

Appellate Court Case No. A05-591

STATE OF MINNESOTA
IN SUPREME COURT

American Crystal Sugar Company,

Relator,

v.

County of Clay,

Respondent.

RELATOR'S REPLY BRIEF

LISA N. BORGEN
Clay County Attorney

MICHELLE C. WINKIS
Attorney Reg. No.: 2771421
Assistant County Attorney

Clay County Courthouse
807 11th Street North
P.O. Box 280
Moorhead, MN 56561-0280
Phone: (218) 299-7647

ATTORNEYS FOR RESPONDENT
COUNTY OF CLAY

FAEGRE & BENSON, LLP

MYRON L. FRANS
Attorney Reg. No.: 172558

MARK D. SAVIN
Attorney Reg. No.: 178007

LISA R. PUGH
Attorney Reg. No.: 287714

2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

ATTORNEYS FOR RELATOR
AMERICAN CRYSTAL SUGAR
COMPANY

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INTRODUCTION

The issue is whether this Court will condone Clay County's attempts to intentionally frustrate American Crystal Sugar's ("ACS's") appeal of its property tax. Clay County officials deliberately played a roguish game of "catch me if you can" with ACS's process servers. This Court should hold that Clay County may not benefit from the collective improper conduct of its public servants. The conduct of these county officials was so outlandish and contrary to the behavior to be expected of public officials (e.g., hiding in a dark house to avoid the process server at the door) that any failure to serve all four county officials and to file proofs of service (if indeed there was a failure) must be excused.

Finding for ACS for the reasons provided in its Brief and this Reply Brief will not result in an expansive service rule applicable to all legal actions. First, the elaborate filing requirements to serve four county officials imposed by Minn. Stat. § 278.01 are not duplicated elsewhere in the Minnesota statutes. Second, the conduct of two out of the four county officials was, to say the least, uniquely improper. Finding for ACS on these particular facts will correct the injustice of this case and allow ACS to proceed in Tax Court.

I. Clay County officials cannot avoid reasonable attempts at service by playing "catch me if you can."

Under Minn. Stat. § 278.01, four county officials must be "served" to commence a taxpayer's property tax action. In this case, two of the four Clay County officials engaged in conduct that was designed to impede ACS's efforts to

serve them in their official capacity. Even so, service was timely made by leaving a copy of the petition at the officials' doorsteps. (ACS Br. at 14-16.)

Alternatively, service was made by facsimile. (ACS Br. at 19-21.)

It is undisputed that taxpayers have until midnight on April 30 to serve their petitions. The plain language of the statute does not require service during office hours. A day for this purpose, then, ends at midnight. Minn. Stat. § 645.45(9), Homart Dev. Co. v. County of Hennepin, 538 N.W.2d 907, 911-912 (Minn. 1995) (fax sent after 5:00 p.m. but before midnight to closed office of County Attorney is “furnished” on the day of transmission, not the next business day). Further, public servants' official duties do not end at the arbitrary moment they choose to close their offices.¹ See e.g., Board of Comm'rs v. Dickey, 86 Minn. 331, 341, 90 N.W. 775, 779 (1902) (a public servant is “unquestionably” a public servant “at all times”). Thus, ACS and other taxpayers had until midnight on April 30 to serve their petitions and, correspondingly, Clay County officials were obligated to accept properly tendered service until that time.²

¹ Nor do their official duties end when the officials “claim” to have closed their offices even though they continue to work in them. Recall the County Attorney returned to her office after telling the process server she had stopped work for the day. (A45, A118.)

² ACS is not asking this Court to decide whether service at the home of a Clay County official would be appropriate if, for example, the process server awakened the official at 11:59 p.m. to make service. That is not what happened here. Here the process server called the officials in the afternoon and offered to meet them anywhere at their convenience. In fact, the Clay County Attorney was returning to her office then and she could have easily met the process server there. (A118, A123.) Both officials admitted they were out in the Clay County community

On April 30, 2003, the day in question, only the Clay County Auditor acted properly by processing the three petitions handed to her in a normal manner (accepting, signing and returning copies of all of the petitions within minutes upon their receipt).³ That, however, is where Clay County's proper conduct ended. The Assessor and the County Attorney made a choice when the process server called them that afternoon. Both officials could have acted properly, consistent with their public duties. Instead they deliberately chose a course of behavior that delayed and impeded the service of petitions by three of Clay County's largest taxpayers (Kmart, ACS and Xcel Energy).

This is not the case where one official acted unprofessionally. A review of the evening's events shows an institutional effort to thwart service:

- The Assessor refused a telephone request at 5:00 p.m. to meet at a convenient time and place for service. He knew that the petitions which the process server wanted to serve on him potentially involved large amounts of money. How did he know? Because he asked the process server for the names of all three taxpayers before refusing to make himself unavailable to receive service. (A101.) After refusing this

(running errands, playing soccer, going out for drinks) when convenient service could have been easily completed. (A101, A119.)

³ In fact, by doing so, the Auditor made Clay County a party to ACS's property tax appeal. (ACS Br. at 3-4.) Although the Clay County Treasurer's actions were also dubious, at best, and did delay the process server, Clay County has conceded that she was served even though she refused to sign all the petitions handed to her. Accordingly, ACS will focus on the improper conduct of the Assessor and the County Attorney.

reasonable request, the Assessor sought and received immediate legal guidance from the Clay County Attorney's office concerning his conduct. Thereafter, when the process server finally found him at home, the Assessor turned off the lights and hid in the dark as she knocked on the door.

- The County Attorney refused a telephone request at 5:30 p.m. to meet for a convenient time and place for service. She claimed the office was closed, even though she returned to it later. (A118, A123.) That evening she was in public in the county (playing soccer and going out for drinks) where she easily could have been served without involving her home. Even so, the County Attorney intentionally refused to tell the process server where she would be.

As described more fully in ACS's opening brief, the Assessor and County Attorney were effectively served under this Court's rulings in Nielsen v. Braland, 264 Minn. 481, 484, 119 N.W.2d 737, 739 (1963), and Carlson v. Cohen, 302 Minn. 531, 223 N.W.2d 810 (1974). Because ACS's petitions were properly served on April 30, 2003, the Tax Court should be reversed.

Even if this Court were to conclude that personal service was not made on all four of the Clay County officials, the Court should apply the Tax Court's own precedents that make it clear that when a county's misconduct is at the root of taxpayer's procedural failure, the county cannot benefit from its misconduct. Puri v. County of Stearns, File No. C7-94-4349-S (Minn. Tax Ct. May 18, 1995)

(A180.), Hechter Gateway L.P. v. County of Scott, File No. 94-05536 (Minn. Tax Ct. Oct. 24, 1994) (A183.).

Alternatively, this Court can find that the Clay County officials' misconduct was actually a waste of energy as Clay County became a party upon personal service of the Auditor (the only official who properly accepted service) under Minn. R. Civ. P. 4.03(e)(1). Thus, the copies of the petitions served by facsimile on the Assessor and the County Attorney in the evening (well before midnight) were properly served under Minn. R. Civ. P. 5.01. See Homart, 538 N.W.2d at 911-912.

Regardless of whether service was (1) actually accomplished, or (2) is deemed accomplished, or (3) is excused because of the conduct of the county's officials, the Court should hold in such a way that the improper conduct of Clay County is not rewarded. Any other holding will undercut the obligation of government officials to behave improperly to citizens seeking appeal of their taxes.

II. The Tax Court has jurisdiction over the matter even though proofs of service on the Assessor and County Attorney were filed on May 1, 2003.

Clay County argues that the May 1 filing of proofs of service for two of the four officials is a procedural "defect" independent from the issue regarding validity of service. It is not. Any technical defect in filing the proof of service was inextricably connected to Clay County's gamesmanship in avoiding service.

Again, this Court should not allow Clay County to benefit from its officials' improper conduct.

It is the fact of service, not the filing of proof of service, that gives a court jurisdiction over a matter. Leland v. Heiberg, 156 Minn. 30, 35, 194 N.W. 93, 95 (1923), Goodman v. Ancient Order of United Workmen, 211 Minn. 181, 183-84, 300 N.W. 624, 625 (1941), Lovin v. Hicks, 116 Minn. 179, 180-81, 133 N.W. 575, 576 (1911), Murray v. Murray, 159 Minn. 111, 113, 198 N.W. 307, 308 (1924). Service on Clay County was accomplished on April 30, 2003. The only reason that the process servers failed to file all four proofs of service on that same date was because of the Clay County public officials' "catch me if you can" game. Under established Tax Court precedent, a county cannot profit from a procedural defect it caused. See Puri, File No. C7-94-4349-S, Hechter, File No. 94-05536.

The cases that Clay County cites in support of its assertion that the Tax Court would have dismissed the petition for failure to file the proof of service do not apply here. (The Tax Court did not even reach this issue below.) In Kwapick v. County of Ramsey, File No. C2-00-1618 (Minn. Tax Ct. Oct. 12, 2000) (R. App. at A-24.) the taxpayer's petition was dismissed, in part, because there had never been any attempt to file a proof of service.

Similar facts justified the dismissal in Guyse v. County of Olmsted, File No. C3-92-1526 (Minn. Tax Ct. Jan. 15, 1993) (R. App. at A-28.) where the taxpayer failed to file a proof of service until its absence was noted by the county. At that point, the taxpayer filed an undated proof of service on the assessor and

treasurer but did not file a proof of service with respect to the County Attorney (apparently because she had not been served). The Tax Court dismissed.

In this case, however, it is undisputed that proof of service on two of the four officials was filed on April 30, 2003. (A8.) Proof of service on the other two officials was filed on May 1, 2003. The only reason ACS's proof of service was filed the next day was because of the county officials' actions. Again, the officials were playing "catch me if you can" while the process servers were trying to find them. It is wholly unfair to allow Clay County claim the hours-late filing as a defense. This Court has held that cases should be decided on the merits, not on mere procedural technicalities.⁴ See e.g., Guillaume & Assocs., Inc. v. Don-John Co., 336 N.W.2d 262, 264 (Minn. 1983).

Further, the Tax Court should have allowed the next-day filing of the proof of service because filing the following day was due to excusable neglect. Minn. Rul. Civ. P. 6.02. This Court has explicitly held that "[w]e are reluctant to allow substantive rights to be decided on technical grounds, particularly where no harm has been shown to result from the few days' delay." Guillaume, 336 N.W.2d at 264. Clay County urges this Court to decide the matter on a technicality — a technicality caused by its own improper actions. Clay County has not shown any harm from the next-day filing. Thus, the Tax Court should have ruled that ACS

⁴ Other courts show flexibility with respect to filing proof of service, undoubtedly because such proof is a mere formality. Only the actual fact of service gives a court jurisdiction. See Minn. Gen. R. Prac. 7 (proof of service to be filed within 10 days).

was permitted to file its proof of service on May 1, under the unique factual circumstances of this case.

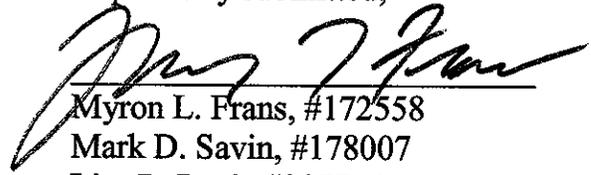
CONCLUSION

ACS respectfully requests this Court to overturn the Tax Court's dismissal of ACS's petition and to find that, with these unique facts, ACS's property tax appeal may proceed.

For this Court to hold otherwise is to reward Clay County for its officials' improper conduct. These officials are public servants with responsibilities to act properly when dealing with the taxpayers and citizens of Clay County. Not only did they refuse to act properly (with the exception of the Auditor) but they intentionally impeded ACS's attempts at service. Having done so, they now point to the technical failures resulting directly from their own actions as grounds for dismissal. This Court should not allow Clay County to benefit from its own improper conduct.

Dated: 6-16, 2005

Respectfully submitted,



Myron L. Frans, #172558

Mark D. Savin, #178007

Lisa R. Pugh, #287714

FAEGRE & BENSON LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402

(612) 766-7000

Attorneys for Relator

American Crystal Sugar

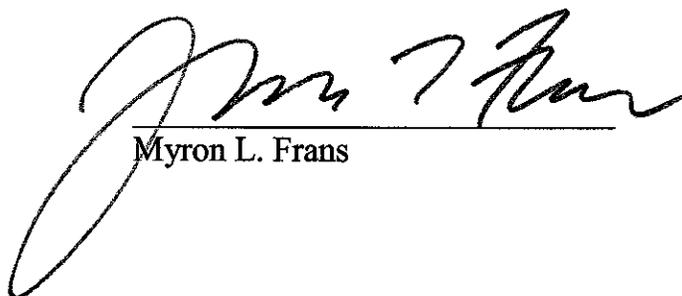
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CERTIFICATE OF COMPLIANCE

WITH MINN. R. CIV. APP. P. 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 2,358 words and complies with the type/volume limitations of the Minnesota Rules of Civil Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Office Word 2003, the word processing system used to prepare this Brief.



Myron L. Frans

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