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SUMMARY
February 29, 2024

2024COA23

No. 23CA0243, *Barrett v. Division of Water* — Water and Irrigation — Water Right Determination and Administration Act of 1969 — Water Judges — Jurisdiction — Water Matters

A division of the court of appeals considers whether the claims at issue are “water matters” within the meaning of section 37-92-203(1), C.R.S. 2023, such that the water court has exclusive jurisdiction over the claims. The division holds that a claim seeking interpretation of the Water Right Determination and Administration Act of 1969 (the Act), sections 37-92-101 to -602, C.R.S. 2023, is inherently a “water matter” because it fundamentally involves determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right.

Because certain of the plaintiffs’ claims involve interpretation of the Act as it pertains to exempt well permits, the division

concludes that those claims implicate the overall management of the state's water resources and are thus water matters.

Accordingly, the water court has exclusive jurisdiction over those claims, as well as ancillary jurisdiction over the plaintiffs' other claims.

For these reasons, the division affirms the district court's dismissal of the plaintiffs' claims for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1).

Court of Appeals No. 23CA0243
Montrose County District Court No. 22CV30077
Honorable J. Steven Patrick, Judge

Pamela Barrett and Raymond M. Cossey,

Plaintiffs-Appellants,

v.

Division of Water Resources, State of Colorado; Office of the State Engineer;
Kevin Rein, P.E., as State Engineer, State of Colorado; Harold Priestley; Drue
Priestley; and HDP Revocable Trust,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE LIPINSKY
Tow and Grove, JJ., concur

Announced February 29, 2024

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¶ 1 Unlike the water-rich eastern states, Colorado, with its semi-arid climate, “has always faced” issues concerning the use of its water resources. *Gallegos v. Colo. Ground Water Comm’n*, 147 P.3d 20, 27 (Colo. 2006). For this reason, our General Assembly enacted legislation — including legislation establishing separate water courts — to resolve conflicts over the right to use water. The Water Right Determination and Administration Act of 1969 (the Water Right Act), sections 37-92-101 to -602, C.R.S. 2023, provides a framework for “implementing the constitutional right to divert the unappropriated waters of any natural stream to beneficial uses.” *State ex rel. Danielson v. Vickroy*, 627 P.2d 752, 757 (Colo. 1981). Among other provisions, the Water Right Act created “the current system of water divisions and [water] courts” and vested the State Engineer and Division Engineers with administrative duties. *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50, 60 (Colo. 2003). The Colorado water courts retain exclusive jurisdiction over all “water matters.” *Tonko v. Mallow*, 154 P.3d 397, 404 (Colo. 2007); see § 37-92-203(1), C.R.S. 2023.

¶ 2 The sole, but important, issue in this case is whether the claims at issue are water matters over which only a water court can

exercise jurisdiction. We conclude, as did the district court, that the claims are water matters.

¶ 3 Plaintiffs, Pamela Barrett and Raymond M. Cossey (jointly, Cossey), appeal the judgment of the district court dismissing their State Administrative Procedure Act (APA) action against defendants, the Division of Water Resources, the Office of the State Engineer, Kevin Rein in his capacity as State Engineer, Harold Priestley, Drue Priestley, and the HDP Revocable Trust. We affirm.

I. Background and Procedural History

¶ 4 Cossey owns thirteen exempt well permits (the Cossey permits). The well permits are licenses issued by the Office of the State Engineer, also known as the Division of Water Resources (the state engineer), under section 37-92-602(3), C.R.S. 2023 (the Exempt Well Statute). The Exempt Well Statute is part of the Water Right Act. The Cossey permits authorize Cossey to construct and use thirteen residential wells. Those wells are exempt from certain of the administrative requirements of the Water Right Act. *See* § 37-92-602.

¶ 5 Harold Priestley, Drue Priestley, and the HDP Revocable Trust (collectively, the Priestleys) filed an administrative complaint (the

Priestley complaint) with the state engineer pursuant to section 24-4-104(5), C.R.S. 2023, which is part of the APA’s licensing provisions.

¶ 6 Section 24-4-104(5) states, in relevant part, that “[a] proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced . . . by the filing with the agency of a written complaint.”

§ 24-4-104(5). In their complaint, the Priestleys sought revocation of the Cossey permits on the grounds that Cossey had allegedly improperly completed the applications for those permits.

¶ 7 The state engineer assigned the Priestleys’ case to a hearing officer, who granted summary judgment to Cossey and dismissed the Priestley complaint. In the “Order Granting Motion for Summary Judgment” (the order), the hearing officer expressly found that the Cossey permits are “valid and in full force and effect.” However, the hearing officer denied Cossey’s request for damages, attorney fees, or other sanctions against the Priestleys because the hearing officer did “not find the Priestleys’ complaint to be frivolous or vexatious,” as Cossey had argued.

¶ 8 Although Cossey agreed with the hearing officer’s determination regarding the validity of the Cossey permits, Cossey disagreed with other portions of the order. Cossey appealed those portions by submitting a “Notice of Exceptions to Order Granting Summary Judgment” (the exceptions) to the state engineer pursuant to section 24-4-105(14)(a)(II), C.R.S. 2023, of the APA.

¶ 9 In the exceptions, Cossey requested that the state engineer revise the order to “(i) clarify the controlling law; (ii) accurately represent the Priestleys’ misrepresentations; (iii) correct statements regarding the [Norwood Water Commission (NWC)]; and (iv) award Cossey damages, costs, and attorney fees.” (Because we conclude that we lack subject matter jurisdiction over this dispute, we do not address the hearing officer’s statements regarding the NWC that Cossey challenges.) The state engineer denied Cossey’s request, concluding that “evidence in the record supports the findings and conclusions of the hearing officer to which Cossey take[s] exception” and affirming the order “on those points” (the state engineer’s decision).

¶ 10 Cossey then filed a complaint for judicial review of the state engineer’s decision (the Cossey complaint) in district court. Cossey

asserted that the district court had subject matter jurisdiction over the claims pleaded in the Cossey complaint under section 24-4-106, C.R.S. 2023 — the judicial review provision of the APA. Cossey alleged that the order and the state engineer’s decision are “arbitrary and capricious, constitute an abuse of discretion,” are “based upon finding[s] of fact that are clearly erroneous on the whole record,” and are “contrary to law.”

¶ 11 The district court dismissed the Cossey complaint for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1). The district court concluded that the Cossey complaint “must be filed in water court because it involves a water matter.” Cossey appeals the district court’s dismissal of the Cossey complaint.

II. Analysis

¶ 12 The single question before us is whether the claims pleaded in the Cossey complaint are water matters. If so, the water court has exclusive jurisdiction over those claims pursuant to section 37-92-203(1). We conclude that, because certain of Cossey’s claims are water matters, the water court has exclusive jurisdiction over all the claims pleaded in the Cossey complaint.

A. Standard of Review and Relevant Law

¶ 13 “When there are no disputed facts, . . . the determination of a court’s subject matter jurisdiction presents a question of law which is reviewed de novo. Statutory interpretation is likewise a question of law subject to de novo review.” *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 11, 340 P.3d 1126, 1131 (citation omitted).

¶ 14 District courts are courts of general jurisdiction, having original jurisdiction in all civil matters “except as otherwise provided” and appellate jurisdiction as “prescribed by law.” Colo. Const. art. VI, § 9(1). Under the APA, the district courts have jurisdiction to review final agency actions. *See* § 24-4-106(2), (4).

¶ 15 The APA generally specifies “the procedures that must be followed in state administrative proceedings.” *Ricchio v. Colo. Sec. Comm’r*, 2022 COA 35, ¶ 1, 512 P.3d 1058, 1059. It allows “any person adversely affected or aggrieved by any agency action” to “commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective.” § 24-4-106(4). However, an agency action is not subject to judicial review in a district court if a statute governing the proceedings in a specific agency provides otherwise. *See* § 24-4-107, C.R.S. 2023

("[W]here there is a conflict between [the APA] and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.").

¶ 16 The water courts have "exclusive jurisdiction of water matters . . . and no judge other than the one designated as a water judge shall act with respect to water matters." § 37-92-203(1); *see also V Bar Ranch LLC v. Cotten*, 233 P.3d 1200, 1206 (Colo. 2010) ("[T]he General Assembly has . . . chosen to delegate certain administrative actions involving 'water matters' to the State Engineer."). For this reason, jurisdiction over appeals of the state engineer's decisions involving water matters is "proper in the water court rather than in the district court." *V Bar Ranch LLC*, 233 P.3d at 1207.

¶ 17 An action is a "water matter within the exclusive jurisdiction of the water judge" if it implicates the right to *use* water, the quantification of a water right, or a change in a previously decreed water right. *Farmers Reservoir & Irrigation Co. v. Pub. Serv. Co. of Colo.*, 2022 CO 22, ¶ 61, 526 P.3d 161, 175 (quoting *Crystal Lakes Water & Sewer Ass'n v. Backlund*, 908 P.2d 534, 540 (Colo. 1996)). "The overall management of the state's water resources, including issuance of well permits and distribution of water in accordance

with court-issued decrees,” constitutes “involvement with the issues related to ‘the right to use water and the quantification of . . . water right[s],” *V Bar Ranch LLC*, 233 P.3d at 1206 (quoting *Tonko*, 154 P.3d at 404), and is therefore a water matter. *Id.* at 1205. Thus, the APA and certain provisions of the Water Right Act empower the state engineer to rule on petitions seeking the revocation or modification of well permits, such proceedings involve water matters, and parties dissatisfied with the state engineer’s rulings on such petitions must appeal to the water court. *Id.*

¶ 18 In certain circumstances, the water courts may also adjudicate claims that do not fall squarely within the definition of “water matter.” “In addition to having exclusive jurisdiction over water matters, a water court is also a district court with general jurisdiction.” *Crystal Lakes Water & Sewer Ass’n*, 908 P.2d at 543. Accordingly, “[a]ncillary jurisdiction over non-water matters exists in Colorado water courts where the ancillary claims are ‘interrelated with the use of water or . . . directly affect the outcome of water matters within the exclusive jurisdiction of the water court.’” *Glover v. Serratoga Falls LLC*, 2021 CO 77, ¶ 22, 498 P.3d 1106, 1114 (quoting *Kobobel v. Colo. Dep’t of Nat. Res.*, 249 P.3d 1127, 1132

(Colo. 2011)). “Put differently, once a water court has jurisdiction over a water matter, it maintains exclusive jurisdiction over other subjects and matters considered ancillary or attendant to the original matter.” *Farmers Reservoir & Irrigation Co.*, ¶ 62, 526 P.3d at 175.

¶ 19 Ancillary jurisdiction advances judicial efficiency because “requiring rulings in two different actions to ‘bring about [a just and final] result’ approaches absurdity.” *Glover*, ¶ 22, 498 P.3d at 1114 (quoting *Crystal Lakes*, 908 P.2d at 543-44). However, if a water court dismisses all the claims that are water matters in a case, the court loses jurisdiction over the remaining claims, which can no longer be deemed ancillary to water matter claims. *See Sheek v. Brooks*, 2019 CO 32M, ¶ 22, 440 P.3d 1145, 1149; *see also Woo v. El Paso Cnty. Sheriff’s Off.*, 2022 CO 56, ¶ 38, 528 P.3d 899, 909 (“Ancillary jurisdiction is not a substitute for subject matter jurisdiction; it is a supplement to subject matter jurisdiction.”); *cf. United States v. Wahi*, 850 F.3d 296, 300 (7th Cir. 2017) (“The term ‘ancillary jurisdiction’ refers to the court’s power to hear claims that are closely linked to other claims over which the court’s jurisdiction is otherwise secure.”); *Jenkins v. Weinshienk*, 670 F.2d 915, 918

(10th Cir. 1982) (“Ancillary jurisdiction rests on the premise that a . . . court acquires jurisdiction of a case or controversy in its entirety. Incident to the disposition of the principal issues before it, a court may decide collateral matters necessary to render complete justice.”). Under these circumstances, a water court must dismiss the erstwhile ancillary claims. *See Sheek*, ¶ 20, 440 P.3d at 1149.

¶ 20 When determining whether a court has subject matter jurisdiction over a claim, “[w]e are not bound by the form in which the plaintiff asserts [the] claim, but rather it is the facts alleged and the relief requested that decide the substance of a claim, which in turn is determinative of the existence of subject matter jurisdiction.” *Trans Shuttle, Inc. v. Pub. Utils. Comm’n*, 58 P.3d 47, 50 (Colo. 2002) (quoting *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999)).

B. The District Court Lacked Jurisdiction Over
the Claims Pleaded in the Cossey Complaint
Because Some of Those Claims Are Water Matters

¶ 21 The essence of Cossey’s argument is that the district court could exercise subject matter jurisdiction over the claims pleaded in the Cossey complaint because those claims were limited to the

issues addressed in the exceptions, and those claims are not water matters. We are not persuaded.

¶ 22 In the exceptions, Cossey listed four exceptions to the state engineer’s decision: (1) “[i]njury is the only legal standard for evaluating an exempt well permit; Guideline 2003-5 is non-binding and therefore irrelevant”; (2) the “Priestleys’ objection was based on lies and speculation”; (3) contrary to a prior stipulated water court decree, the boundaries of the NWC’s authority do not extend beyond the Town of Norwood’s municipal boundaries; and (4) because the Priestley complaint “lacked substantial justification,” Cossey is “entitled to an award of damages, costs, and attorney fees.” (For the reasons explained above, we need not provide detailed explanations of those exemptions, as we consider only their general subject areas.)

¶ 23 In the Cossey complaint, Cossey sought an order

- A. Overruling the [order and state engineer’s decision];
- B. Holding that material injury is the only legal standard for issuing a well permit;
- C. Determining that Guideline 2003-5 and/or Subsection (6) of [the Exempt Well

Statute] cannot be the basis for denying or revoking a well permit;

D. Finding that the [state engineer's] acquiescence to the NWC's claimed status as a legal water supplier with a service area extending beyond the territorial boundaries of [the Town of Norwood] is arbitrary, capricious, an abuse of discretion, a denial of a statutory right, and contrary to law;

E. Declaring that the [Priestley complaint] was groundless, frivolous, and vexatious;

F. Finding that the [state engineer's] determination that the Priestleys had a legal basis for filing and maintaining the [Priestley complaint] was an abuse of discretion, arbitrary and capricious, and not based upon the record;

G. Holding that Cossey incurred damages as a result of the Priestley[s'] bad-faith actions;

H. Awarding Cossey damages, attorney fees, costs, and sanctions; and

I. All other relief [the district court] deems just and proper.

¶ 24 As far as we can discern from Cossey's arguments, exceptions (1) and (3) listed in the exceptions, and the correlating requests for relief B, C, and D in the Cossey complaint, involve water matters because they seek determinations regarding the "right to use

water.” *Farmers Reservoir & Irrigation Co.*, ¶ 61, 526 P.3d at 175.

This is so because

- resolution of exception (1) and request for relief B requires interpretation of the Exempt Well Statute;
- resolution of exception (1) and request for relief C requires interpretation of a guideline of the state engineer (Guideline 2003-5); and
- resolution of exception (3) and request for relief D requires interpretation of a water court decree that references the boundaries of NWC, which is a water commission.

¶ 25 Combined, these issues require determinations regarding how the interplay between the statute, guideline, and decree affects — in Cossey’s words — the “legal standard for issuing” or “evaluating” a well permit. Indeed, in the exceptions, Cossey expressly asked the state engineer to “clarify the controlling law.” A party’s request for a determination of the legal standard for issuance of a well permit and for distribution of water in accordance with a court-issued decree constitutes a water matter because the request implicates

the “overall management of the state’s water resources.” *V Bar Ranch LLC*, 233 P.3d at 1206.

¶ 26 Moreover, we hold that a claim seeking interpretation of the Water Right Act is inherently a water matter, subject to the exclusive jurisdiction of the water courts, because it fundamentally involves “determinations regarding the right to use water, the quantification of a water right, or a change in a previously decreed water right.” *Farmers Reservoir & Irrigation Co.*, ¶ 61, 526 P.3d at 175 (quoting *Tonko*, 154 P.3d at 404). We conclude that a water court is the proper forum for claims and issues requiring interpretation of the Water Right Act in light of such courts’ specialized expertise in water law. *Cf. Crystal Lakes Water & Sewer Ass’n*, 908 P.2d at 542 (holding that the water court is the proper forum to define the scope of plans for augmentation that it previously decreed because the “specialized expertise of the water court is essential in determining whether wells are subject to a plan for augmentation”).

¶ 27 Further, request for relief A in the Cossey complaint involves a water matter because it asks the district court to “overrul[e]” the order. As Cossey acknowledges, the order concerned the validity of

the Cossey permits, and thus the legal right to use water. *See V Bar Ranch LLC*, 233 P.3d at 1205 (“[P]etitions to revoke or modify well permits . . . constitute ‘water matters’ . . .”).

¶ 28 Because the exceptions involved water matters, Cossey needed to appeal the state engineer’s decision to the water court, which had exclusive jurisdiction over the issues raised in the exceptions. And exercising jurisdiction over Cossey’s water matter claims would have meant the water court had exclusive jurisdiction over the “other subjects and matters” contained in the exceptions — the Priestleys’ conduct in filing their complaint and Cossey’s entitlement to damages, costs, and attorney fees — because those issues are “ancillary or attendant” to the water matters. *Farmers Reservoir & Irrigation Co.*, ¶ 62, 526 P.3d at 175. Specifically, Cossey’s entitlement to sanctions would depend, in part, on whether the Priestley complaint was frivolous, which, in turn, requires an evaluation of the merits of the Priestleys’ request to revoke the Cossey permits — a water matter. Holding otherwise would produce the “absurd result” of requiring the parties to first litigate the water matters in a water court and then proceed to a district court to litigate “the same facts and significantly related

issues” underlying Cossey’s prayer for sanctions, attorney fees, and costs. *Glover*, ¶ 24, 498 P.3d at 1114.

¶ 29 Accordingly, the district court did not err by dismissing the Cossey complaint for lack of subject matter jurisdiction. *Cf. Archuleta v. Gomez*, 140 P.3d 281, 284 (Colo. App. 2006) (concluding that the district court erred by exercising jurisdiction over a defense involving adverse possession of ditches because, although the issues underlying the defense were “within the jurisdiction of the district court, [they were] ancillary to the dispute regarding the use of the water and, thus, [were] . . . issue[s] that could properly be resolved by the water court”).

¶ 30 Although Cossey filed the Cossey complaint under the judicial review provision of the APA, the nature of the relief sought determines whether the district court had subject matter jurisdiction. *See Trans Shuttle, Inc.*, 58 P.3d at 50. And because the relief Cossey sought involved interpretation of the Water Right Act as it pertains to exempt well permits, which is a water matter, the district court lacked jurisdiction. Thus, the water court had exclusive jurisdiction over the claims pleaded in the Cossey complaint.

III. Disposition

¶ 31 The judgment is affirmed.

JUDGE TOW and JUDGE GROVE concur.