

No. A05-2014
State of Minnesota
In Supreme Court

Commandeur, LLC and
ACRO Business Finance Corporation,

Appellants,

v.

Howard Hartry, Inc.,

Respondent

Court of Appeals Opinion Filed
November 22, 2005

RESPONDENT'S INFORMAL BRIEF

COTTRELL LAW FIRM, P.A.
William G. Cottrell (#0146092)
3445 Washington Drive, Suite 204
Eagan, MN 55122
(651) 905-0496

Attorney for Respondent

MASLON EDELMAN BORMAN & BRAND, LLP
David F. Herr (#44441)
Michael C. McCarthy (#230406)
Matthew P. Lewis (#311996)
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
(612) 672-8200

Attorneys for Appellants

I. STATEMENT OF LEGAL ISSUE

Is Columbus Day a "holiday" for the judicial branch?

The Court of Appeals correctly decided Columbus Day is not a holiday for the judicial branch, and therefore, Appellants did not have an extra day to file and serve their Notice of Appeal in the required period of time.

II. SUMMARY OF ARGUMENT

Since Columbus Day was not chosen as an elective holiday by the judicial branch as defined and permitted by Minn. Stat. § 645.44, subd. 5, Appellants' Notice of Appeal was due on Columbus Day and it was not error for the Court of Appeals to dismiss the appeal.

III. STATEMENT OF THE CASE

The parties agree that an appeal may be taken from a judgment only if filed within 60 days after its entry. It is well known in computing the time period that the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. *See* MINN. R. CIV. APP. P. 126.01 and MINN. R. CIV. P. 6.01.

The 60th day after entry of this judgment was Sunday, October 9, 2005. Monday, October 10 was Columbus Day, a day recognized by Minn. Stat. § 645.44, subd. 5, as an elective holiday for the judicial and legislative branches of Minnesota. The Court of Appeals was open for business as the Courts chose to not have Columbus Day as a holiday. Consequently, Appellants had to file their appeal on or before October 10, 2005. Appellants did not serve and file their appeal until October 11, 2005.

The Court of Appeals issued an order requesting briefing on whether the appeal was timely. (A013-A015) That order expressed the Court of Appeals' view that Columbus Day is not a holiday for purposes of filing an appeal because the Minnesota state courts have elected to not have Columbus Day, as a holiday, as is their prerogative under Minn. Stat. § 645.44, subd. 5. (A014)

On November 22, 2005, the Court of Appeals did indeed issue a second order dismissing Appellants' appeal as untimely. (A021-A023) The Court of Appeals properly ignored the cases cited by Appellants since they were before the 1979 amendment which created the optional holiday. The Court properly relied on language from the 1996 Advisory Committee Comment to Rule 6.01 and commentary from Minnesota Practice which notes that Columbus Day is not a state holiday, and specifically warns attorneys to be wary.

IV. ARGUMENT

This is a case of first impression for the Minnesota Supreme Court. Prior to 1979, Minn. Stat. § 645.44, subd. 5 clearly included Christopher Columbus Day, the second Monday of October as a holiday. In 1979, the Legislature in its wisdom passed an amendment to Minn. Stat. § 645.44 subd. 5 adding language creating an option at the discretion of the different branches of state government. The option created was whether to recognize Columbus Day and the Friday after Thanksgiving as holidays. Since the adoption of this amendment, the Minnesota Supreme Court has not needed to review the amended language.

The plain language of Minn. Stat. § 654.44, subd. 5, when read in its entirety, defines and designates Columbus Day as an optional holiday. Additionally, the legislative

intent, derived from both executive and court administrative interpretation, is consistent with the plain language of the statute. Columbus Day was not a holiday for the Minnesota courts in 2005. Therefore, it was appropriate for the Court of Appeals to dismiss Appellant's appeal as untimely.

1. The Plain Language of Minn. Stat. § 654.44, subd. 5, Designates Columbus Day as an Optional Legal Holiday.

Minnesota Statute § 654.44, subd. 5 defines and designates the following days as holidays:

Holiday includes New Year's Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Christopher Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25.... No public business shall be transacted by the legislature, nor shall any civil process be served thereon. However, for the executive branch of the state of Minnesota, "holiday" also includes the Friday after Thanksgiving but does not include Christopher Columbus Day. *Other branches of state government and political subdivisions shall have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays.* Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, public business may be conducted thereon.

(Emphasis added.) In 1979, the Legislature amended the Minn. Stat. § 654.44 subd. 5 by adding the last five lines to the definition of holiday. Laws 1979 Ch. 332, Art. I § 92 .

This 1979 amendment was intended and does in fact clearly create two optional holidays: Columbus Day and the Friday after Thanksgiving. This change in the law is reflected in the plain language of the statute when read as a whole.

The amendment changed the status of Columbus Day from that of a holiday to that of an optional holiday. This status is crucial for the computation of an appeal period under Minn. R. Civ. P. 6.01, which states, “the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday... as used in this rule and in Rule 77(c), ‘legal holiday’ includes any holiday defined or designated by statute.”

Appellant argues that Columbus Day is first “included” as a holiday and then gives authorization to the courts to remain open and conduct public business on Columbus Day. This assertion is incorrect. The plain language of the statute does exactly the opposite. Additionally, the canons of statutory interpretation do not support appellant’s narrowed reading of the statute.

a. A statute must be read as a whole.

Minnesota has long-standing case precedent upholding the rule that statutes shall be read and interpreted in their entirety. “In ascertaining legislative intent every law should be interpreted and construed, if possible, to give effect to all of its provisions; and it is presumed that the legislature intends that the entire statute be given effect.” *County of Beltrami v. County of Hennepin*, 119 N.W.2d 25, 29 (Minn. 1963). Furthermore, as Justice Mitchell stated in 1895,

It is always an unsafe way of construing a statute or contract to divide it, by a process of etymological dissection, into separate words, and then apply to each, thus separated from its context, some particular definition given by lexicographers, and then reconstruct the instrument upon the basis of these definitions. An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascertained from the context, the nature of the subject treated of, and the purpose or intention of the parties who executed the contract, or of the body which enacted or framed the statute or constitution.

International Trust Co. v. American Loan & Trust Co., 65 N.W. 78, 79 (Minn. 1895).

Minn Stat. § 645.44, subd. 5, when read as a whole, designates certain days as “holidays” and further defines Columbus Day and the Friday after Thanksgiving as optional holidays. The legislature did not differentiate between “holiday” and “legal holiday.” The term “holiday” is used in both the original language and the language added by the 1979 amendment. Therefore, the plain meaning of the statute must impose a consistent definition of the term “holiday.”

b. A statute should not be read to reach an absurd result.

“It is one of the statutory presumptions in ascertaining legislative intent that the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.”
Minn. Stat. § 654.17.

The very language of the statute disproves appellant’s insistence that Columbus Day is a holiday with further authorization to conduct business thereon. The second to last line of the statute states: “Other branches of state government and political subdivisions *shall have the option of determining whether* Christopher Columbus Day and the Friday after Thanksgiving *shall be holidays*” (emphasis added). Appellant’s narrow reading of the statute disregards this sentence, asserting instead that it granted authority for the courts to conduct public business. In order for appellant’s assertion to be correct, it must be assumed that the term “holidays” at the end of this sentence does not mean holiday, but instead means a day the court has the authority to be closed. The assumption that the Legislature intended two separate meanings of the term “holiday” within Minn. Stat. § 645.44 subd. 5 is absurd.

2. The Intent of the Legislature is clear.

In the interpretation of statutes, the court's function is to determine, guided by ordinary rules of construction, what the legislative intent was and to give effect to it. Minnesota Statute § 645.16. "Legislative intent may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the former law, if any, including other laws upon the same or similar subjects; (4) the consequences of a particular interpretation; (5) the contemporaneous legislative history; and (6) legislative and administrative interpretations of the statute." *Id.* In the case of the 1979 amendment to Minn. Stat. §645.44 subd. 5, there exist evidence of administrative, and executive interpretation from which we can ascertain legislative intent.

a. The 1980 Attorney General's opinion letter.

In 1980, following the adoption of the 1979 amendment to Minn. Stat. § 654.44, subd. 5, the Attorney General issued an Opinion Letter regarding the interpretation of the amendment. This letter states: "in our view, Minn. Stat. § 654.44 (Supp. 1979) may be read to permit the County to determine that, as regards Columbus Day and Thanksgiving Friday, one, both, or neither shall be legal holidays." 1980 Minn. AG LEXIS 9 (Minn. AG 1980). This contemporaneous interpretation clearly shows the executive branch had interpreted the 1979 amendment as a permissive addition leaving the status of holiday to be determined by the County. There is absolutely no indication in this Opinion Letter that Columbus Day maintained dual status of both a holiday and an optional day-off for the courts.

b. 1996 Advisory Committee note to Minn. R. Civ. P. 6.01

In 1996, in amending Minn. R. Civ. P. 6.01, the judiciary reflected its interpretation of the 1979 amendment in its advisory committee notes. The notes state: “Minn. Stat. § 645.44, subd. 5, defines legal holidays, but allows the judiciary to pick either Columbus Day or the Friday after Thanksgiving as a holiday. Whichever is selected is defined to be a holiday under the rule.” Minn. R. Civ. P. 6.01 1996 advisory comm. cmt. This interpretation leaves no room for ambiguity. The committee clearly interpreted the 1979 amendment as allowing the state branches of government the option of adopting holiday status, not just the option of conducting public business on Columbus Day.

c. Minnesota Practice

Legal authorities have interpreted Minn. Stat. § 654.44, subd. 5 consistent with the executive and 1996 Advisory Committee interpretation. In 2004, local commentators noted that although Columbus Day is a federal holiday with no mail service, the state courts are open and it is *not a state holiday*. 3 Eric J. Magnuson & David F. Herr, *Minnesota Practice* § 126.3 (2004) [emphasis added]. This is evidence of both a consistent interpretation of Minn Stat. § 654.44, subd. 5 by the legal community, and the additional awareness that the courts have elected that Columbus Day not be a holiday.

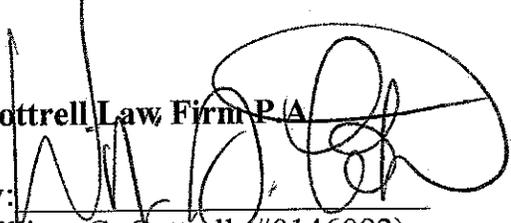
V. Conclusion

The only question on this appeal is whether Minn. Stat. § 654.44, subd. 5 designates and defines Columbus Day as a holiday. It does not; the statute plainly defines Columbus Day as an optional holiday. The Court of Appeals decision is sound and does not constitute error. The Court of Appeals decision is consistent with the plain language, the canons of

statutory construction, and the historical interpretation of Minn. Stat. § 654.44, subd. 5.

Therefore, this Court should uphold the Court of Appeals' decision.

Dated: March 24, 2006.


Cottrell Law Firm P.A.

By: _____
William G. Cottrell (#0146092)
3445 Washington Drive, Suite 204
Eagan, Minnesota 55122
(651) 905-2002

ATTORNEY FOR RESPONDENT