

STATE OF MINNESOTA
COUNTY OF RAMSEY

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DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: 14 Other Civil

In Re Temporary Funding of Core Functions of
the Executive Branch of the State of Minnesota

Court File No. 62 CV 11-5203
Hon. Kathleen R. Gearin

**ASSOCIATION OF RESIDENTIAL RESOURCES IN MINNESOTA,
MINNESOTA DEVELOPMENT ACHIEVEMENT CENTER ASSOCIATION, AND
MINNESOTA HABILITATION COALITION, INC.'S ("MOVANTS")**

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

I. ISSUES.

Issue 1: Rule 24.01¹ requires intervention where a movant's ability to protect an interest involved in an action will be impaired or impeded by the disposition of the action, and the existing parties do not adequately represent the Movants' interest. No party represents Movants' particular interests in this action, which will decide whether the state payments necessary for Movants' disabled clients will continue during a government shutdown. Must the Court allow intervention by Movants?

Answer: Movants have a right to intervene under Rule 24.01. This action will decide whether state payments for services that their members provide to disabled individuals will continue during a government shutdown. Without the state payments, thousands of disabled individuals will become homeless or unemployed, or will lose the home and community-based services that allow them to live independently and safely outside an institutional setting.

Although the Attorney General seeks to continue a wide range of state payments, she does not

¹ Unless otherwise indicated, all citations to "Rule" or "Rules" are to the Minnesota Rules of Civil Procedure.

represent the particular interests of the disabled individuals served by Movants. Because Movants' interest in providing services to disabled clients will be impaired without continued state payments during a government shutdown, and because those interests are not adequately protected by the parties to this action, the court must allow intervention as of right.

Issue 2: Rule 24.02 permits intervention where a movant's claim and the main action share a common question of law or fact, and intervention will not unduly delay or prejudice the adjudication of the action. Here, Movants seek to continue particular state payments that are at issue in the Petition and Response in this action. Movants' intervention will not prejudice the adjudication of these claims. Should the Court permit intervention?

Answer: The Court should permit Movants to intervene under Rule 24.02. The state payments that Movants seek to continue during a government shutdown are squarely at issue in the dispute between the Attorney General and the Governor. The particular evidence and arguments that Movants will present to the Court will not unduly delay or prejudice the adjudication of that dispute, and will allow the Court to make a more informed decision. The Court, therefore, should permit Movants to intervene.

Issue 3: Rule 6.04 and Rule 115.07, General Rules of Practice for the District Courts, allow the Court to modify time limits contained in the rules. A strict application of the time limits for intervention and for non-dispositive motions will delay Movants' intervention until after the hearing on the Attorney General's Petition, after a government shutdown, and after funding for Movants' services may end. Should the Court modify the time limits for Movants' intervention?

Answer: The Court should exercise its power to modify and relax time limits to allow Movants to intervene and to meaningfully participate in this action. Strict application of

the intervention rules requires Movants to wait thirty days before bringing their Motion to Intervene.² Strict application of the rules for non-dispositive motions requires filing and service of Movants' motion papers at least fourteen days before a hearing.³ Because strict application of these time requirements prevents Movants' claims from being heard in a meaningful and timely manner, the Court should modify or relax the time requirements, and should allow Movants' to bring and be heard on their Motion to Intervene and Petition in Intervention.

II. STANDARDS APPLICABLE TO INTERVENTION.

Minnesota Courts follow "the policy of encouraging all legitimate interventions."⁴

In determining whether conditions for intervention have been met, the court will look to the pleadings and, absent sham or frivolity, a court will accept the allegations in the pleadings as true. . . . Secondly, on motion to intervene of right, the merits of the proposed complaint are not to be determined.⁵

III. BACKGROUND.⁶

In her Petition and Motion, the Minnesota Attorney General notes that, in 2001 and 2005, this Court determined that core government functions include:

. . . the funding of patient care and services in local government or private facilities or programs, such as . . . mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; . . . the application and maintenance of federal and/or State contracted or mandated programs and projects, such as . . . medical assistance, . . . [and] protecting the state and federal constitutional rights of Minnesota citizens⁷

² Minn. R. Civ. P. 24.03.

³ Gen. R. Prac. 115.04.

⁴ *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981)(citations omitted).

⁵ *Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharm.*, 301 Minn. 28, 31, 221 N.W.2d 162, 164 (1974)(citation omitted).

⁶ The facts are contained in the Attorney General's Petition and Motion for Relief (June 13, 2011), in the Response of the Governor to the Petition of the Attorney General (June 15, 2011), and in the proposed Petition in Intervention.

⁷ Petition ¶ 12; see also *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Finding of Fact, Conclusions of Law, and Order Granting Motion for

The Attorney General and the Governor agree that these services are core government functions.⁸ If there is a government shutdown on July 1, 2011, the Attorney General seeks to continue these core governmental services with the corresponding payments to providers; the Governor seeks to continue the services without payments.

Movants' Petition in Intervention alleges that Movants are associations of providers whose members provide some of the core government functions at issue in this action. Movants' members provide twenty-four-hour and day-time community-based-care services for Minnesota children and adults with developmental disabilities, acquired or traumatic brain injuries, critical illnesses, or other maladies. Without the services, many recipients would be institutionalized or hospitalized. The Petition in Intervention alleges that, without the payments for these core government functions, Movants' disabled clients will not receive the services, and will become homeless or unemployed, or will lose the home and community-based services that allow them to live independently and safely outside an institutional setting. Movants' seek to continue funding of these core government functions, if there is a shutdown.

IV. ARGUMENT.

Movants' Petition in Intervention clearly claims an interest relating to the property and transaction at issue in this action, that is, the continued payment for core government functions received by disabled individuals. While the Attorney General seeks to continue those payments generally, the Attorney General is not advocating for the particular state payments affecting those served by Movants' members. The Governor seeks to discontinue the payments altogether. The Court, therefore, must allow Movants to intervene as of right under Rule 24.01.

Temporary Funding, No. C0-05-5928 (Ramsey County Dist. Ct. June 23, 2005), submitted as Exhibit 4, Attachment B to the Attorney General's Petition.

⁸ *Id.*, and Response of the Governor to the Petition of the Attorney General, Exhibit B, p. 3 (*see* the critical services listed under Human Services).

Movants' Petition in Intervention states a claim that raises questions of law and fact in common with the questions raised in the main action involving the continuance of state payments for core government functions. Movants' intervention will not unduly delay or prejudice the adjudication of the original parties' rights. The hearing set for June 23, can go forward as planned. The Court, therefore, should permit Movants' to intervene under Rule 24.02.

Strict enforcement of time limits for intervention and non-dispositive motions prevents Movants from intervening until after the hearing on the merits of this action, after the scheduled government shutdown, and after the threatened end of state payments. Because Movants and the disabled clients that their members serve have a significant stake in continued funding of the core government functions that affect them, the Court should exercise its discretion, relax and modify the time requirements, and allow Movants to bring, and be heard on their Motion to Intervene, and on their Petition in Intervention.

A. Because Disabled Individuals Lack Adequate Representation For Their Right to Continued State Payments, Which Is at Issue in This Action, Movants May Intervene as of Right.

Rule 24.01 provides for intervention as of right:

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.

In *Costley*,⁹ the Minnesota Supreme Court reversed a denial of intervention as of right in circumstance similar to the circumstances here. There, Caromin House obtained a permit to build a group home for mentally retarded adults. Neighbors sued to enjoin construction. Potential residents of the home moved to intervene. The trial court denied both the neighbors'

⁹ 313 N.W.2d 21.

motion for a temporary injunction, and the potential residents' motion to intervene. In reversing denial of the motion to intervene, the Supreme Court accepted the pleadings as true, and found that the potential residents had the necessary interest in the action. Turning to whether the potential residents' interests were adequately represented by Caromin House's interest in building and operating the facility, the Supreme Court observed:

(I)f (the applicant's) interest is similar to, but not identical with that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but he ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.¹⁰

Although Caromin House had a general interest in building and operating a group home, that interest was not identical to the potential residents' particular interest in living in this group facility in their community. The Supreme Court concluded that Caromin House did not adequately represent the potential residents' interest, and that denial of intervention as of right was unjustified.

Like the potential residents in *Costley*, the disabled individuals served by Movants claim the necessary interest in the action, that is, an interest in funding of core government functions. Their interest is similar, but not identical to the Attorney General's interest. The Attorney General seeks funding for core government functions generally; Movants seek funding for particular core government functions that affect their disabled clients. Applying Minnesota's "policy of encouraging all legitimate interventions,"¹¹ to the circumstances of this case, the Court must allow Movants to intervene as of right.

¹⁰ *Id.* at 28 (quoting 7A C. Wright & A. Miller, *Federal Practice & Procedure* § 1909, at 524 (1972)).

¹¹ *Id.* at 28.

B. Because Disabled Individuals' Claim for Continued State Payments Has Common Questions of Law and Fact to the Questions Raised by the Petition and the Response, and Because Movants' Intervention Will Not Unduly Delay Adjudication of This Action, the Court Should Permit Movants to Intervene.

Rule 24.02 provides for permissive intervention:

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

In *Snyder's Drug Stores*,¹² the Minnesota Supreme Court reversed a denial of permissive intervention. There, Snyder's Drug challenged a State Board of Pharmacy regulation barring pharmacists' advertising of retail-prescription-drug prices. The trial court permitted the Minnesota State Pharmaceutical Association to intervene, but denied intervention by two consumer groups, one of which – the Metropolitan Senior Citizens Federation (“MSCF”) – was a “Minnesota non-profit corporation consisting of metropolitan area senior citizen organizations.”¹³ The trial court denied intervention because it would make the litigation more complex. Although permissive intervention is discretionary,¹⁴ the Supreme Court rejected the trial court's reasoning. The Court held first that although the evidence introduced by the consumer groups would add to the record, it would allow for a more informed decision.¹⁵ Second, although the consumer groups would introduce an additional issue, the best interests of judicial economy dictated that all issues be addressed in one action.¹⁶ In reversing the denial of permissive intervention, the Supreme Court concluded that “[n]ot allowing the [consumer

¹² 301 Minn. 28, 221 N.W.2d 162.

¹³ *Id.*, 301 Minn. at 30, 221 N.W.2d at 164.

¹⁴ *Id.*, 301 Minn. at 34, 221 N.W.2d at 166.

¹⁵ *Id.*

¹⁶ *Id.*

groups] to intervene means that really no one representing the consuming public has any part in the lawsuit”¹⁷

Like MSCF in *Snyder’s Drug Stores*, Movants are associations who represent those most affected by the failure to fund certain core government functions, that is, the disabled community. Movants’ Petition in Intervention raises factual and legal questions common to the questions raised in the Petition and Response. Allowing intervention will not unduly delay the adjudication of the issues, because Movants do not seek to postpone the June 23, 2011 hearing. This Court, therefore, should follow the reasoning of *Snyder’s Drug Stores*, and permit Movants to intervene in this matter.

C. Because Strict Enforcement of Time Limits Prevents Movants From Intervening Until After the Hearing on the Merits of this Action, After a Government Shutdown, and After the Potential End of Payments, the Court Should Exercise Its Discretion, and Allow Movants to Bring and Be Heard on Their Motion to Intervene, and Their Petition in Intervention.

Movants seek to intervene in an action filed on June 13, 2011, seven days ago; to which a response was made on June 15, 2011, five days ago; and which will be heard on June 23, 2011, ten days after filing, eight days after the Response, and three days from today. Rule 24.03 requires intervening parties to allow thirty days for others to object to intervention. If objection is made, the intervening party has thirty-days to serve a motion to intervene. Rule 115.04, General Rules of Practice for the District Court, requires at least fourteen days notice for a non-dispositive motion. Strict enforcement of these time limits prevents Movants from bringing and being heard on their Petition in Intervention until at least August 4, 2011, long after the hearing on the merits, a government shutdown, and the potential end of payments.

¹⁷ *Id.* 301 Minn. at 35, 221 N.W.2d at 166.

Rule 6.04, allows a court to change time limits, including limits for intervention and for motions. Or, a court may exercise its inherent power to allow a party to come into an action. For example, in *State ex rel. Peterson v. Bentley*,¹⁸ the Minnesota Supreme Court explained, “[e]ven if petitioners had not shown themselves entitled to come within the provisions of the intervention statute, the court in the exercise of its inherent power could permit them to come into the proceedings.”¹⁹

Here, applicable time limits prevent Movants from bringing or being heard on their Petition in Intervention until long after this action is decided, and damage is done. The short timeline for this action – ten days to a hearing on the merits – will prevent Movants from participating in an action that will decide the fate of the disabled clients they serve. The Court, therefore, should either order the time limits for intervention changed, or exercise its inherent power to bring Movants into this action. The disabled clients deserve to be heard.

V. **CONCLUSION.**

Movants have a right to intervene. This action will decide whether state payments for the services to disabled individuals they serve will continue during a government shutdown. Without the state payments, thousands of disabled individuals will be severely affected. Although the Attorney General seeks to continue a wide range of state payments, she does not represent the particular interests of the disabled individuals served by Movants. Because disabled individuals’ interest in receive core government functions will be impaired if the Court does not order continued state payments, and because those interests are not adequately protected by existing parties, the Court must allow intervention as of right.

¹⁸ 216 Minn. 146, 12 N.W.2d 347.

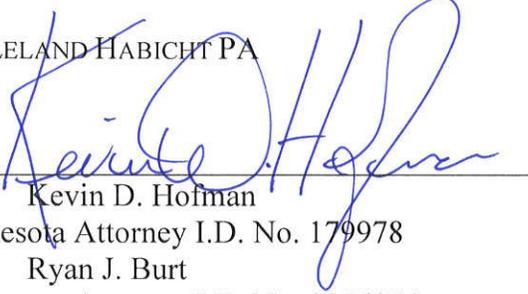
¹⁹ 216 Minn. at 157, 12 N.W.2d at 354.

Absent a right to intervene, the Court should permit Movants to intervene. The state payments that Movants seek to continue during a government shutdown are squarely at issue in the dispute between the Attorney General and the Governor. The particular evidence and arguments that Movants will present to the Court will not unduly delay or prejudice the adjudication of that dispute, and will allow the Court to make a more informed decision. The Court, therefore, should permit Movants to intervene.

The Court should exercise its power to modify and relax time limits to allow Movants to meaningfully participate in this action. Strict application of time requirements prevents disabled individuals' claims from being heard in a meaningful and timely manner. The Court should modify or relax the time requirements, or should exercise its inherent powers, to allow Movants' to bring and be heard on their Motion to Intervene and Petition in Intervention.

Dated: 20 June 2011

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ACKNOWLEDGMENT

Movants, through their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties under Minn. Stat. § 549.211, subd. 3.

A handwritten signature in blue ink, reading "Kevin D. Helm", is written over a horizontal line. The signature is stylized and cursive.