Trial Court Case No. 25-CV-08-1104 (Consolidated)
Appellate Court Case No. A10-0332

State of Minnesota
In Supreme Court

Robert McCaughtry, *et al.*,

Petitioners,

vs.

City of Red Wing,

Respondent.

RULE 117 PETITION FOR REVIEW

INSTITUTE FOR JUSTICE
MINNESOTA CHAPTER

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Plaintiff-Petitioners Robert McCaughtry, *et al.*, hereby request review by the Supreme Court of the above-entitled matter.

STATEMENT OF LEGAL ISSUES RAISED BY THE PETITION

1. The Uniform Declaratory Judgment Act (UDJA), chapter 555 of the Minnesota Statutes, gives courts the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. Minnesota courts have concluded that a person may bring a declaratory judgment action whenever the ripening seeds of a justiciable controversy are present, but have also stated that for a declaratory judgment to be justiciable, litigants "must show a direct or imminent injury" from the application of an allegedly unconstitutional statute. What does "injury" require in the context of the ripening seeds of a controversy?

   The court of appeals held that a party must have suffered or be in imminent danger of suffering injury, but did not analyze the relationship between the standing requirement of "injury" and the justiciability requirement of "ripening seeds of a controversy."

2. The city of Red Wing has (a) enacted a rental housing inspection ordinance allowing the city to seek administrative warrants to enter homes, (b) sought three warrants to enter Plaintiffs' homes and properties, and (c) unequivocally admitted it will continue to seek warrants and attempt to conduct inspections. Is a justiciable controversy—or at least the "ripening seeds" of one—present under either state or federal law when a municipality enacts and begins enforcing a rental housing inspection ordinance against tenants and landlords?

   The court of appeals concluded Plaintiff tenants and landlords could not seek a declaration that Red Wing's Rental Dwelling License Code was unconstitutional because they had not suffered any injury, although it did not identify when an injury would be present. The court of appeals did not separately discuss Minnesota and federal justiciability requirements.

STATEMENT OF THE CASE

This controversy between the city of Red Wing and Plaintiff tenants and landlords has been raging since 2006, when the city first enacted an ordinance requiring it to inspect all rental homes in the city, and later authorizing it to seek administrative warrants when anyone refuses the inspections. Since then, the city has relentlessly sought to enter Plaintiffs' homes and properties, including submitting three warrant applications to the district court. Plaintiffs have opposed these searches since 2006, refusing consent and going to court each time to defend themselves against the warrant applications and the unreasonable searches sought by the city. Plaintiffs also brought separate declaratory judgment actions in conjunction with their opposition to the warrants, seeking a ruling that the ordinance itself authorizes

searches (and warrant applications) that violate the U.S. and Minnesota constitutions. Although the district court agreed with Plaintiffs that each individual warrant did not satisfy constitutional standards, the court did not allow Plaintiffs to challenge the underlying ordinance that authorizes the city to seek the warrants and conduct searches in the first place. Instead, the district court concluded Plaintiffs lacked standing to seek a declaratory judgment, even though the court found that the city will continue to seek warrants.

The court of appeals affirmed the district court, concluding that the city's continued efforts to inspect Plaintiffs' homes and properties and the recurring need to go to court to defend themselves against those efforts had not caused them any injury. As a result, tenants and landlords like Plaintiffs are unable to obtain relief even under the clear terms of the UDJA, and must instead continually and indefinitely defend themselves against particular warrant applications for as long as the city chooses to file them.

The decisions below highlight a gross misunderstanding of the nature of declaratory relief within Minnesota's courts, due in part to a lack of clarity in this Court's precedents. The purpose of declaratory judgments is to resolve "uncertaint[ies] and insecurit[ies] with respect to rights,"[1] by turning the light on "*before*—rather than after—one steps in a hole."[2] This controversy presents a textbook example of the proper situation in which to seek a declaratory judgment—a recurring legal controversy between parties with tangible, adverse interests. Here, the tenants and landlords want to know if the city's underlying inspection ordinance is constitutional before city officials apply for another warrant, show up at their door with a warrant, or search their homes. The court of appeals nevertheless concluded that the obvious presence of such a controversy still does not make the case justiciable. By failing to clearly integrate the "injury" requirement into the normal justiciability inquiry for declaratory judgments,[3] this Court has enabled lower courts to slam the courthouse door in the face of litigants whenever they conclude a party has not already suffered an injury. But such a regime guts the purpose of declaratory judgments,

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[1] Minn. Stat. § 555.12.
[2] *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273-74 (Minn. App. 2001) (emphasis added).
[3] *See, e.g., Onvoy, Inc. v. Allette, Inc.*, 736 N.W.2d 611, 617-18 (Minn. 2007) (enumerating three-part test).

requiring plaintiffs to fall into the hole before they are allowed to reach for the light.

Review of this case is therefore required for three main reasons listed in Rule 117. First, this Court should clarify what it means to require "injury" as a prerequisite to seeking declaratory relief where, as here, Plaintiffs have shown at least the "ripening seeds of a controversy."[4] More broadly, it should clarify when declaratory judgment actions are justiciable.[5] Second, this case is one of major statewide importance[6] because rental housing inspection programs are rapidly proliferating and affecting hundreds of thousands of people throughout Minnesota.[7] If the court of appeals' ruling stands, citizens will have no idea whether they can challenge these laws when the city first shows intent to enter or if they must wait until the city is literally knocking at their door with a warrant in hand—which by then, is too late. Third, the explosion in new inspection ordinances virtually ensures that this issue will recur.[8]

ARGUMENT

It is plain that courts are having great difficulty integrating the injury requirement into the justiciability inquiry for declaratory judgments. Declaratory judgments are a unique class of cases. The whole purpose of the UDJA is to allow parties to seek resolution of legal conflicts *before* they would be able to do so under other statutes. Thus, a case need not present a full-blown controversy, just the "ripening seeds" of one.[9] Although declaratory judgment actions must still be justiciable, the requirement of injury cannot be identical to that in other cases; if it were identical, there would be no point in having a UDJA at all. This Court's decisions have been confusing as to how "justiciability" and "injury" should be applied to declaratory judgment actions. As a result, the lower courts in this and other cases have

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[4] *Cf. State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007) ("In the absence of a redressable injury, Minnesota courts will exercise judicial power only in narrowly-defined circumstances. First, to prevent injury and conserve judicial resources, we will issue declaratory judgments."); Minn. Stat § 14.44 (2010) (allowing litigants to seek pre-enforcement declarations on the validity of an agency rule).

[5] *See* Minn. R. Civ. App. P. 117, subd. 2(d)(2).

[6] *Id.* at subd. 2(a).

[7] In their appendix below, Plaintiffs included information concerning the presence of these ordinances in 100 of Minnesota's largest cities and when they were passed. That information is included in the appendix of this submission at pp. A000426-27.

[8] Minn. R. Civ. App. P. 117, subd. 2(d)(3).

[9] *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass'n*, 271 N.W.2d 445, 448 (Minn. 1978) (quoting *Minneapolis Fed'n of Men Teachers v. Bd. of Educ.*, 56 N.W.2d 203, 205-06 (Minn. 1952)).

tacked additional standing injury requirements on top of the declaratory judgment justiciability standards. This Court should clarify its precedents and explain what justiciability and injury really mean in declaratory judgment actions.

This Court has held that "[t]o establish a justiciable controversy, [a plaintiff] must show a direct and imminent injury which results from the alleged unconstitutional provision."[10] In describing the "injury" requirement for a justiciable declaratory judgment action, this Court stated:

> Among the essentials necessary to the raising of a justiciable controversy is the existence of a genuine conflict in the tangible interests of the opposing litigants. Complainant must prove his possession of a legal interest or right which is capable of and in need of protection from the claims, demands, or objections emanating from a source competent legally to place such legal interest or right in jeopardy. Although complainant *need not necessarily possess a cause of action* (as that term is ordinarily used) as a basis for obtaining declaratory relief, nevertheless he must, as a minimum requirement, possess a bona fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner.[11]

Thus, contrary to the decision of the court below, "physical injury need not necessarily be alleged."[12] Instead, "[t]he inquiry . . . focus[es] upon whether plaintiffs have asserted legally cognizable interests which will, in some way distinguished from the general public, be interfered with or destroyed."[13] In other words, courts simply have to ensure that the litigant is not just a citizen with a generalized grievance but instead is personally endangered by the enforcement of the statute. As *Kennedy v. Carlson*, *supra*, makes clear, the "direct and imminent injury" language found in a few of this Court's declaratory judgment cases (usually taxpayer ones)[14] is simply an alternative way of explaining that there must be a genuine conflict between parties with adverse interests. Thus, a party has met the "injury" requirement in the declaratory judgment context whenever its case presents, at minimum, "the ripening seeds of a

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[10] *Kennedy v. Carlson*, 544 N.W.2d 1, 6 (Minn. 1996) (quotation and citation omitted).
[11] *Id.* (quoting *State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 477 (Minn. 1946)) (emphasis added).
[12] *Cnty. Bd. of Educ. v. Borgen*, 257 N.W. 92, 94 (Minn. 1934) (citing Edwin Borchard, *Declaratory Judgments* 26 (1st ed. 1934)); *see also Harrington v. Fairchild*, 51 N.W.2d 71, 74 (1952) (quoting Edwin Borchard, *Declaratory Judgments* 27 (2d ed. 1941)) (explaining that a declaratory judgment plaintiff "need merely show that some legal interest or right of his has been placed in jeopardy").
[13] *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 588 (Minn. 1977).
[14] The "injury" requirement originated in taxpayer standing cases (*Haveland*, *Marzitelli*) as a way to ensure that citizens did not file declaratory judgment cases based on generalized grievances as taxpayers. It soon came to be applied to other declaratory judgment actions. But as this case demonstrates, "injury" has been misconstrued to prevent plaintiffs from seeking declaratory judgments even when appropriate.

controversy."

This case easily meets the standard for a justiciable controversy. Plaintiffs are challenging an ordinance that explicitly authorizes the city to seek what Plaintiffs claim are illegal, administrative warrants, and have had to show up in court *three times* to defend themselves against these warrants and the illegal searches they authorize. The City is legally competent to put Plaintiffs' rights in jeopardy and has in fact put their rights in jeopardy and will continue to do so.[15] The court of appeals, however, ignored the presence of this very live controversy.

The court's mistake was, unfortunately, not surprising because this Court's precedents are unclear about the justiciability requirements for declaratory judgment actions.[16] For example, in *McKee v. Likins*, cited by the court of appeals below, this Court stated—in a footnote and without citation—that "[t]he declaratory judgment statute itself . . . does not provide a separate test for standing."[17] This statement strongly implies that a plaintiff in a declaratory judgment case must have already suffered an injury, just like a plaintiff in a case where a party requests damages. Lower courts also sometimes follow this approach.[18] No Minnesota decision directly addresses how the "ripening seeds" inquiry and the "injury" requirement fit together in a declaratory judgment action. A clarification is needed so that the lower courts understand when individuals may use the UDJA to resolve the constitutionality of municipal ordinances and to remind the lower courts of the purpose of declaratory relief. If the confusion continues, it could prevent litigants in many other types of cases from bringing declaratory judgment actions—thus thwarting the intent of the Legislature that adopted the UDJA decades ago and has barely touched since.

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[15] The fact that the city has thus far been *unable* to enforce its ordinance is irrelevant. *See Men Teachers*, 56 N.W. 2d at 206 (stating "such a controversy does not lose its justiciable character because the court ... issues a restraining order to preserve the status quo until the rights of the parties have been declared. It is no defense that the court by appropriate action has prevented the ripening seeds of a controversy from becoming ripe.").

[16] *See, e.g., In re Petition for Cnty. Ditch No. 86 v. Phillips*, 625 N.W.2d 813, 817 (Minn. 2001) ("Standing is a prerequisite to a court's exercise of jurisdiction.").

[17] 261 N.W.2d 566, 570 n.1 (Minn. 1977).

[18] *See, e.g., Anderson v. Cnty. of Lion*, 784 N.W.2d 77, 83-84 (Minn. App. 2010); *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004); *Alliance for Metro. Stability v. Met. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003); *Rocco Altobelli v. State, Dep't of Commerce*, 524 N.W.2d 30, 34 (Minn. App. 1994); *Byrd v. Indep. Sch. Dist. 194*, 495 N.W.2d 226, 230-231 (Minn. App. 1993).

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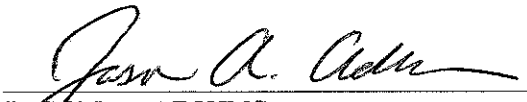
Respectfully submitted,

INSTITUTE FOR JUSTICE
MINNESOTA CHAPTER



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