IN THE COURT OF APPEALS OF IOWA

No. 2-034 / 11-1116
Filed April 25, 2012

O.M.J.C. SIGNAL, INC.,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF TRANSPORTATION and HORIZON SIGNAL TECHNOLOGIES,
Defendants-Appellees.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

O.M.J.C. Signal, Inc., appeals from the district court's grant of summary judgment in favor of the Iowa Department of Transportation and Horizon Signal Technologies on its petition for declaratory judgment. **AFFIRMED.**

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellant.

Thomas J. Miller, Attorney General, Richard F. Mull, Assistant Attorney General, for appellee Iowa Department of Transportation.

Clark I. Mitchell and Benjamin P. Long of Grefe & Sidney, P.L.C., Des Moines, for appellee Horizon Signal Technologies.

Heard by Vogel, P.J., and Tabor and Bower, JJ.

TABOR, J.

This appeal involves two competing manufacturers of the temporary traffic signals used by the Iowa Department of Transportation (IDOT) at its road construction sites. O.M.J.C. Signal, Inc. (OMJC) challenges a summary judgment ruling in favor of Horizon Signal Technologies and the IDOT. OMJC asked the district court to rule that the IDOT was not requiring Horizon to comply with a regulation setting the technical standard for the safety devices sold by the two competitors. Because the district court properly determined that OMJC failed to exhaust its administrative remedies, we affirm the grant of summary judgment.

I. Background Facts and Proceedings

OMJC and Horizon manufacture and sell temporary traffic signals. The IDOT uses these portable devices to control the flow of vehicles when road construction forces two-way traffic into a single lane. The IDOT entered into a contract to purchase traffic signals from Horizon for this purpose.

The IDOT has promulgated specifications for temporary traffic signals, which state in pertinent part:

> The system shall include a solid state digital traffic signal controller capable of operating the signals in accordance with MUTCD [Manual on Uniform Traffic Control Devices] requirements and NEMA [National Electrical Manufacturers Association] Standards TS1. (A certificate of compliance may be required.) All portable traffic signal systems shall have a conflict monitor that conforms to NEMA TS1 standards. The conflict monitor shall detect the presence of conflicting signal indications, the absence of proper voltages, and the proper operation of the controller.

The NEMA TS1 requires, among other things, that the connector pin terminations of traffic signal controllers be interchangeable with units from other manufacturing sources.

In 2005, OMJC began questioning Horizon's compliance with the IDOT's specifications, arguing Horizon's equipment did not comply with the NEMA Standards TS1. Specifically, OMJC challenged Horizon's compliance with the interchangeability requirement. In July 2007, the IDOT sent one of Horizon's devices to be tested at MET Laboratories to determine if it met NEMA Standards TS1. In March 2008, an IDOT staff member notified OMJC that testing revealed the Horizon devices do comply with the standards.

On April 30, 2008, OMJC filed a petition for declaratory judgment, asking the district court to require the IDOT and Horizon to provide all information in their control and custody for determination of NEMA TS1 compliance with all IDOT projects. The petition also requested that the court determine whether the IDOT is requiring Horizon and other signal contractors to be NEMA TS1 compliant. After the district court ruled that OMJC was entitled to receive a redacted copy of the MET Laboratories report, Horizon pursued an interlocutory appeal. We affirmed the ruling regarding access to the report in *O.M.J.C. Signal v. Iowa Department of Transportation*, No. 09-0771 (Iowa Ct. App. Dec. 17, 2009).

Both the IDOT and Horizon filed motions for summary judgment, alleging the district court lacked jurisdiction to hear the declaratory judgment action based in part on OMJC's failure to exhaust administrative remedies. At the hearing on

March 21, 2011, OMJC argued the petition was properly before the court. In the alternative, OMJC argued that if the petition was not properly filed as an original action, it should be recast as a petition for judicial review of a final agency action. OMJC argued it exhausted administrative remedies by engaging in email correspondence with the IDOT traffic engineer and other staff members.

On June 20, 2011, the district court granted summary judgment in favor of the IDOT and Horizon. The court held OMJC "failed to employ, much less exhaust, its administrative remedies by simply having various communications with the IDOT over a period of years." Because the decision whether Horizon's equipment complied with the specifications in the rule was clearly vested with the IDOT, the court held OMJC was required to exhaust its administrative remedies before seeking redress with the court. Finally, the court declined to consider OMJC's original petition as a request for judicial review under Iowa Code section 17A.19 (2007).

II. Standard of Review

We review summary judgment rulings for correction of legal error. *Pavone v. Kirke*, 807 N.W.2d 828, 832 (Iowa 2011). The moving party must demonstrate the absence of any genuine issues of material fact and establish it is entitled to judgment on the merits as a matter of law. *Id.* We examine the record in the light most favorable to the nonmoving party. *Id.*

Critical to the district court's summary judgment ruling are interpretations of a rule of civil procedure and provisions of chapter 17A, the Iowa Administrative Procedures Act (IAPA). We review those underlying questions of statutory

construction for the correction of errors at law as well. *See Travelers Indem. Co. v. D.J. Franzen, Inc*., 792 N.W.2d 242, 246 (Iowa 2010).

III. Analysis

OMJC sought relief by filing a petition for declaratory judgment in Story County district court. Iowa Rule of Civil Procedure 1.1101 allows parties to file declaratory judgment actions, asking the court to declare "rights, status, and other legal relations whether or not further relief is or could be claimed." The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. Iowa R. Civ. P. 1.1101. But a court must deny relief "when there is a complete remedy otherwise provided by law that is intended to be exclusive." *City of Des Moines v. Des Moines Police Bargaining Unit Ass'n*, 360 N.W.2d 729, 731 (Iowa 1985) (interpreting rule then numbered as Iowa Rule of Civil Procedure 261). The sticking point in this case is whether an exclusive administrative remedy exists for the declaratory relief sought by OMJC. *See id.* A party must exhaust its administrative remedies before seeking declaratory judgment from the district court when "[a]n adequate administrative remedy [exists] for the claimed wrong, and the statutes . . . expressly or impliedly require that remedy to be exhausted before resort to the courts." *Id.*

A. Does an adequate administrative remedy exist?

The district court identified Iowa Code section 17A.9 as an adequate administrative remedy for OMJC's claimed wrong. That provision of the IAPA allows "[a]ny person" to petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the

primary jurisdiction of the agency. Iowa Code § 17A.9(1)(a). Section 17A.9(2) directs each state agency to adopt rules governing the filing of petitions for declaratory orders. Section 17A.9(2) also mandates that agencies "describe the classes of circumstances" in which it will not issue a declaratory order, and reminds the agencies that any limitations on the availability of declaratory orders "must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice."

The drafters of section 17A.9 were also concerned that interested parties be apprised of the administrative action. Within fifteen days of receiving a petition for a declaratory order, "an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and may give notice to any other persons." Id. § 17A.9(3). The statute allows parties to intervene, requires copies of all orders be mailed to the parties, and states a declaratory order "has the same status and binding effect as any final order issued in a contested case proceeding." *Id.* § 17A.19(4), (6), (7).

To comply with section 17A.9, the IDOT adopted rules for the filing of petitions for declaratory orders. The IDOT defined a petition for declaratory order as "a formal request from a person or agency to the department asking how the department will apply a statute, rule or order based on a specific set of facts contained in the petition." Iowa Admin. Code r. 761-12.1). Under the IDOT rule, the purpose of a petition for declaratory order "is to seek binding advice from the department, not to challenge a decision that the department has already made." *Id.*

The district court concluded OMJC had the opportunity to file a petition for declaratory order with the IDOT, the entity best equipped to address the technical issues in play. The court observed:

> The undisputed record discloses no reason to doubt the DOT's ability or willingness to hear a petition for declaratory ruling properly filed by O.M.J.C. Any agency ruling on that petition would have the status of a final order in a contested case. . . . The ruling would be subject to judicial review under section 17A.19. Even if the DOT refused to rule on a petition for an administrative declaratory ruling properly filed by O.M.J.C., that refusal would also be subject to judicial review.

We agree with the district court's reasoning. A request that the IDOT determine whether Horizon's equipment complied with the rule on temporary traffic devices falls within the agency's description of how it would implement section 17A.9—by allowing a party to ask for binding advice as to how the IDOT would apply a certain rule to a given set of facts.

OMJC argues declaratory orders are not available at the agency level because they apply only to hypothetical facts, not real-life scenarios like this one involving temporary traffic signals. OMJC relies on *City of Des Moines v. Public Employment Relations Bd.*, 275 N.W.2d 753, 758 (Iowa 1979) for this proposition. In that case, the city presented PERB with an existing set of facts and asked whether it had jurisdiction to consider a request to arrange binding arbitration under those facts. *City of Des Moines*, 275 N.W.2d at 755-56. The board issued its ruling, which the district court reversed. *Id.* at 758. The district court speculated the case might be moot given a settlement of the underlying labor dispute, but decided the question as one of great public importance that was likely to recur. *Id.* The supreme court found it could review the ruling, even

if the issue was moot, noting that section 17A.9 "contemplates declaratory rulings by administrative agencies on purely hypothetical facts." *Id.* The opinion does not limit declaratory orders to cases involving hypothetical facts; it simply clarifies that declaratory orders are available in such situations.

In its reply brief, OMJC cites *Tindal v. Norman*, 427 N.W.2d 871, 873 (Iowa 1988), which states that "section 17A.9 contemplates rulings on purely hypothetical sets of facts, *not on concrete challenges such as that here presented.*" (Emphasis added.) This language in *Tindal* is obiter dictum—as the court found the plaintiff was challenging the facial constitutional validity of a statute, which was beyond the agency's ability to decide. 427 N.W.2d at 872-73.

Courts may not render declaratory judgments on hypothetical or speculative questions. *See Bechtel v. City of Des Moines*, 225 N.W.2d 326, 331-32 (Iowa 1975) (requiring "justiciable controversy"). The administrative process is not as circumscribed as the judicial process. *See* Arthur Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access To Agency Law, The Rulemaking Process,* 60 Iowa L. Rev. 731, 806 (1975). The more expansive ability to obtain a binding declaration from an agency on hypothetical facts does not mean the traditional judicial-type declaration based on existing information ceases to be an option in the agency context.

Nothing in the language of the section 17A.9 suggests that declaratory orders would be unavailable when a petition contains genuine facts as the "specified circumstances" underlying its request for a legal determination. Iowa

Code § 17A.9(1)(a). A declaratory order must set out the "particular facts on which it is based." *Id*. § 17A.9(7). That phrase contemplates applying the agency rule to either real or imagined facts. Applying a rule to concrete facts would actually be the more efficient and certain process for an agency, just as it is for the courts. Accordingly, we reject OMJC's argument that declaratory orders are only available on hypothetical fact patterns. We find no error in the district court's decision that section 17A.9 offers OMJC an adequate administrative remedy for its alleged wrong.

B. Did OMJC need to exhaust its administrative remedy before filing a judicial action?

The next question is whether any statute expressly or by implication required OMJC to exhaust its options in the administrative realm before resorting to the courts. Iowa Code section 17A.19(1) allows a party "who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action" to seek judicial review of that action. The judicial review provisions in chapter 17A.19 are "the exclusive means" by which a party may seek judicial review. *See Teleconnect Co. v. Iowa State Commerce Comm'n*, 366 N.W.2d 515, 518 (Iowa 1985).

Our supreme court has discussed the reasons for this "exhaustion doctrine" as follows:

> The exhaustion requirement is both an expression of administrative autonomy and a rule of sound judicial administration. The agency is created as a separate entity, vested with its own powers and duties. The agency should be free, even when it errs, to work out its own problems. The courts should not interfere with the job given to it until it has completed its work. Premature interruption of the

> administrative process is no more justified than premature interruption of the trial process by interlocutory appeals. The agency, as the tribunal of first instance, should be permitted to develop the factual background upon which decisions should be based. Like the trial court, the agency should be given the first chance to exercise discretion and apply its expertness. In addition, judicial efficiency requires the courts to stay their hand while the party may still vindicate his rights in the administrative process. If he is required to pursue further agency remedies, the courts may never have to intervene.

Des Moines Police Bargaining Unit Ass'n, 360 N.W.2d at 732 (quoting B. Schwartz, *Administrative Law* § 172, at 498 (1976))

Exhaustion of administrative remedies is required in all but the following cases:

> 1) plaintiff challenges, by way of judicial review under Iowa Code section 17A.19, an agency action as in violation of the rulemaking procedures set forth under the APA;
> (2) plaintiff claims an adequate administrative remedy does not exist for the claimed wrong, or stated otherwise, plaintiff will suffer "irreparable injury of substantial dimension" if not allowed access to district court prior to exhausting all administrative remedies; or
> (3) plaintiff claims the applicable statute does not expressly or implicitly require that all adequate administrative remedies be exhausted prior to bringing an action in district court . . . .

IES Util. Inc. v. Iowa Dep't of Revenue & Fin., 545 N.W.2d 536, 539 (Iowa 1996) (citations omitted). The first exception to the exhaustion doctrine does not apply here because OMJC does not contend the IDOT violated the rulemaking procedures. The second exception also is inapposite because OMJC had the ability to seek redress with the agency by filing a petition for declaratory ruling. The remaining question is whether the legislature expressly or implicitly requires a party to exhaust all adequate administrative remedies before bringing a declaratory judgment action in district court.

In determining whether the law requires exhaustion of administrative remedies, we first ask whether the relief sought is within the jurisdiction of the agency. *See Rowen v. LeMars Mut. Ins. Co. of Iowa*, 230 N.W.2d 905, 909 (Iowa 1975). To make this determination, we must identify the claims and then examine the statutory scheme establishing the agency to see whether the agency has the power to adjudicate them. *See id.* Here, OMJC seeks a determination as to whether Horizon's equipment complies with the department's rule and whether the IDOT is enforcing its own regulation. The statutes establishing the IDOT assign that agency with the task of adopting specifications for a uniform system of traffic-control devices, as well as the placement and maintenance of those devices in conformity with its specifications. Iowa Code §§ 321.252, .253. The district court held: "To conclude the Iowa Legislature intended that question to be resolved, in the first instance, by a court, rather than within the administrative agency, would clearly run afoul of the statutory mandates in Iowa Code chapters 321 and 17A."

The district court was correct in determining exhaustion was required. This case is analogous to *Des Moines Police Bargaining Unit Association*, 360 N.W.2d at 730, where the city filed a declaratory judgment action to determine whether a provision in its collective bargaining agreement with the police union was illegal because it constituted a retirement system within the meaning of Iowa Code section 20.9. The supreme court found the issue was like those routinely decided by the Public Employment Relations Board, which could have issued a declaratory ruling on the matter. *Des Moines Police Bargaining Unit Ass'n*, 360

N.W.2d at 731-32. Unlike the situation in *Lundy v. Iowa Dep't of Human Services*, 376 N.W.2d 893, 896 (Iowa 1985), where the validity of the department's rules were attacked on procedural grounds, the court in *Des Moines Police Bargaining Unit Association* was being asked to determine the applicability of a PERB rule to a particular set of facts. *See also Salsbury Labs. v. Iowa Dep't of Env't. Quality*, 276 N.W.2d 830, 836 (Iowa 1979) (holding that "where an attack is made on the validity of an agency's enabling statute, an administrative remedy ordinarily is inadequate" because "[a]gencies cannot decide issues of statutory validity"; if the constitutional issue does not need to be examined in a particular factual context, the administrative remedy is "inadequate"). OMJC is asking the court to determine the applicability of the IDOT rule to a particular set of facts. Under the *Des Moines Police Bargaining Unit Association* case, OMJC was required to exhaust its administrative remedies before filing a judicial action.

C. Did OMJC exhaust its administrative remedy?

OMJC argues in the alternative that if exhaustion of administrative remedies is required, it satisfied that requirement by corresponding with the IDOT between 2005 and 2008 regarding Horizon's compliance with the rule on electrical specifications. We must determine whether this correspondence sufficed to exhaust administrative remedies.

"In determining if agency action is final the question is 'whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.'" *Dunn v. City Dev. Bd.*, 623

N.W.2d 820, 825 (Iowa 2001) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797, 112 S. Ct. 2767, 2773, 120 L. Ed. 2d 636, 648 (1992)). As courts, we should neither anticipate the final administrative decision on our own nor intervene before the final decision at the highest agency level has been formulated. *Grains of Iowa L.C. v. Iowa Dep't of Agric. & Land Stewardship*, 562 N.W.2d 441, 444 (Iowa Ct. App. 1997).

The IAPA defines "administrative action" as including

> the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

Iowa Code § 17A.2(2). Iowa Code section 17A.19(1) provides, "A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy." When each issue raised in an intermediate proceeding could be raised in the final review of agency action, it is "telling proof" that final review is the adequate remedy. *Richards v. Iowa State Commerce Comm'n*, 270 N.W.2d 616, 621 (Iowa 1978).

The district court found the correspondence between IDOT staff and OMJC did not constitute final agency action, holding: "A series of letters, emails, and telephone calls do not provide an adequate record for the court to review." We agree. Although dicta, the United States Supreme Court found a report of the Secretary of Commerce to the President is "an unusual candidate for agency action" because "it is not promulgated to the public in the Federal Register, no

official administrative record is generated, and its effect on reapportionment is felt only after the President makes the necessary calculations and reports the result to the Congress." *Franklin*, 505 U.S. at 796, 112 S. Ct. at 2773, 120 L. Ed. 2d at 648. Likewise, the correspondence between IDOT employees and OMJC should not be considered final agency action. The fact that OMJC could have initiated a declaratory ruling action is telling proof that it is the adequate remedy.

OMJC argues that it corresponded with the IDOT over three years with the purpose of prompting the IDOT to realize Horizon's equipment did not comply with agency rules, but the IDOT failed to reach that realization. The fact that OMJC cannot pinpoint a specific date of agency action indicates no final agency action occurred. Now OMJC claims seeking a declaratory ruling on the matter "would be a waste of time" because the IDOT's "decision" would be the same. We do not believe that OMJC's exchange with one IDOT employee negates the party's obligation to exhaust its remedies through official agency channels.

D. Can OMJC's action for declaratory judgment be considered a petition for judicial review?

OMJC also contends its petition for declaratory judgment can be treated as a request for judicial review under chapter 17A. It is true that so long as the instrument, its filing, and other procedural steps meet section 17A.19 requirements, it does not matter how the petition is labeled. *See Neumeister v. City Dev. Bd.*, 291 N.W.2d 11, 13 (Iowa 1980). Under section 17A.19(4), a petition for judicial review must contain a concise statement of the agency action that is the subject of the petition, the particular action appealed from, the grounds

on which relief is sought, and the relief sought. As the district court found, OMJC's petition for declaratory judgment fails to meet these requirements.

Even if OMJC's request for declaratory judgment could be considered a petition for judicial review, it is untimely. Section 17A.19(3) requires a petition for judicial review to be filed "within thirty days after the issuance of the agency's final decision in that contested case." If the IDOT message sent to OMJC on March 25, 2008, stating Horizon's system met specifications was the final agency action in this matter, OMJC did not file its petition until April 30, 2008—beyond the thirty-day deadline in section 17A.19(3).

E. Summary.

We conclude OMJC failed to exhaust its administrative remedies before filing its original action seeking declaratory judgment in the district court. Accordingly, the district court was correct in finding it could not consider the matter. We affirm the grant of summary judgment in favor of Horizon and the IDOT. We need not address the IDOT's alternative argument that OMJC's action is barred by the doctrine of sovereign immunity.

AFFIRMED.