STATE OF MINNESOTA
IN COURT OF APPEALS
A12-113

The Home Insurance Company,
Respondent,

vs.

Special Compensation Fund, et al.,
Appellants.

Filed September 10, 2012
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CV-09-6985

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Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

HALBROOKS, Judge

In this insurance dispute, appellants Special Compensation Fund and Minnesota Department of Labor and Industry challenge the district court's grant of summary judgment to respondent The Home Insurance Company and the court's declaration that Home—an insolvent insurer—is entitled to reimbursement from the Fund for workers' compensation claims that Home paid before, during, and after its liquidation. Appellants argue the district court erred in determining that Home is entitled to reimbursement under applicable statutes; that Home's claims for reimbursement were timely; that Home's complaint presented a justiciable controversy; and that the reimbursement should proceed without delay despite the presence of a claw-back provision in the instrument governing the liquidation. We affirm.

FACTS

Special Compensation Fund

The legislature created the Special Compensation Fund under Minn. Stat. § 176.129 to administer programs designed to increase the fairness and efficiency of Minnesota workers' compensation laws. Minn. Stat. § 176.001 (2010) ("It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter."). When it was first implemented, the Fund had five distinct functions: (1) subsequent disability, or second injury, fund reimbursement; (2) supplementary benefit reimbursement; (3) special-claims

administration; (4) insurance verification; and (5) administration of the mandatory workers' compensation insurance-coverage law. The subsequent-disability and supplementary-benefit-reimbursement functions were repealed in 1992 and 1995, respectively, but workers who were eligible for compensation under these programs before the dates of repeal remain in the system. Minn. Stat. § 176.131, subd. 1(a) (1990) (repealed 1992) (subsequent disability); Minn. Stat. § 176.132, subds. 1(b), 3 (1994) (repealed 1995) (supplementary benefit reimbursement).

The Claims Services Investigations Unit within the Minnesota Department of Labor and Industry (the department) manages the Fund and enforces the mandatory coverage requirements of Minnesota's workers' compensation laws. The funding comes from three sources: (1) an insurer premium charge; (2) an assessment against self-insured employers; and (3) recoveries from uninsured employers and bankrupt self-insured employers. *See* Minn. Stat. § 176.129, subd. 2a(a) (2010). To receive reimbursement, employers and insurers must stay current "with all past due and currently due assessments, penalties, and reports to the special compensation fund." Minn. Stat. § 176.129, subd. 13 (2010).

Minnesota Insurance Guaranty Association

The Minnesota Insurance Guaranty Association Act governs the provision of direct insurance. Minn. Stat. §§ 60C.01-.22 (2010). The legislature created the Minnesota Insurance Guaranty Association (MIGA)

> to provide a mechanism for the payment of covered claims under certain insurance policies . . . , minimize excessive delay in payment and to avoid financial loss to claimants or

> policyholders because of the liquidation of an insurer, and to provide an association to assess the cost of the protection among insurers.

Minn. Stat. § 60C.02, subd. 2. When MIGA makes a payment on behalf of a liquidated insurer, it has the right to pursue and retain salvage and subrogation recoverables to the extent they were paid. Minn. Stat. § 60C.05, subd. 1(a). All insurers doing business in Minnesota are required to be members of MIGA. Minn. Stat. § 60C.04. MIGA and Minn. Stat. §§ 60C.01-.22 are completely separate from the Fund and Minn. Stat. § 176.129. MIGA does not make any payments to the Fund.

Home Insurance Company and its insolvency

Home is an insurance company that was duly organized and existing under New Hampshire law that wrote workers' compensation policies in Minnesota. Home was routinely reimbursed by the Fund under Minn. Stat. § 176.129 for subsequent disability and supplementary benefit payments. In June 1995, Home discontinued issuing policies for workers' compensation and has subsequently been in "run-off." Home's business was limited to servicing its existing claim obligations, which derived from policies written prior to June 1995. Home kept its assessments current with the Fund until July 2002.

The Merrimack County Superior Court of New Hampshire declared Home insolvent on June 13, 2003. The Commissioner of Insurance of the State of New Hampshire was appointed as Home's liquidator and assumed control of Home's operations and the disposition of its assets. Because Home was insolvent, MIGA became involved to ensure that Home's policyholders in Minnesota would still receive coverage.

The liquidator made an agreement with MIGA whereby MIGA would receive payment for its costs through early-access distributions from the liquidated estate. But MIGA would have to return any money from the early-access distributions in the event that the liquidator subsequently determined that it was necessary to pay "claw-back" claims, i.e., claims of secured creditors or creditors whose claims fell into the same or higher priority class than that of MIGA.

Before the liquidation process began on June 12, 2003, Home paid $1,316,628 directly to claimants. During a transition period from June 13, 2003, through August 2003, Home paid another $288,177.85 directly to claimants; these payments were treated as early-access distributions to MIGA. In August 2003, MIGA began making the payments owed to Home's Minnesota claimants. Home has continued on a rolling basis to reimburse MIGA for these payments through early-access distributions.

Home has made seven early-access distributions to MIGA. The first two occurred in October 2004 and December 2005, and the liquidator approved 100% of the expenses incurred by MIGA. For the following five early-access distributions, the liquidator applied a 40% distribution cap to avoid any claw-back situations. In total, MIGA has made payments exceeding $6 million, and Home seeks reimbursement from the Fund for $5,660,630 for payments it has made to reimburse MIGA.

Home submitted its reimbursement request to the Fund in February 2008. The department denied all reimbursement. In December 2008, Home sought reconsideration. The department again refused any reimbursement. In April 2009, Home sent a final request for reimbursement to the department with updated claims information. The

commissioner denied Home's claims on May 22, 2009. Home commenced this action against appellants on June 11, 2009.

Home's complaint had three counts. In the first count, Home sought a declaratory judgment for payments made while in liquidation from June 13, 2003, to August 2003, during which time Home made direct payments of $288,177.85 to claimants. Count one also sought reimbursement for the early-access payments that Home made to MIGA in excess of $6 million. In the second count, Home sought a declaratory judgment for reimbursement for payments made before liquidation, which amounted to $1,316,628. In the third count, Home sought a declaratory judgment for future payments on qualifying claims.

Appellants moved for summary judgment on all of Home's claims, asserting that Home lacked standing, that Home's claims are barred by the applicable statute of limitations, and that Home is not entitled to reimbursement based on the express language of the statute. Home brought a cross-motion for summary judgment, asserting that it was entitled to declaratory relief. The district court denied appellants' motion for summary judgment and granted Home's motion for summary judgment, in part. It granted summary judgment for declaratory relief on counts one and two, but denied summary judgment on count three because the amounts could not be determined based on the record before the district court.

Appellants brought a motion for clarification or modification. The district court granted appellants' motion, in part. First, it clarified that Home should be reimbursed by appellants for any amounts that Home paid MIGA for subsequent disability and

supplementary benefits that were actually distributed. Second, appellants argued that any payments should be delayed until Home's estate is fully liquidated because the potential for claw-back may decrease the amount that appellants owe Home. The district court found that the liquidation court in New Hampshire accounted for this possibility when it implemented the 40% cap. The district court therefore found that there was adequate protection against the possibility of claw-back and ruled that reimbursement need not be delayed. Finally, the district court held that there was no need for accountings of prior submissions, but that appellants were entitled to review documents to ensure that itemized expenses are eligible for reimbursement for future submissions. This appeal follows.

D E C I S I O N

Appellants challenge the district's court grant of summary judgment to Home. Summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). On appeal from summary judgment, we review the record to determine whether there is any genuine issue of material fact for trial and whether, in granting summary judgment, the district court committed an error of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We "view the evidence in the light most favorable to the party against whom judgment was granted." *Bellomo*, 504 N.W.2d at 761.

I.

Appellants contend that the express language of the statute precludes Home's claim for reimbursement. This court reviews issues of statutory interpretation de novo. *City of E. Bethel v. Anoka Cnty. Hous. & Redev. Auth.*, 798 N.W.2d 375, 379 (Minn. App. 2011). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). When a statute is clear and free from all ambiguity, we will not disregard the letter of the law under the pretext of pursuing the spirit of the law. *Id.* When interpreting a law, words and phrases are accorded their common and approved usage. Minn. Stat. § 645.08(1) (2010).

A. Current in assessments

Appellants contend that Home is not eligible for reimbursement because Home is not current with its assessments. Minn. Stat. § 176.129, subd. 13, provides: "Employers and insurers may not be reimbursed from the special compensation fund for any periods unless the employer or insurer is up to date with all past due and currently due assessments, penalties, and reports to the special compensation fund under this section." It is undisputed that Home has not paid its assessments since July 2002. Under the express language of the statute, Home is currently ineligible to receive any reimbursements from the Fund.

But Home is willing and able to pay all the assessments that it owes in order to become current. The express language of the statute allows Home to become eligible by paying all past due assessments. While it has been ten years since Home was current with its assessments, there is no statutory limit for the time period in which Home can

become current. Therefore, if Home were to become current with its assessments, it would be eligible for reimbursement payments from the Fund.

B. Home is an insurer

Appellants argue that Home is not entitled to reimbursement payments because Home is not an employer or insurer that pays supplementary or second-injury benefits under the statute. The parties somewhat imprecisely focus on the language of Minn. Stat. § 60C.05, which governs the powers and duties of MIGA. The issue of whether Home is an insurer under MIGA is resolved by the definitions provided under Minn. Stat. § 60C.03, subd. 6, which provides that a "member insurer" of MIGA is any person who writes any kind of insurance and is licensed to transact insurance business in Minnesota. Minn. Stat. § 60C.03, subd. 6. It continues:

> An insurer ceases to be a member insurer the day following the termination or expiration of its license to transact the kinds of insurance to which this chapter applies. The insurer remains liable as a member insurer for any and all obligations, including obligations for assessments levied before the termination or expiration with respect to an insurer that became an insolvent insurer before the termination or expiration of the insurer's license.

Id. Home was a member of MIGA at the time that it wrote the policies, and it remains liable "as a member insurer" for all of its obligations before it became insolvent. MIGA does not have the sole legal authority and obligation for payment of benefits, as appellants assert.

Furthermore, the statute defines an "insolvent insurer" as "an insurer licensed to transact insurance in this state . . . at the time the policy was issued . . . and against whom

a final order of liquidation has been entered . . . with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile." Minn. Stat. § 60C.03, subd. 8. The definition in subdivision 6 explicitly states that an insolvent insurer remains liable for financial obligations incurred prior to insolvency. Home satisfies the definition of an insolvent insurer. Because Home fits the definitions of a "member insurer" and an "insolvent insurer" provided by chapter 60C, it is an insurer that pays supplementary and second-injury benefits under Minn. Stat. §§ 176.131, .132.

C. Reimbursement of Home disbursements to MIGA consistent with chapter 60C

Appellants contend that the reimbursement of Home's disbursements to MIGA is inconsistent with the purpose of chapter 60C because MIGA is deemed the insurer. Appellants argue, "Respondent is not an insurer or an employer, and it is not paying benefits. Therefore, as a matter of law and public policy, Home has no statutory authority to obtain reimbursement from the Fund." This assertion is an extension of its previous argument and fails for the same reasons.

II.

Appellants contend that Home is barred from bringing a claim by the applicable statutes of limitation and the doctrine of laches. We disagree.

A. Statute of limitations

First, appellants assert that "on the date that Home was placed in liquidation, Home was not entitled to any reimbursement from the Fund because it had—and continues to have—more than $500,000 in outstanding assessments." This is the same

argument as in section I.A. Because Minn. Stat. § 176.129, subd. 13, allows Home to become current in its deficient assessments, Home is not barred from receiving reimbursements.

Second, appellants contend that the six-year statute of limitations bars Home's complaint. The parties agree that Minn. Stat. § 541.05, subd. 1(2) (2010), provides the correct standard: the proper statute of limitations is six years because Minn. Stat. § 176.129 is a statute that creates liability. The construction and applicability of a statute of limitations are questions of law, which this court reviews de novo. *McClure v. Davis Eng'g, LLC*, 716 N.W.2d 354, 358 (Minn. App. 2006). A cause of action accrues "at such time as it could be brought in a court of law without dismissal for failure to state a claim." *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716-17 (Minn. 2008). The statute of limitations period "begins to run when the plaintiff can allege each of the essential elements of a claim." *Id.* at 717.

The parties differ as to when the statute of limitations was triggered. Appellants contend that it occurred when Home made payments to the injured workers. Home contends that it occurred when the department denied its request for reimbursement. In support of its position, appellants cite *Metro. Prop. & Cas. Ins. Co. v. Metro. Transit Comm'n*, 538 N.W.2d 692, 695 (Minn. 1995), for the proposition that the right of indemnity accrues when the party seeking indemnity has made payment to the injured person. But this is the common-law rule. *Id.* Minn. Stat. § 176.001 (2010) explicitly provides that the common law does not apply to chapter 176. Rather, the statute provides, "All employers and insurers shall make reports to the commissioner as required

for the proper administration of this section and Minnesota Statutes 1990, section 176.131, and Minnesota Statutes 1994, section 176.132." Minn. Stat. § 176.129, subd. 13 (2010).[1] Because the statute requires Home to submit a report to the commissioner before it can receive reimbursement for subsequent disability and supplementary benefits, the statute of limitations is not triggered until Home submits the proper reports. Therefore, the statute of limitations was not triggered until the department rejected Home's final request for reimbursement on May 22, 2009. Home brought its claim on June 11, 2009, less than one month after its request was denied.

B. Doctrine of laches

Appellants also contend that Home's claim is barred by the doctrine of laches. "Laches is an equitable doctrine applied to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2002) (quotation omitted). "The standard of review of the district court's decision on an issue of laches is whether the court abused its discretion." *In re Marriage of Opp*, 516 N.W.2d 193, 196 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). A district court has abused its discretion when its decision is arbitrary, capricious, or not in conformity with the law. *In re Ruth Easton Fund*, 680 N.W.2d 541, 547 (Minn. App. 2004).

[1] This is consistent with the letter the department sent to Home, which stated, "The operative event for determining the Department's obligation to reimburse supplementary and second injury benefits is not the employee's date of injury, but rather the date the claim for reimbursement is submitted to the Department."

When there is an applicable statute of limitations, laches applies only when an injustice would otherwise result. *Kahnke v. Green*, 695 N.W.2d 148, 152 (Minn. App. 2005). The analysis is "principally a question of the inequity of permitting the claim to be enforced,—an inequity founded upon some change in the condition or relations of the property or the parties." *Id.* (quotations omitted). The doctrine of laches may be applied "where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired." *Id.* (quotations omitted).

The district court rejected appellants' laches argument, reasoning that it "found no evidence of substantial prejudice to the Special Compensation Fund, the Department, MIGA or individual Minnesota claimants. There is no equitable basis to bar plaintiff's suit. Accordingly, the Court determines the doctrine of laches does not apply in this action to bar plaintiff's claims."

Appellants argue that the district court erred because it would be prejudicial to pay Home's reimbursement requests more than six years after Home made the benefit payments in April 2003. The statute provides that the funding for the Fund is based on the estimated liabilities from year to year. Minn. Stat. § 176.129, subd. 2a(a). The statute continues: "The total amount of the assessment must be allocated between self-insured employers and insured employers based on paid indemnity losses for the preceding calendar year." *Id.* Self-insured employers and insured employers are then assessed in the same proportion in which they paid indemnity losses from the Fund during the preceding year. *Id.*, subd. 2a(b). Appellants argue that because Home did not

make its claims every year, which would have allowed payments and resulting assessments to be spread over those six years, the Fund is now faced with a very large loss that could only be covered by placing an unjust assessment rate on self-insured employers. The amicus curiae brief submitted by the Minnesota Self-Insurers' Association (MSIA) echoes this argument, claiming that "the assessment owed to the [Fund] from self-insurers would increase from 22% to 24.5% (or $2,376,761) and the insurers would pass along the increased assessment to employers who are not self-insured by increasing the premium surcharge from 8.9% to 9.9% (or $7,623,239)."

But the arguments and evidence that MSIA presents in its amicus brief were not part of the district court's record. Because "[a]n appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below," we do not consider it in this decision. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Further, the Fund would cover the same reimbursements to Home, regardless of whether Home requested reimbursement throughout the six years or in a lump sum. While a large lump sum now may create higher assessments for the following year, the statute allows it. Because the position of the parties does not change so drastically as to require equitable relief, the district court did not abuse its discretion by denying it.

III.

Appellants contend that Home failed to present a justiciable controversy. A justiciable controversy exists if the claim "(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests

between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 336 (Minn. 2011). The issue of justiciability is a question of law, which we review de novo. *Id.*

Appellants make three arguments why Home has failed to establish a justiciable controversy. First, appellants contend that Home has only said that it could pay its assessments, and until it does, there is no concrete assertion of a right that emanates from a legal source. As discussed in section I.A, Home has offered to pay its past-due assessments in their entirety. The fact that the Fund has asserted that it would not reimburse Home even if it did make the assessments presents a genuine conflict in tangible interests that emanates from a legal source.

Second, appellants contend that the disbursements that Home will ultimately make to MIGA are hypothetical because of the potential for claw-back. The facts show that the liquidator imposed a 40% cap on the early-access distributions that Home made to MIGA to avoid any claw-back situations, which the district court found to be credible. Because the amounts issued by the liquidator were determined to avoid any claw-back situations, the numbers are not hypothetical.

Third, appellants argue that the future payments that Home requested at the district court level are hypothetical because they are based on undefined and remote contingencies. In Home's complaint, count three sought reimbursement of future payments on qualifying claims. The district court denied summary judgment on this count, stating, "These judgments are subject to an offset by [the Fund] for any amount

owing on the Montgomery Ward Claims which amount cannot be determined at this point." Home does not contest the district court's ruling.

IV.

Appellants contend that any claim for reimbursement should be delayed until the conclusion of the liquidation process. Because there is no legal standard governing the timing of payments during a liquidation proceeding, the timing of Home's receipt of reimbursements is a question of fact. This court gives great deference to the district court's findings of fact, and we will not set aside those findings unless clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

The district court found that there was no reason to delay the reimbursement payments based on the possibility that the liquidator may order some of the money returned under the claw-back provision. It reasoned, "Home's early access distributions to MIGA have been 'capped' and thus are not available for creditors of Home to 'claw back.'" This finding is supported by the record, as the liquidator implemented the 40% cap to avoid claw-back situations. Because the district court's finding of fact is supported by evidence in the record, the district court did not clearly err in refusing to delay Home's claims for reimbursement until the liquidation proceeding has concluded.

Affirmed.