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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-811

Douglas Benson, et al.,
Appellants,

vs.

Jill Alverson, in her official capacity as the
Hennepin County Local Registrar,
Respondent,

State of Minnesota,
Respondent.

Filed January 23, 2012
Affirmed in part, reversed in part, and remanded
Worke, Judge

Hennepin County District Court
File No. 27-CV-10-11697

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Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants challenge the dismissal of their claims against the state and the Hennepin County Registrar for failure to issue marriage licenses, arguing that the Minnesota Defense of Marriage Act (MN DOMA) violates their Minnesota constitutional rights. Appellants also argue that the district court erred by determining that the state is not a proper party. We affirm the district court's determination that the state is not a proper party, and we affirm the district court's determination that MN DOMA does not violate the single-subject and freedom-of-association provisions of the Minnesota Constitution. But because the district court inappropriately dismissed the matter at this early stage of litigation, we reverse and remand the remaining claims.

FACTS

Appellants Douglas Benson, Duane Gajewski, Jessica Dykhuis, Lindzi Campbell,[1] Thomas Trisko, and John Rittman filed a complaint against respondent Jill Alverson, in her official capacity as the Hennepin County Local Registrar, alleging that she refused to accept their applications for marriage licenses based solely on the fact that the three couples are comprised of same-sex individuals. Appellants claimed that respondent

[1] Dykhuis and Campbell also filed the complaint on behalf of their child, appellant Sean Campbell.

Alverson violated their due-process, equal-protection, freedom-of-conscience, and freedom-of-association rights under the Minnesota Constitution, and the single-subject provision of the Minnesota Constitution. Appellants amended their complaint, adding respondent State of Minnesota as a party.[2] Respondents moved to dismiss appellants' complaint pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. The state also moved to dismiss on the ground of misjoinder. The district court dismissed the state and granted respondents' motion to dismiss, concluding that *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971), *appeal dismissed* 409 U.S. 810 (1972) is binding precedent, holding that MN DOMA is constitutional. This appeal follows.

D E C I S I O N

State as a proper party

Appellants argue that the district court erred in dismissing the state as a party, claiming that the state was properly joined under the Uniform Declaratory Judgment Act. A declaratory-judgment action must present a justiciable controversy or a district court lacks jurisdiction to declare rights under the act. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 617 (Minn. 2007). 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

[2] Appellants added the state as a party only after respondent Alverson moved to dismiss appellants' claims on the ground that appellants failed to include the state as an indispensable party.

facts that would form an advisory opinion." *Id.* at 617-18. This court reviews de novo whether a justiciable controversy exists between the parties, and whether a district court has jurisdiction over a declaratory-judgment action. *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273 (Minn. App. 2001).

Under the act,

> In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and *if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard*.

Minn. Stat. § 555.11 (2010) (emphasis added). Thus, the attorney general must be served and is entitled to be heard. But the state's participation or degree of involvement is discretionary with the state.

Appellants seek the issuance of marriage licenses. The local registrar is responsible for maintaining registration of vital statistics, including marriages. Minn. Stat. §§ 144.212, subds. 9, 10, .223 (2010). The local registrar issues marriage licenses. Minn. Stat. § 517.07 (2010). A justiciable controversy exists between appellants and respondent Alverson. The state does not issue marriage licenses. Thus, while the state was entitled to be heard because there is a constitutional challenge, it was within the state's discretion whether to exercise that right. The district court, therefore, appropriately dismissed the state.

Rule-12 dismissal

The district court dismissed the matter pursuant to Minn. R. Civ. P. 12.02(e). "When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (citing *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997)). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978)). Our standard of review is de novo. *Id.*

Single subject

We first address appellants' argument that MN DOMA violates the Single Subject Clause of the Minnesota Constitution. Under the Single Subject Clause, "[n]o law shall embrace more than one subject, which shall be expressed in its title." Minn. Const. art. IV, § 17. This requirement prevents the combining of unpopular laws and including them in an unrelated, but more popular, law. *Townsend v. State*, 767 N.W.2d 11, 13 (Minn. 2009) (citing *The Debates and Proceedings of the Minnesota Constitutional Convention* 124, 262-63 (Francis H. Smith, reporter 1857)). A law will not violate the Single Subject Clause as long as all of its provisions "fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject." *Id.* (quotation omitted).

The challenged bill was:

> A bill for an act relating to human services; appropriating money; changing provisions for health care, long-term care facilities, children's programs, child support enforcement, continuing care for disabled persons; creating a demonstration project for persons with disabilities; changing provisions for marriage; accelerating state payments; [and] making technical amendments to welfare reform[.]

S.F. 1908, third engrossment (1997). The district court determined that these provisions generally relate to families. We agree that these provisions fall under one general idea; it cannot be said that these are "wholly unrelated matters." *See Unity Church of St. Paul v. State*, 694 N.W.2d 585, 594 (Minn. App. 2005) (stating that "provisions are not germane if they pertain to wholly unrelated matters"), *review dismissed* (Minn. June 9, 2005). Therefore, the district court did not err in determining that MN DOMA does not violate the Single Subject Clause of the Minnesota Constitution.

Freedom of conscience

We next address appellants' argument that MN DOMA violates their freedom-of-conscience rights under the Minnesota Constitution, claiming that they are not able to fully exercise their religion because even if they marry in a church, the state does not recognize their marriages. The district court determined that "the Minnesota Supreme Court has not offered guidance on the issue of religious freedom as it relates to same-sex marriage." Not relying on precedent, the district court then determined that "[t]he State's choice to recognize opposite-sex marriages performed in churches, but not same-sex marriages is a decision within the purview of the State's power to prohibit certain marriages without unconstitutionally interfering in religious freedoms."

Under the Minnesota Constitution, "interference with the rights of conscience [shall not] be permitted, or any preference be given by law to any religious establishment or mode of worship." Minn. Const. art. I, § 16. The Minnesota Constitution provides stronger protection for freedom of conscience than the United States Constitution. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 864-65 (Minn. 1992). Minnesota courts apply a four-part test to examine claims that state action violates a right to conscience. *Id.* at 865. This test considers whether the (1) belief is sincere; (2) state action burdens the belief; (3) state interest is overriding or compelling; and (4) state uses the least restrictive means. *Id.*

The district court's determination that appellants' beliefs are sincere is not challenged. The issue is whether the state action—the prohibition of same-sex marriage—burdens that belief. At least one of the three couples has been married in a church and there is no evidence that the state's failure to recognize same-sex marriages interferes with appellants engaging in a religious marital ceremony. Thus, the district court did not err in determining that the statute does not violate appellants' freedom-of-conscience rights.

Equal protection, due process, and freedom of association

Finally, we address appellants' argument that MN DOMA violates their equal-protection, due-process, and freedom-of-association rights under the Minnesota Constitution. The district court dismissed these claims, relying on *Baker*. In *Baker*, a couple was denied a marriage license solely because they were of the same sex. 291 Minn. at 311, 191 N.W.2d at 185. The couple claimed that the statute prohibiting same-

sex marriage violated the United States Constitution by depriving them of liberty without due process and denied them equal protection of the laws. *Id.* at 312, 191 N.W.2d at 186. The supreme court stated that:

> These constitutional challenges have in common the assertion that the right to marry without regard to the sex of the parties is a fundamental right of all persons and that restricting marriage to only couples of the opposite sex is irrational and invidiously discriminatory. We are not independently persuaded by these contentions and do not find support for them in any decisions of the United States Supreme Court.

Id. The supreme court determined that the marital "union of man and woman, uniquely involving [] procreation" is a "historic institution . . . more deeply founded than the [] contemporary concept of marriage and societal interests" asserted by the appellants. *Id.* The supreme court concluded that "[t]he equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry [because] [t]here is no irrational or invidious discrimination." *Id.* at 313, 191 N.W.2d at 187.

The couple in *Baker* compared the denial of their request for a marriage license to an earlier marital restriction based merely on race. *Id.* at 314, 191 N.W.2d at 187. The supreme court concluded, without explanation, that "in commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex." *Id.* at 315, 191 N.W.2d at 187. The supreme court held that the statute did not offend the Due Process or Equal Protection Clauses of the United States Constitution. *Id.* The supreme court

further "dismiss[ed] without discussion [] additional contentions that the statute contravenes the First Amendment and Eighth Amendment of the United States Constitution." *Id.* at 312 n.2, 191 N.W.2d at 186 n.2.

Appellants here argue that MN DOMA violates the Minnesota Constitution. The district court determined that MN DOMA does not violate the Minnesota Constitution, relying on *Baker*, stating that it had "no reason to believe that the result in *Baker* would have been different had the *Baker* [appellants] alleged violations of the Minnesota Constitution." But we do not agree that *Baker* forecloses an argument based on the Minnesota Constitution, and conclude that the district court inappropriately dismissed the matter on a rule-12 motion.

Equal protection

We do not agree with the district court's reliance on *Baker* in disposing of appellants' equal-protection challenge. Under the Minnesota Constitution, "No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. A statute may violate the Equal Protection Clause either by its express terms—a "facial" violation—or by its application—an "as-applied" violation. *State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). A facial challenge "asserts that at least two classes are created by the statute, that the classes are treated differently under the statute, and that the difference in treatment cannot be justified." *In re McCannel*, 301 N.W.2d 910, 916 (Minn. 1980).

Appellants argue that they are a suspect class because the law involves the fundamental right to marry. But even if appellants are not a suspect class, courts apply the rational-basis test to the challenged law, which under the Minnesota Constitution is a higher standard than that applied under the United States Constitution. *See State v. Benniefield*, 678 N.W.2d 42, 46 (Minn. 2004) (applying rational-basis test when no suspect classification or fundamental right is involved). When applying rational-basis review under the Equal Protection Clause of the United States Constitution, courts determine "whether the challenged classification has a legitimate purpose and whether it was reasonable [for the legislature] to believe that use of the challenged classification would promote that purpose." *Gluba ex rel. Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 721 (Minn. 2007). But a rational-basis analysis under the Minnesota Constitution requires that

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Id. The supreme court has stated that "[t]he key distinction between the federal and Minnesota tests is that under the Minnesota test we have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires." *Id.* (quotation omitted).

The supreme court in *Baker* presumably determined that the statute did not violate the United States Constitution because it passed the rational-basis test, although the supreme court did not conduct an explicit analysis under any test. *See* 291 Minn. at 313-15, 191 N.W.2d at 187. The supreme court stated merely that "[t]he equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry. There is no irrational or invidious discrimination." *Id.* at 313, 191 N.W.2d at 187. But an equal-protection challenge under the Minnesota Constitution requires more analysis than was provided by the *Baker* court. *See Gluba*, 735 N.W.2d at 721.

While the district court stated that it had "no reason to believe that the result in *Baker* would have been different had the *Baker* [appellants] alleged violations of the Minnesota Constitution," it is unclear what test the *Baker* court applied. And even if the *Baker* court conducted a rational-basis examination of the statute, the rational-basis test under the Minnesota Constitution is different than the federal rational-basis test. *See id.* The district court was required to conduct an independent analysis of appellants' equal-protection challenge under Minnesota law before concluding whether a rule-12 dismissal was appropriate. Therefore, the district court erred in dismissing appellants' equal-protection claim.

Due process

Appellants next argue that MN DOMA violates the Due Process Clause of the Minnesota Constitution. The district court, again, determined that the statute does not violate the Minnesota Constitution, relying on *Baker*, assuming that the result in *Baker*

would have been no different had the couple in *Baker* alleged violations of the Minnesota Constitution.

Under the Minnesota Constitution, the government cannot deprive a person of "life, liberty, or property without due process of law." Minn. Const. art. 1, § 7. If a fundamental right is implicated, the state must show a legitimate and compelling interest in abridging that right. *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999). But if a fundamental right is not implicated, "judicial scrutiny is not exacting and substantive due process requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective." *Id.*

Appellants claim that the government cannot deprive them of their fundamental right to marry without showing that this denial is narrowly tailored to serve a compelling state interest. But even if the right to marry is not considered a fundamental right, appellants should have been granted an opportunity to show that MN DOMA is not a reasonable means to its stated objective—to promote opposite-sex marriages to encourage procreation. The district court failed to conduct an appropriate analysis under the Minnesota Constitution; therefore, appellants' due-process claim on a rule-12 motion was improperly dismissed.

Freedom of association

Appellants next argue that MN DOMA violates the freedom-of-association provision of the Minnesota Constitution. The district court determined that the statute does not violate the Minnesota Constitution, relying on *Baker*. The district court stated that "[w]ere this [c]ourt to conclude that [appellants] could be entitled to relief under a

freedom of association theory, this would be in direct contravention of the clear holding in *Baker*." The district court apparently relied on a footnote in *Baker* in which the supreme court stated: "We dismiss without discussion [appellants'] additional contentions that the statute contravenes the First Amendment and Eighth Amendment of the United States Constitution." 291 Minn. at 312 n.2, 191 N.W.2d at 186 n.2.

Under the Minnesota Constitution, "The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people." Minn. Const. art. 1, § 16. Appellants argue that they have an inherent pre-constitutional right of familial association. They argue that this is especially true of appellant minor child; that this child has an inherent right to establish a family relationship. "Choices about marriage, family life, and the upbringing of children are among associational rights [the Supreme] Court has ranked as of basic importance in our society." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116, 117 S. Ct. 555, 564 (1996) (quotation omitted). The Supreme Court has determined that these rights are protected by the Fourteenth Amendment to the United States Constitution. *Id.* Appellants argue that these rights are also the inherent rights protected in the Minnesota Constitution. Although the *Baker* court did not address this issue, the district court relied on *Baker* in concluding that appellants' freedom-of-association rights were not violated. The district court failed to provide an analysis of this claim and inappropriately dismissed it on a rule-12 motion.

Conclusion

This matter came before the district court on respondents' motion to dismiss for failure to state a claim upon which relief can be granted. The district court appropriately

dismissed the state as a party to the lawsuit; thus, we affirm that decision. Because the district court appropriately analyzed two of appellants' claims, we affirm the district court's determinations that MN DOMA does not violate the Single Subject or Freedom of Conscience Clauses of the Minnesota Constitution. But the district court improperly relied on *Baker* in analyzing appellants' remaining claims; therefore, the district court erred in dismissing appellants' equal-protection, due-process, and freedom-of-association claims on the merits at this stage in the proceedings.

The district court failed to address appellants' challenges under the Minnesota Constitution. A proper analysis is necessary especially because the Minnesota rational-basis test for determining whether equal-protection rights have been violated is more stringent than the federal test. Additionally, the supreme court in *Baker* specifically stated that there was no guidance from decisions from the United States Supreme Court regarding whether the right to marry if a fundamental right of *all persons* and whether restricting marriage based solely on sex is "irrational and invidiously discriminatory." 291 Minn. at 312, 191 N.W.2d at 186. But since *Baker* was decided in 1971, the United States Supreme Court has issued decisions providing guidance on these issues. For example, in *Romer v. Evans*, the Supreme Court determined that a state law that prohibited government action designed to protect homosexual persons from discrimination violated the equal-protection clause because the law treated homosexual persons unequal to everyone else. 517 U.S. 620, 624, 635, 116 S. Ct. 1620, 1623, 1629 (1996). The Supreme Court stated that the law imposed a disadvantage "born of animosity toward the class of persons affected." *Id.* at 634, 116 S. Ct. at 1628. The

Court instructed that "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *Id.* (quotation omitted). Thus, the Supreme Court has provided guidance since *Baker* indicating that moral disapproval of a class because of sexual orientation cannot be a *legitimate* government purpose that equal-protection requires. We reverse and remand the district court's dismissal pursuant to rule 12.02(e) for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.