STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0712

Marlys Larsen,
Appellant,

vs.

City of Spicer,
Respondent.

Filed January 20, 2009
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Kandiyohi County District Court
File No. 34-CV-06-645

John E. Mack, Mack & Daby, P.A., P.O. Box 302, New London, MN 56273 (for appellant)

Marcel B. Darval, Plaza One, 1305 South First Street, Willmar, MN 56201 (for respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's dismissal of her special assessment appeal involving five parcels of property. Because the district court erroneously concluded that

appellant failed to comply with the statutory requirements for perfecting an appeal under Minn. Stat. § 429.081 (2008) as to four of those parcels, we reverse in part and remand. But we agree that appellant failed to perfect her appeal as to the fifth parcel. We therefore affirm the district court's order as to this parcel.

FACTS

On November 8, 2006, respondent City of Spicer approved special assessments on five parcels owned by appellant Marlys Larsen. On November 9, 2006, the clerk of the City of Spicer mailed a notice of assessments regarding each parcel to appellant. On December 6, 2006, 27 days after receiving notice, appellant personally delivered one copy of each of the November 9 notices to the city clerk, and wrote the following on the bottom of each: "I appeal my assessment of Nov. 9 2006, [signed] Marlys Larsen."

Nine days later, on December 15, 2006, appellant delivered a handwritten "Notice of Appeal" to the district court administrator, which listed four of the five properties that were subject to special assessments. Appellant's "Notice of Appeal" did not list parcel number 85-600-0450. Appellant attached a paper to the notice that stated: "This is an Affidavit of Service to 8th District Court of MN. I am filing an appeal. I mailed a copy of my Notice of Appeal to City Clerk." These documents were accepted and filed by the district court administrator, but the matter was mistakenly placed on the tax court's docket. Eventually, the matter was correctly placed on the district court's calendar.

The district court dismissed appellant's appeals for lack of subject matter jurisdiction, having concluded that appellant "failed to comply with the filing requirements in Minn. Stat. [§] 429.081 (2007)." This appeal follows.

D E C I S I O N

Appellant argues that the district court erroneously dismissed her special assessment appeals on the basis that she "did not timely file a notice of appeal," and "failed to comply with the filing requirements in Minn. Stat. [§] 429.081 (2007)." We review questions involving service of process and statutory interpretation de novo. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d. 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001) (noting that "[d]etermination of whether service of process was proper is a question of law reviewed de novo."); *Grimm v. Comm'r of Pub. Safety*, 469 N.W.2d 746, 747 (Minn. App. 1991) (explaining that interpretation of a statute is a question of law fully reviewable by an appellate court).

Minn. Stat. § 429.081 (2008) governs the process for appealing a special assessment, and provides that "[w]ithin 30 days after the adoption of the assessment, any person aggrieved . . . may appeal to the district court by serving a notice upon the mayor or clerk of the municipality. The notice shall be filed with the court administrator of the district court within ten days after its service." The statute imposes the following conditions: (1) notice of appeal must be served within 30 days of the adoption of the assessment; (2) it must be served on either the mayor or municipal clerk; and (3) the notice must be filed with the court administrator of the district court within ten days after being served on the mayor or municipal clerk. Minn. Stat. § 429.081; *see Wessen v. Village of Deephaven*, 284 Minn. 296, 298, 170 N.W.2d 126, 128 (1969) (construing predecessor statute, which provided for 20, rather than 30 days for appeal). Statutory

conditions such as these demand strict compliance, and "will not be extended by construction." *Wessen*, 284 Minn. at 298, 170 N.W.2d at 128.

"If service of process is invalid, the district court lacks jurisdiction to consider the case, and it is properly dismissed." *Leek v. Am. Express Prop. Cas.*, 591 N.W.2d 507, 509 (Minn. App. 1999), *review denied* (Minn. July 7, 1999). Respondent concedes that appellant's notice of appeal was timely filed. But respondent claims that dismissal was proper because the notices of appeal that appellant served on the city and filed with the district court were different from one another, and because appellant failed to file an affidavit of service with the district court. We address each of these contentions in turn.

Statutory Requirements

The district court found that appellant had failed to comply with Minn. Stat. § 429.081 because (1) the notices that appellant served on the city and filed with the district court were not copies or even similar; (2) the notices did not reference that the appeal involved "special" assessments; and (3) the "Notice of Appeal" that appellant filed with the district court excluded one of the five parcels. Review of the district court's conclusions requires us to construe the requirements of Minn. Stat. § 429.081. In deciding questions of statutory construction, we first examine whether the language of the statute is clear or ambiguous. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Ambiguity exists when statutory language is open to more than one meaning. *Id.* (quotation omitted). Minnesota Statute section 429.081 states that an appellant must file "a notice upon the mayor or clerk of the municipality. The notice shall be filed with the court administrator of the district court within ten days after its

service." These words are not ambiguous. When words of a statute are unambiguous, we must give effect to their plain meaning. *Grimm*, 469 N.W.2d at 747.

Words and phrases are interpreted according to the rules of grammar and their ordinary usage. Minn. Stat. § 645.08(1) (2008). The word "a" is an indefinite article, and "connotes a thing not previously noted or recognized, in contrast with *the* [a definite article], which connotes a thing previously noted or recognized." *Webster's New World Dictionary* 1 (2d College ed. 1980). Thus, in Minn. Stat. § 429.081, "the" notice refers to the notice previously specified, namely, the notice served upon the mayor or the city clerk. However, it is not possible to take this sentence literally, for the document itself, once served upon the mayor or city clerk, cannot then be filed with the court administrator. And "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1) (2008).

In recognition of the impossibility of serving and then filing the same document, respondent contends that the word "the" signifies that the contents of the notices must be identical. However, this interpretation requires us to add language to the statute. "Where failure of expression rather than ambiguity of expression concerning the elements of the statutory standard is the vice of the enactment, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature." *Ryan Contracting, Inc. v. JAG Invs., Inc.*, 634 N.W.2d 176, 182 (Minn. 2001) (quoting *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959), *overruled on other grounds by Mavco, Inc. v. Eggink*, 739 N.W.2d 148 (Minn. 2007).

Other statutes expressly provide that a "copy" of a notice shall be served on a party. *E.g.*, Minn. Stat. § 209.021 subd. 3 (2008) (providing that a contestant must deliver a "copy of the notice" filed with county auditor); Minn. Stat. § 256.045 subd. 7 (2008) ("[appellant] may appeal the order to the district court . . . by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record . . . ."). If the legislature intended a copy of the notice to be filed with the court, it could have easily said so. Section 429.081 does not require that the notices be identical in form. Therefore, it was error for the district court to dismiss appellant's case because her notices were not copies or similar in form.

Where, as here, a statute is silent on the form a notice must take, the statute is satisfied if the notice "is sufficient to apprise one of ordinary intelligence of the nature and subject of the hearing." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 392 (Minn. 1980) (quotation omitted). Clerical errors in a notice which do not mislead the opposing party do not constitute a defect requiring dismissal. *Village of Aurora v. Comm'r of Taxation*, 217 Minn. 64, 70, 14 N.W.2d 292, 297 (1944). The notices that were served on respondent and filed with the district court referenced an appeal of assessments and identified the relevant properties by parcel numbers. Certainly, one of ordinary intelligence could decipher that appellant intended to appeal the assessments that were levied on the listed parcels.

However, we cannot say that notice was sufficient as to parcel number 85-600-0450, because this parcel was not listed in the notice that was filed with the district court. The statute clearly requires that notice be filed with the court administrator, as well as

served on the opposing party. Minn. Stat. § 429.081 ("The notice shall be filed with the court administrator of the district court within ten days after its service."). Thus, the notice must apprise the court administrator of the nature and subject of the hearing. Because appellant failed to include parcel 85-600-0450 in the notice that was filed with the district court, the notice was insufficient to apprise one of ordinary intelligence that the hearing involved an appeal of an assessment on this parcel. Therefore, the district court properly concluded that it did not have subject matter jurisdiction over parcel 85-600-0450. *See Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 767-68 (Minn. 1997) (stating that proper service and filing of notice of appeal is necessary to invoke the district court's jurisdiction).

Respondent argues that appellant's notices were inadequate for several reasons. First, respondent complains that the notices failed to specify the reasons for the appeal. Next, respondent points out that the notice that was filed with the district court did not refer to the notices that had been served on respondent, did not identify the type or amount of assessment being appealed, and did not identify the date of the adoption of the assessments. But Minn. Stat. § 429.081 does not require this level of specificity. And respondent failed to allege, much less demonstrate, any prejudice resulting from the alleged inadequacies.

Further, we do not find appellant's failure to identify the assessments as "special assessments" to be fatal, particularly when respondent's own notices refer to "assessments," rather than "special assessments." Given the fact that strict compliance with section 429.081 is necessary, we will not read requirements into the statute that

make compliance more difficult when notice is otherwise sufficient and no prejudice results. *See Vernco, Inc., v. Twp. of Manyaska, Martin County*, 290 N.W.2d 443, 444 (Minn. 1980) (holding that "actual notice within the time limitations provided by statute is sufficient to confer jurisdiction upon the district court"). Thus, the district court erred by dismissing appellant's appeal on this ground.

In summary, we reverse the district court's dismissal of the special assessment appeals related to parcels 85-100-1670, 85-600-0720, 85-650-0100, and 85-650-0110, and remand for further proceedings. But we affirm the district court's dismissal of the special assessment appeal related to parcel 85-600-0450.

Proof of Service

The district court also cited the following defects in appellant's proof of service as a basis for its conclusion that appellant failed to comply with statutory requirements: (1) the "Notice of Appeal" was not filed with an affidavit of service; (2) the proof of service incorrectly stated that appellant mailed her notices to the city clerk, when they were hand-delivered; and (3) the proof of service erroneously stated that the "Notice of Appeal" was served on the city clerk, when copies of the property assessment forms with appellant's handwritten notation were actually served.

The Minnesota Rules of Civil Procedure "reflect a well-considered policy to discourage technicalities and form . . . they should be liberally construed in the interests of justice." *Love v. Anderson*, 240 Minn. 312, 314, 61 N.W.2d 419, 421 (1953). The rules are "designed to effect the settlement of controversies upon their merits rather than

to terminate actions by dismissal on technical grounds." *Ind. Sch. Dist. No. 273 v. Gross*, 291 Minn. 158, 165, 190 N.W.2d 651, 656 (1971).

Minn. R. Civ. P. 4.06 states that "Service of summons and other process shall be proved . . . by the affidavit of any other person making it . . . *Failure to make proof of service shall not affect the validity of the service*." (Emphasis added). The rule clearly states that failure to file an affidavit will not affect the validity of service. Respondent does not deny that it was served and we have found that service was effective as to four of the properties. Appellant's failure to make proof of service did not affect the validity of service. Thus, it was error for the district court to dismiss appellant's appeal on this ground.

Affirmed in part, reversed in part, and remanded.

Dated: _____

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The Honorable Michelle A. Larkin
Minnesota Court of Appeals