

Nos. A05-2424 and A05-2425

State of Minnesota
In Supreme Court

John A. Woodhall, Jr., et al.,
Appellants (A05-2424),

vs.

State of Minnesota,
Respondent,
 State of Minnesota, by its Commissioner of Transportation,
Respondent,

vs.

Grove City Grain and Feed Company,
Respondent Below,
 and

Timothy R. Pieh, et al.,
Appellants (A05-2425).

REPLY BRIEF

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ARGUMENT

The State's Brief is more remarkable for what it does not say than for what it does. In granting further review, this Court specifically instructed the parties to "brief the jurisdictional issue addressed in the special concurrence of Justice Paul H. Anderson in *Housing and Redevelopment Authority for the City of Richfield v. Adelman*, 590 N.W.2d 327, 333 (Minn. 1999)." (A-88-89). Justice Anderson's concurrence is a careful and persuasive explanation of how the notice and service requirements in Minn. Stat. § 117.145 (2006) for an appeal of a condemnation award are not jurisdictional and that, at most, a failure to comply affects the court's personal, not subject matter, jurisdiction.

Appellants took the Court's instruction seriously and opened our brief with a detailed analysis of the principles in that opinion. The State's Brief, on the other hand, doesn't get around to a substantive discussion of the *Adelman* concurrence until p. 28, and then provides barely a page of discussion. (State's Br. at 28). And the State never really provides any analysis of the reasoning of Justice Anderson's concurrence, other than to say that it finds no express support in the Court's majority opinion.

Rather than squarely address the serious issues raised by the *Adelman* concurrence, the State cites dictum from several cases for the dubious proposition that any technical defects in perfecting an appeal and failure to comply strictly with section 117.145 should be deemed to deprive the district court of subject matter jurisdiction. None of these decisions, however, even remotely resembles this case. For example, in *State v. Radosevich*, 249 Minn. 268, 82 N.W.2d 70 (1957), and *County of Hennepin v. Holt*, 296 Minn. 164, 207 N.W.2d 723 (1973), the condemnor's motion to dismiss the

appeal was denied and this Court noted, in dictum, that the right of appeal is statutory and an appellant must comply with the statutory requirements for perfecting an appeal. (Interestingly, in *Radosevich*, as here, the State seemed intent on citing dictum from cases that had no real application to the case before the Court -- a fact the opinion notes in language that is directly on point here: "While some of the language of our opinion in that case, taken out of context, might seem to support the state's contentions, it is clear that the case did not deal with the problem now before us and is easily distinguishable on its facts." 249 Minn. at 275, 82 N.W.2d at 74.)

County of Ramsey v. Ball, 291 Minn. 225, 190 N.W.2d 495 (1971), and *State v. Goins*, 286 Minn. 54, 174 N.W.2d 231 (1970), involve appeals that were not timely filed. Why this is deemed relevant here is not clear. Nowhere have we suggested that an appeal that is not timely filed would not be jurisdictionally defective. Of course, it is undisputed that both appeals here were timely filed and served on the State.

As a matter of fact, the State's assertion of a hyper-technical interpretation and application of section 117.145 is precisely what Justice Anderson's *Adelmann* concurrence had argued against, particularly in cases involving a party's fundamental right to just compensation for a taking:

We first made reference to language used in the case of *State v. Rust*, 256 Minn. 246, 98 N.W.2d 271 (1959) to emphasize that attempts on the part of the condemnor to defeat a landowner's right to his day in court are not looked on with favor, especially when the constitutional right to just compensation for the taking of land is involved. Quoting *Rust*, we said:

"[t]he decisions in this state have never unduly restricted the owner's constitutional right to just compensation where there has been a

taking of private property for public use under the powers of eminent domain. *Attempts on the part of condemnor by technical means to defeat the landowner's right to his day in court have never been viewed with favor.* Every owner is constitutionally entitled to a just and equal application of the rule that what he owns shall not be taken from him or destroyed or damaged for public use without just compensation.”

590 N.W.2d at 338 (emphasis added). Even though this disapproving language is directed at overreaching positions by condemnors -- precisely like the State is taking here -- the State apparently has nothing to say in response.

Interpreting section 117.145 not to deprive the court of subject matter jurisdiction because of a technical notice or service defect is completely consistent with this Court's case law concerning perfection of appeals in other contexts. Thus, the Court held in *Boom v. Boom*, 361 N.W.2d 34 (Minn. 1985), that once a party properly invokes the jurisdiction of the court, failure to technically comply with a rule does not deprive the court of jurisdiction. *See id.* at 36. Here, as the *Adelmann* concurrence demonstrates, it is the filing of the petition that invokes the jurisdiction of court and the appointment of commissioners does not divest the court of subject matter jurisdiction. *Adelmann*, 590 N.W.2d at 333-34 (Anderson, J., concurring).

The State's brief also mischaracterizes Appellants' argument, suggesting that we do not account for the ramifications of a failure to serve a person or entity with an interest in the property being condemned. There may indeed be ramifications for failing to serve the notice of appeal on a person or entity with an interest in the dispute, but, as the *Adelmann* concurrence explains, any failure so to serve would affect only the court's personal, not subject matter, jurisdiction. *See Adelmann*, 590 N.W.2d at 333-34

(Anderson, J., concurring). As this Court recently noted in another context, “It is well-established that failure to serve the notice of appeal on an adverse party means that the appellate court cannot alter the judgment *as to that party*.” *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 765 (Minn. 2005) (emphasis added).

In addition, as this Court noted in *County of Dakota v. Lyndale Terminal*, 529 N.W.2d 672 (Minn. 1995), failure to serve the notice of appeal of a condemnation award on entities who recorded an interest in the property after the petition was filed did not deprive the district court of subject matter jurisdiction over the appeal. *Lyndale Terminal*, 529 N.W.2d at 675. And the Court also noted that parties who recorded an interest post-filing had a remedy in Minn. Stat. § 117.175, subd. 1, which permits the district court to “require other parties to be joined [in the appeal proceeding] and to plead therein when necessary for the proper determination of the questions involved.” 529 N.W.2d at 675.

The State argues that the appeals should be dismissed because Kandiyohi County supposedly has “an interest” in the subject properties, citing the *Lyndale Terminal* case for the proposition that counties always have recorded interests in property. (State’s Br. at 16-17). (The district court also relied on *Lyndale Terminal* when it concluded that Kandiyohi County was an “interested party in [this] matter, given its authority to impose property taxes.” A-81.) This is simply not a fair or accurate reading of *Lyndale Terminal*. In the fact section of the *Lyndale Terminal* decision, this Court stated: “In addition, Minnegasco, Inc. and the City of Burnsville recorded interests in the property prior to the filing of the condemnation petition but were not mailed notice of the appeal

by the County or Aurora.” *Id.* at 674. This sentence is clear: the city (not the county) had actually taken steps to record an interest in the property in question before the county brought its condemnation petition. *Id.* Nothing in this sentence – or in the rest of the *Lyndale Terminal* opinion, for that matter – suggests that a county always has a recorded property interest in property subject to condemnation.

One of the more striking weaknesses of the State’s Brief is its failure to address the issue of when a technical violation of rules or statute will be deemed automatically fatal to a party’s action, and when it is merely one of the factors a court should consider in determining the outcome of a case. While some cases do indeed hold that a procedural error of a certain type merits automatic dismissal of a party’s action, see, e.g., *Hagemeyer v. Board of Commissioners of Wright County*, 73 N.W. 628 (Minn. 1898), there are a large number of cases which hold that procedural errors of another type do not merit such dismissal. See, e.g., *Percy v. Hofius*, 370 N.W.2d 490 (Minn. App. 1985). The important question which needs to be addressed -- and is nowhere addressed in the State’s Brief -- is this: When is a technical defect a bar to the jurisdiction of a reviewing court, and when is it not?

This Court has set forth several principles as guidance in resolving such issues. The fundamental consideration which underlies all of them, however, was set forth in *Sommers v. Thomas*, 88 N.W.2d 191, 196 (Minn. 1958): “[i]t must be remembered that the goal of all litigation is to bring about judgments after trials on the merits”

In applying this fundamental consideration, several principles emerge from the cases and analyses:

1. Where the legislature has been explicit about whether a technical requirement is jurisdictional or not, the language of the statute controls.
2. If the appeal is likely to involve the same issues as to the multiple parties who are to be served, technical defects in service are more likely to be deemed jurisdictional. If different potential respondents would present different issues from those involved in the appeal against the respondent who is served, failure to serve the potential respondents is unlikely to be a jurisdictional defect.
3. If the appeal takes place in the context of a larger, ongoing legal action which has already been initiated, failure to serve all respondents is unlikely to be a jurisdictional defect.
4. If the appeal invokes the appellate jurisdiction of the court only, defects in service of the notice of appeal are more likely to be considered as jurisdictional defects than if the "appeal" invokes the original jurisdiction of the court and leads to a trial *de novo*.
5. If the appeal involves an appellant's fundamental rights, courts are less likely to dismiss it on jurisdictional grounds for minor technical defects.

First, the courts look to the statute to determine whether it provides express guidance as to the consequences of technical violations of its terms. Where a statute explicitly indicates that an act must be performed within a specific time or in a specific manner to confer jurisdiction on the reviewing court, failure to act in accordance with the statutory requirements is often held to be a jurisdictional defect. See, e.g., *Lake Elmo v. Minnesota Municipal Board*, 474 N.W.2d 450 (Minn. App. 1991). Thus, failure to observe time limitations for appeal is usually considered to be jurisdictional defect. See, e.g., *Tischendorf v. Tischendorf*, 321 N.W.2d 405 (Minn. 1982). See also *Elliott v. Retail Hardware Mutual Fire Insurance Co.*, 233 N.W. 316 (Minn. 1930).

On the other hand, defects in a timely-filed notice are usually not considered jurisdictional. See, e.g., *Estate of Devenney*, 192 Minn. 265, 269, 256 N.W. 104, 105 (1934):

We do not believe that this court should look with favor upon objections which reach only the form of the notice and not its substance. This notice should be liberally construed as pleadings in general are liberally construed by this court.

Moreover, failure to serve parties who are noted in the statute or failure to serve those parties in the precise manner indicated in the statute or rule is often not held to be jurisdictional error. For example, in *Blaeser and Johnson, P.A. v. Kjellberg*, 483 N.W.2d 98 (Minn. App. 1992), the court of appeals held that where a summons and complaint was served by mail and the defendant indicated that he had received the documents by certified mail, the plaintiff's failure to serve the complaint by personal service was not jurisdictional. See also *Stonewall Insurance Co. v. Horak*, 325 N.W.2d 134 (Minn. 1982), where the court held that actual receipt of the summons and complaint by mail constituted delivery for purposes of Minn.R.Civ.P. 4.03(a). The essence of these cases is that if the person or party who counts really does get notice that the appellant is appealing, the reviewing Court will not dismiss the case for a technical violation of the rules.

Second, in cases where an appellant serves some, but not all, of multiple parties to a legal action, courts have held that whether the failure to serve parties other than the target respondent is jurisdictional depends upon whether the appellant would have the same claims against the unserved respondents as against the respondent who is served. For example, in *Thayer v. Duffy*, 240 Minn. 234, 256, 63 N.W.2d 28, 41 (1953), the

Supreme Court held that where a judgment or order appealed from is indivisible, notice of appeal must be given to every party whose interest in the subject of the appeal is in direct conflict with an affirmance, reversal, or modification, but when another adverse party has not been served with a notice of appeal from a judgment or order which is divisible, the appeal need not be dismissed, although the reviewing court's consideration will be limited to the issues between the appellant and the parties properly served, noting that "failure to serve notice of appeal upon such purchasers did not limit our jurisdiction to determine other issues presented in the appeal nor serve as the basis for its dismissal."

See also *Frost v. St. Paul Banking & Investment Co.*, 57 Minn. 325, 59 N.W. 308 (1894) and the Court's recent opinion in *Janssen*, discussed *supra* at p. 4.

Third, courts have looked to whether the appeal involves the whole of the case in the district court, or whether it is part of a larger, ongoing action, of which the district court already has jurisdiction. This issue has already been discussed in some detail as it relates to condemnation proceedings involving one determination of public necessity and multiple appeals. The Court should consider the excellent analysis of this issue provided by the Colorado Court of Appeals in *Eagle Peak Farms Ltd. v. Lost Creek Ground Water Management*, 7 P.3d 1006 (Colo. App. 1999). There, certain property owners appealed from a district court order denying them ground water rights. The property owners did not serve all the parties the statute required to be served in order to perfect their appeal. In determining that this failure was not jurisdictional, the Colorado court emphasized the distinction between true jurisdictional defects and simple procedural errors:

Subject matter jurisdiction concerns those categories of actions which a court is empowered by the constitution or statute to adjudicate and those remedies it is authorized to grant. Such jurisdictional requirements, established by the constitution or statute, are those necessary to invoke the jurisdiction of the court. Subject matter jurisdiction cannot be waived.

On the other hand, procedural requirements are those which facilitate the proceedings before the court. Once a court's subject matter jurisdiction properly is invoked, a party's failure to comply with a procedural requirement may justify the court's dismissal of an action within its discretion, but such failure does not divest the court of such jurisdiction.

As a general rule, the filing of a complaint gives a court subject matter jurisdiction over the plaintiff and the action.

Here, under §§ 37-90-115(1) and 37-90-131(1)(b), C.R.S.1999, any party adversely affected or aggrieved by a decision of a water management district board must take an appeal within 30 days of the board's decision or the decision becomes final and unreviewable. An appeal is commenced by the timely filing of the notice of appeal. See C.A.R. 3(a) (appeal is "taken by filing" notice of such appeal).

We conclude that, similar to the commencement of an action under C.R.C.P. 3, it is the timely filing of the notice of appeal which invokes the court's subject matter jurisdiction. And, because plaintiffs filed their notice of appeal within 30 days of the District's decision, the district court had subject matter jurisdiction over the appeal.

Id. at 1009-10 (citations omitted).

Fourth, our courts have looked to whether the "appeal" invokes the appellate jurisdiction of the court only, or whether it invokes the court's original jurisdiction where there will be a trial *de novo* and all parties will have an opportunity to assert and protect their rights.

It is worth noting that an appeal to the court of appeals is very different from an appeal to the district court when the latter results in a trial on the merits. In the former case, the parties and the Court are limited to a review of the record, and all the safeguards

which insure that third parties with a potential interest in the case can protect their rights – as, for example, Minn. R. Civ. P. 19.01 et seq and 20.01 et seq. regarding joinder of parties; Minn. R. Civ. P. 23.01 et seq. regarding class actions; Minn. R. Civ. P. 24.01 et seq. regarding intervention, and Minn. R. Civ. P. 25.01 et seq. dealing with substitution of parties. This is undoubtedly why, in another context, the court of appeals in *McClellan v. Goldberg*, 568 N.W.2d 860, 862 (Minn. App. 1997), stressed the difference between an appeal and removal from conciliation court to district court, noting that jurisdictional principles that apply to the former should not apply to the latter:

The district court based its holding that it had no jurisdiction on the conclusion that a removal from conciliation court to district court is analogous to an appeal from a district court judgment, citing *Arndt v. Minnesota Educ. Ass'n*, 270 Minn. 489, 134 N.W.2d 136, 137 (1965), for the principle that it lacked authority to extend the time for an appeal. We conclude, however, that removal from conciliation court to district court is not analogous to an appeal, and failure to comply with the technical requirements of removal does not defeat jurisdiction. See *Percy v. Hofius*, 370 N.W.2d 490, 491 (Minn.App.1985) (reinstating a demand for removal denied for failure to comply with technical requirements). As the district court noted, the conciliation court judgment in *Percy* was a default judgment, not the result of a contested hearing. We are not persuaded, however, that *Percy* must be restricted to default judgments.

Like *McClellan* and unlike the cases cited by the State, the present cases are not appeals to a court of appellate jurisdiction, but are appeals to courts of original jurisdiction for full trial on the merits.

Fifth, as discussed in our opening brief, courts have been more reluctant to dismiss appeals for technical reasons where fundamental rights, such as the right to just compensation in eminent domain cases, is at stake.

Summing up, the law of technical defects in appeals can be stated thus: Where a statute provides a specific time within which to appeal, failure to observe that time limitation is ordinarily jurisdictional. Where the appeal is timely, however, and the affected parties have received notice of the appeal, failure to serve all other parties who may be entitled to notice is not jurisdictional. Rather, the appeal may proceed, but any issues which relate to the rights of parties who have not been served with the notice of appeal will not be heard. The appeal may be dismissed only if the party actually served can demonstrate prejudice resulting from the failure of appellant to serve the notice of appeal on one of the other parties noted in the statute or rule.

Applying these principles to the present case, it is undisputed that the notices of appeal were timely filed and timely served upon the State, so any technical defects were not obviously jurisdictional under the language of the statute. Indeed, as noted in appellants' original brief, the language of the statute is compatible with a need only to serve the party who "has an interest in the parcel," so that, far from making a failure to serve all parties named by the State jurisdictional, it is not clear that the statute even requires service on such parties at all. And in any event, the statute is very far indeed from explicitly stating that a failure to serve all such parties will result in a dismissal of an entire appeal.

It is also clear that the parties not served here have very different interests than the state, and that any interests they might have in an appeal would be very different from those the appellants are asserting against the State here. Indeed, it is difficult to imagine

in principle what interest Kandiyohi County, Wells Fargo Bank, and the Van Orts would have in the determination of how much the State should pay appellants for the taking.

In addition, here, a compensation hearing takes place in the context of a larger condemnation action in which all the other potential parties are known and many of the issues which affect compensation have already been presented to and determined by the court in the condemnation action. The State is afforded a full court hearing with all the rules of civil procedure at its disposal. While it is difficult to imagine what conceivable prejudice could arise from a failure to serve Kandiyohi County or Wells Fargo Bank or the contract vendor, the State does claim the County has been prejudiced, stating (at p. 17):

The County has been a respondent in both of these cases from the beginning because it is the taxing authority for the properties. As the taxing authority, the County has “recorded interests in the property prior to the filing of the condemnation petition..... Because the County has “recorded interests in the property prior to the filing of the condemnation petition,” MnDOT names the County as a respondent in every parcel involved in every condemnation action in the State. If there are any unpaid property taxes or assessments existing on the property on the date of taking, the State has a statutory obligation to address those arrearages in the condemnation action. Minn. Stat. sec. 117.135 subd. 1 (2004). If that is not done, the Commissioner of Finance may divert money to the County that otherwise would have been directed to MNDOT out of the trunk highway fund.

But this sounds like potential prejudice to MnDOT, not Kandiyohi County. And in such an event, the State, through MnDOT or the Commissioner of Finance, or any other agency, has the authority to direct the Attorney General’s Office to join the County as a party if they deem it prudent. Moreover, Kandiyohi County is a mere administrative appendage of the State of Minnesota. *Roseau County v. Hereim Township*, 183 N.W. 518

(Minn. 1921). If MnDOT is so meticulous about notifying every County involved whenever a condemnation action is considered, it can be equally meticulous about notifying the relevant County whenever a condemnation appeal takes place. The State's claim of actual prejudice from failing to serve the County – or anyone else, for that matter – lacks merit.

It should be remembered that an appeal from a commissioner's award, unlike an appeal from a final judgment of the district court, results in a full hearing on the merits, subject to the Minnesota Rules of Civil Procedure, so the possibility of prejudice from a "frozen trial record" can largely be obviated in the subsequent district court proceedings.¹ If, for some presently unforeseeable reason, an issue should arise requiring the presence of Kandiyohi County et al, then the State or the appellants could always join these parties in the District Court action under Minn. R. Civ. P. 17.01 et seq.

Finally, at the risk of repetition, it must be remembered that few property interests are more fundamental than the right to just compensation, and, as Justice Anderson's concurrence in *Adelmann* points out, courts are reluctant to deprive property owners of such rights for minor technical errors.

¹ The State claims that "[t]he district court has original jurisdiction during the petition and commissioners' hearing stages, but appellate jurisdiction over a new civil action during the appeal stage of a condemnation case...." (Respondent's Brief, p. 34.). This is wrong. Original jurisdiction means an independent jurisdiction, one not based on or limited to review of another court's judgment or proceeding. It can be distinguished from appellate jurisdiction, which is the jurisdiction of a superior court to review the final determination on the record made by an inferior tribunal. In holding a trial de novo on the issue of just compensation, the District Court is exercising its original jurisdiction. See, e.g., 20 Am. Jr. 2nd, "Courts," sec. 66.

One last point: A determination by this court that a failure to serve parties which have no apparent interest in the action and in the absence of a showing of prejudice nevertheless requires dismissal would create havoc in other areas of the law. Consider, for example, Minn. Stat. § 609.5314, subd. 2:

Forfeiture of property described in subdivision 1 is governed by this subdivision. When seizure occurs, or within a reasonable time after that, all persons known to have an ownership, possessory, or security interest in seized property must be notified of the seizure and the intent to forfeit the property.

Suppose the State serves the driver/owner of a vehicle which is carrying narcotics, but does not serve the bank which has a security interest on the car. Under the logic of the State's "failure to serve all parties results in failure of the action" theory, the prosecution could not effect forfeiture on the driver/owner, because a required party was not served. The same logic would apply to other forfeiture statutes requiring service on all parties having an interest in subject property. This could have a devastating effect upon law enforcement.

In sum, a party is entitled to his day in court unless a legislative enactment specifically prevents it or unless having that day in court would prejudice someone with a real interest in the litigation. Here, the legislature did not specify the consequence of failure to serve an irrelevant party, did not indicate dismissal was a consequence of that failure, and was attempting to protect a fundamental property right. In the absence of a showing of prejudice, the appeals should be permitted to proceed.

In the end, it comes down to this: The *only* parties with an interest in the amount of just compensation due are Appellants and the State. The State simply cannot and does

not dispute that it was properly served. The district court therefore had both subject matter jurisdiction over the appeal and personal jurisdiction over the State, and the State lacks standing to assert the rights of third parties not before the court. *See Laird v. Tatum*, 408 U.S. 1, 13-14 (1972). This Court should therefore reverse the rulings below and allow Appellants' appeals to proceed.

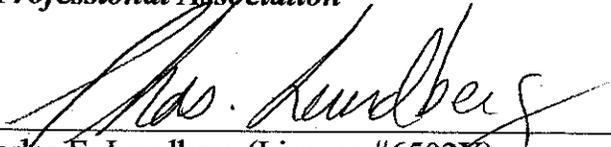
CONCLUSION

For the foregoing reasons, and for the reasons set forth in Appellants' opening brief, Appellants respectfully request that the Court reverse the Court of Appeals and remand for further proceedings.

Respectfully submitted,

BASSFORD REMELE
A Professional Association

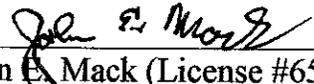
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