

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

APPELLANTS' INFORMAL BRIEF AND APPENDIX

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I. STATEMENT OF LEGAL ISSUE

Is Columbus Day a “legal holiday” as that term is defined by Minn. R. Civ. App. P. 126.01 and Minn. R. Civ. P. 6.01?

Contrary to the plain language of the Rules and this Court’s prior holding in *Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 766 (Minn. 1977), the Court of Appeals held that Columbus Day is not a “legal holiday” under Minn. R. Civ. App. P. 126.01 and Minn. R. Civ. P. 6.01, and therefore, because Appellants did not file and serve their Notice of Appeal on Columbus Day, the appeal was dismissed as untimely. (A021-A023)

II. SUMMARY OF ARGUMENT

The plain language of Minn. R. Civ. App. P. 126.01 and Minn. R. Civ. P. 6.01 does not allow a notice of appeal to be due on any “legal holiday.” As defined by Rule 6.01, a “legal holiday” includes any “holiday defined or designated by statute.” Since Columbus Day is a “legal holiday” defined and designated by Minn. Stat. § 645.44, subd. 5, Appellants’ Notice of Appeal could not be due on that day and it was error for the Court of Appeals to hold otherwise.

III. STATEMENT OF THE CASE

On August 10, 2005, judgment was entered against Appellants in the district court. (A001-A002) Pursuant to Minn. R. Civ. App. P. 104.01, subd. 1, unless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry. In computing the time period, 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.

In this case, the 60th day after entry of judgment was Sunday, October 9, 2005. Monday, October 10 was Columbus Day, a day recognized by Minn. Stat. § 645.44, subd. 5, as a legal holiday, and a day on which service by mail was impossible because the United States Postal Service was closed. Consequently, Appellants had until Tuesday, October 11 to file their appeal. Appellants did in fact serve and file their appeal on October 11, 2005. (A011-A012)

Nonetheless, on November 4, 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 legal holiday for purposes of filing an appeal because the Minnesota state courts have opted to remain open for business on Columbus Day, as is their prerogative under Minn. Stat. § 645.44, subd. 5. (A014) In response to the Court of Appeals' request for briefing on the issue, Appellants submitted a brief explaining that the rules included all holidays designated by statute as "legal holidays," and not merely holidays on which the Minnesota state courts were closed. (A016-A020) Moreover, because Columbus Day is designated a "legal holiday" under Minn. Stat. § 645.44, subd. 5, it is included under Rule 6.01. *Id.* Consequently, Columbus Day could not be the day upon which Appellants' Notice of Appeal was due, and therefore, the October 11 filing was timely. *Id.*

On November 22, 2005, the Court of Appeals issued a second order dismissing Appellants' appeal as untimely. (A021-A023) In rejecting Appellants' legal arguments, the Court of Appeals dismissed the cases cited by Appellants and ignored the plain

language of Rule 6.01. *Id.* Instead, the Court relied exclusively on language from the 1996 Advisory Committee Comment to Rule 6.01 and commentary from Minnesota Practice noting that state courts are open on Columbus Day. (A022) The Court failed to address the merits of Appellants’ argument that regardless of whether the state courts are open, for purposes of Rule 6.01, Columbus Day is still a “legal holiday.”

IV. ARGUMENT

For purposes of the legal question presented on this appeal, the relevant inquiry is *not* whether the state courts are open on Columbus Day. The relevant question is whether Columbus Day is a “legal holiday” as that term is defined by Minn. R. Civ. App. P. 126.01 and Minn. R. Civ. P. 6.01.¹ Rule 6.01 states in relevant part that, “The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday” Rule 6.01 specifically states that “[a]s used in this rule and in Rule 77(c), ‘legal holiday’ includes *any holiday defined or designated by statute.*” Rule 6.01 does not define a “legal holiday” as “any court holiday.” Rather, it defines it as “*any* holiday defined or designated *by statute.*” (Emphasis added). For at least three separate reasons, Columbus Day is a “legal holiday” as that term is defined by Rule 6.01. Therefore, it was error for the Court of Appeals to dismiss Appellants’ appeal as untimely.

1. The Plain Language of Minn. Stat. § 645.44, subd. 5, Defines and Designates Columbus Day a “Legal Holiday.”

The plain, unambiguous language of Minn. Stat. § 645.44, subd. 5, defines and designates Columbus Day as a legal holiday:

¹ Since Minn. R. Civ. App. P. 126.01 incorporates the method of computation specified in Rule 6.01, the language of Rule 6.01 actually governs this question.

“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 on any holiday, except in cases of necessity and except in cases of public business 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). The statute does not say that Columbus Day is a legal holiday unless the courts say it is not. Rather, it “includes” Columbus Day as a legal holiday and then authorizes the courts, and other entities, to remain open and conduct public business on Columbus Day if they so choose. Regardless of whether the Court of Appeals exercises its option to remain open, however, Columbus Day remains a “legal holiday” designated and defined by Minn. Stat. § 645.44, subd. 5. Thus, under Rule 6.01, it is not a day upon which a notice of appeal can be due.

2. Service of a Notice of Appeal Constitutes Civil Process, and Therefore, Such Service Is Prohibited on Columbus Day.

An appeal is commenced by both filing and serving a notice of appeal. *See* MINN. R. CIV. APP. P. 103.01, subd. 1. Pursuant to the plain language of Minn. Stat. § 645, subd. 5, however, no civil process can be served on any of the holidays designated by the statute, including, but not limited to, Columbus Day. While admittedly the last sentence

of subdivision 5 allows the courts to conduct “public business” on Columbus Day, the last sentence says nothing about civil process. Therefore, even if a notice of appeal could be filed with the Court of Appeals on Columbus Day, there can be no dispute that Minn. Stat. § 645, subd. 5, prohibits service of the notice of appeal on that day. In other words, even if Appellants in this case were able to file their Notice of Appeal on Columbus Day because the Courts were open, for purposes of Rule 6.01, Columbus Day remains a “legal holiday” upon which the notice of appeal cannot be held due because Appellants were prohibited from serving the notice.

This undeniable conclusion was confirmed by the Supreme Court in *Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 766 (Minn. 1977). In *Andrusick*, this Court held that service of a notice of appeal constituted service of civil process. *Id.* (quoting Black’s Law Dictionary’s definition of “process” as including any “means whereby a court compels a compliance with its demands”). Therefore, even if service is accepted on Columbus Day, service of the notice of appeal on Columbus Day is ineffectual because, under Minn. Stat. § 645.44, subd. 5, a “notice of appeal may not be served” on Columbus Day. *Id.* (holding that an appeal from an assessment must be dismissed because “the notice of appeal was served on a holiday” designated by § 645.44, subd. 5, Columbus Day); *see also Skeim v. Indep. School Dist. No. 115*, 234 N.W.2d 806, 811 (Minn. 1975) (holding that § 645.44 “establishes Columbus Day as a legal holiday”); *Kantack v. Kreuer*, 158 N.W.2d 842, 844 (Minn. 1968) (accepting as a given that a transaction that occurred on Columbus Day occurred on a “legal holiday,” but finding that the transaction was not prohibited on that basis alone).

In the present case, the Court of Appeals ignored the plain language of Minn. Stat. § 645.44, subd. 5, and the Court's holding in *Andrusick*. The Court of Appeals argued that *Andrusick* was inapposite because “[b]efore it was amended in 1979, Minn. Stat. § 645.44, subd. 5, unambiguously established Columbus Day as a legal holiday.” (A022) According to the Court of Appeals, after 1979, *Andrusick* is no longer good law because branches of state government, including the courts, have now been given the option to determine whether they would recognize Columbus Day as a holiday. *Id.* “Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, **public business may be conducted thereon.**” (Emphasis added). *Id.*

What the Court of Appeals does not explain, however, is how this amendment allowing it to conduct “public business” on Columbus Day overcomes the continuing prohibition in the amended statute that “nor shall any civil process be served thereon.” See MINN. STAT. § 645.44, subd. 5. The statute draws a very clear distinction between “public business” and “civil process” by stating, “No public business shall be transacted on any holiday, . . . **nor** shall any civil process be served thereon.” (Emphasis added). Moreover, the last sentence of § 645.44, subd. 5, was not amended to state that if the courts conduct public business on Columbus Day, then civil process can be served thereon as well. Rather, civil process remains prohibited under the amended statute regardless of whether the courts choose to stay open for public business.

As a result, the 1979 amendments to § 645.44, subd. 5, did not, as the Court of Appeals claims, overrule this Court's holding in *Andrusick*. Rather, as a matter of law, a notice of appeal still constitutes civil process and civil process still cannot occur on Columbus Day. Despite the Court of Appeals' implication to the contrary, Minn. Stat.

§ 645.44, subd. 5, is not ambiguous on this point. It provides no exception to the clearly stated rule that no service of process shall occur on Columbus Day, and consequently, a notice of appeal cannot be held due on Columbus Day.

3. Adopting the Court of Appeals' Conclusion That Columbus Day Is Not a "Legal Holiday" Under Rule 6.01 Leads To An Unjust and Unfair Result.

In determining the day upon which civil process is due, a party consulting the court rules and statutes ought to be able to answer the question with certainty. Appellants here did so but later found out that the Court of Appeals has its own rule in derogation of the plain language of both the rules and statutes – a rule that applies only to Columbus Day. Here, as in all cases involving Minn. R. Civ. App. P. 125.01, Appellants had a right to file their notice of appeal by mail. *See* Minn. R. Civ. App. P. 125.01. Under the Court of Appeals' rule governing Columbus Day, however, Appellants were unable to exercise that right on the very day when their Notice of Appeal was supposedly due.

Pursuant to Minn. R. Civ. App. P. 125.01, an appellant has the right to file its notice of appeal by mail so long as "the papers are deposited in the mail within the time fixed for filing." Under the Court of Appeals interpretation of the Rules, if the 60th day after entry of judgment falls on *any day in the calendar year other than Columbus Day or the Saturday or Sunday before Columbus Day* (including every other Saturday, Sunday and legal holiday), then an Appellant is afforded at least 60 days to deposit in the mail its notice of appeal. If, however, the 60th day falls on Columbus Day (or the Saturday or Sunday before Columbus Day), then the Appellant must exercise its right to file by mail prior to 60 days. Making matters far worse, nothing in the rules notifies the

litigant of this one exception to the general rule that a litigant can file by mail by simply depositing in the mail its notice of appeal within the time fixed for filing.

The present case highlights the trap being set by the Court of Appeals. In the present case, because the U.S. Post Office was closed on both October 9th (a Sunday) and October 10th (Columbus Day), to exercise their right to file their notice of appeal by U.S. Mail under Rule 125.01, Appellants would have had to file their notice no later than the 58th day following entry of judgment (unless Appellants' counsel worked that Saturday, in which case the notice could have been filed as late as the 59th day). Appellants respectfully submit that there is no means by which they could have learned that fact by reading the applicable rules. Neither Minn. R. Civ. App. P. 125.01, nor Minn. R. Civ. App. P. 126.01, nor Minn. R. Civ. P. 6.01 list Columbus Day as an exception, nor do any of these rules state that service by mail must occur on the 58th day if a notice of appeal falls due on Columbus Day.

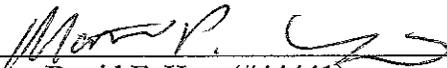
In sum, the Court of Appeals has made new law, and it is law that is not apparent in the plain language of the rules. To the contrary, the Court of Appeals has ignored the plain language of Rule 6.01 and carved out a special exception that applies only to Columbus Day. This exception is both unjust and unfair to litigants who should be able to rely on the plain language of the Rules. It constitutes nothing more than a trap for the unwary, and as such, it should be reversed by this Court. Regardless of whether the Court of Appeals was open on October 10th, Columbus Day is a "legal holiday" that is both defined and designated by statute. Accordingly, it was error for the Court to require service and filing of Appellants' Notice of Appeal on Columbus Day.

V. CONCLUSION

Under Minn. R. Civ. P. 6.01 the only question on this appeal is whether Minn. Stat. § 645.44, subd. 5, defines or designates Columbus Day as a “legal holiday.” It plainly does. Therefore, the last day of any period computed under the Minnesota Rules of Civil Procedure or Civil Appellate Procedure cannot include Columbus Day. The Court of Appeals’ decision to the contrary constitutes error. The Court of Appeals’ decision creates a chaotic and fundamentally unfair rule that is certain to cause other parties to lose their rights without notice. Therefore, this Court should reverse the Court of Appeals’ decision and remand this case for a resolution of Appellants’ appeal on its merits.

Dated: February 23, 2006.

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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) (with amendments effective July 1, 2007).