STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1021

Gertrude Jansen, by & through her power of attorney, Sue Kline,
Appellant,

vs.

Franciscan Health Community, d/b/a St. Mary's Home,
Respondent.

Filed December 14, 2010
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-09-680

Mark R. Kosieradzki, Joel E. Smith, Kosieradzki Smith Law Firm, LLC, Plymouth, Minnesota (for appellant)

Thomas A. Harder, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's award of summary judgment in respondent's favor, arguing that Minn. Stat. § 256B.48 (2008) prohibits a nursing facility that offers only private rooms from charging private-paying residents a higher rate for a private room than it charges medical-assistance recipients. Because the unambiguous statutory language does not prohibit a higher rate under these circumstances, we affirm.

FACTS

The facts in this case are undisputed. Respondent Franciscan Health Community, d/b/a St. Mary's Home (St. Mary's), is a Medicaid- and Medicare-certified nursing facility and therefore subject to Minn. Stat. § 256B.48, which generally requires a nursing facility to charge private-paying residents the same amount, for similar services, as residents whose care is paid by medical assistance (MA). *See* Minn. Stat. § 256B.41-.441 (2008) (setting forth the statutory scheme for providing medical assistance to persons in nursing facilities).

Appellant Gertrude Jansen was a resident at St. Mary's. At all times relevant to this appeal, St. Mary's offered its residents only private rooms. Jansen leased a private room from St. Mary's and paid for the room with private funds, i.e. she was a private-paying resident. St. Mary's also leased private rooms to MA recipients. St. Mary's charged Jansen a higher rate for her private room than it charged the MA recipients.

In January 2009, Jansen filed this action in district court, alleging that St. Mary's violated Minn. Stat. § 256B.48, subd. 1(a), by charging her a higher rate than MA

recipients for a private room. *See* Minn. Stat. § 256B.48, subd. 1(a) (providing a private-paying resident with a cause of action for civil damages against a nursing facility that charges the resident rates in violation of the statute). St. Mary's moved to dismiss under Minn. R. Civ. P. 12.02(e), arguing that Jansen failed to state a claim upon which relief could be granted. The district court stayed the action and ordered the parties to submit the matter to an administrative law judge "to determine the appropriate 'rate or rates at issue in the cause of action.'" *See id*. (providing for an administrative hearing to determine the "allowed rate or rates at issue in the cause of action," referring to rates "which are approved by the state agency for medical assistance recipients"). The district court further ordered the parties to file "the resulting report of the administrative law judge" with the court and that the matter would then "be scheduled for further hearing on [St. Mary's] [m]otion to [d]ismiss."

Because the parties agreed that "[r]egardless of any administrative ruling, the identical legal issue will remain before the [c]ourt," the parties submitted the pertinent legal issue to the district court on a stipulated record. The parties identified the legal issue as follows: "May a skilled nursing facility with all private, single-bed rooms charge its private-pay residents, under . . . Minn. Stat. § 256B.48, more for a private, single-bed room than the rate allowed by [DHS] to be charged to Medical Assistance residents for such a room?" The parties advised the district court that, although St. Mary's had obtained an affidavit from the audit director of the Minnesota Department of Human Services (DHS) Facility Rates and Policy Division regarding the "allowed rate," the affidavit was not part of the parties' stipulation. The parties asked the district court to

address the pending motion to dismiss on the merits, based on the legal issue presented, or to certify the question for consideration by this court.

The district court granted St. Mary's motion to dismiss without addressing the specific legal issue identified by the parties. Instead, the district court reasoned that the complaint fails to set forth the "allowed rate" for the services provided to Jansen, that the record does not establish "this 'allowed rate,'" and that "[w]ithout that rate, the [c]ourt is unable to determine whether [St. Mary's] charges were in violation of the statute." The district court therefore concluded that the complaint lacks an essential element. The district court granted St. Mary's motion to dismiss, but stayed entry of judgment for 30 days "to allow [Jansen] the opportunity to submit for further consideration the affidavit concerning the 'allowed rate' at issue in this case from [DHS] identified in the parties' [s]tipulation." Jansen later submitted the DHS affidavit to the district court, and the district court entered judgment for St. Mary's. This appeal follows.

D E C I S I O N

I.

We first address Jansen's claims of procedural error. To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975); *see also* Minn. R. Civ. P. 61 (requiring errors that do not affect the substantial rights of the parties to be ignored or disregarded).

Jansen asserts that the district court erred by staying the proceedings on the motion to dismiss and ordering the parties to submit to an administrative-law process, thereby

imposing an "unwarranted and limited fact-finding process." Although the district court ordered the parties to submit to an administrative fact-finding process, the parties did not engage in the process. Instead, the parties informed the district court that they had "worked diligently to agree to a stipulated record that hopefully would avoid the necessity of an administrative hearing, and any discovery associated with said hearing." The parties asked the district court to decide the pending motion on the merits based on the stipulated record. And at oral argument, Jansen conceded that there are no genuine issues of material fact and that the issue presented is solely one of law. Given the parties' refusal to engage in the administrative fact-finding process and Jansen's concession that there are no genuine issues of material fact relevant to the legal issue presented, we discern no prejudice resulting from the district court's order. Thus, this alleged error is not a basis for reversal. *See Midway Ctr. Assocs.*, 306 Minn. at 356, 237 N.W.2d at 78.

Jansen also argues that the district court erred by converting St. Mary's motion to dismiss into a motion for summary judgment. The district court explained that it converted the motion because the parties had submitted a "33-paragraph stipulation including matters and information outside the confines of [Jansen's] complaint."

The rules of civil procedure provide that

> [i]f, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.02.

The parties mutually presented the district court with a stipulated record for its "review and consideration" in determining the pending motion to dismiss. The stipulation was "presented to and not excluded by" the district court, and it contained "matters outside the pleading." *Id*. Under the unambiguous language of rule 12.02, the district court did not err by treating the motion as one for summary judgment.

Lastly, Jansen asserts that the district court erred by giving her the opportunity to present the DHS affidavit regarding the "allowed rate" while precluding her from conducting any discovery. But Jansen agrees that the "allowed rate" is the rate that St. Mary's may charge MA recipients. Jansen also agrees that the issue here is whether St. Mary's may charge private-paying residents more for a private room than it charges MA recipients. Determination of this legal issue does not require identification of the "allowed rate." Thus, any potential discovery regarding the "allowed rate" is irrelevant. Moreover, it is undisputed that St. Mary's charged Jansen more for a private room than it charged MA recipients. We therefore discern no prejudice resulting from Jansen's purported inability to conduct discovery and no basis for relief on this ground. *See Midway Ctr. Assocs.*, 306 Minn. at 356, 237 N.W.2d at 78.

In sum, none of Jansen's claims of procedural error provides a basis for reversal.

II.

We next review the district court's award of summary judgment for St. Mary's. "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

"When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)). "[S]ummary judgment should be affirmed if it can be sustained on any ground." *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

The issue presented is whether Minn. Stat. § 256B.48, subd. 1(a), prohibits St. Mary's from charging a private-paying resident more for a private room than it charges MA recipients. Minn. Stat. § 256B.48, subd. 1(a), provides, in relevant part:

> A nursing facility is not eligible to receive medical assistance payments unless it refrains from all of the following: (a) Charging private paying residents rates for similar services which exceed those which are approved by the state agency for medical assistance recipients as determined by the prospective desk audit rate, except under the following circumstances: the nursing facility may (1) charge private paying residents a higher rate for a private room, and (2) charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the commissioner.

Jansen argues that we should interpret this statute as prohibiting the rate disparity in this case. When interpreting a statute, our objective is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2008). "[An appellate court] first look[s] to see whether the statute's language, on its face, is clear or ambiguous. A statute is ambiguous only when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)

(quotation and citations omitted). If the legislature's intent is clearly discernible from a statute's unambiguous language, appellate courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004). We discern no ambiguity in the language of Minn. Stat. § 256B.48, subd. 1(a). The plain language indicates that St. Mary's is allowed to charge Jansen "a higher rate for a private room." Minn. Stat. § 256B.48, subd. 1(a). We therefore will not engage in statutory interpretation.

Jansen contends that her private room is a "special service" and argues that the rate disparity should be analyzed in this context. We are not persuaded. The separate enumeration of the private-room and special-services exceptions under section 256B.48, subd. 1(a), indicates that the exceptions are distinct (i.e., that a private room is not a type of special service). Moreover, the statutory language indicates that a private room in a nursing facility that offers only private rooms is not a "special service" because a resident does not have the option of declining a private room in such a facility. *See id*. (stating, "Residents are free to select or decline special services.").

Jansen also contends that the private-room exception should not apply where all of the rooms in a nursing facility are private, thereby suggesting a limitation on the private-room exception as follows: a nursing facility may charge private-paying residents a higher rate for a private room *unless all of the rooms in the facility are private*. In support of this contention, Jansen argues that allowing a nursing facility to charge private-paying residents more for a private room in a facility that offers only private rooms violates the legislative intent of section 256B.48 and the public policy underlying

the statute. *See Good Neighbor Care Ctrs., Inc. v. Minnesota Dep't of Human Servs.*, 428 N.W.2d 397, 401 (Minn. App. 1988) ("It is presumed that the legislature intends . . . to favor the public interest over private interests . . . ."), *review denied* (Minn. Oct. 19, 1988); *Highland Chateau, Inc. v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 809 (Minn. App. 1984) (agreeing with the district court's assessment that when enacting the rate equalization statute "the legislature had in mind a social purpose that cannot be ignored"), *review denied* (Minn. Feb. 6, 1985). But because the relevant statutory language is explicit, we do not consider legislative intent or the related cannons of statutory construction. *See* Minn. Stat. § 645.16 (enumerating factors that may be considered in determining legislative intent when "the words of a law are not explicit"). And "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." *Id*.

We do not know whether the legislature contemplated a facility that offers only private rooms when it drafted and enacted section 256B.48, subd. 1(a). But any potential legislative oversight does not change our decision because this court cannot supply the legislature's purposeful or inadvertent omissions. *See Green Giant Co. v. Comm'r of Revenue*, 534 N.W.2d 710, 712 (Minn. 1995) (stating "[courts] will not supply that which the legislature purposefully omits or inadvertently overlooks"). Moreover, whether a nursing facility that offers only private rooms should be allowed to charge private-paying residents a higher room rate than MA recipients is a policy question that is properly addressed to the legislature, and not to this court. *See Sefkow v. Sefkow*, 427 N.W.2d

203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

The plain language of section 256B.48, subd. 1(a), did not prohibit St. Mary's from charging Jansen a higher rate for her private room. Thus, the rate was not in violation of section 256B.48, subd. 1(a), and Jansen's claim for damages fails as a matter of law. *See* Minn. Stat. § 256B.48, subd. 1(a) (authorizing a private cause of action for civil damages against a nursing facility that charges the resident "rates in violation of this clause"). Accordingly, St. Mary's is entitled to summary judgment, and we affirm.

Affirmed.

Dated:

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Judge Michelle A. Larkin