25CA1551 City of Durango v Simpson 11-19-2026

COLORADO COURT OF APPEALS

DATE FILED
November 19, 2026
CASE NUMBER: 2025CA1551

Court of Appeals No. 25CA1551
La Plata County District Court No. 24CV30126
Honorable Suzanne F. Carlson, Judge

City of Durango,

Plaintiff-Appellee,

v.

John Devlin Simpson,

Defendant-Appellant.

JUDGMENT VACATED

Division III
Opinion by JUDGE BRENTON
Dunn and Schutz, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced November 19, 2026

Mark C. Morgan, City Attorney, Jim Martin, Assistant City Attorney, Maya Graeber, Assistant City Attorney, Durango, Colorado, for Plaintiff-Appellee

John Devlin Simpson, Pro Se

¶ 1 Defendant, John Devlin Simpson, appeals the district court's order granting in part and denying in part the motion for summary judgment filed by plaintiff, the City of Durango. We vacate the judgment.

I. Background

¶ 2 Simpson served as a volunteer appointee to the City's Infrastructure Advisory Board for two years ending in 2023. This case concerns fourteen emails Simpson wrote during his term. Each of the emails addressed official matters but included a statement inserted by Simpson that they were "not subject to" the Colorado Open Records Act (CORA).

¶ 3 The Durango Herald newspaper made a CORA request for communications between Simpson and a former city councilor. Simpson provided twelve of the fourteen emails to the City for release to the newspaper but did not initially provide the remaining two. Regardless, the City had all fourteen emails on its server and produced them. The Durango Herald did not challenge the City's response to its CORA request.

¶ 4 The City's Board of Ethics then received a complaint alleging, in relevant part, that Simpson violated Durango's code of ethics by

withholding the two emails and including the "not subject to CORA" language in his emails. In his written response, Simpson challenged the Board's authority to investigate or discipline him on the basis of CORA, a statute that — in Simpson's view — the Board lacked jurisdiction to enforce. Simpson's response included assertions that could be interpreted as threats to sue the City if it continued to pursue the ethics complaint against him. Rather than proceed before the Board, the City brought a declaratory judgment claim against Simpson in district court.

¶ 5 In its petition, the City requested five separate declarations. Four addressed whether Simpson's conduct violated CORA. Specifically, the City sought declarations that (1) Simpson's failure to release all fourteen emails to the City violated CORA; (2) including the "not subject to CORA" language violated CORA; (3) the emails were public records subject to CORA; and (4) the "not subject to CORA" language had no legal effect. In its fifth request, the City asked the court to declare that the Board "has the jurisdiction to move forward processing the complaint" against Simpson.

¶ 6 Simpson moved to dismiss for lack of standing. The court denied the motion, concluding that the City had a legally protected interest in enforcing its ethics code and that the parties were concretely adverse and engaged in a present dispute, and consequently the City had standing to seek declaratory judgment.

¶ 7 The City moved for summary judgment. As to the CORA-specific requests, the district court declared that the emails were public records subject to CORA and that Simpson violated CORA by withholding two of them. The court dismissed the request for a declaration that Simpson violated CORA purely by including the "not subject to CORA" language in his emails. It also declined to declare that the Board of Ethics had jurisdiction to address the alleged CORA violations, noting that the Board had not yet even determined the scope of its jurisdiction, so that issue was not ripe for review.

II. Analysis

¶ 8 Simpson argues that the district court erred in (1) denying his motion to dismiss for lack of standing and (2) concluding on summary judgment that he violated CORA. We hold that the

district court lacked subject-matter jurisdiction to enter the requested CORA declarations and thus vacate the judgment.

A. Applicable Law and Standard of Review

¶ 9 In their exercise of judicial power, Colorado courts "limit their inquiry to the resolution of actual controversies based on real facts." *Bd. of Dirs., Metro Wastewater Reclamation Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 105 P.3d 653, 656 (Colo. 2005). Courts use "jurisprudential doctrines that include standing, mootness, and ripeness[] to establish parameters for the principled exercise of judicial authority." *Id.*

¶ 10 The ripeness doctrine "tests whether the issue is real, immediate, and fit for adjudication." *Id.* "A court has no jurisdiction to render an advisory opinion on a controversy that is not yet ripe . . . ." *Robertson v. Westminster Mall Co.*, 43 P.3d 622, 628 (Colo. App. 2001).

¶ 11 The Declaratory Judgment Act authorizes a court "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." § 13-51-102, C.R.S. 2026. But the statute does not allow a court "to take cases that are not justiciable." *Metro Wastewater Reclamation Dist.*, 105 P.3d at 656.

When considering a request for a declaratory judgment, the court "must focus on a real set of facts involving an immediate controversy fit for judicial resolution." *Id.*

¶ 12 Ripeness and the associated prohibition on advisory opinions apply with equal force in the declaratory judgment context. "Declaratory judgment proceedings may not be invoked to obtain advisory opinions or resolve nonexistent questions, even where it may be assumed that the question may arise at some future time." *Am. Civ. Liberties Union of Colo. v. Whitman*, 159 P.3d 707, 709 (Colo. App. 2006); *see also State v. Hill*, 2023 CO 31, ¶ 10 ("[A] declaratory judgment is procedural, not substantive, in nature. So, although the Declaratory Judgment Act and C.R.C.P. 57 provide procedural mechanisms to recognize rights, they do not themselves confer or expand them.").

¶ 13 A district court may enter a declaratory judgment only when the requested judgment would "afford the plaintiff present relief." *Cacioppo v. Eagle Cnty Sch. Dist. Re-50J*, 92 P.3d 453, 467 (Colo. 2004) (citation omitted). When "the declaration sought would not resolve the conflict giving rise to the proceeding," the court may

refuse to enter a declaratory judgment. *Burkett v. Amoco Prod. Co.*, 85 P.3d 576, 579 (Colo. App. 2003).

¶ 14 In addition, "[w]hen administrative remedies are provided by statute or ordinance, the procedure outlined in the statute or ordinance must be followed if the contested matter is within the jurisdiction of the administrative authority." *Egle v. City & County of Denver*, 93 P.3d 609, 612 (Colo. App. 2004). "If complete, adequate, and speedy administrative remedies are available, a party must pursue these remedies before filing suit in district court." *City & County of Denver v. United Air Lines, Inc.*, 8 P.3d 1206, 1212 (Colo. 2000). When a plaintiff does not exhaust their administrative remedies, "the district court may lack subject-matter jurisdiction over the action." *Id.*

¶ 15 The parties focus their appellate arguments on standing. But we may "choose among threshold grounds for denying audience to a case on the merits." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999). Thus "[w]e may address jurisdictional issues in any order we find convenient." *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223, 1229 (10th Cir. 2004). And "we may raise jurisdictional

defects sua sponte, regardless of whether the parties have raised the issue." *People v. S.X.G.*, 2012 CO 5, ¶ 9.

¶ 16 In the absence of disputed facts, we review issues related to justiciability de novo. *See Youngs v. Indus. Claim Appeals Off.*, 2012 COA 85M ¶ 16.

B. Discussion

¶ 17 The premise of the relevant portion of the ethics complaint against Simpson was that his actions vis-a-vis the fourteen emails violated CORA and thereby — the City asserts — also violated the City's ethics code. But the City didn't ask the district court to decide whether Simpson violated the ethics code. Instead, the City asked the district court to decide an underlying question that would have been before the Board in deciding the ethics complaint — whether Simpson violated CORA.[1]

¶ 18 Nor did the City assert a claim for relief under CORA — it expressly disavowed seeking "any of the relief" that CORA provides.

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[1] The only ethics-related declaration the City sought was its request for a declaration that the Board had jurisdiction to proceed against Simpson. The district court denied this declaration as unripe and the City did not cross-appeal. That ruling is thus not before us. *See People v. Kovacs*, 2012 COA 111, ¶ 20.

Indeed, because the City was not a "person denied the right to inspect any record" covered by CORA, it's unlikely the City could have asserted a substantive CORA claim against Simpson. § 24-72-204(5)(a), C.R.S. 2026. So at bottom, the City asked the district court to declare that certain elements of a legal claim were met, even as the City did not — and likely could not — assert that claim. This amounts to a request for an impermissible advisory opinion. And a declaratory judgment is not a vehicle to "obtain advisory opinions or resolve nonexistent questions." *Am. Civ. Liberties Union of Colo.*, 159 P.3d at 709.

¶ 19 And even though Simpson claims that only a district court — and not a municipal board of ethics — has jurisdiction to decide whether a CORA violation occurred, that argument is premature. The Board of Ethics hasn't exercised jurisdiction to determine whether a CORA violation occurred. As the district court recognized, it would be "preemptive" for a court to determine the bounds of the jurisdiction of the Board of Ethics before that body had an opportunity to do so for itself, and such a request is "not

ripe for review."[2] *See Colo. Health Facilities Rev. Council v. Dist. Ct.*, 689 P.2d 617, 622 (Colo. 1984) ("Administrative proceedings at least implicitly include legal determinations of the agency's jurisdiction under an organic statute, but such determinations generally are not reviewed until the conclusion of the proceedings.").

¶ 20 In addition, the district court lacked jurisdiction over the City's request because the City did not exhaust its administrative remedies before filing suit. The full Durango Code of Ethics is not in the record. But it is clear from the proceedings below that the code provides for an enforcement mechanism via the Board of Ethics — indeed, once it filed suit in district court, the City moved to stay proceedings before the Board on the complaint against Simpson. So there's no dispute that the City had initiated, but not completed, the administrative process available to it at the time it filed suit.

¶ 21 The exhaustion requirement exists in part "to prevent piecemeal application of judicial relief and to conserve judicial

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[2] Because the district court declined to decide whether the Board of Ethics had jurisdiction to determine whether Simpson's actions violated CORA and the City did not cross-appeal that ruling, that question is not before us and we thus take no position on it.

resources." *State v. Golden's Concrete Co.*, 962 P.2d 919, 923 (Colo. 1998). Here, the City chose to leapfrog the Board of Ethics and go directly to the district court for declarations that Simpson's conduct violated CORA. But even if we were to affirm those declarations, the City would still need to go back to the Board to decide the remaining issues and reach a final decision on the complaint. At that point, an aggrieved party could challenge the Board's decision once more in district court. *See* C.R.C.P. 106(a)(4) (providing for judicial review where "any governmental body . . . exercising judicial or quasi-judicial functions has exceeded its jurisdiction"). This would give rise to the very piecemeal application of judicial relief warned against by the supreme court in the exhaustion context. *See Golden's Concrete Co.*, 962 P.2d at 923.

¶ 22 Instead of allowing this merry-go-round between the district court and the Board, the proper course would have been to permit the Board to reach its decision in the first instance and then, if necessary, seek review of that decision under the appropriate standards. By short-circuiting this process, the City failed to exhaust its administrative remedies. And in deciding whether Simpson's actions violated CORA, the district court rendered an

impermissible advisory opinion. For these reasons, the district court lacked jurisdiction.

III. Disposition

¶ 23 We vacate the district court's judgment.

JUDGE DUNN and JUDGE SCHUTZ concur.

Court of Appeals

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TIFFANY MORTIER
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals will issue no earlier than 42 days after entry of the judgment. Pursuant to C.A.R. 3.4(m) and C.A.R. 3.5(m), the mandate of the Court of Appeals will issue 29 days after entry of the judgment in appeals from proceedings in dependency or neglect, or appeals of mental health orders.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. The mandate will issue no earlier than 28 days after the court denies the petition for rehearing. In appeals from proceedings in dependency or neglect, or appeals of mental health orders, if the petition is denied, the mandate must issue 14 days after entry of the order denying the petition.

In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or 14 days after the court denies a timely petition for rehearing, whichever occurs later.

A timely filed petition for writ of certiorari or a timely filed motion for extension of time to file a petition for writ of certiorari transfers jurisdiction from the court of appeals to the supreme court under C.A.R. 52(b).

BY THE COURT: Ted C Tow III,
Chief Judge

DATED: August 1, 2026

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