “Subject-matter jurisdiction is ‘a court’s power to hear and determine cases of the general class or categor[ies] to which the proceedings in question belong.’” *Bode v. Minn. Dep’t of Natural Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quoting *Black’s Law Dictionary* 1425 (6th ed. 1990)), *aff’d* 612 N.W.2d 862 (Minn. 2000). Respondents’ lawsuits are civil cases, and there can be no dispute that Hennepin County District Court has the power to hear these cases. Yet Nill advances several arguments in support of the contention that Hennepin County District Court lacks jurisdiction to hear respondents’ cases. None is persuasive.

Nill first argues that Norman County District Court reserved “exclusive jurisdiction” over any future issues involving attorney fees and that Hennepin County District Court must respect this reservation of jurisdiction. In support of this argument, Nill cites the following language from the April 2, 2002 Norman County District Court order for judgment in the class-action suit:

This court shall reserve continuing jurisdiction over distribution of the common fund pursuant to Minnesota Rule of Civil Procedure 23.04, including class notice and a hearing

to approve a distribution plan, an award of a percentage of the common fund as Class Counsel's attorney's fees, claims administration costs to be paid from the common fund, an award to Class Representatives for serving as Class Representatives, distribution of the common fund on submitted claims and whether the Defendant has standing to object to any unclaimed funds.

Nill suggests that we construe this language as a reservation of exclusive jurisdiction over any issue related to the attorney-fee award in the class-action suit.

Interpretation of court orders presents questions of law, which we decide de novo. *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993). As a general rule, when the language is unambiguous, it shall be construed according to its plain meaning. *See Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977) (addressing interpretation of language employed by the parties in a stipulated provision of a judgment and decree). A writing "is unambiguous if its meaning can be determined without any guide other than knowledge of the facts on which the language depends for meaning." *Landwehr v. Landwehr*, 380 N.W.2d 136, 138 (Minn. App. 1985) (quotation omitted) (discussing a dissolution provision).

Norman County District Court described its reservation of jurisdiction as continuing, not exclusive. The reservation of jurisdiction was for the express purposes articulated by the district court, all of which were accomplished and finalized by the district court's June 5, 2007 order for judgment and judgment. The June 5, 2007 order granted final approval and judgment for the class notice and distribution plan, and for the disbursements approved therein; determined that there were no valid objections to the distribution plan; approved distribution of incentive payments to the class representatives;

approved distribution of the \$29 million attorney fee 61 days after entry of judgment; and approved distributions for payments of reasonable expenses related to the class-action suit.

But the June 5, 2007 order did not include language continuing the previous reservation of jurisdiction, despite the fact that the district court judge was aware of respondents' Hennepin County lawsuits. The order states:

A Minneapolis claimant, Clifford Larson, Jr., does not object to the [attorney] fee award, but objects to Douglas J. Nill receiving his 1/2 share of the fee at this time.

The basis for the objection is an allegation that Douglas J. Nill is refusing to pay certain attorneys from whom Mr. Nill has claimed to have requested and obtained financial and legal assistance in the instant litigation. Those attorneys have not filed any objection or claims on their own behalf. . . . *The Court is further aware that the attorneys who are claiming to have provided such services have instituted a separate lawsuit venued in Hennepin County of the State of Minnesota.*

(Emphasis added.) If the district court in Norman County had intended to assert exclusive jurisdiction over all disputes related to distribution of the attorney-fee award in the class-action suit, the district court judge would have included language in its June 5, 2007 order continuing its jurisdiction beyond entry of final judgment.

We reject Nill's contention that the district court's 2002 reservation of continuing jurisdiction vested indeterminate, exclusive jurisdiction in Norman County District Court and deprived Hennepin County District Court of subject-matter jurisdiction over respondents' lawsuits. The plain language of the order and the record simply do not support this contention. And even if Norman County had expressly reserved jurisdiction

over all issues related to the class-action suit, the reservation would not automatically deprive all other district courts of the jurisdiction conveyed by the Minnesota Constitution. Rather, the reservation would give rise to a comity issue, which is the basis for Nill's second argument.

Nill's second argument is based on the "first-to-file" rule, which is related to the comity principle. When a district court exercises jurisdiction over a case, it has authority to determine all issues relevant to the case and may restrain the prosecution of other suits raising the same issues until a final judgment is issued. *Minn. Mut. Life Ins. v. Anderson*, 410 N.W.2d 80, 81 (Minn. App. 1987). However, this power is discretionary and exercise of this power depends on similarities between the litigation. *Id.* "The parties must be the same; the issue must be the same; and resolution of the first action must be dispositive of the action to be enjoined." *Id.* at 81-82 (quotation omitted). In general, when courts have concurrent jurisdiction, the first to acquire jurisdiction has priority in considering the case. *Id.* at 82.

Where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction, its power being adequate to the administration of complete justice, retains its jurisdiction and may dispose of the whole controversy, and no court of coordinate power is at liberty to interfere with its action.

Id. (quotation omitted).

Nill contends that Hennepin County District Court was obligated to respect the Norman County District Court's reservation of jurisdiction over matters related to the class-action suit. Nill's argument is faulty because, as discussed above, Norman County

District Court did not continue its reservation of jurisdiction beyond the final order for judgment. And the comity principle only applies until a final judgment is issued. *Id.* at 81. In this case, final judgment entered in the Norman County class-action suit on June 5, 2007 and provided for distribution of the attorney-fee award 61 days later. Nill did not raise any objection to Hennepin County’s subject-matter jurisdiction or raise the comity issue until well after the entry of final judgment in Norman County.

Moreover, the power of one court to restrain another court from exercising jurisdiction based on the comity principle is discretionary. *Id.* Before Hennepin County District Court can be said to have improperly usurped the jurisdiction of Norman County District Court, Norman County District Court must have elected to exercise its jurisdiction. The record does not indicate that Norman County District Court attempted to exercise jurisdiction over respondents’ lawsuits. To the contrary, the final judgment was entered in Norman County even after the assigned judge acknowledged the pending Hennepin County lawsuits, and without any indication that the court would exercise jurisdiction over the Hennepin County lawsuits, reserve jurisdiction for that purpose, or restrain prosecution of the Hennepin County litigation.

Finally, application of the first-to-file rule in favor of Norman County District Court would not have been automatic. “[C]omity is not a rule of law but a principle.” *Id.* at 82. The first-to-file rule is not “rigid, mechanical, or inflexible,” but rather is applied in a manner serving “sound judicial administration” based on a determination of which of the two actions will best serve the needs of the parties by providing a comprehensive resolution to the general conflict. *Id.* (quotation omitted). Nill’s argument that Hennepin

County was automatically obligated to respect Norman County District Court's alleged ongoing jurisdiction erroneously presumes that determinations necessary for application of the comity principle conclusively favor jurisdiction in Norman County. Nill's comity argument also presumes that respondents' agreements with Nill are fee-splitting agreements. The trier-of-fact has not yet determined whether the writings between the parties are loans or fee-splitting agreements. It is impossible to determine whether the Hennepin County lawsuits and the Norman County class-action lawsuit involve "actions between the same parties, on the same subject, and to test the same rights" without that determination. *See id.* (quotation omitted).

Nill's third argument in support of its position that Hennepin County District Court lacks jurisdiction is that the Norman County class-action court is the only district court authorized to hear issues related to the attorney-fee award in the class-action suit, and therefore, the only court authorized to hear respondents' claims for a portion of the attorney-fee award. Nill cites Minnesota Rules of Civil Procedure 23 in support of that position and argues that rule 23 should be interpreted to grant exclusive jurisdiction to the class-action court. The Minnesota Rules of Civil Procedure authorize the district court to make appropriate orders related to the conduct of class-action suits. Minn. R. Civ. P. 23.04. Specifically, the court may make appropriate orders "determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument." *Id.* 23.04(a). And the rules prescribe the manner in which attorney fees are requested and awarded. *Id.* 23.08. These rules may empower

a class-action court to assume exclusive jurisdiction over claims related to the class-action attorney-fee award, but they do not require the class-action court to do so.

We decline to read an exclusive jurisdiction requirement into Minnesota Rules of Civil Procedure 23. We note that exclusive jurisdiction is recognized in certain areas of the law. *See, e.g.*, Minn. Const. art. VI, § 11 (the probate court has original jurisdiction in law and equity over the administration of the estates of deceased persons); *Pangalos v. Halpern*, 247 Minn. 80, 84, 76 N.W.2d 702, 705 (1956) (a probate court exercises exclusive jurisdiction over how estates are administered, expended, and disbursed); *see also* Minn. Stat. § 260B.101 (2008) (“the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent”). There is no similar grant of exclusive jurisdiction in class-action cases. And we are satisfied that proper application of the comity principle and the first-to-file rule will ensure that claims related to a pending class-action lawsuit will not inappropriately be heard by a court other than the class-action court.

Nill’s fourth argument regarding exclusive subject-matter jurisdiction is that respondents’ claims are precisely the type of claims that must be addressed by the class-action court. Nill relies heavily on *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) in support of this argument. The relevant issue in that case, for the purpose of our analysis, was whether a private attorney-fee-sharing agreement in a class-action lawsuit was reviewable by a federal district court. *Id.* at 1224. The issue was not whether the class-action court had exclusive jurisdiction to review the agreement.

We do not find the decision in *Allapattah Servs.* relevant to our determination of whether Hennepin County District Court has subject-matter jurisdiction in this case.

Finally, Nill advances a number of reasons why Norman County District Court is the more appropriate court to hear and determine respondents' lawsuits. First, Nill argues that the lawsuits may implicate Norman County District Court's responsibility, as a fiduciary for the class, to determine a reasonable attorney-fee award from the common fund. Second, Nill argues that the Norman County District Court has unique knowledge that may be relevant to the issues in respondents' lawsuits. Third, Nill argues that continued oversight of the attorney-fee award by the class-action judge will ensure protection of the class. Fourth, Nill argues that allowing fee disputes between lawyers in a class-action suit to be brought in any district court based on venue considerations is bad policy. Each of these arguments may support a determination that it is more appropriate for Norman County District Court to exercise its jurisdiction than Hennepin County District Court. But the arguments do not support Nill's claim that Hennepin County District Court lacks subject-matter jurisdiction.

And we do not determine whether venue would have been most proper in Norman County. We will generally not consider matters not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Nill did not raise the venue issue below. Nill instead argued that Hennepin County District Court lacks jurisdiction. The district court correctly rejected that contention.

Nill makes several other arguments regarding why respondents are not entitled to recover on the claims in the underlying lawsuits. Because this is an interlocutory appeal

concerning subject-matter jurisdiction, these claims are not before us for review. The district court must address these claims in the first instance.

Finally, respondents filed a joint motion to strike the third section of Nill’s brief and a portion of Nill’s appendix, which refer to Minnesota Rules of Professional Conduct 1.5(e), on the ground that they “have nothing to do with the subject-matter-jurisdiction issue,” which is the only issue before this court on appeal. A special term panel of this court deferred ruling on the motion to strike, reasoning that the panel assigned to consider the appeal on the merits would be in the best position to determine whether Nill’s brief improperly includes matters outside the scope of this appeal.

We agree that some of Nill’s arguments are irrelevant to the sole issue before us on appeal. But because we have confined our review to consideration of the arguments relevant to the issue before us, we deny the motion.

Affirmed; motion denied.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals