

Nos. A10-1244 and A10-1331

State of Minnesota
In Court of Appeals

City of Minneapolis, a municipal corporation,
Respondent,

vs.

Minneapolis Police Relief Association and
Minneapolis Firefighters Relief Association,
Appellants.

**BRIEF OF AMICUS CURIAE
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

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The International Association of Fire Fighters, AFL-CIO (“IAFF”) submits this brief as *amicus curiae* in support of the appellants, the Minneapolis Firefighters Relief Association (“MFRA”) and the Minneapolis Police Relief Association (“MPRA”) (collectively referred to as “the Funds”).¹ The IAFF files this brief pursuant to Minn. R. Civ. App. 129, as well as this Court’s decision on August 30, 2010.

INTEREST OF THE AMICUS

The IAFF is an unincorporated association comprised of municipal, state, federal, and private sector fire fighters throughout the United States and Canada. The IAFF’s mission includes protecting the safety and improving the working conditions of fire fighters and emergency medical services employees, as well as advancing the general health and welfare of those personnel through collective bargaining, court action, judicial advocacy, grass roots lobbying and other appropriate means. As the leading advocate for the rights of more than 300,000 full-time professional fire fighters and paramedics who protect 85 percent of the nation’s population, the IAFF seeks to promote the welfare of fire fighters occupying every rank of the profession.

Amicus curiae has a distinct and important interest in this case. As set forth in greater detail below, this Court found in April 2008 that the individual fire

¹ Pursuant to Minn. R. Civ. App. 129.03, counsel for the IAFF hereby attests that this brief was not authored in whole or in part by counsel for either of the parties. Similarly, no party or other entity made a monetary contribution for the preparation or submission of the brief.

fighter retirees (*i.e.*, members and beneficiaries of the MFRA) were not indispensable parties to this particular litigation. However, the district court's final order and judgment issued after that decision includes a recoupment requirement that will result in a reduction in pension benefits provided to many retired fire fighters and their surviving spouses. If the Order is not reversed, the MFRA will be forced to recoup monies previously paid and to reduce future payments to members; therefore, the fire fighters, including members of the IAFF, individuals whom have been improperly denied the opportunity to participate in this litigation, have a direct interest in the outcome of this case.

BACKGROUND

In 2006 the City of Minneapolis brought a declaratory action against the Funds, claiming that the pension payments made to the Funds' members were not in accord with a Settlement Agreement reached between the parties in 1995. The Funds moved to dismiss the instant case in part because the Funds' individual members and their beneficiaries are indispensable parties to the litigation, and because the court lacked subject-matter jurisdiction due to the City's failure to join those individuals. In opposing this motion, the City took the position that the individual members were not indispensable parties because, *inter alia*, it was *not* seeking to reduce their individual retirement benefits. On the basis of that position, the district court denied the Funds' motion to dismiss, finding that because the individual members "do not calculate or administer benefits" they are

not indispensable parties and are “not so affected by a declaration in this matter that their joinder is required.” Order of January 24, 2007, p. 6.

This Court upheld the January 24, 2007 decision, finding that because “this case is primarily ‘a dispute between the contributor to and the administrators of the pension funds about the proper method of calculating the contributor’s minimum obligation[,]’ [t]he individual members of the associations are not indispensable parties.” *City of Minneapolis v. Minneapolis Police Relief Ass’n*, 2008 Minn. App. LEXIS, *11 (Minn. Ct. App. April 15, 2008), review denied, 2008 Minn. LEXIS 422 (Minn. June 25, 2008). The district court subsequently entered an order on November 20, 2009 in which it expressly concluded that the City was *not* entitled to recoup the alleged overpayments from the Funds’ members because the governing statute provided the “explicit, precise, and unambiguous remedy” of amortizing the overpayment amount. Order, citing Minn. Stat. § 69.77, subd. 8.

The posture of the case changed dramatically, however, on December 23, 2009, when the City requested that the district court order the Funds to recoup past alleged overpayments directly from the individual members, parties whom the City has argued time and time again need not be joined in this case. Remarkably, even though these individuals had never been made parties to this case, and had been provided absolutely no due process with respect to the issues being litigated, the district court agreed with the City, and issued an order on May 17, 2010, requiring the Funds to recoup benefits directly from the Funds’ members and their

beneficiaries (*i.e.*, the City's retired fire fighters, police officers and their surviving spouses).²

The threat to the livelihoods of the retired fire fighters, the very individuals the district court found to be "not indispensable parties," is both imminent and substantial. The MFRA members are well beyond working age. Indeed, the average age of a retiree is more than 70 years old, and the average age of a surviving spouse is 78 years old. Fire fighters who participate in a qualified public retirement system like the MFRA do not receive Social Security benefits. As such, the benefits paid to the retired fire fighters and their surviving spouses are often the only, or at least the primary, source of income received by them for their years of dedication and service to the City.

Under the district court's November 20, 2009 order, the retired fire fighters' benefits will be reduced by approximately \$136.96 per month. This reduction does *not* include the recoupment sought by the City and ordered by the district court. If the district court's order of May 17, 2010 is permitted to stand, and recoupment occurs, the average fire fighter retiree may be required to pay back more than \$20,000, and the average surviving spouse may be required to pay back more than \$11,000, *in addition to* the reduction in their future benefits. On top of this already substantial burden, the City is also demanding that the retirees

² On May 28, 2010, the district court issued an order staying the recoupment proceedings pending the outcome of this appeal. On October 7, 2010, the City moved to enforce the order of May 17, 2010, requiring the Funds to recoup benefits paid to retired fire fighters and their spouses.

pay pre-judgment and post-judgment interest on benefits paid to them from 2000 to 2010, further compounding this significant strain on their limited incomes.

The district court's decision cannot be allowed to stand. In addition to the arguments set forth by the appellants in their opening brief, it is clear that the district court erred by ordering the Funds to recoup the alleged overpayments from their members because it lacked jurisdiction over these individuals; it violated the members' fundamental due process rights; and it imposed this remedy in the absence of, and indeed in violation of, express statutory authority.

ARGUMENT

I. The District Court's Recoupment Order Violates the Fund Members' Due Process Rights.

(1) The District Court Lacked Jurisdiction to Impose this Remedy Against the Funds' Members.

By ordering recoupment from the Fund' members' pension benefits without joining them as parties to this case, the district court violated the due process rights of these individuals. It is a fundamental tenet of due process that a judgment or decree among parties to a lawsuit cannot bind a third party who has not been made a party to the litigation. *Martin v. Wilks*, 490 U.S. 755 (1989) (superseded by statute on other grounds); *see also Taylor v. Sturgel*, 553 U.S. 880, 893 (2008) ("one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.") (citations omitted). Permitting the district court to adversely affect the rights of Fund members and their beneficiaries who have not been joined as

parties – and who were, as this Court recognized in its August 17, 2010 order granting Berryman and Kastner permission to file an amicus brief, expressly denied this opportunity by the court – violates their fundamental right to due process.

This principle is made explicitly clear by the Minnesota Declaratory Judgment Act, the statute under which the City filed this litigation. The Act empowers courts to declare rights, status, and other legal relations that are affected by a statute, ordinance, contract, or franchise. Minn. Stat. §§ 555.01, 555.02. The Act clearly requires that “all persons *shall* be made parties who have or claim any interest *which would be affected* by the declaration, and *no declaration shall prejudice the rights of persons not parties* to the proceeding.” *Id.* at § 555.11 (emphasis added).³ Accordingly, a party who has an interest that is affected by the outcome of the litigation is a “necessary party” who must be joined to a declaratory action. *Minneapolis-St. Paul Sanitary Dist. v. City of St. Paul*, 43 N.W.2d 219, 221 (Minn. Ct. App. 1950); see also *Cincinnati Insurance Co. v. Franck*, 621 N.W.2d 270, 274-75 (Minn. Ct. App. 2001) (all necessary parties must be joined under § 555.11 because the declaration cannot bind absent parties).

It necessarily follows that the *failure* to join a necessary party deprives the court of jurisdiction to consider and declare rights under the Declaratory Judgment Act. In *Frisk v. Board of Education of City of Duluth*, 75 N.W.2d 504, 514 (Minn. 1956), which involved a declaratory action between individuals and the City, the

³ The word “shall” is mandatory. See Minn. Stat. § 645.44, subd. 16.

court found that it did not have jurisdiction to adjudicate the teachers' rights to retirement benefits because the benefits were administered by a separate organization that was not a party to the proceeding. Similarly, in *Unbank Co., LLP v. Merwin Drug Co.*, 677 N.W.2d 105 (Minn. Ct. App. 2004), the court held that the failure to join the commissioner's office as a party violated § 555.11 because its interests were affected by the court's decision.

There is simply no question that the district court's decision requiring the Funds to recoup alleged overpayments from its members' pensions will severely and detrimentally affect their interests. As demonstrated, the decision threatens to impose extreme financial hardship on these individuals, many of whom rely upon their pension benefits as their sole source of income. Because they were not parties to this case the court lacked jurisdiction under the Declaratory Judgment Act to render its recoupment order.⁴

This conclusion is not only mandated by Minnesota law but is also consistent with decisions rendered by courts in other jurisdictions that have considered similar factual scenarios. For example, in *Abbatematteo v. State of Rhode Island*, 694 A.2d 738 (R.I. 1997), the court was faced with the issue of whether individual plan participants were indispensable parties in a declaratory

⁴ The district court's May 17, 2010 decision makes clear that the Funds themselves are in no position to advocate the interests of their individual members. In addition to ordering the members and their beneficiaries to reimburse the Funds for pension benefits they received for well over 10 years, the district court's order mandates that the Funds *oppose* any and all challenges raised by the members to the recoupment. Such an edict unilaterally ensures that the interests of the Funds and the beneficiaries are contrary to one another.

judgment action filed against the retirement system, where the effect of the requested relief would be to reduce their benefits. The lower court dismissed the action for the failure to join the potentially affected members, and the state's supreme court upheld the dismissal, concluding that the failure to join these individuals was fatal to the court's jurisdiction under the Uniform Declaratory Judgment Act. *Id.* at 740.

Likewise, in *Banks v. City of Wilkes Barre*, 1963 WL 6434 (Pa. Com. Pl. 1963), the court considered the issue of indispensable parties in a declaratory action filed by active fire fighters against the City to exclude certain retired fire fighters from membership in the retirement system. The court concluded that the retired fire fighters and their spouses, as well as the retirement board itself, were indispensable parties that must be joined under the Uniform Declaratory Judgment Act because they could be affected by its decision. *See also Glandon v. Searle*, 412 P.2d 116 (Wash. 1966) (finding that any person whose rights could be affected by a declaratory judgment are necessary parties and must be joined in the litigation).

As these decisions illustrate, the district court was without jurisdiction under Minnesota's Declaratory Judgment Act to order the Funds to recoup pension benefits from their members, including the retired fire fighters and their beneficiaries. The district court's order should be reversed on this ground alone.

(2) The Funds' Members Were Entitled to Due Process Before Being Deprived of their Pension Benefits by the Court.

The Funds' members, including the retired fire fighters, cannot be deprived of their pension benefits without due process. As early as 1914, the Supreme Court of Minnesota expressly rejected the notion that a fire fighter's pension is "a mere gratuity to be granted or withheld at the whim or pleasure of the [retirement] association." *Stevens v. Minneapolis Fire Department Relief Ass'n*, 145 N.W. 35, 36 (Minn. 1914). The Court instead concluded that association members have "vested rights" to their benefits "which the association may not arbitrarily destroy," but which must instead be provided "in harmony with the fundamental doctrine that no person can be deprived of his property or property rights except by due process of law." *Id.* This principle was reiterated in *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W. 2d 740, 748-50 (Minn. 1983), in which the Court held that public employees have a right to a promised pension benefit under the theory of promissory estoppel to which the "state constitution's impairment of contracts clause, Minn. Constit. art. I, §11" would apply. *See also Law Enforcement Labor Services, Inc. v. County of Mower*, 483 N.W.2d 696, 701 (Minn. 1992) (holding that, upon retirement in reliance on the county's promise of pension benefits, the retiree's "right to such benefits is vested for the life of the retiree and cannot be altered absent the retiree's express consent"); *Housing and Redevelopment Authority of Chisholm v. Norman*, 696 N.W.2d 329, 338 (Minn. 2005)(holding that the employee's right to the payment of health insurance premiums, as set forth in the collective bargaining agreement,

“vested at the time she retired and [her former employer] cannot now unilaterally terminate those benefits”).

Applying this precedent, the Minnesota Supreme Court has *expressly concluded* that the pension benefits payable by the MPRA constitute a property interest within the meaning of state law. Specifically, in *Janssen v. Janssen*, 331 N.W.2d 752 (Minn. 1983), the Court was faced with the question of whether pension benefits promised to a police officer upon his retirement constituted marital property for purposes of a marriage dissolution proceeding, despite the fact that the benefit had not yet even vested at the time of the dissolution.⁵ Addressing the question of “whether a nonvested pension right is marital property,” the Court held that this issue was “substantially answered” in the affirmative by its decision in *Christensen*, in which it had overruled previous cases “that had used a gratuity approach to public pension or retirement plans.” Accordingly, the court concluded that “the interest appellant holds [in his pension benefit] becomes more than a mere expectancy – it becomes a *chose in action*, a contractual right: *a property interest.*” *Id.* at 755 (emphasis added). The Court’s decision in *Janssen* – along with its previous decisions protecting public employees’ rights to their pensions – removes any doubt that the Funds’ members have a protected property interest in their pension benefits.

⁵ At the time of the dissolution, the police officer had worked for the police department for 19 and ½ years, but the Fund’s regulations required 20 years of service for vesting. *Id.* at 753.

It necessarily follows that the district court violated the members' due process rights when it ordered the Funds to recoup these benefits. The Minnesota Constitution explicitly states that "[n]o person shall ... be deprived of life, liberty or property without due process of law." Minn. Const. art. I, §7. Applying this provision, the Minnesota Supreme Court has long held that, "[a]t a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case." *Contos v. Herbst*, 278 N.W.2d 732, 742 (Minn. 1979); see also *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978) (due process requires "reasonable notice of hearing and a reasonable opportunity to be heard"). Of course, in the instant case, the Funds' members were not only deprived of prior notice or an opportunity to be heard, but were also *expressly denied* the right to participate in the case because they were found not to be "indispensable parties." This fundamental denial of their due process rights compels reversal of the district court's order.

This conclusion is amply supported by a number of decisions that have been rendered by Minnesota courts and the courts of other jurisdictions. For instance, in *Sammons v. Sammons*, 642 N.W.2d 450 (Minn. Ct. App. 2002), the Court of Appeals reversed the district court's order imposing a constructive trust on the petitioner's property in a proceeding involving her son's divorce on grounds that the petitioner was not a party to the case, and the district court therefore "did not have personal jurisdiction to enter a judgment affecting her

rights to her property.” *Id.* at 457. Moreover, relying upon the due process clause of the Minnesota Constitution, the court rejected the argument that petitioner’s actual knowledge of the proceedings cured this defect because such knowledge “did not give the court personal jurisdiction over her, nor did such knowledge equate to the due process guarantees of required notice and opportunity to be heard.” *Id.* at 457-58; *see also Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) (holding that, “in the exercise of due process no court, regardless of its jurisdictional structure, may adjudicate directly upon a person’s rights without such person being either actually joined or constructively before the court.”).

Courts in other jurisdictions have reached similar conclusions. For instance, in *Kosakowski v. Board of Trustees of the City of Calumet City Police Pension Fund*, 906 N.E. 2d 689 (Ill. App. Ct. 2009), the pension board recouped an overpayment to a retired police officer arising from the board’s erroneous interpretation of its governing regulations by unilaterally reducing his future pension payments. Despite the existence of a state statute specifically providing the board the right to recoup overpayments resulting from errors, the court condemned the board’s unilateral reduction because it failed to afford the retiree “notice and an opportunity to be heard before modifying his pension.” *Id.* at 695. Similarly, in *State of Washington v. Adams*, 732 P.2d 149 (Wash. 1987), the state attempted to recoup salary overpayments it had made to a number of its teachers by providing them notice and then summarily deducting the overpayment amounts from the future paychecks of those employees who refused to return the funds

voluntarily. Even after concluding on the merits that the state was legally entitled to recover the payments, the court – noting the absence of state statutory procedures to protect the employees from erroneous claims – held that the procedure used by the state violated the employees’ right to due process because it deprived them of their property without any opportunity to respond. *Id.* at 616.

It is clear from the foregoing that the district court violated the fundamental due process rights of the Funds’ members when it ordered the Funds to recoup from them the alleged overpayments, where they had never been parties to the case and were otherwise denied a meaningful right to be heard on this matter. Applying even the most basic notions of fairness compels the conclusion that the district court’s order cannot be allowed to stand.

II. The District Court Lacked Authority Under Minnesota Law to Order Recoupment as a Remedy for the Alleged Overpayments.

The district court’s order requiring recoupment from the individual Fund members, including the retired fire fighters and their beneficiaries, should also be reversed because there is absolutely no statutory or administrative authority that permits such a remedy. In its Order of November 20, 2009, the district court – recognizing the dearth of statutory authority for recoupment – correctly held that the City was not entitled to recoup the alleged overpayments from the Funds’ pensioners and beneficiaries. Order, p. 8. Indeed, the court held that recoupment was not permitted because the statute provides an “explicit, precise, and

unambiguous remedy” – namely, the amortization of unfunded actuarial liabilities. *See* Minn. Stat. § 69.77.

The court’s initial ruling on this issue was correct. Minnesota has not enacted any statutory authority by which either the MPRA or the MFRA may recoup overpayments from their members or their beneficiaries. This stands in striking contrast to a number of other states, whose legislatures have enacted statutes specifically allowing for this remedy. Notably, because the drastic remedy of recoupment can create significant hardships on retirees, the legislatures and courts of these states have typically imposed limitations on how it may be applied.

For example, Illinois law provides that “the amount of any overpayment, due to fraud, misrepresentation, or error, of any pension or benefit granted under this Article may be deducted from future payments to the recipient of such pension or benefit.” 40 ILCS 5/3-144.2 (2010). Even with this explicit statutory authority, however, Illinois courts have strictly limited instances in which pension boards are permitted to exercise this remedy. In *Sola v. Roselle Police Pension Board*, 794 N.E.2d 1055, 1058 (Ill. App. Ct. 2003), the surviving spouse of a retired fire fighter had been receiving pension benefits that included a cost of living increase for eight years when the pension board informed her that, because she was not entitled to those benefits, it intended to modify her future benefits pursuant to 40 ILCS 5/3-144.2. The court, however, found that the change in the Board’s interpretation of the pension code was neither an error nor a misrepresentation;

therefore, modification of her benefits to permit recoupment of the alleged “overpayments” was not permitted. *Id.* at 1058. In so holding, the court noted that permitting the board to reopen final decisions “simply because it failed to verify the accuracy of the information on which it based its decision would ... leave pension recipients uncertain as to their entitlement to benefits despite the fact that they relied on the ... Pension Board.” *Id.* (quoting *Rosler v. Morton Grove Police Pension Board*, 178 Ill. App. 3d 769 (1989)).

Other states have incorporated these limitations expressly into their recoupment statutes. For instance, under New Mexico’s recoupment statute, overpayments resulting from an “error or omission” may only be recouped for a period of one year prior to when the error was discovered. N.M. Stat. Ann. § 10-11-4.2 (2010). Similarly, Arizona’s statute permitting direct recoupment from future benefits of overpayments arising from “misstatement or computation error” expressly prohibits the collection of interest upon such amounts. A.R.S. § 38-850(F) (2010); *see also* MCLS § 418.833 (2010) (Michigan statutory language permitting an employer or carrier to “take[] action to recover overpayment of [worker’s disability] benefits,” so long as such recoupment is limited to one year prior to the date of taking such action); 5 M.R.S. § 17054(3) (2010) (Maine anti-alienation provision permitting the recovery of “[a]ny amounts due ... as the result of overpayment” from an individual, provided that the recovery practices are “reasonable and consider the personal economic stability of the retiree.”).

Unlike these other states, the Minnesota legislature has not seen fit to provide the MFRA or the MPRA with statutory authority to recoup alleged overpayments from their members. This absence of authority is made even more conspicuous by the fact that the Minnesota legislature has expressly *provided* for this remedy with respect to other workers' benefit funds. For instance, statutes governing Minnesota's workers compensation benefits provide that "mistaken compensation may be taken [from the person] as a partial credit against future periodic benefits." Minn. Stat. § 176.521. Moreover, the legislature has specifically provided for the recovery of pension overpayments by other pension associations within the state. See Minn. Stat. § 354A.12, subd. 7 (2009) (authorizing the executive director of the teachers' retirement fund association to seek recovery of overpayments of pension funds through direct repayment from the individual).

In determining whether the district court is permitted to order recoupment of benefits administered by the Funds, this Court should be guided by the canon of statutory construction *expressio unius est exclusio alterius* (i.e., the expression of one thing is the exclusion of another). See *Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 457 (Minn. 2006). Because the Minnesota legislature has enacted specific provisions by which an overpayment of certain benefits may be recovered through recoupment, and since the legislature has not enacted such a provision with respect to pension benefits administered by the MPRA and the

MFRA, it is clear that the legislature did not intend to provide these Funds with such authority.

Should any doubt remain on this point, the recoupment remedy ordered by the court is prohibited by Minnesota's anti-alienation provision, which makes clear that "[n]one of the monies ... provided for in the governing law of a covered retirement plan is assignable either in law or in equity *or subject to* state estate tax, or to execution, levy, attachment, garnishment, or *other legal process*, except as provided in subdivision 2 or section 518.58, 518.581, or 518A.53." Minn. Stat. § 356.401, subd. 1 (emphasis added).⁶ The MFRA is a covered retirement plan subject to those provisions. *Id.* at subd. 3(19). Therefore, according to the plain language of this statute, the district court was clearly without authority to subject the plan's members to recoupment pursuant to its May 17, 2010 order.

CONCLUSION

When this Court previously reviewed and upheld the district court's decision not to require the individual members to be joined as parties, the pertinent facts were very different than they are today. Relying upon the City's assertion that it did not intend to seek recoupment from the members and beneficiaries, both the district court and this Court found that because the case is primarily "a dispute between the contributor to and administrators of the pension funds about the

⁶ None of the enumerated exceptions applies here. Subdivision 2 of Section 356.401 is limited to situations where an overpayment is made after the death of a recipient to an account held by other owners *who are not* the beneficiary or their surviving spouse. The other exceptions, all part of Chapter 518 and dealing with the dissolution of marriage, are similarly inapplicable.

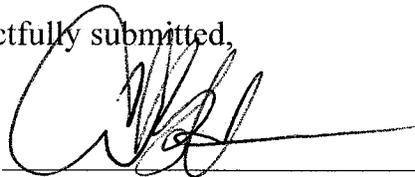
proper method of calculating the contributor's minimum obligation," the individual members are not indispensable parties.

The posture of this case has dramatically changed since this Court's last review. The retired fire fighter members of the MFRA are now subject to an order that will result in the unilateral recoument from their future pension payments of tens of thousands of dollars, despite the fact that they were strangers to this litigation and were denied their day in court. The IAFF's members affected by this case, who risked their lives to protect the lives and property of the City's populace, deserve better. They certainly deserve to have their fundamental due process rights protected.

For the foregoing reasons, and for the reasons set forth in the appellants' brief, the IAFF respectfully urges this Court to find in favor of the appellants in this matter and reverse the judgment of the district court.

Dated: 10/29/10

Respectfully submitted,



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