STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0620

Dr. Jane Doe, et al.,
Respondents,

vs.

Governor of Minnesota, et al.,
Respondents,

Mothers Offering Maternal Support,
Appellant.

Filed February 12, 2024
Affirmed
Slieter, Judge

Ramsey County District Court
File No. 62-CV-19-3868

Christy L. Hall, Jessica Braverman, Gender Justice, St. Paul, Minnesota; and

Tanya Pellegrini (*pro hac vice*), Lawyering Project, San Francisco, California (for respondents Dr. Jane Doe, et al.)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Jennifer Olson, Assistant Attorney General, St. Paul, Minnesota (for respondents Governor of Minnesota, et al.)

April King, Howse & Thompson, P.A., Plymouth, Minnesota; and

Teresa Stanton Collett (*pro hac vice*), Eagan, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's denial of its postjudgment motion to intervene as a matter of right. Because appellant's application to intervene in the action is untimely, we affirm.

FACTS

The underlying litigation began in May 2019 when respondents Dr. Jane Doe, et al. (Doe) filed a complaint in Ramsey County District Court seeking declaratory and injunctive relief against respondents Governor of Minnesota, et al. (the state). Doe alleged that certain statutes governing abortion violated the Minnesota Constitution, including the one known as the two-parent notification statute. *See* Minn. Stat. § 144.343, subds. 2-6 (2022) (generally requiring a physician to notify the parents of a pregnant minor prior to performing an abortion on that minor; and granting a civil action against the physician to a "person wrongfully denied notification").

In November 2021, Doe filed a motion for partial summary judgment that included, as here relevant, a request for judgment that the two-parent notification statute violated the state constitution. The state opposed the motion. The district court heard the motion in December 2021.

On July 13, 2022, the district court granted summary judgment, concluding that several of the challenged laws—including the two-parent notification statute—were unconstitutional, and enjoining their enforcement. On July 28, 2022, the attorney general

announced that the state would not appeal. The remaining claims were dismissed by stipulation pursuant to Minn. R. Civ. P. 41.01(a) the next day.

On September 12, 2022, appellant Mothers Offering Maternal Support (MOMS), an association of Minnesota mothers with minor daughters, filed notice of its intention to intervene in the action pursuant to Minn. R. Civ. P. 24.03. Doe and the state objected to the intervention. MOMS sought to intervene as a party so that it could move the district court for relief from the July 13, 2022 judgment pursuant to Minn. R. Civ. P. 60.02. In March 2023, the district court denied intervention. MOMS appeals.

DECISION

I. MOMS' intervention application was untimely.[1]

A district court's denial of a motion to intervene as a matter of right is reviewed *de novo*. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005). Intervention as a matter of right is governed by Minnesota Rule of Civil Procedure 24.01, which states:

[1] The state argues, as threshold issues, that MOMS lacks standing to challenge the district court's denial of MOMS' motion to intervene, and that MOMS' appeal is moot because the July 13, 2022 judgment can no longer be amended. We disagree. MOMS has standing to appeal the denial of intervention because it is the party aggrieved by the district court's decision to deny its motion to intervene. *See State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 814 (Minn. 2014) (stating that "[a]n appellant has standing to appeal if the appellant is an aggrieved party" and noting that "[an] appellant's status as an aggrieved party depends on whether there is injury to a legally protected right" (quotations omitted)). And this appeal is not moot because this court can grant MOMS effective relief by reversing the district court's denial of its intervention motion thereby allowing MOMS to return to district court and bring a motion under Minn. R. Civ. P. 60.02 for relief from the July 13, 2022 judgment. *See Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015) (an appeal is moot when "an award of effective relief is no longer possible").

> Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Thus, to be entitled to intervention as a matter of right, the proposed intervenor must satisfy four requirements: "(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties." *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). The proposed intervenor must meet all four requirements. *Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70, 76 (Minn. App. 2020) (citing *League of Women Voters*, 819 N.W.2d 636 at 641).

Because we conclude that MOMS failed to make a timely application to intervene in the action, and because MOMS must satisfy all four requirements, that is where we begin, and end, our analysis. *Id.*

"The timeliness of a motion to intervene must be determined on the basis of all the circumstances in each particular case." *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979). An application to intervene that is brought after a suit has progressed beyond trial or judgment, while not prohibited, is viewed unfavorably. *Erickson v. Bennett*, 409 N.W.2d 884, 886-87 (Minn. App. 1987); *see also Brakke v. Beardsle*y, 279 N.W.2d 798, 801 (Minn. 1979) (stating "we have previously indicated disfavor for intervention after trial because of the delay involved and potential prejudice to the parties"); *Halverson*

ex rel. Halverson v. Taflin, 617 N.W.2d 448, 450 (Minn. App. 2000) (reasoning that "posttrial intervention is not viewed favorably because of the potential prejudice to the original parties").

Whether an application for intervention is timely is a case-by-case determination. *Mead*, 691 N.W.2d at 501 (citing *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684, 687 (Minn. App. 1984), *rev. denied* (Minn. June 12, 1984)). The particular circumstances relevant to determining the timeliness of an application to intervene includes such factors as: (1) how far the suit has progressed; (2) the reason for the delay in seeking intervention; and (3) any prejudice to the existing parties because of the delay. *Id.* (citing *Blue Cross/Blue Shield of R.I. v. Flam*, 509 N.W.2d 393, 396 (Minn. App. 1993), *rev. denied* (Minn. Feb. 24, 1994)).

How Far the Suit has Progressed

The parties agree that the time for appealing the July 13, 2022 judgment expired at 11:59 p.m. on September 12, 2022. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (providing that "an appeal may be taken from a judgment within 60 days after its entry"); Minn. R. Civ. P. 6.01 (providing standard method for computing time); *see also Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 221 (Minn. 2007) (holding that "for res judicata purposes, a judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified"). As the district court accurately found in its order denying intervention, MOMS electronically filed its intervention notice at 5:56 p.m. on September 12, 2022, just six hours and three minutes before the time to appeal the judgment lapsed.

This factor overwhelmingly suggests an untimely intervention application.

The Reason for the Delay in Seeking Intervention

MOMS argues that it provided good reason for having filed notice of intervention so late in the progression of the case. Its asserted reasons for its belated application for intervention may be summarized as twofold: (1) MOMS is comprised of "ordinary citizens" who ought not be held to a requirement to "monitor the legal work of government officials" to learn the progress of litigation in which they have an interest; and (2) MOMS was not aware that its interests were not adequately protected until the judgment was entered on July 13, 2022. For the following reasons, we are not persuaded.

Regarding its first reason, MOMS has cited no authority, and we have found none, that the timeliness of an intervention application is considered differently because the proposed intervenor is an "ordinary citizen." Instead, a person who knows that they have an interest in a legal action to which they are not a party is expected to act promptly to protect that interest. *See Omegon, Inc.*, 346 N.W.2d at 686 (denying intervention where the proposed intervenor, an association of homeowners, brought its application to intervene postjudgment; was aware of the legal proceeding before judgment; and delayed seeking intervention because of reliance on a belief in the adequacy of the government's representation of its interests in the action, which it later came to believe was misplaced). And the record reveals no circumstances that prevented MOMS from seeking intervention earlier. *See Erickson*, 409 N.W.2d at 887 (finding that the intervenor "had no choice under the circumstances but to seek intervention after the default hearing"); *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 446 (Minn. App. 2013) (determining that an application

for intervention was timely where the proposed intervenor "unquestionably acted with due diligence in seeking intervention and was not at fault for not having sought to intervene earlier").

Additionally, MOMS was aware that it had an interest in the subject of this legal action. The record confirms that some MOMS members were aware of the existence of litigation regarding the enforceability of the two-parent notification statute from the outset of the case in 2019. Additionally, as the district court noted, this litigation was widely publicized, relative to most lawsuits, "attracting considerable media attention" from the beginning. And all district court filings, including documents revealing the state's legal arguments in response to plaintiff's summary-judgment motions, are publicly available. *See* Minn. R. Pub. Access to Recs. of Jud. Branch 2 (providing that "[r]ecords of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying"), 8, subd. 2(g) (providing remote access to the publicly accessible portions of such records).

Similarly, we are not persuaded by MOMS' second reason for its late intervention motion, its unawareness that its interests were not being adequately represented by the state until the district court's July 13, 2022 order. As already explained, it had access to all pleadings and other filings submitted by the state in response to plaintiff's summary-judgment motion to inform it of the state's representation of its interests. Further, we note that another organization sought intervention early in this litigation, solely for the purpose of defending on a basis not raised by the state. *See Doe v. State*, No. A20-0273, 2020 WL 6011443 (Minn. App. Oct. 12, 2020), *rev. denied* (Minn. Dec. 29, 2020). Part

of the intervention argument by appellant in *Doe*, was that the state was not adequately representing its interests because it failed to raise the defense that Minnesota has not recognized, either in the constitution or common law, the right of private citizens to commence a lawsuit against the government. *Id.* at *1.

In sum, we are not persuaded that, under the particular circumstances of this case, MOMS could only have become aware that its interests in the outcome of the litigation might be inadequately protected once the district court entered judgment on July 13, 2022.

This factor suggests an untimely intervention application.

Prejudice to the Existing Parties Because of the Delay

"This court has deemed intervention untimely if the prejudice to the original parties will be substantial." *Halverson ex rel. Halverson*, 617 N.W.2d at 450 (citing *Omegon, Inc.*, 346 N.W.2d at 687 (finding intervention untimely if the rights of the original parties will be substantially prejudiced)).

The underlying case commenced in May 2019. Judgment was entered on July 13, 2022, after more than three years of litigation. MOMS filed its intervention notice on September 12, 2022, during the final hours of the last day to appeal the judgment.

During oral argument before the district court, counsel for MOMS estimated that, if it successfully intervened in the action, its intervention would delay the finality of the matter by another 18 to 24 months.

We conclude that allowing intervention after MOMS delayed seeking intervention until the very last day of the appeal period would substantially prejudice the existing

parties. *Omegon, Inc.*, 346 N.W.2d at 687. This factor, therefore, also suggests an untimely intervention application.

For the foregoing reasons, MOMS' intervention application was untimely. And because MOMS did not make a timely application to intervene in the action, we affirm the district court's denial of intervention.[2]

Affirmed.

[2] MOMS also moved for permissive intervention pursuant to Minn. R. Civ. P. 24.02 and appealed the denial of permissive intervention. But an order denying permissive intervention is unappealable as of right unless it is based on a finding that the proposed intervenor lacks a protectable interest in the litigation. *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007); *see also Norman v. Refsland*, 383 N.W.2d 673, 675 (Minn. 1986). Because the district court based its denial of permissive intervention on untimeliness rather than on a lack of a protectable interest in the litigation, that denial is not appealable as of right and we decline to extend review to that decision.