

A09-1696
A09-1697
STATE OF MINNESOTA
IN COURT OF APPEALS

Michele Sykes

vs.

City of Rochester

APPELLANT'S REPLY BRIEF AND APPENDIX

LAWYER FOR PLAINTIFF(S)

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Pro Se

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

APPELLANT'S RESPONSES TO RESPONDENT'S ARGUMENTS

RESPONDENT'S STATEMENT OF THE FACTS

I. Special assessment for removal of refuse.

Respondent states that the City "removed debris and tall grass and weeds from Ms. Sykes' yard. Respondent fails to state, however, that this was done illegally and in violation of Plaintiff's constitutional rights (Plaintiff's Petition for Review - a part of the record) (Transcript, page 12, lines 14-20).

Respondent states, "Any expenses incurred by the City in the abatement of a public health or safety hazard under this section shall be the responsibility of the property owner." However, there was no "public health or safety hazard" to abate.

Respondent also states the continuances for both assessments were in the minutes of the City Council meetings. However, Respondent fails to state that said minutes were not published and made available until after the continued meetings were held.

Following the meeting, Plaintiff had been checking to see the results, and the minutes continued to be unavailable. Plaintiff was finally told, when she called the City Clerk's Office on December 16, 2008 (Appendix, Plaintiff's Cell Phone Bill) that although the minutes were not available, the issues had been continued, and that the Council had assessed the amounts against Plaintiff's property.

Plaintiff was informed at that time that she could come in and get a CD with the meetings recorded on them, which she did. Thus, Plaintiff did not know of the continued meetings or the assessment until December 16, 2008, the day after the second assessment was levied. Therefore, Plaintiff was not properly notified of meetings, and was deprived of the right to due process.

II. Special assessment for weed abatement.

Respondent fails to state that said yard had been mowed by Plaintiff exactly one week prior to the mowing done on behalf of the City. (Plaintiff's Petition for Review - a part of the record) (Transcript, page 12, lines 14-20).

Please see the argument above concerning the continuance being "duly noticed and recorded in the minutes of the meeting."

On both of these assessments, Respondent fails to state that there was absolutely no reference to, nor discussion of, Plaintiff's letters of objection.

RESPONDENT'S LEGAL ARGUMENT

While Respondent's statement that in the case of "removal or elimination of public health or safety hazards from private property," Minn. Stat. § 429.101 allows "a special assessment against the benefited property" is correct. There was no benefit to Plaintiff's property, and was, in fact, considerable damage to Plaintiff's property. (Plaintiff's Petition for Review - a part of the record) (Transcript, page 12, lines 14-20).

Wessen v. Village of Deephaven, 284 Minn. 296, 299 170 N.W.2d 126,128 (Minn. 1969) does not apply, as none of the "Notices" in Wesson were even mailed to the proper entity within the time frame prescribed at that time. The only one that would have been properly served by being mailed within 20 days was improperly mailed to the "attorney's for the village." The Court did not state that Rule 3.01 applied. In fact it states, "Assuming that 3.01 could be applied to the present situation (even though it deals directly with the question of when an action is commenced rather than what constitutes proper service), we do not believe that we are at liberty to adopt such a construction of the statute." The Court also did not address whether service by mail was appropriate, as there were other defects present. "We need not reach plaintiffs' claim as to service by mail on the attorneys for the village or their argument that the so-called 'Notices of Objection' fulfilled the statutory notice requirement. Rule 5.02, on which plaintiffs rely for the sufficiency of service by mail on the attorneys, provides that service by mail is complete upon mailing. If it is assumed that such service was proper and valid, then under the provisions of s 429.081 plaintiffs had 10 days from the date of mailing within which to file the notices of appeal with the clerk of district court." The Notice was not filed within 10 days, Wessen v. Village of Deephaven, 284 Minn. 296, 299 170 N.W.2d 126,128 (Minn. 1969)

Andrusick v. City of Apple Valley, 258 N.W.2d 766 (Minn. 1977) also does not apply as neither Notice was served on a holiday.

Both Notices were properly served and filed (Appellant's Brief)

Continuing to refer to Plaintiff's "NOTICE OF APPEAL" as a "letter" throughout Respondent's Brief, and a "Letter of Intention to Appeal" in Appendix does not change the fact that it is, in fact, a "NOTICE OF APPEAL." Her suggestion that it might not be such by stating, "Even if this letter could be considered sufficient notice ..." does not change the fact that it is a proper Notice.

Larsen v. City of Spicer (unpublished and in Appellant's Brief, appendix # 1, 2009) states, "Where, as here, a statute is silent on the form a notice must take, the statute is satisfied if the notice "is sufficient to apprise one of ordinary intelligence of the nature and subject of the hearing." City of Minneapolis v. Wurtele, 291 N.W.2d 386, 392 (Minn.1980) (quotation omitted). Clerical errors in a notice which do not mislead the opposing party do not constitute a defect requiring dismissal. Village of Aurora v. Comm'r of Taxation, 217 Minn. 64, 70, 14 N.W.2d 292, 297 (1944)."

Respondent cites Andrusick to argue that the pleading to which this appeal "is most analogous is the summons and complaint," which is not supported by Andrusick. This is an APPEAL and, as such, it is most analogous to an appeal, which is commenced either

through service by mail or in person. "Service may be personal or by United States Mail," and "Service by United States Mail is complete on mailing." (Minnesota Rules of Civil Appellate Procedure, 125.03)

None of Respondent's arguments concerning service under Rule 3.01 have any merit, as Rule 3.01 has no application to these appeals.

Plaintiff was unaware that she could file a memorandum, and had believed that she came to the hearing on the City's motions to present her case with evidence and her witness. She had expected to be able to depose Ms. Scherr, but when she was unsuccessful in her attempts to get Ms. VanderWiel to schedule one, she had no choice but to move the court for a continuance at the last minute, as Ms. Scherr's deposition was critical to Plaintiff's case.

Respondent states, "If Ms. Sykes had served the City with the notice of appeal on December 31 ... she filed the appeal two days past the deadline." This is untrue, as Plaintiff filed the "Notice of Appeal" on the 9th, not the 12th. (Appellant's Brief) Plaintiff was unaware that the papers had been improperly filed, and should not have been expected to know that, as the records of the Olmsted County District Court should have been presumed to be correct.

Respondent states, "Ms. Sykes sent the City letters objecting to the assessments." This statement is false. Ms. Sykes delivered the letters prior to the start of the City Council meeting, as stated in Appellant's Brief.

RESPONDENT'S CONCLUSION

Respondent refers to these cases as "lawsuits." They are not lawsuits, but are appeals, and should be referred to, and judged, as such.

APPELLANT'S CONCLUSION

For the above reasons, and any other reasons the Court deems appropriate, Plaintiff respectfully requests that the Court of Appeals reverse the District Court's dismissal of her appeals in both cases.

Respectfully submitted,
Michele Sykes

Pro Se