STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0174

Heather Lee Hanson, n/k/a, Heather Lee Blocker,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 4, 2012
Affirmed
Cleary, Judge

Dakota County District Court
File No. 19HA-CR-08-4860

Renee J. Bergeron, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Tricia A. Loehr, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Chutich, Judge; and Hooten, Judge.

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

CLEARY, Judge

Appellant challenges the denial of her petition for postconviction relief. She argues that she is entitled to a reduction in the amount of restitution she was ordered to

pay because the state is estopped from claiming any restitution prior to February 2007. We affirm.

FACTS

In October 2005, appellant Heather Hanson, now known as Heather Blocker, began receiving section 8 housing-assistance benefits. The section 8 program was facilitated by the Dakota County Community Development Agency (DCCDA). At that time, appellant reported to the DCCDA that the members of her household were herself and her four children. Appellant also reported that the father of her children, B.B., lived in a different residence and was paying child support to her. In October 2006, appellant reported no changes regarding her household members.

In November 2006, the DCCDA sent appellant a letter notifying her that her participation in the section 8 program would be terminated on December 31, 2006, because she allowed B.B., an "unreported additional adult," to live in her rental unit and because she did not represent her true circumstances to the DCCDA. In an amended letter sent in December 2006, the DCCDA informed appellant that the termination would be effective January 31, 2007. In both letters, the DCCDA informed appellant that she would be responsible for repaying benefits that had been overpaid to her; the first letter stated that the overpaid benefits totaled $18,933, and the second letter stated that the overpaid benefits totaled $20,204. Appellant disputed the termination, and an informal hearing was held in January 2007. Present at the informal hearing were appellant, B.B., a representative of the DCCDA, and the hearing officer. In February 2007, the hearing officer issued an order finding that "given the lack of current concrete evidence provided

by the [DCCDA] at the informal hearing, the hearing officer can only conclude that the preponderance of evidence does not support a termination of [appellant's] [s]ection 8 participation at this time." The February 2007 order therefore did not address the overpayment of benefits to appellant.

In November 2007, the DCCDA again notified appellant that her participation in the section 8 program would be terminated. The DCCDA alleged that illegal drugs were found in appellant's rental unit, an unapproved additional adult was living in her unit, and she had unreported income. The DCCDA stated the termination would be effective December 31, 2007, and that appellant would not receive assistance for November or December. Appellant again disputed the termination, and an informal hearing was held in March 2008. Present at the hearing were appellant, a DCCDA representative, and the hearing officer. In March 2008, the hearing officer issued an order finding that:

> [A]fter a thorough and thoughtful review of all the evidence, information and testimony presented at the informal hearing and based on a preponderance of evidence, the hearing officer has concluded that [appellant] was in fact in violation of [s]ection 8 federal program regulations and [DCCDA] policies as a result of having an unapproved additional adult residing in her assisted unit – namely [B.B.] – and as a result of permitting illegal drug activity in her assisted unit.

The hearing officer concluded that appellant's section 8 participation should be terminated. The hearing officer agreed with the DCCDA's calculation of the amount of benefits that were overpaid to appellant. The order stated, "The hearing officer has also reviewed and concurs with the [DCCDA's] overpayment calculation and with the

[DCCDA's] determination that [appellant] should be held responsible for repaying the [DCCDA] for all [s]ection 8 benefits paid on her behalf from October 1, 2005, to date."

In November 2008, appellant was charged with one count of fifth-degree controlled substance crime under Minn. Stat. § 152.025, subds. 1(1), 3(a) (2008), and five counts of theft by false representation under Minn. Stat. § 609.52, subds. 2(3), 3(2), 3(5), 4 (2008). The five counts of theft by false representation accounted for the time period between October 2005 and September 2007, when she was receiving housing assistance to which she was not entitled. The controlled-substance charge was dismissed, and appellant entered an *Alford* plea to one count of theft by false representation. The court reduced the count from a felony to a gross misdemeanor, and the remaining theft counts were dismissed. Appellant acknowledged at the plea hearing that she would be required to pay restitution. Appellant's attorney underestimated what the total amount would be, stating that, in her opinion, "it should be about eight or nine thousand dollars." Although the amount of restitution had not yet been determined, the district court stated, "Restitution on all counts, and what that means is we are going to ask Community Corrections to do a study. They will determine how much is owed, taking into account the prior proceedings with the judgment, I believe." Appellant raised no objection to this statement by the judge.

In March 2010, appellant was notified that the total amount of restitution she was required to pay was $27,515.75. Pursuant to Minn. Stat. § 611A.045, subd. 3(b) (2008), appellant challenged the amount of restitution she owed. She claimed that the February 2007 DCCDA order, finding insufficient evidence to terminate her participation in the

section 8 program, precluded the DCCDA from claiming restitution prior to that time. In October 2010, the district court determined that the DCCDA was not estopped from claiming restitution prior to February 2007 and ordered appellant to pay the full amount.

Appellant filed an appeal and a motion for an extension of time to file the appeal with this court in February 2011. Appellant argued that she was not appealing the conviction but rather appealing the restitution determination. This court denied appellant's motion for an extension of time and dismissed the appeal as untimely. The Minnesota Supreme Court denied appellant's petition for further review. In October 2011, appellant filed a petition for postconviction relief in the district court. The district court denied appellant's motion for postconviction relief and concluded that appellant "failed to prove she is entitled to postconviction relief." This appeal followed.

D E C I S I O N

I

When reviewing the decision of the postconviction court, we review questions of law de novo. *Arredondo v. State*, 754 N.W.2d 566, 570 (Minn. 2008). Our review of factual findings is limited to determining whether there is sufficient evidence in the record to support the findings of the postconviction court. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). The decisions of a postconviction court will not be disturbed unless the court abused its discretion. *Perry v. State*, 595 N.W.2d 197, 200 (Minn. 1999).

A

The state argues that postconviction relief is not available to appellant because she does not dispute the district court's determination that she "failed to prove she is entitled

to postconviction relief" and because she did not provide any evidence that entitles her to postconviction relief.

After the time for direct appeal has ended,

> a person convicted of a crime, who claims that . . . the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state . . . may commence a proceeding to secure relief by filing a petition in the district court . . . .

Minn. Stat. § 590.01, subd. 1 (2010). "[W]here direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The statutory version of the *Knaffla* rule states, "A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence." Minn. Stat. § 590.01, subd. 1.

The district court here stated, "[Appellant] is requesting postconviction relief because [appellant] was unable to appeal the October 2010 order and is essentially raising the same issues she did in September 2010." Although the district court did not cite to *Knaffla*, it appears to have applied the *Knaffla* rule barring appellant from raising issues in a postconviction petition that she raised or knew of at the time of the previous appeal. It is undisputed that appellant is raising the same issues as she raised in her previous appeal.

In *Knaffla*, the defendant did not pursue a direct appeal and filed a petition for postconviction relief after the time for a direct appeal had expired. 309 Minn. at 247, 243

N.W.2d at 738. The postconviction court determined that the defendant did not receive a fair trial but denied postconviction relief because he did not seek a direct appeal. *Id.* The Minnesota Supreme Court reversed the postconviction court and stated, "[I]n a postconviction proceeding, relief is to be predicated, not upon a determination as to whether direct appeal from the conviction was taken within the prescribed time limitations, but rather upon compliance with the procedural requirements of Minn. St. c. 590." *Id.* at 252, 243 N.W.2d at 741. The court noted, "The salient feature of Minn. St. c. 590 . . . is that a convicted defendant is entitled to at least one right of review by an appellate or postconviction court." *Id.*

In a similar case, a defendant filed a petition for postconviction relief in which he claimed that his guilty plea was not valid. *Barnslater v. State*, 805 N.W.2d 910, 912 (Minn. App. 2011). The district court, relying on *Knaffla*, determined that the defendant's petition was barred because he had previously appealed from his probation revocation. *Id.* at 913. This court held:

> [T]he district court considering [the defendant's] postconviction petition instead called [the probation-revocation] appeal a restitution-order appeal, and then it denied [the defendant's] petition for postconviction relief on the grounds of *Knaffla*. Whether we call the previous appeal a probation-revocation appeal or a restitution-order appeal, what is relevant is that it was not *a direct appeal from [the defendant's] conviction*. It therefore does not implicate the concerns or fall under the holding of *Knaffla*.

Id.

Similarly, appellant here filed an appeal from the restitution order issued in October 2010; she did not file a direct appeal from her conviction. The *Knaffla* rule does not bar appellant's postconviction petition.

B

The state also argues that appellant waived her right to claim collateral estoppel because she did not raise the issue at the March 2008 hearing regarding her section 8 eligibility and because she entered into the plea agreement to pay restitution on all counts against her. The state contends that, while appellant could challenge the amount or type of restitution determined by the district court, she cannot "bring a legal challenge, collateral estoppel, to an agreement she entered into."[1]

"An offender may challenge restitution, but must do so by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later." Minn. Stat. § 611A.045, subd 3(b). "At the sentencing, dispositional hearing, or hearing on the restitution request, the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts." Minn. Stat. § 611A.045, subd. 3(a) (2008).

[1] The state relies on *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007), for the proposition that "Minnesota courts have held that when a defendant enters a valid plea colloquy under [r]ule 15, they waive all non-jurisdictional defects." *Farnsworth* addresses a defendant's ability to challenge errors that occurred prior to a plea agreement. *Id.* at 371–72. Because appellant here challenged the amount of restitution determined after the plea, *Farnsworth* does not apply.

Appellant here is properly challenging the amount of restitution she was ordered to pay. She does not argue that she should not have to pay any restitution; rather, she claims that the amount calculated by DCCDA is incorrect because it factors in amounts prior to the February 2007 order. Appellant is not challenging her conviction or trying to withdraw her plea. Nor is she challenging any defect that occurred prior to the entry of her plea. Furthermore, appellant here submitted a timely challenge to the restitution amount in the district court, in accordance with the procedure described in Minn. Stat. § 611A.045, subd. 3(b). *See Mason v. State*, 652 N.W.2d 269, 271–72 (Minn. App. 2002) (affirming the district court's conclusion that failure to challenge restitution within the time allowed under Minn. Stat. § 611A.045, subd. 3(b), precluded review on the merits of a restitution order), *review denied* (Minn. Dec. 30, 2002).

Because appellant's appeal from the restitution-hearing order is not a direct appeal of her conviction and not barred by the *Knaffla* rule, and because appellant preserved the issue for appeal by properly challenging the restitution order under Minn. Stat. § 611A.045, subd. 3(b), we review appellant's collateral estoppel claim.

II

"Whether collateral estoppel is available is a mixed question of law and fact subject to de novo review." *In re Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). "Once it is determined that collateral estoppel is available, the decision to apply the doctrine is left to the trial court's discretion." *Id.*

"Collateral estoppel 'precludes parties to an action from relitigating in subsequent actions issues that were determined in the prior action.'" *State v. Lemmer*, 736 N.W.2d 650, 658 (Minn. 2007) (quoting *In re Village of Byron*, 255 N.W.2d 226, 228 (Minn. 1977)). Collateral estoppel applies when:

> (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Lemmer, 736 N.W.2d at 659 (quoting *Willems v. Comm'r of Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983)). All four prongs of the test must be met for collateral estoppel to apply. *Heine v. Simon*, 702 N.W.2d 752, 761 (Minn. 2005).

Identical Issue

The January 2007 hearing "was initiated at the request of [appellant] to dispute the termination of her participation in the Section 8 rental assistance program." Once the hearing officer found that there was "insufficient current evidence" to conclude that appellant had violated the terms of the assistance program, she did not need to specifically reach the issue of whether appellant had been overpaid benefits by the DCCDA.

The March 2008 hearing was also "initiated at the request of [appellant] to dispute the termination of her participation in the [s]ection 8 rental assistance program." But in contrast, the hearing officer concluded that a preponderance of the evidence supported the conclusion that appellant was "in violation of [s]ection 8 federal program regulations and [DCCDA] policies," and the hearing officer ordered appellant's termination from the

program. The hearing officer then addressed the calculation of overpaid benefits and concluded that appellant should repay the DCCDA for all benefits received from October 1, 2005, until the time of the hearing. Appellant does not argue that the March 2008 order precludes the state from seeking restitution prior to February 2007; she instead argues that collateral estoppel applies based on the February 2007 order.

The issue in the present case is calculating the amount of restitution appellant owed for benefits that were overpaid to her. The issue in the January 2007 hearing was whether appellant violated the policies of the section 8 program and, if she did, how much she owed for the benefits that were overpaid to her. Although these issues are quite similar and this is a close call, they are not identical for the purposes of this case.

Final Judgment on the Merits

In her February 2007 order, the hearing officer concluded that "there is insufficient current evidence to warrant a conclusion" that appellant was violating the section 8 program policies. The hearing officer also concluded "that the preponderance of evidence does not support a termination of [appellant's] [s]ection 8 participation *at this time*. Therefore, [appellant's] [s]ection 8 participation should be continued as previously scheduled." (Emphasis added.) The hearing officer's conclusions imply that, while there was insufficient current evidence to prove that appellant *was* violating the section 8 program policies, she could not definitively conclude that appellant was not violating the policies. This implication demonstrates that the hearing officer did not consider her February 2007 conclusions to be a final judgment and that they could be reevaluated at any time. Indeed, appellant was required to submit to annual housing inspections and

periodically certify that her household composition had not changed. Appellant's situation was eventually reevaluated in March 2008, and the hearing officer concluded then that appellant had been violating section 8 policies since October 2005.

A housing authority agency is acting in a quasi-judicial capacity when it holds an informal hearing where it receives evidence, hears testimony, and makes a determination regarding an individual's section 8 benefits. *Wilhite v. Scott Cnty. Hous. & Redev. Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009). "Collateral estoppel may apply to administrative decisions when an agency acts in a judicial or quasi-judicial capacity." *Builders Commonwealth, Inc. v. Dep't of Emp't & Econ. Dev.*, 814 N.W.2d 49, 55 (Minn. App. 2012).

Appellant argues that an administrative determination regarding housing-assistance benefits is final, and it appears that, despite the temporal language used by the hearing officer, the February 2007 order was final. However, because we ultimately conclude that the parties were not in privity, collateral estoppel does not apply.

Party to the Prior Adjudication or in Privity with a Party to the Prior Adjudication

The parties present at the January 2007 hearing were appellant, B.B., a representative of the DCCDA, and the hearing officer. The parties to the criminal proceeding were appellant and the State of Minnesota, represented by the Dakota County Attorney. Appellant argues that the Dakota County Attorney and the DCCDA are in privity with each other because the Dakota County Attorney represents the DCCDA in its proceedings.

The Minnesota Supreme Court "bases its privity determination on whether the party to be estopped (1) had a controlling participation in the first action, (2) had an active self-interest in the previous litigation, or (3) had a right to appeal from a prior judgment." *Lemmer*, 736 N.W.2d at 661 (citation omitted).

In *Lemmer*, the court held that the Commissioner of Public Safety (Commissioner) and the State of Minnesota were not in privity. *Id.* The defendant in *Lemmer* was arrested for boating while impaired, and his driver's license was revoked. *Id.* at 653. The defendant challenged the civil revocation of his driver's license in an implied-consent hearing. *Id.* The revocation was rescinded because the district court determined that the sheriff did not have a particularized and objective basis for stopping the defendant. *Id.* The defendant was also charged in a criminal action with driving while intoxicated (DWI). *Id.* In that proceeding, the state was represented by a county attorney. *Id.* The defendant argued that the state was collaterally estopped from arguing that the stop was valid, claiming that the commissioner and the state were the same party. *Id.* The court determined that the parties were not the same and then analyzed whether they were in privity. *Id.* at 660–61. The court concluded that "the differing functions and responsibilities of the Commissioner of Public Safety and the State of Minnesota are sufficiently distinct" to conclude that they were not in privity. *Id.* at 661. The court pointed out that the Department of Public Safety "was established for the purpose of regulating drivers' licensing and safety responsibility," which was distinct from "the prosecution of crimes, which is the function that the state is serving in the DWI prosecution." *Id.* The court also pointed out that, although both the Commissioner and

the state had an interest in proving that the defendant was intoxicated, "[t]he state has no authority over decisions made by the Commissioner in implied consent proceedings and vice versa." *Id.* at 662. The court finally noted that the state's lack of interest in the implied-consent hearing and inability to appeal an adverse decision against the Commissioner in an implied-consent hearing "weigh[ed] against the existence of privity." *Id.* at 663.

The parties here are similarly situated. They are connected, but not connected to such a degree as to be in privity. One of the purposes of the DCCDA is to "provide a sufficient supply of adequate, safe, and sanitary dwellings in order to protect the health, safety, morals, and welfare" of the citizens of Dakota County. Minn. Stat. § 469.001(1) (2010); *see also* Minn. Stat. § 383D.41 (2010). As was the case in *Lemmer*, the DCCDA's purpose is separate and distinct from the prosecution of crimes in Dakota County, which is charged to the Dakota County Attorney. *See* Minn. Stat. § 388.051, subd. 1(c) (2010). The state, through the Dakota County attorney, did not have any input as to the legal theories or arguments advanced during the informal hearing in January 2007. The county attorney was not present at the January 2007 hearing; the only participants at that hearing were appellant, B.B., the DCCDA representative, and the hearing officer. The state did not have an active self-interest in the January 2007 hearing and could not appeal a decision that would have been adverse to the DCCDA.

The DCCDA and the state, represented by the Dakota County Attorney, were not in privity.

Full and Fair Opportunity to be Heard on the Adjudicated Issue

Appellant argues that the Dakota County Attorney and the DCCDA were in privity, and therefore the Dakota County Attorney had a full and fair opportunity to be heard on the issue of benefits paid to appellant. However, as noted, the Dakota County Attorney was not present at the January 2007 hearing, and therefore the state did not have an opportunity to be heard. The state did not bring charges against appellant until November 2008, almost two years later. Since the Dakota County Attorney and the DCCDA were not in privity, the state did not have a full and fair opportunity to be heard.

Because the DCCDA and the state were not in privity and, as a result, the state did not have a full and fair opportunity to be heard, we hold that the doctrine of collateral estoppel is not available to appellant here and that the district court did not abuse its discretion by denying postconviction relief.

Affirmed.