Filed in Second Judicial District Court
10/25/2017 9:36 AM
Ramsey County, MN

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CASE TYPE: Other Civil

The Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives, Plaintiffs, v. Mark B. Dayton, in his official capacity as Governor of the State of Minnesota, and Myron Frans, in his official capacity as Commissioner of the Minnesota Department of Management and Budget, Defendants.	Court File No. 62-CV-17-3601 Chief Judge John H. Guthmann **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO ENFORCE JUDGMENT**

TO: The Honorable John H. Guthmann, Judge of Second District Court, and Samuel Hanson, Esq, attorney for Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on October 25, 2017, at the Ramsey County District Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota, or as soon thereafter as counsel may be heard, Plaintiffs will move the Court for an order granting the following relief:

MOTION

Plaintiffs the Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives respectfully move this Court for an order enforcing or clarifying the effect of its Judgment entered on July 20, 2017. Pursuant to the parties' stipulation, the Court entered final partial judgment on Count I of the Complaint. The Judgment voided Governor Dayton's line-item vetoes of the appropriations to the Senate and House for the 2018–2019 fiscal biennium, and restored the appropriations to the Omnibus State Government Appropriations bill. The Judgment

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has not been stayed by any court. The appropriations to the Senate and House therefore went into effect on July 1, 2017. The Minnesota Supreme Court has not vacated the Judgment. The Senate and House request that the Court order enforcement of its Judgment.

MEMORANDUM

I. THIS COURT'S JUDGMENT UNAMBIGUOUSLY RESTORED THE APPROPRIATIONS TO THE LEGISLATURE FOR THE 2018–2019 FISCAL BIENNIUM, AND THAT JUDGMENT REMAINS IN EFFECT.

On June 23, 2017, the parties jointly requested that the Court rule on Count I and enter final judgment under Minnesota Rule of Civil Procedure 54.02. (Stipulation ¶ 2, June 23, 2017.) The parties also requested that the Court enter a temporary injunction to fund the Senate and House while the awaiting the ruling of this Court, and "during the Appeal Period or until October 1, 2017, whichever first occurs (the 'Injunction Period')." (Stipulation ¶ 5.)[1] The Court conducted an independent review and granted a temporary injunction consistent with the parties' request. (*See* Findings of Fact, Conclusions of Law, and Order Granting Temp. Injunctive Relief, June 26, 2017 ("Temporary Injunction").) The Temporary Injunction was to "remain in effect until the court issues its final decision and all appellate review has been completed or until October 1, 2017, whichever occurs first and subject to further order of this court." (Temp. Inj. 12 at ¶ 6.)

On July 19, 2017, the Court issued the Order Granting Declaratory Judgment ("Order"), which unambiguously restored the appropriations to the Legislature for the 2018–2019 fiscal biennium. The Order provides the following relevant to this inquiry:

[1] The Stipulation defined "Appeal Period" as "until all appellate review has been completed and the Mandate of the Appellate Courts has issued on Count I (the 'Appeal Period'), *or until further order of this Court*." (Stipulation ¶ 3 (emphasis added).)

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a. The Omnibus State Government Appropriations bill became law when Governor Dayton signed it on May 30, 2017.
b. The Governor's vetoes of the two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, violate the Separation of Powers clause of the Minnesota Constitution by impermissibly preventing the Legislature from exercising its constitutional powers and duties. Minn. Const. art. IV, § 1; *see id*. art III.
c. As a result of violating the Separation of Powers clause of the Minnesota Constitution, the Governor's line-item vetoes are unconstitutional, null, and void.
d. Because the Governor's line item vetoes are unconstitutional, null, and void, those two items of appropriation became law with the rest of the bill.

(Order 3 at ¶ 2, July 19, 2017.) Recognizing the parties' stipulation, this Court ordered entry of final partial judgment on Count I under Rule 54.02. (Order 4 at ¶ 5.) Judgment was entered on July 20, 2017. No stay was ordered and Defendants have never requested one. The Order and Judgment supersede the Temporary Injunction.

On July 24, 2017, Defendants appealed this Court's ruling on Count I. The supreme court granted accelerated review, heard oral arguments, and has the matter under advisement.[2] The supreme court has not vacated this Court's Judgment. The Judgment on Count I therefore remains in effect.

Despite the clear language of this Court's Judgment, the Defendants have treated the Temporary Injunction as superseding the Judgment. (*See* Temp. Inj.) The Defendants cannot ignore the Judgment which, by its terms, supersedes the Temporary Injunction. Choosing not to waste time and money litigating the correct interpretation of the Judgment, the Legislature agreed to a temporary "ceasefire" with the Governor, and agreed to defer litigation over the interpretation of the Judgment until October 1, 2017. (*See* Stipulation and Order, July 31, 2017.) The stipulation

[2] The supreme court issued an order on September 8, 2017, ordering the parties to mediation. On the second day of mediation, the mediator declared an impasse and ended the mediation.

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also required that Commissioner Frans continue funding the Senate and House at a "fractional share of their fiscal year 2017 base general fund funding" until appellate review was complete or October 1, 2017, whichever occurred first. (Stipulation and Order ¶ 2, July 31, 2017.)[3]

When October 1, 2017 passed without a ruling from the supreme court, the temporary funding under the July 31, 2017 Stipulation and Order ended. Attempts by the parties to resolve their dispute over the interpretation of the Judgment without further litigation failed.

On October 2, 2017, the Defendants refused to honor the Judgment and forced the Legislature to begin depleting its carryforward funds.[4] (*See* Second Aff. of James Reinholdz ¶¶ 2–7, Oct. 24, 2017; Aff. of Betty Myers ¶¶ 2–7, Oct. 24, 2017.) By denying access to the appropriations, the Governor and Commissioner Frans intentionally ignore the Court's Judgment.

II. THE DISTRICT COURT RETAINS JURISDICTION TO ENFORCE ITS JUDGMENT DURING THE PENDENCY OF THE APPEAL.

Once an appeal has been filed, the district court's authority to act on the order or judgment appealed from is governed by Minn. R. Civ. App. P. 108.01. As a general rule, "an appeal from a judgment or order does not stay enforcement of the judgment or order in the trial court unless the court orders relief in accordance with Rule 108.02." Minn. R. Civ. App. P. 108.01, subd. 1. After an appeal is filed, the district court retains jurisdiction to order "enforcement of the judgment or order" appealed from. 3 ERIC J. MAGNUSON, DAVID F. HERR & SAM HANSON, MINNESOTA

[3] The July 31, 2017 Stipulation and Order mistakenly uses the term "appeal period" to refer to the period that the injunction would have been in effect. This was an inadvertent drafting error. The parties intended to continue funding until the supreme court issued a decision or October 1, 2017, whichever occurred first.

[4] The Senate and House are required to identify a funding account when they submit a bill to the Department of Management and Budget (MMB) for payment. Commissioner Frans forced the Senate and House to begin depleting their carryforward funds by eliminating every funding account except for their carryforward accounts. (Myers Aff. ¶¶ 2–7; Second Reinholdz Aff. ¶¶ 2–7.) As bills become due, the Senate and House are now forced to request payment from their respective carryforward accounts. If Commissioner Frans wanted to honor the Court's Judgment, he would create funding accounts for the Senate and House that correspond to their fiscal year 2018 appropriations. Commissioner Frans refuses to do that.

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PRACTICE—APPELLATE RULES ANNOTATED § 108.3 (2017 ed.); Minn. R. Civ. App. P. 108.01, 1998 advisory comm. cmt. ("Generally, the trial court retains authority to enforce the judgment[.]"); *see, e.g.*, *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824 (Minn. 1984); *Kane v. Locke*, 16 N.W.2d 545, 546 (Minn. 1944) (appellant cannot complain of enforcement efforts where no supersedeas bond was posted)[5]; *Briggs v. Shea*, 50 N.W. 1037, 1037 (Minn. 1892) (an appeal to the supreme court with a stay does not oust the jurisdiction of the lower court); *David N. Volkmann Const., Inc. v. Isaacs*, 428 N.W.2d 875, 876 (Minn. Ct. App. 1988) ("In the absence of an approved supersedeas bond or a stay from the trial court, the respondent may enforce the trial court's decision pending appeal."). This Court has jurisdiction to order enforcement of its Judgment during the pendency of the appeal.

III. THE COURT SHOULD ENFORCE ITS JUDGMENT.

The Legislature respectfully requests that the Court grant its motion as soon as possible for several reasons. First, the Governor and Commissioner Frans are causing irreparable harm to the Senate and House by denying access to their appropriations for fiscal year 2018. Both the Senate and House have curtailed legislative operations in tangible ways as a result of being forced to use their carryforwards funds. For example, the House has cancelled per diem, mileage and business travel expense reimbursement, communication reimbursement, out-of-state travel reimbursement (unless previously approved by the Speaker), district travel reimbursement, and committee budget spending. (Second Reinholdz Aff. ¶ 8.) The Senate has implemented similar restrictions, including travel restrictions and cancelling bonding tours. These consequences are a direct result of the Governor's and Commissioner Frans' refusal to honor this Court's Judgment. It is not business as

[5] The Defendants would not have been required to provide security if they had moved to stay enforcement of the Judgment because they are government entities. Minn. R. Civ. App. P. 108.02, subd. 2.

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usual for the Legislature. The Defendants have once again prevented the Legislature from fully exercising its constitutional powers and duties in violation of the Minnesota Constitution.

Second, the Defendants' decision to force the Legislature to exhaust its carryforwards would accomplish another unconstitutional result beyond the Governor's line-item vetoes. *See Starkweather v. Blair*, 71 N.W.2d 869, 876 (Minn. 1955) (constitutional powers may not be used "to accomplish an unconstitutional result."). The decision to use the carryforward funds is solely within the discretion of the Legislature. The Defendants cannot force the Legislature, directly or indirectly, to use their discretionary funds. *See State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (Minn. 1930) ("Neither department can control, coerce, or restrain the action or nonaction of either of the others in the exercise of any official power or duty conferred by the Constitution, or by valid law, involving the exercise of discretion."). The Defendants' disregard for the Court's Judgment effectively allows the Governor's line-item vetoes to persist. This cannot be what the Court intended when it declared the Governor's line-item vetoes unconstitutional, null, and void.

Third, the Defendants' refusal to recognize this Court's Judgment contravenes the parties' stipulation and undermines the rule of law. Rule 54.02 has specific legal consequences. The parties stipulated to the entry of final partial judgment on Count I under Rule 54.02 to ensure its appealability on an expedited basis regardless of which party prevailed before the Court. The Defendants lost, disregarded the parties' agreement, and intentionally ignored the Court's Judgment. Neither the Governor nor Commissioner Frans should be allowed to flout the law.

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CONCLUSION

For these reasons, the Legislature respectfully requests the Court grant its motion and issue an order enforcing or clarifying its Judgment as previously entered.

Respectfully submitted,

Dated: October 25, 2017

KELLEY, WOLTER & SCOTT, P.A.

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