

NO. A05-0310

State of Minnesota
In Supreme Court

Thomas Carroll Rubey,
Petitioner,

v.

Valerie Ann Vannett,
Respondent.

**ARGUMENT BY R-KIDS OF MINNESOTA
AS AMICUS CURIAE**

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MAY IT PLEASE THE COURT:

1. INTRODUCTORY REMARKS: This argument is submitted by R-KIDS of Minnesota, a non-profit corporation organized under the laws of this State, by leave of this Court evidenced by order of Hon. Kathleen Blatz, Chief Justice, entered on June 14, 2005. This entire submission has been prepared by the undersigned as general counsel for R-KIDS of Minnesota, and all costs of our appearance in this cause, from our motion for leave to appear as amicus curiae to the present submission, have been born exclusively from our corporate treasury. We appear in support of the petitioner. We shall not orally argue.

2. PROPOSITIONS TO BE ADVANCED BY AMICUS: We anticipate that counsel for the petitioner will fully argue his cause, including ample discussion of all relevant particulars of record and all needful commentary on procedural issues. In conformity with our earlier motion for leave to intervene and the said order of the Chief Justice, amicus will confine attention to two main propositions, then comment on how each proposition applies to this case.

This case was tried in family court, which ruled against the petitioner on certain points, whereupon the petitioner made a motion for amended findings under Rule 52.02 of the Minnesota Rules of Civil Procedure.

The time for such motion is governed by Rule 59.03 of the Minnesota Rules of Civil Procedure which stipulates that “notice of motion *shall be served within*

30 days after . . . service of notice by a party of the filing of the decision or order, and the motion *shall be heard within 60 days* after such . . . notice of filing, unless the time for hearing be extended by the court within the 60-day period for good cause shown.” [Emphasis added]

In this case, the notice of motion and motion for amended findings were served within 30 days. But the motion was not heard within 60 days, because court personnel assigned date for hearing beyond 60 days. When such date was assigned, counsel for the petitioner asked court personnel about an order extending time for hearing, and believed on the basis of assurances received that such order would be routinely granted, yet he was shocked to learn that such order was neglected for some reason or other. The respondent did not object until after the 60 days ran. In any event the petitioner’s motion for amended findings was dismissed, because it was not heard within 60 days.

Amicus will not take sides in the imbroglio between court and counsel. Suffice it to say that there was a misunderstanding, and the motion for amended findings was not heard within 60 days as prescribed by Rule 59.03.

The petitioner took an appeal. He relied on Rule 104.01, Subd. 2, of the Minnesota Rules of Civil Appellate Procedure which says that “if any party *serves and files a proper and timely motion* of a type specified immediately below, *the time for appeal* from the order or judgment subject to such motion runs for all

parties from the service by any party of the notice of filing of the order disposing of the last such motion outstanding.” [Emphasis added] The motions covered by Rule 104.01, Subd. 2, include a motion amended findings under Rule 52.02 of the Minnesota Rules of Civil Procedure.

The petitioner’s appeal in this case was dismissed as untimely by the court of appeals, and the reason assigned was that the motion for amended findings was not heard by the district court within 60 days as prescribed by Rules 52.02 and 59.03.

This kind of procedural problem has arisen in countless other cases in Minnesota over many years. It has often afflicted litigants in family court practice, and tarnished the reputations of not a few good lawyers. This problem must be resolved definitively and unequivocally by this Court so it will not recur.

We shall not undertake a detailed analysis of relevant judicial decisions. Counsel for the petitioner knows more about those cases than any lawyer we know, and we can add nothing to his knowledge of the field. We intend to take a *more philosophical* approach to show that, notwithstanding all the confusion in past judicial decisions, there are clear solutions which this Court ought to adopt.

We maintain, first, that hearing beyond 60 days did not, in the circumstances of this case, deprive *the district court* of jurisdiction to act upon the motion for amended findings; secondly, that, in any event, even if the motion for

amended findings was defective because not heard within 60 days, the mere filing and service of such motion extended the time for appeal, hence *the court of appeals* has jurisdiction to entertain the appeal.

3. OUR VIEW OF RULE 59.03 : It is settled, nor does anybody doubt that failure to serve a notice of any motion governed by Rule 59.03, within the time prescribed for such service by Rule 59.03, deprives the district court of jurisdiction to entertain the motion, and that, absent such service, an order granting relief must be vacated on appeal. See *Bowman v. Pamida Inc.*, 261 N. W. 2d 594 at 597 (Minn. 1977). As appears in Rules 50.02, 52.02, and 59.03, the motions subject to these restraints include motions for new trial, for amended findings, and for judgment notwithstanding the verdict.

The question here is whether failure to hear any such motion within 60 days also deprives the district court of jurisdiction. The unhappy truth is that the decisions of the court of appeals are in hopeless conflict. The order of the court of appeals dismissing the appeal in this case characterized their decision as a “close call.” We think the problem is that outstanding precedents are in a state of disorder which cannot be cured by drawing distinctions without difference.

In *Texas Commerce Bank v. Olson*, 416 N.W. 2d 456 at 462-463 (Minn. 1987), it was held that, if hearing on such a motion is scheduled after the prescribed time for such hearing, and the party adverse to the motion does not

object until after such time has run, such party waives his right to object, and the district court may entertain the motion. That certainly seems to say that hearing within the time prescribed by Rule 59.03 is not essential to the jurisdiction of the district court.

On the other hand, in *Celis v. State Farm Mutual Automobile Ins. Co.*, 580 N. W. 2d 64 at 66 (Minn. App. 1998), it was held by a majority of two that failure to hear such a motion within the time prescribed by Rule 59.03 deprives the district court of jurisdiction to entertain the motion. The dissent bemoaned the senseless result, and suggested equitable estoppel as a way to avoid it.

Texas Commerce Bank and *Celis* are irreconcilable. Where is the line between them? In truth, there is no line at all.

The hint of a good solution is found in *American Standard Ins. Co. v. Le*, 551 N. W. 2d 923 at 925-926 (Minn. 1996). It is enough to say that counsel made motions for amended findings, judgment notwithstanding the verdict, or new trial, and made an attempt in good faith to schedule his motions for timely hearing under Rule 59.03, but there was a problem with court administration which led to the passing of too much time. Under those circumstances, denial of jurisdiction in the district court to entertain the motion would have been very harsh. The literal rigor of Rule 59.03 was disregarded in relation to the facts of the case, yet this Court really did not say why. We mean here to provide the missing rationale.

At some point *Dr. Bonham's Case*, 8 Coke 114a (C. P. 1610), is invariably mentioned in law school. Lord Coke there held that an act of Parliament contrary to Magna Carta was null and void. But this pronouncement was an extravagance in England, because, by constitutional custom, the King, Lords, and Commons in Parliament were the supreme and ultimate power of the realm, and could enact anything in law not naturally impossible. So a remedy had to be and was found to redress legislative excess. Sir William Blackstone laid down the classical principle:

“I know it is generally laid down more largely that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it: and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that would set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable, there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity and only quoad hoc [to that extent or thus far] to disregard it.” -- *Commentaries on the Laws of England*, Edward Christian, London, 1765, Bk. I, p. 91.

But a power of judges to strike down laws as unconstitutional, harkening back to Lord Coke, was conceded by the framers of the United States Constitution in the Philadelphia Convention. See, e. g., Max Ferrand (ed.), *Records of the Federal Convention of 1787*, Yale University Press, New Haven, 2nd edition

1937, Vol. 2, pp. 298-301 (Madison's Notes, August 15, 1787). And one of the delegates to the Philadelphia Convention, later sitting as a federal judge, lucidly articulated the theory of judicial review in *Vanhorne's Lessee v. Dorrance*, 2 Dallas 304 at 308 (U. S. Cir. Ct. Pa. 1795). And so *Marbury v. Madison*, 1 Cranch 137 (U. S. 1803), was not really an earthshaking event as some have supposed. This power of judicial review existed only to a limited extent in Canada under the British North America Acts of 1867-1975, but has been very aggressively exercised under the Constitution Act of 1982, as illustrated by the sharp contrast between *Morgantaler v. The Queen*, 53 D. L. R. 3rd 161 (Canada 1976), and *Morgantaler v. The Queen*, 44 D. L. R. 4th 385 (Canada 1988).

Even so, British, American, and Canadian judges have always used the power of construing statutes so as to avoid legally unreasonable or manifestly absurd results which otherwise would have followed from literal application of laws in unusual circumstances. And skillful employment of this more traditional and conservative authority can achieve very striking and beneficial results. See, e. g., *Holy Trinity Church v. United States*, 143 U. S. 457 at 459-461 (1892), and *Toronto v. Forest Hill*, 9 D. L. R. 2nd 113 at 114-115 and 124 (Canada 1957).

The lawgiver is always presumed to have intended a just result, so that, if a law literally applied to unusual circumstances produces a result which is legally unreasonable or manifestly absurd, the judiciary can and should hold that the

lawgiver intended no such result, and thus *not apply* the law in such a situation, notwithstanding the literal meaning of the words used. In Section 645.17(1) of Minnesota Statutes, the legislature adopted this common law rule for administration of all laws of our State. And needless to say, this Court can use this power in the just application of rules which it has framed and adopted in exercise of statutory or inherent authority.

We concede that that both requirements of Rule 59.03 -- i. e., 30 days for service of notice and 60 days for hearing -- condition the jurisdiction of the district court to entertain certain post-trial motions, *but only to the extent that such limits should not be disregarded in unusual situations.*

It is elementary that rules of civil procedure, including rules governing appeal, are remedial, and thus such rules should be liberally construed in the interests of just, speedy, and inexpensive determination of every case, as expressly directed in Rule 1 of the Minnesota Rules of Civil Procedure. Every reasonable allowance should be freely conceded to avoid forfeiture of the right to be heard on the merits in the district court and on appeal. See, e. g., *Ginsberg v. Williams*, 135 N. W. 2d 213 (Minn. 1965), and *Stebbens v. Friend, Crosby & Co.*, 254 N. W. 818 (Minn. 1934). These cases reinforce the powerful language of Article I, Section 8 of the Minnesota Constitution, echoing Magna Carta and given liberalized effect in the fundamental law of our State ever since *Davis v. Pierse*,

7 Minn. 13 at 19, Gil. 1 at 7 (1862). If this guarantee means anything, it means that a litigant seeking justice should not be obstructed by needless and pointless technicalities, particularly where, as here, the judicial precedents are hopelessly confounded with inconsistencies.

And so if the requirement of hearing within 60 days under Rule 59.03 is literally applied to a situation in which counsel has earnestly sought to comply with the rule but has been obstructed by circumstances not of his making, and thereby a citizen has been denied a fair right to press his claims, the result is legally unreasonable.

Therefore, we propose that the requirement of hearing a motion within 60 days under Rule 59.03 should not be deemed a bar to the jurisdiction of the district court to entertain and decide the motion, *whenever counsel can demonstrate that he made an effort in good faith to schedule a hearing within 60 days or to secure an extension, and that a problem arose in setting the hearing or securing an order for extension due to pressure upon the district court's calendar, or inadvertence or misunderstanding of the presiding judge or administrative personnel, or adverse counsel did not object until after 60 days had run.*

This sense of Rule 59.03 is the essential idea behind *American Standard*, 551 N. W. 2d 925-926, only the proper rationale should be made explicit, -- i. e., the common law rule that the lawgiver is presumed to have intended a just

result, and that, consequently, a law or rule should be disregarded in those situations where literal application to the facts would be legally unreasonable or manifestly absurd.

Under this view of Rule 59.03, the district court had jurisdiction to entertain the petitioner's motion for amended findings in this case, and that alone, without further discussion, makes the appeal timely,

This Court may wish to reframe Rule 59.03 of the Minnesota Rules of Civil Procedure to deal with future cases. On that question we have no advice to offer, except to note that counsel for the petitioner has prepared a remarkable survey of corresponding rules in other States. He presented this survey in his memorandum to the court of appeals, and presumably will do the same here. From this excellent scholarship, this Court will surely find valuable guidance.

We wish to add here a brief caveat to avoid misunderstanding of our recommendation in regard to Rule 59.03 in this particular case.

The common law rule on which we have based our recommendation seems superficially to be at variance with the second paragraph of Section 645.16 of Minnesota Statutes, which reads, "When the words of a law are in their application to an existing situation are clear and free from ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." The same principle is part of the common law for construing statutes, and is amply illustrated from a

number of interesting cases, not to mention the first book of Blackstone at pages 59-61. See, e. g., *Downes v. Bidwell*, 182 U. S. 244 at 253-256 (1901). Alexander Hamilton expressed the idea bluntly when he said, “Whatever may have been the intention of the framers of a constitution or of a law, that intention is to be sought for in the instrument itself, according to the usual and established rules of construction.” See Jay Cooke (ed.), *Reports of Alexander Hamilton*, Harper & Row, New York, 1964, p. 94. (Opinion on the Bank, February 23, 1791).

Where the legal meaning of a constitutional provision, statute, regulation, or rule is perfectly clear from the face of the document properly and deliberately construed, and such meaning is perfectly clear in relation to certain facts under consideration, then such meaning cannot be avoided by reference to debates on framing and adoption, or a supposed “spirit of the law” at variance with what the words of the law plainly say. Yet it remains that, if the words of a law or rule, as applied literally to an unusual situation, produce a result which is so unreasonable or absurd that the lawgiver cannot be presumed to have intended it, the courts may and should conclude that such words do not govern that particular case. The latter principle governs the proper application of Rule 59.03 in this case, and like cases, substantially with the qualification which we recommend.

4. OUR VIEW OF RULE 104.01, SUBDIVISION 2: We must now consider the Minnesota Rules of Civil Appellate Procedure.

We note first an important rule of construction, derived from the civil law and adopted by the common law, that “clauses in pari materia should be read together,” -- i. e., that all clauses or provisions of the same written document or positive law, dealing with the same question or subject, must be read together to avoid inconsistencies between them so they all work together in serving the same general end, to be sure each serves some purpose and is not redundant, and to shed light on each other and thereby to clarify the meaning of each alone and all together. Many reported opinions illustrate this principle, including *Kneedler v. Lane*, 45 Pa. St. 238 at 331 (1863-1864); *Lane County v. Oregon*, 7 Wall. 71 at 78-79 (U. S. 1868); *Platt v. Union Pacific Railroad*, 99 U. S. 48 at 58-59 (1878); and *United States v. E. C. Knight & Co.*, 156 U. S. 1 at 9-10 (1895). Probably the best known example of comparing related clauses to shed light on each other is *Gibbons v. Ogden*, 9 Wheat. 1 at 190-192 (U. S. 1824), where the power to regulate commerce was compared with an exception concerning navigation, from which it was deduced that the power to regulate commerce includes the power to regulate navigation.

Important insight on the meaning of Rule 104.01, Subd. 2, of the Minnesota Rules of Civil Appellate Procedure can be derived by comparing it with Rules 50.02, 52.02, 59.03, and 60.01 of the Minnesota Rules of Civil Procedure. Three striking contrasts are evident:

First, Rule 59.03 concerns motions for new trial, amended findings, and judgment notwithstanding the verdict, but *not motions to vacate judgment*. Yet Rule 104.01 concerns motions for new trial, amended findings, and judgment notwithstanding the verdict, and *also motions to vacate judgment*. This contrast reveals that the requirements of Rule 104.01 *are not tied to* the requirements of Rule 59.03.

Second, Rule 59.03 concerns the power of the *district court* to hear and decide certain motions. But Rule 104.01 extends time to appeal, and thus concerns the power of the *court of appeals* to entertain appeals. This contrast likewise suggests that the requirements of Rule 104.01 *are independent of* the requirements of Rule 59.03.

Third, Rule 59.03 requires, for a certain class of motions, *service of a notice* within 30 days, and *holding a hearing* within 60 days, while Rule 104.01 requires only *servicing a timely and proper motion* falling within a larger class of motions. And this contrast confirms the two previously mentioned indications, for it demonstrates that the requirements of Rule 104.01 *are different from* the requirements of Rule 59.03.

It is thus evident that, even if a motion governed by Rule 59.03 were defective because inexcusably not heard within 60 days, the time for appeal from the judgment would *nevertheless be extended* by Rule 104.01, and the court of appeals

would *still have jurisdiction* to entertain an appeal served and filed within the time extended.

This assessment is buttressed by *Madson v. Minnesota Mining & Mfg. Co.*, 612 N. W. 2d 168 at 171-172 (Minn. 2000). This Court there held that *a motion is “timely” under Rule 104.01 if filed and served within the time allowed by rules governing procedure in the district court, and “proper” under Rule 104.01 if of a kind authorized by the rules governing procedure in the district court, whether or not such motion is lawfully allowed, granted, denied, or dismissed.*

Under *Madson*, a motion governed by Rule 59.03 is “timely” under Rule 104.01, if notice thereof is served within 30 days of service of the order or decision on the moving party, and such motion is “proper” under Rule 104.01 if it is in form a motion for judgment notwithstanding the verdict under Rule 50.02, or a motion for amended findings under Rule 52.02, or a motion for new trial under Rule 59.01. If proper under Rule 104.01, a motion governed by Rule 59.03 remains proper in this sense, and time for appeal is extended, whether such motion is allowed and granted, or allowed but denied, or even if such motion is dismissed for want of hearing within 60 days, and regardless of whether the order of the district court dealing with such motion is sustainable or reversible on appeal.

Under this view of Rule 104.01, the court of appeals has jurisdiction to entertain the petitioner’s appeal.

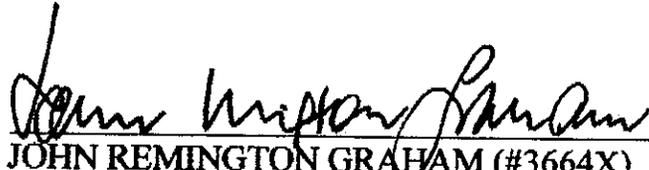
5. CONCLUSIONS: Rule 59.03 of the Minnesota Rules of Civil Procedure and Rule 104.01, Subd. 2, of the Minnesota Rules of Civil Appellate Procedure must be construed according to classical principles which rest on natural reason and sound philosophy.

Under Rule 59.03 thus construed, the district court had jurisdiction to decide the petitioner's motion for amended findings.

Under Rule 104.01 thus construed, the court of appeals has jurisdiction to entertain the petitioner's appeal.

Respectfully submitted,

Dated: July 6, 2005


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CERTIFICATE OF COMPLIANCE

The undersigned hereby certified as an officer of the court that the foregoing submission was prepared on a Microsoft Word Program, using 14-point Times New Roman font, and that, excluding the cover, the table of contents, the table of authorities, this certificate, and the appendix, this submission consists of 3,713 words proportionally spaced, as measured by the equipment used in the preparation thereof, less than 7,000 words in any event, in compliance with Rule 132.01, Subd. 3, of the Minnesota Rules of Civil Appellate Procedure.

Dated: July 6, 2005 John Remington Graham
JOHN REMINGTON GRAHAM (#3664X)