

CASE NO. A06-1989

STATE OF MINNESOTA
IN COURT OF APPEALS

ORIGINAL

EDUCATION MINNESOTA – OSSEO and EDUCATION MINNESOTA –
OSSEO-ESP,

Appellants,

v.

INDEPENDENT SCHOOL DISTRICT NO. 279, OSSEO AREA SCHOOLS,
MAPLE GROVE, MINNESOTA, and RICH MELVIN, IN HIS CAPACITY AS
ASSISTANT SUPERINTENDENT OF HUMAN RESOURCES OF I.S.D. 279,

Respondents.

APPELLANTS' REPLY BRIEF

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I. APPELLANTS' APPEAL WAS TIMELY FILED

1. **The Findings of Fact, Conclusions of Law and Order for Judgment dated August 3, 2006, was not an appealable order.**

The general rule is that an order for judgment is not appealable. "It is well settled in this jurisdiction that an order for judgment is a nonappealable order."

Wilson v. Schaub, 269 N.W.2d 46 (Minn. 1978).

In addition, the Rules of Civil Appellate Procedure were specifically amended in 1983 to clarify this issue. Currently, Minn. R. Civ. App. P.

§ 103.03(a) states:

An appeal may be taken to the Court of Appeals:

(a) from a final judgment, or from a partial judgment entered pursuant to Minn. R. Civ. P. 54.02;

(b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;

Prior to the amendment, the rule included the words "order for judgment" in subdivision (a) in the list of judgment types that were appealable. The 1983 amendments specifically removed the words "order for judgment" from subdivision (a). Prior to this amendment then, the rule allowed an appeal from an order for judgment. After the amendment, the rule ensured that appeals could not be taken from an order for judgment without judgment being entered.

The only issue here, therefore, is whether there is either a different rule that makes this order for judgment otherwise appealable or whether this order for judgment is somehow not really an order for judgment.

2. Orders for Judgment made in a ruling involving an injunction are appealable as judgments not as orders.

Respondents correctly assert that an order that “grants, refuses, dissolves, or refuses to dissolve an injunction” is normally appealable. This is true only in circumstances where the court issues an order only. However, where a court issues an ***order for judgment*** in an injunction matter, the case is not appealable until the judgment itself is actually entered. Minnesota Daily v. University of Minnesota, 432 N.W.2d 189 (Minn. App. 1988). The decision whether to issue an order only or an order for judgment is within the discretion of the trial court. Presumably, the trial court issued an order for judgment in this case because Appellants asked for more than injunctive relief. In any event, the trial court specifically issued an order for judgment. Any appeal from the original order for judgment, before entry of judgment, would have been premature and therefore, untimely.

In the Minnesota Daily case, the appellants appealed both from the original order that was filed AND from the entry of judgment. This Court noted the difference between an order and an order for judgment thusly: “An *order* denying injunctive relief is generally appealable. Minn. R. Civ. App. P. § 103.03(b). However, an *order for judgment* in an injunction action is not appealable or effective until judgment is entered, and the proper appeal is then from the *judgment*). (Emphasis in original). Id. at 190, fn 1.

This principle is well-settled law in Minnesota and has been cited repeatedly since the Minnesota Supreme Court decision in Holliston v. Ernstron, 120 Minn 507, 139 N.W. 805 (1913). See eg. Erickson v. Erickson, 430 N.W. 499, 500 (Minn. App. 1988); and Matter of Salkin, 430 N.W.2d 13, 15 (Minn. App. 1988).

3. Appealable orders are changed to nonappealable orders when an order for judgment is issued.

Assuming arguendo that the August 3, 2006, ruling in this matter was somehow appealable as an appealable order, the subsequent amended findings made clear that an appeal must be taken from the entry of judgment dated September 21, 2006.

In Saric v. Stover, 451 N.W.2d 65 (Minn. App. 1990), this Court had occasion to rule on this issue. In Saric, the trial court issued an order for judgment on an otherwise appealable order. In that case this Court ruled that “when the trial court has included such direction in an [otherwise appealable] order, the parties must await entry of judgment and perfect their appeal from that judgment.” Id. at 66.

Under any applicable analysis, the appeal of the trial courts ruling was timely filed.

II. TRANSMITTING A COPY OF THE JUDGMENT TO THE COMMISSIONER OF THE BUREAU OF MEDIATION SERVICES (BMS) IS NOT A JURISDICTIONAL PREREQUISITE TO APPEAL TO THIS COURT.

Respondents assert that failure to transmit a copy of the judgment in this matter within ten days is a jurisdictional prerequisite to perfecting an appeal to this Court. This is an issue of first impression and would require adding a procedural component not found anywhere in the Rules of Civil Appellate Procedure.

The statute in question reads:

A copy of any complaint alleging an unfair labor practice must be filed with the commissioner at the time it is brought in district court. The party bringing an unfair labor practice action in district court shall also transmit to the commissioner any orders or judgments of the court within ten days of the order or judgment.

Minn. Stat. § 179A.13, subd. 1 (2006).

This Court had occasion to rule on the language in the first sentence on two occasions. In Lee v. Regents of the University of Minnesota, 672 N.W.2d 366 (Minn. App. 2003), this Court determined that it would not overturn a district court determination that failure to file the complaint with the BMS was a condition precedent to initiating an unfair labor practice lawsuit. Id. at 373. This portion of the Lee decision was followed in this Court's decision in Allen v. Hennepin County, 680 N.W.2d 560, 566-567 (Minn. App. 2004).

These cases should be distinguished from the instant case for four reasons. First, the portion of the Lee decision cited by Respondent as the holding of the case is erroneous. The portion cited is dicta and was based on a standard of review for this appellate court that is not applicable here. In Lee, this Court indicated that under the applicable standard of review, it would not overturn a ruling of the trial court on a procedural issue unless the Appellant could bear the burden of demonstrating prejudice. Id. at 373. The court in Allen applied the same standard of review. In this matter, however, there is no lower court ruling and this Court decides the issue de novo.

Second, there is no disagreement in this case that the complaint was filed with the commissioner of the BMS and that a copy of the judgment was transmitted as well. The only question is whether a late transmittal of the judgment alone bars appellate review. In both Lee and Allen, nether party complied with the transmittal requirement at all. In this matter, however, the parties agree that there was full compliance with the transmittal at the initiation of the lawsuit. Further, there is no disagreement that the judgment was transmitted. Under these circumstances, Appellants substantially complied with the terms of the statute, and the appeal should go forward in the interests of justice.

Third, an appellate court is not suited for resolving factual disputes that will occur on this issue. Although it is true that Appellants do not dispute the facts as

asserted by Respondents, a holding by this Court will result in such disputes being addressed here in the future and would make for a precedent that this Court could not administer in some future cases. Disputes of the type resolved by the decisions in Lee and Allen are determined first by the trial court and then reviewed by this Court. No such resolution mechanism is available under these facts.

Finally, Appellants assert to the Court that if the Legislature had wanted the transmittal of the judgment to the BMS to be a jurisdictional prerequisite to appeal, it could have stated so in the statute. There is nothing on the face of the statute that would indicate that the transmittal is jurisdictional. In the interest of judicial restraint, this Court should “decline to read into the statute a provision the legislature ‘purposely omits or inadvertently overlooks.’” Metropolitan Sports Facilities Commission v. County of Hennepin, 561 N.W.2d 513, 516-517 (Minn. 1997).

This Court has held that where, as here, a statute does not indicate the consequence of a failure to comply with a statute, that statute is considered directory, rather than mandatory. Savre v. Independent School District No. 283, Spring Lake Park, 642 N.W.2d 467, 472 (Minn. App. 2002). The difference between a mandatory and directory statute is substantial. Failure to comply with a directory statute does not automatically invalidate the action taken under that

statute. This is especially so, given substantial compliance with the statute, such as is the case here and in Savre. Id. at 472.

The statutory provision requiring transmittal of the judgment within ten days is clear on its face. The consequences of failing to comply within ten days is not clear anywhere in the provision. In such a circumstance, the court should look to the legislative history of the provision to ascertain the legislative intent. Rambeck v. La Bree, 156 Minn. 310, 194 N.W. 643 (1923); Handle with Care, Inc. v. Department of Human Services, 406 N.W.2d 518, 520, 522 (Minn. 1987).

The purpose and goal of the court in interpreting a statute is to give effect to the intention of the legislature in the drafting of the statute. Education Minnesota – Chisholm v. Independent School District No. 695, Chisholm, 662 N.W.2d 139, 143 (Minn. 2003). In this regard, statements made by the sponsor of the bill are to be given substantial weight. In the Matter of State Farm Mutual Automobile Insurance Company, 392 N.W.2d 558, 569 (Minn. App. 1986).

The statute in question was enacted in 1989. The sponsor of the bill in the House of Representatives was Andy Dawkins. In introducing and explaining the bill, House File 489, Representative Dawkins stated the following:

It's an uncontroversial bill that's sponsored by our Bureau of Mediation Services that I authored at the governor's request and it has the support of the governor. I've had it reviewed by all of the public employee unions and today now also with the employers, the public employers. It seems what we are really doing here is we are having a, if you got a bill summary in front of you, it says it in detail

that you might want to see. But it just clarifies procedures, housekeeping changes, no substantial effect on any existing law or governmental agencies as they currently operate. We do require (with this bill) a filing now with the commissioner, I'm sorry, with the Bureau of Mediation Services to get a centralized source of data. It really has nothing that I think you would find objectionable or have anyone need to testify for or against on.

Tape, Minnesota House Labor Relations Committee, March 20, 1989.

The purpose of the transmittal was to have a centralized source of data regarding unfair labor practice lawsuits. There was no intention expressed to add a jurisdictional prerequisite to appeal a district court decision on an unfair labor practice lawsuit. To that end, this Court should not add a requirement that the legislature omitted.

III. LEGISLATIVE HISTORY TESTIMONY CITED BY RESPONDENTS SHOULD BE GIVEN NO WEIGHT.

As stated earlier, it is well-settled that contemporaneous legislative testimony by the bill's chief author is given authority by the courts. See State Farm and Handle with Care supra. However, testimony of the same legislator given at a later date as to the intent of the legislature at the earlier date is inadmissible. State Farm, 392 N.W.2d at 569. The testimony of Senator Donald Moe cited on pages 20-21 of Respondent's brief should, therefore, not be considered by the Court.

Similarly, testimony by those other than the sponsor of the bill are to be treated with caution by the court. Handle With Care, 406 N.W.2d at 522. Only

the sponsor of the bill can truly know what he/she intends by a bill. Others can only surmise. Indeed, this is exemplified by the purported recitation of the testimony of Howard Bicker, the Director of the State Board of Investment on page 36 of Respondent's brief. That testimony was "quoted" as supporting the intention of the Legislature to not require the identity of 403(b) vendors to be subject to collective bargaining.

Respondent quoted Mr. Bicker thusly: "The school district still can control how many vendors are available in each district, and I think that's important." First off, Mr. Bicker's statement clarifies nothing with regard to the intention of the Legislature. Secondly, the quote is erroneous. What Mr. Bicker actually said was: "*from what I understand and just reading this*, the school district still can control how many vendors are available in each district, and I think that's important." Respondents' Brief, at A90 (emphasis added). The court should give no weight to this testimony.

Finally, with regard to matched plans only, Appellants concede that a district can limit the number of vendors. It is Appellants' position that who that vendor is must be bargained with the union. Additionally, this statutory limitation does not apply at all when it comes to unmatched contributions, over which the employer has no authority to unilaterally determine the number or identity of the vendors.

IV. CONCLUSION

Appellants rely on the arguments made in their initial brief as to the remainder of the contentions.

Dated: March 5, 2007.

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