

Nos. A05-2424 and A05-2425

STATE OF MINNESOTA
IN SUPREME COURTJohn A. Woodhall, Jr., et al.,
Appellants,

vs.

State of Minnesota,
by its Commissioner of Transportation,
Respondent, (A05-2424)

and

Timothy and Mary Pieh, et al.,
Appellants,

vs.

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by its Commissioner of Transportation,
Respondent, (A05-2425).**RESPONDENT STATE OF MINNESOTA'S BRIEF**MIKE HATCH
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LEGAL ISSUES

- I. Does the district court obtain subject matter jurisdiction over an appeal to the district court from the commissioners' award in a condemnation case when the appealing party does not provide notice of its appeal to any of the other respondents or owners who have an interest in the property?

The district court held that it did not have jurisdiction over the attempted appeals because the Appellants did not comply with the statutory notice requirements provided in Minn. Stat. §117.145. The court of appeals affirmed, holding that because Appellants did not perfect their appeals, the district court ceased to have jurisdiction over the attempted appeals.

County of Ramsey v. Ball, 291 Minn. 225, 190 N.W.2d 495 (1971).

State v. Goins, 286 Minn. 54, 174 N.W.2d 231 (1970).

Minn. Stat. §117.145 (2004).

Minn. Stat. §117.135, subd. 1 (2004).

STATEMENT OF THE CASE

These condemnation actions were commenced in late 2002 when the Minnesota Department of Transportation (State or MnDOT) filed its Petitions for condemnation in the Kandiyohi County district court. Appellants' Appendix at A-1 and A-39 [hereinafter, AA1 and AA39]. The district court conducted hearings on the State's Petitions and thereafter granted the Petitions. AA57.¹ The commissioners appointed by the district court to determine the value of the property rights acquired filed their respective reports in the district court in early 2005. AA10 and AA64. After the awards were filed the Piehs and the Woodhalls (hereinafter, Appellants) attempted to perfect their appeals to the district court for a de novo trial on the question of damages. AA-13 and AA74. Because Appellants did not serve their notices of appeal on any respondents other than the State, the State brought motions to dismiss both of the attempted appeals. AA16 and AA77. The Kandiyohi County district court granted the State's motions in orders dated October 18, 2005. AA35 and AA79.

With respect to the order dismissing the Woodhall appeal, the district court found, as a conclusion of law, that Kandiyohi County was an interested party in this case and that, as a result, it was entitled to notice of the appeal. AA80-81. The district court concluded that because the Woodhalls did not serve the County with their notice of appeal it did not have jurisdiction over the matter. AA81.

¹ The district court order granting the Petition in the *State v. Grove City Grain & Feed Co.* case, which is the case which included the Pieh property, is apparently not in the record.

With respect to the order granting dismissal of the attempted appeal of the Piehs, the district court's conclusions of law state that Kandiyohi County was an interested party. AA36. The district court found as a fact that Wells Fargo held a mortgage on the subject property. AA36. The district court also held, as a conclusion of law, that the Piehs were required by law to serve notice of their attempted appeal on the contract for deed vendors, Mr. and Mrs. Van Ort, as well as on Wells Fargo and Kandiyohi County, and that, because they did not do so, the district court lacked jurisdiction over the matter. AA36-7.

Appellants appealed the dismissals to the court of appeals, which affirmed the district court on July 25, 2006 in an unpublished decision entitled *Woodhall v. State*. AA83. The court of appeals affirmed the district court's dismissals "[b]ecause appellants failed to perfect their appeals[,]” AA84, and because “[a] party’s failure to strictly comply with the notice requirements of section 117.145 deprives the district court of subject-matter jurisdiction over the appeal.” AA86. Finally, the court of appeals held that because the County, the Van Orts and Wells Fargo were respondents in this case, and because the statute unambiguously requires service of the notice of appeal on “all respondents,” the district court was correct in dismissing the attempted appeals because these respondents did not receive timely notice of the attempted appeals. AA87.

Appellants then sought review in this Court, which review was granted in an order dated October 17, 2006. AA88.

STATEMENT OF FACTS

I. PIEH CASE.

The Pieh property is identified as Parcel 64 in the State's condemnation Petition. AA4. With respect to Parcel 64, the Petition identifies the following respondents: Timothy R. Pieh and Mary L. Breen Pieh as contract for deed vendees; Burton R. Van Ort and Ella Van Ort as contract for deed vendors; Wells Fargo Bank Minnesota, as mortgagee;² and County of Kandiyohi as taxing authority. AA4. All of these respondents were identified in the award form used by the commission when it made its award of damages for Parcel 64. AA8-10. After the commission award regarding Parcel 64 was filed in the district court, MnDOT notified these same respondents that the award had been filed as required by Minn. Stat. §117.115, subd. 2 (2004). AA7-10. MnDOT also prepared and filed an affidavit of mailing as required by Minn. Stat. §117.115 (2004), which affidavit states that MnDOT mailed the notice of award to each of the respondents listed in the condemnation Petition for Parcel 64, along with the Kandiyohi County Auditor. Appellants' brief at court of appeals, at A-10 through A-12 (hereinafter, ABCA at A10-12).

On March 24, 2005 the Appellants filed a Notice of Appeal and Affidavit of Mailing with the Kandiyohi County court administrator. AA13-15. The Notice of

² Appellants state that "[t]he Piehs did not serve their contract vendors, Burton and Ella Van Ort, or the Van Orts' mortgagee, Wells Fargo Bank, with a copy of their appeal." App. Br. at 7 (emphasis added). The record evidence is that the Piehs, and not the Van Orts, were Wells Fargo's mortgagees. See, AA20 and Piehs' brief in court of appeals at appendix A-29.

Appeal and Affidavit of Mailing indicate that the only party served with the Notice of Appeal was the State. AA13-15. The Appellants' Notice of Appeal was not served on any of the other respondents involved in Parcel 64. AA13-15.

On August 29, 2005 the State served and filed a motion to dismiss the attempted appeal. AA16-17. A hearing on the State's motion was held on October 7, 2005. AA35. Four days after that hearing, and some six and one-half months after their attempted appeal to the district court, the Piehs, in an ex parte communication with the district court, sent the district court judge a document entitled Affidavit and Release, in which Mr. and Mrs. Van Ort purport to release the State from any claims they may have arising from the condemnation action. Respondent's brief at court of appeals, at RA12-RA15 (hereinafter, RBCA at RA12-15). In an order dated October 18, 2005 the district court granted the State's motion. AA35-37.

On March 27, 2003 Wells Fargo sent the State a letter in which it states that it is no longer interested in the Pieh property because it has closed the Piehs' home equity line of credit.³ AA20. The letter also states that a satisfaction is being sent to Kandiyohi County, who will then send a copy of the satisfaction to the Piehs once it has been recorded. AA20. The State did not receive confirmation of a recorded satisfaction until

³ Citing this letter, Appellants argue that "[t]he State admits that Wells Fargo Bank has no interest in the property in question." App. Br. at 7. In support of this assertion Appellants cite to pages 18 and 20 of the appendix. There is nothing on either of those pages that constitutes such an admission.

August 5, 2005, long after Appellants' attempted appeal to the district court. State's Memorandum of Law in Support of Motion to Dismiss, Jann Affidavit, Exhibit G.

II. WOODHALL CASE.

The Woodhall property is identified as Parcel 34 in the State's condemnation Petition. AA49. With respect to Parcel 49, the Petition identifies six Woodhall family members as respondents, along with County of Kandiyohi. AA49. All of these respondents were identified in the award form used by the commission when it made its award of damages for Parcel 34. AA64-68. After the commission award regarding Parcel 34 was filed in the district court, MnDOT notified these same respondents that the award had been filed, as required by Minn. Stat. §117.115, subd. 2 (2004). ABCA at A-35-36. MnDOT also prepared and filed an affidavit of mailing as required by Minn. Stat. §117.115 (2004), which affidavit states that MnDOT mailed the notice of award to each of the respondents listed in the condemnation Petition for Parcel 34, along with the Kandiyohi County Auditor. ABCA at A-37-A-41.

On February 25, 2005 Appellants filed a Notice of Appeal and Affidavit of Mailing with the Kandiyohi County court administrator. AA74-76. The Notice of Appeal and Affidavit of Mailing indicate that the only party served with the Notice of Appeal was the State. AA74-76. The Appellants' Notice of Appeal was not served on the other respondent involved in Parcel 34. AA74-76.

On August 31, 2005 the State served and filed a motion to dismiss the attempted appeal. AA77-78. A hearing on the State's motion was conducted on October 7, 2005.

AA79. In an order dated October 18, 2005 the district court granted the State's Motion.

AA79-81.

ARGUMENT

I. STANDARD OF REVIEW.

The propriety of a district court's dismissal of an attempted appeal from the commissioners' award for lack of subject matter jurisdiction presents a question of law that this Court reviews de novo. *Tischer v. Housing and Redev. Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005); *Odenthal v. Minnesota Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 434 (Minn. 2002). This Court reviews statutory construction under a de novo standard. *Education Minnesota-Chisholm v. Independent School Dist. No. 695*, 662 N.W.2d 139, 143 (Minn. 2003).

II. THE DISTRICT COURT DOES NOT OBTAIN SUBJECT MATTER JURISDICTION OVER AN ATTEMPTED APPEAL FROM A COMMISSIONERS' AWARD WHEN THE APPELLANT DOES NOT SERVE ALL RESPONDENTS AND ALL PARTIES WITH AN INTEREST IN THE PROPERTY.

The right to appeal from a commissioners' award in a condemnation case is governed by Minn. Stat. Ch. 117, which provides in pertinent part:

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

Minn. Stat. §117.145 (2004).

The requirements applicable to the affidavit of mailing referenced in Minn. Stat.

§117.145 are defined as follows:

Within ten days after the date of the filing of the report of commissioners, the petitioner shall notify the following listed persons, by mail, of the filing of the report of commissioners setting forth the date of the filing of the report, the amount of the award, and all the terms and conditions thereof as the same pertain to the respondent or party listed:

- (1) each respondent listed in the petition as having an interest in any parcel described in the report;
- (2) each other party to the proceeding whose appearance has been noted by the court in its order approving the petition under section 117.075; and
- (3) each respondent's attorney.

Such notification shall be addressed to the last known post office address of each person notified. Notice of the filing of the report need not be given to parties initially served by publication under section 117.055. The petitioner shall file with the court administrator an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.

Minn. Stat. §117.115, subd. 2 (2004).

This Court has consistently held that unless the conditions provided in the appeal statute are strictly complied with, the district court obtains no jurisdiction over an attempted appeal of a commissioners' award. "It is elementary that the right of appeal under our condemnation proceedings is governed by statute and that, unless the conditions prescribed by the statute are observed, the court acquires no jurisdiction."

State v. Radosevich, 249 Minn. 268, 271, 82 N.W.2d 70, 72 (1957); *accord*, *County of Hennepin v. Holt*, 296 Minn. 164, 168, 207 N.W.2d 723, 726 (1973); *County of Ramsey v. Ball*, 291 Minn. 225, 227, 190 N.W.2d 495, 496 (1971); *State v. Goins*, 286 Minn. 54, 57,

174 N.W.2d 231, 233 (1970).⁴ If “no jurisdiction” is acquired, subject matter jurisdiction over an attempted appeal is not acquired. In that circumstance, the district court shall dismiss the action. Minn. R. Civ. P. 12.08(c).

The issue in *Radosevich* was whether one landowner could, consistent with statutory requirements, in one appeal jointly appeal from one commissioners’ award made for three separate awards. *Radosevich*, 249 Minn. at 271, 82 N.W.2d at 72. The State argued that the landowner could not do so and moved the district court to dismiss the appeal. *Id.*, 249 Minn. at 268, 82 N.W.2d at 71. The district court denied the motion, and this Court affirmed. *Id.*, 249 Minn. at 268, 82 N.W.2d at 70. In affirming the district court, this Court held that the right of appeal in condemnation is statutory, and unless the requirements of the statute are strictly followed, the district court obtains no jurisdiction over the appeal, *Id.*, 249 Minn. at 271, 82 N.W.2d at 72.

The issue in *County of Hennepin v. Holt*, 296 Minn. 164, 207 N.W.2d 723 (1973) was whether an appeal of a commissioners’ award which made a gross award and then apportioned that gross award between the fee owners and the tenants vests jurisdiction over the appeal in the district court when the appeal does not expressly state that it seeks appeal of the award apportioned only to the tenant. *Id.*, 296 Minn. at 166-67, 207 N.W.2d

⁴ The concurring opinion in *Housing and Redev. Auth. for the City of Richfield v. Adelman*, 590 N.W.2d 327 (Minn. 1999) expresses concern regarding this Court’s reliance on *Radosevich*, stating that *Radosevich* relies on two cases that that did not involve Chapter 117 or its antecedents. *Id.* at 335 (concurring opinion of J. Paul Anderson). But it is important to note that *Radosevich*, *Holt*, *Ball* and *Goins* all involved appeals under Chapter 117, the condemnation statute at issue in these appeals.

at 725-26. The tenant argued that because the appeal did not specifically state that the award allotted to the tenant was being appealed, the district court did not obtain jurisdiction over that portion of the appeal. *Id.*, 296 Minn. at 167, 207 N.W.2d at 725-26. The district court rejected that argument and this Court affirmed, again stating that the right of appeal is strictly statutory, and that unless the statutory provisions are followed, the district court obtains no jurisdiction. *Id.*, 296 Minn. at 168, 207 N.W.2d at 726.

In *County of Ramsey v. Ball*, 291 Minn. 225, 190 N.W.2d 495 (1971) the issue was whether the landowner's attempted appeal two years after the filing of the commissioners' award complied with the statutory requirement that appeals be taken within 40 days of the filing of the commissioners' report. *Id.*, 291 Minn. at 226-27, 190 N.W.2d at 496. After the landowner filed the attempted appeal the County moved to dismiss the appeal, which motion was granted by the district court. *Id.* This Court affirmed stating that if the conditions permitting the right to appeal are not observed the district court does not have jurisdiction. *Id.* This Court reasoned that because the notice of appeal was not timely filed, the appellant had not complied with the conditions granting the right of appeal and the district court did not err in dismissing the appeal. *Id.*

In *State v. Goins*, 286 Minn. 54, 174 N.W.2d 231 (1970) the issue was whether a landowner, who did not appeal the commissioners' awards, could compel the State to maintain its appeals after the State chose to discontinue the appeals. *Id.*, 286 Minn. at 56, 174 N.W.2d at 232-33. After the State appealed, but before trial, the State moved to dismiss the appeals. *Id.* The landowner resisted the motion, apparently having decided

that it wanted an appeal of the awards. *Id.* But, by the time the landowner decided that it wanted an appeal, the 40 day period for appealing from commission awards had passed. *Id.*, 286 Minn. 56-57, 174 N.W.2d at 233. The district court granted the State's motions and the landowner then moved to strike the dismissals and for reinstatement of the appeals. *Id.*, 286 Minn. at 54, 174 N.W.2d at 231. The district court denied the landowner's motion and this Court affirmed, again stating that the filing of the notice of appeal is jurisdictional in a condemnation proceeding and unless the conditions prescribed by statute are observed, the court acquires no jurisdiction. *Id.*, 286 Minn. at 57, 174 N.W.2d at 233.

These recent decisions are consistent with this Court's historic approach to the issue of district court jurisdiction over condemnation appeals. For example, in *Hagemeyer v. Board of Comm'rs of Wright County*, 71 Minn. 42, 73 N.W. 628 (1898), this Court upheld the district court's dismissal of an appeal for lack of subject matter jurisdiction because the appellant failed to comply with various statutory requirements. In upholding the dismissal, this Court stated:

Under the amendment of 1895 it was required of the appellant, among other things, that a copy of the notice of appeal be filed in the office of the town clerk of each town in which the highway proposed to be laid out, altered, or discontinued may be situated. A compliance with this provision of the law was essential to the appeal, which is purely statutory. It must be taken as the statute directs. This rule has often been announced by this court. The filing of this copy was a jurisdictional requisite of an effectual appeal, and without this the district court had no jurisdiction over the subject-matter of the controversy. If a copy of the notice had actually been filed as required by the statute, jurisdiction would have been acquired, although no proof of such filing had been made.

Id., 71 Minn. at 44, 73 N.W. at 629 (citations omitted);⁵ *see also*, *Klein v. Town of Turtle Lake*, 154 Minn. 521, 192 N.W. 121 (1923); *Schwede v. Town of Burnstown*, 35 Minn. 468, 29 N.W. 72 (1886).

The decisions of this Court are consistent with decisions from other jurisdictions that have condemnation proceedings procedurally similar to those in Minnesota.⁶

Applying the principles of this Court's precedent to the facts of this case, it is clear that the district court did not err in dismissing the attempted appeals for lack of jurisdiction. There is no dispute in either the Pieh or Woodhall cases that the only party receiving notice of the attempted appeals was the State of Minnesota.⁷ Thus, the Appellants did not comply with Minn. Stat. §117.145, which requires service on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing. Pursuant

⁵ While *Hagemeyer* does not involve Chapter 117 as currently codified, and therefore raises the issue addressed at *supra* n. 4, this Court has held that its decisions construing similar statutes are informative when considering issues arising under Chapter 117, and that the rationale used in cases construing similar statutes may be applied by analogy, at least in part, to questions arising under Chapter 117. *State v. Radosevich*, 249 Minn. 268, 273, 82 N.W.2d 70, 73 (1957).

⁶ *See, e.g.*, *Stanton v. Monroe County*, 261 Ala. 61, 62-63, 72 So.2d 854, 854-56 (Ala. 1954); *Department of Transp. v. Rudeseal*, 156 Ga.App. 712, 712-14, 276 S.E.2d 52, 52-53 (Ga. Ct. App. 1980); *Burnham v. City of West Des Moines*, 568 N.W.2d 808, 810-11 (Iowa 1997); *Kenkel v. Iowa State Highway Comm'n*, 162 N.W.2d 762, 764 (Iowa 1968); *Miracle v. Commonwealth Dept. of Highways*, 467 S.W.2d 757, 757-58 (Ky. 1971); *Department of Highways v. Rogers*, 184 Mont. 181, 182-84, 602 P.2d 560, 560-62 (Mont. 1979); *Goins v. Sanford Furniture Co.*, 105 N.C.App. 244, 245, 412 S.E.2d 172, 172-73 (N.C. Ct. App. 1992); *519 Corp. v. Department of Transp.*, 92 Wis.2d 276, 278, 286-88, 284 N.W.2d 643, 644, 648-49 (Wis. 1979).

⁷ Appellants characterize their decision to not serve all respondents with notices of the attempted appeals as "minor procedural errors by the property owner." App. Br. at 20.

to Minn. Stat. §117.145 the Piehs were required to serve Mr. and Mrs. Van Ort, Wells Fargo and the County because they were respondents in the action and because they had an interest in the parcel. Similarly, the Woodhalls were required to serve Kandiyohi County because it too was a respondent and because it had an interest in the parcel.

II. THERE IS NO COMPELLING REASON TO ABANDON THE LONG-STANDING REQUIREMENT OF SERVICE OF THE NOTICE OF APPEAL ON ALL RESPONDENTS AND ALL PARTIES WITH AN INTEREST IN THE PROPERTY.

There is nothing new or unique in these appeals⁸ to warrant a departure from this Court's established precedent. These appeals present only the question of whether a district court obtains subject matter jurisdiction over attempted appeals that do not comply with statutory requirements. This Court has consistently held that in such circumstances a district court does not obtain subject matter jurisdiction over the attempted appeals. No compelling reason is presented here for a departure from that precedent.

A. The District Court Properly Applied The Law In Dismissing Appellants' Attempted Appeals For Lack Of Jurisdiction When Appellants Did Not Serve Their Notices of Appeal On All Respondents And All Parties With An Interest In The Property.

The basic premise of all of Appellants' arguments to this Court is that the Appellants did not need to provide notice of their attempted appeals because the

⁸ Appellants argue here, for the first time, that the district court committed error in granting the State's motions to dismiss. App. Br. at 8. Appellants did not argue to the district court that a grant of the motions would constitute error, and they made no claim of error before the court of appeals. In fact, to the contrary, the Woodhalls admitted in the court of appeals that the district court's dismissals were consistent with existing law. Woodhall brief in court of appeals at 3-4.

respondents and the parties who received notice of the filing of the commissions' awards did not have an interest in the properties. App. Br. at 8, 14, 17, 21, 25. Because this premise is factually and legally flawed, and because it forms the basis of all of Appellants' arguments here, those arguments are unavailing.

As a threshold matter, Appellants' arguments implicitly assume that an appellant may unilaterally decide who does or does not have an interest in the property such that they are entitled to notice of the appeals. Appellants offer no citation to any authority to support this argument. This argument constitutes a fundamental disregard of the express requirements of the notice statute. The legislature has decided who is entitled to notice of an appeal. Minn. Stat. §117.145 (2004) provides that an appellant must serve its notice of appeal on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners. The affidavit of mailing with respect to the Pieh property indicates that the notice of filing of the commissioners' award was mailed to Mr. and Mrs. Pieh, Mr. and Mrs. Van Ort, Wells Fargo and Kandiyohi County. The affidavit of mailing with respect to the Woodhall property indicates that the notice of filing of the commissioners' award was mailed to all six Woodhall family members and Kandiyohi County. Pursuant to the express, and clear, requirements of Minn. Stat. §117.145 (2004), all of these persons were entitled to notice.

The approach to providing notice of an appeal espoused by Appellants would create many obvious problems for the orderly administration of condemnation cases. For example, Minn. Stat. §117.145 (2004) provides that if one party appeals within forty days of the filing of the commissioners' award, another may cross-appeal within fifty days of the filing of the commissioners' award. If a party wishes to cross-appeal only if another party first appeals, the party seeking to cross-appeal may lose its statutory right to appeal within 50 days if it never receives notice of an original appeal. Alternatively, if the party wishing to cross-appeal does not lose its right to cross-appeal because it did not receive notice of an original appeal, and the original appeal went to trial and judgment, the party wishing to cross-appeal would not be bound by the judgment. Abandoning the current rule would create confusion as to the finality of judgments, piecemeal litigation in condemnation cases, and the inevitable waste of judicial and administrative resources. These very issues were addressed by the Iowa Supreme Court in *Bourjaily v. Johnson County*, 167 N.W.2d 630 (Iowa 1969), wherein the Court stated:

It is clear that the contract vendors and the mortgagee have interests in the property which will be directly and materially affected by the condemnation of the land in question. Affirmance and finalization of these proceedings wherein only plaintiffs have been named and served pursuant to sections 472.3 and 472.9 would undoubtedly result in future litigation to determine the rights of the contract vendors and mortgagee. To avoid a multiplicity of actions and to expedite the most rapid acquisition possible by a condemnor of unclouded title to real property our legislature has wisely provided all land owners and lien holders of record be named both in the application for condemnation and in the notice of assessment.

Id. at 634.

Moreover, Appellants' assertion that the County, the contract for deed vendors, and the mortgagee did not have interests in these properties and that, as a result, they need not be served with notice of the attempted appeals, is simply wrong as a matter of law. The word "owner" is a defined word in Chapter 117. Minn. Stat. §117.025, subd. 3 (2004) defines an owner as "all persons interested in such property as proprietors, tenants, life estate holders, encumbrancers, or otherwise." As a matter of law, these persons are all owners with an interest in the properties within the purview of Chapter 117, and were thus entitled to notice of the appeals.

Appellants justify their decision to not serve Kandiyohi County with notice of their appeal with the argument that if these cases were to proceed to trial, and a higher compensation award were there obtained, the County would not be prejudiced by the failure to provide notice to it because it would then have "higher valued land to tax." App. Br. at 15. Appellants have not cited any authority to support this proposition and there appears to be none. This argument also assumes that trial in the district court will always result in a larger award. This assumption is speculative and completely misses the point.⁹ 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

⁹ The argument that an appealing party does not have to provide notice of an appeal to another interested party because that party may already have sufficient financial securities has been squarely rejected as an excuse for failure to provide notice of the appeal. *Merritt v. Interstate Power Co.*, 261 Iowa 174, 176-79, 153 N.W.2d 489, 491-94 (Iowa 1967).

petition. . . .” *County of Dakota v. Lyndale Terminal*, 529 N.W.2d 672, 674 n.1 (Minn. 1995). 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. §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. Minn. Stat. §117.135, subd. 2 (2004). The system created by the legislature in Chapter 117 is designed to ensure that property taxes and assessments on property involved in a condemnation action are brought current in the action. Thus, the legislature has a particular, and continuing interest in ensuring that this system works properly. The system would be frustrated, however, if an appellant can unilaterally decide that the County no longer needs to be involved in the case.

The Appellants similarly assert that Wells Fargo need not have been served because if there were to be a trial, the compensation to the landowner would be greater and that would provide more security for the mortgage. App. Br. at 15. Again, Appellants cite no authority to support this notion. Moreover, it assumes that one respondent should be permitted to decide the existence or significance of another party’s interests.

An owner of property involved in a condemnation action includes a person “interested in such property” as an encumbrancer. Minn. Stat. §117.025, subd. 3 (2004). A mortgage is an encumbrance on property. *Kirkwold Constr. Co. v. M.G.A. Constr., Inc.*, 513 N.W.2d 241, 243 (Minn. 1994); *Brooks v. American Lumber & Constr. Co.*, 162 Minn. 220, 223, 202 N.W. 818, 819 (Minn. 1925); *Thesing v. Thesing*, 390 N.W.2d 469, 471 (Minn. Ct. App. 1986). In this case, because Wells Fargo had a mortgage on the Pieh property at the time the State commenced this action, it was named as a respondent in the case. At that time, Wells Fargo was an encumbrancer on the property and, as such, an owner with an interest in the property. Pursuant to Minn. Stat. §117.145 (2004) it was entitled to notice of the appeal.

Appellants argue that the Van Ort contract for deed vendors do not have an interest in the property subject to the contract for deed, and thus did not need to be served with notice of the appeal. App. Br. at 8. Appellants again assert that the contract vendors did not need to receive notice of the attempted appeal because a larger jury verdict would make the contract vendees healthier, thereby resulting in no prejudice to the vendors. App. Br. at 15. One purpose of the current notice statute is to allow the vendors to make those decisions for themselves, not to have someone else make those decisions for them. Because the Van Orts had an interest in the subject property, no appeal should go forward without notice of appeal to them.

Minn. Stat. §117.025 subd. 3 defines an owner of property involved in a condemnation action as a “proprietor.” A proprietor is defined as “one who has legal title

to something; an owner.” The American Heritage College Dictionary 1098 (3d ed. 1993). A contract for deed vendor retains legal title to the property, and retains a lien on the property. *Shields v. Goldetsky*, 552 N.W.2d 226, 229 (Minn. 1996). Thus, the Van Orts were owners of the subject property both as proprietors and as encumbrancers. They were respondents in this case from the beginning,¹⁰ they had an interest in the property, and they were entitled to notice of the appeal.

Arguably, one purpose of the notice statute is to allow those with interests in properties involved in litigation to make their own informed decisions about whether and how to protect those interests. It is illogical and contradictory to allow one respondent to make unilateral decisions on behalf of other respondents with interests in the property. The County, the contract vendors and the mortgagee were entitled to notice of the attempted appeals so that they could decide for themselves whether and how to proceed.

B. The Service Requirements of Minn. Stat. §117.145 Are Clear And Unambiguous.

Appellants argue that Minn. Stat. §117.145 (2004) is ambiguous and that “a sound reading of Minn. Stat. §117.145 dictates reversal here.” Pieh Petition for Review at 5;

¹⁰ To the extent that the Van Orts’ Affidavit and Release constitutes a post-appeal effort to confer jurisdiction on the district court after the attempted appeal is taken, such effort is unavailing because subject matter jurisdiction cannot be conferred by consent. *No Power Line, Inc. v. Minnesota Envtl. Quality Council*, 262 N.W.2d 312, 321 (Minn. 1977); *see also, Carmichael v. Iowa State Highway Comm’n*, 156 N.W.2d 332, 335, 338 (Iowa 1968) (jurisdiction of the district court in condemnation cases is appellate only; only by process of appeal does the district court obtain jurisdiction over both the subject matter and the parties; the statutory time for invoking the appellate jurisdiction of the district court elapsed long before the disclaimer of interest was filed).

App. Br. at 15-20.¹¹ If this Court decides to address Appellants' ambiguity argument, the argument is unpersuasive. The court of appeals expressly held below that Minn. Stat. §117.145 (2004) "is clear and unambiguous." AA87. The court of appeals construed Minn. Stat. §117.145 (2004) to require service of the notice of appeal on two groups: 1) all respondents; and 2) all other parties interested in the condemned land. That construction of the statute is consistent with the clear language of the statute and properly applies the grammatical rule of the last antecedent. *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (according to the grammatical rule of the last antecedent, a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows; referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent); *see also*, *State v. Wilson*, 524 N.W.2d 271, 273-74 (Minn. Ct. App. 1994) (qualifying phrases in statutes usually refer only to the immediately preceding antecedent).

Applying the rule of the last antecedent to the statute at issue, there are two classes of people entitled to notice of an appeal: all respondents, and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing. The phrase "having an interest in any parcel" follows

¹¹ Appellants did not argue to either the district court or the court of appeals that this statute is ambiguous. This Court should decline review of Appellants' ambiguity argument because it was not argued in the district court and formed no part of the district court's decision. *Toth v. Arason*, 722 N.W.2d 437, 443 (Minn. 2006) (reviewing court generally may consider only those issues that the record shows were presented to and considered by the trial court).

the preceding noun “parties.” Thus, the phrase “having an interest in any parcel” modifies the noun “parties” and applies only to other parties described in the appeal who are shown in the petitioner’s affidavit of mailing.

Appellants assert that the “all respondents” must be read in either of the following two manners: 1) all respondents “can only mean all respondents having an interest in the parcel;” or 2) “[i]f, on the other hand, ‘all respondents’ refers [sic] the respondents in the condemnation petition, the context makes it clear that the appellant is directed to serve all respondents who have a property interest in the parcel in question.” App. Br. at 19. Even if these constructions of the statute are plausible, the argument still fails because under either one notice of the attempted appeal must still be served on parties with an interest in the property. The County, the contract vendors, and the mortgagee were all respondents in these cases and they all possessed an interest in the property as a matter of law. Thus, they were all entitled to notice of the appeal under either of the Appellants’ constructions of the statute.

C. The Fact That Eminent Domain Litigation Involves Constitutional Rights Does Not Relieve A Party From Its Duty To Follow The Strict Requirements of A Notice Statute.

Appellants argue in this Court that the notice requirements of Minn. Stat. §117.145 (2004) constitute an unreasonable impediment to their right to obtain just compensation. Pieh Petition for Review at 2-4; App. Br. at 20-25. Appellants did not make this argument to either the district court or the court of appeals. This Court should decline review of Appellants argument because it was not presented to the district court and

formed no part of that court's decision. *Toth v. Arason*, 722 N.W.2d 437, 443 (Minn. 2006). That rule applies, with exceptions in limited circumstances not shown to exist here,¹² even when constitutional claims have been raised. *Hampton v. Hampton*, 303 Minn. 500, 501, 229 N.W.2d 139, 140 (1975) (where an issue of constitutionality is not raised and acted upon in the court below, a party will not be heard to raise the issue for the first time on appeal to the supreme court).

If this Court does address the constitutional argument, it is unpersuasive because it is based upon a mistaken premise, i.e., that other respondents in these actions did not have an interest in the property.¹³ As discussed earlier, the contract vendors, the mortgagee and the County all had interests in the subject properties as a matter of law. As a result, they were entitled to notices of the appeals because they were all respondents and because they all had interests in the subject properties.

¹² An exception to this rule exists when the interests of justice require consideration of the issue, when the parties have had adequate time to brief such issues, and when the issues are implied in the lower court. *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982) (allowing consideration of the constitutional issue because it was fully briefed in a motion in the district court); *Elwell v. County of Hennepin*, 301 Minn. 63, 68, 221 N.W.2d 538, 542 (1974) (when the constitutionality of the statute was argued by both parties in post-trial briefs and discussed at length in the trial court's memorandum, the question is within the scope of supreme court review). None of the circumstances justifying application of the exception exist in this case.

¹³ Appellants refer only to the County in this section of their brief, stating "[i]ndeed, if Minn. Stat. §117.145 were read to deny just compensation to a property owner for a reason as trivial as the failure to serve process on a governmental subdivision with no possible interest in the outcome of this litigation, its constitutionality would be in considerable doubt." App. Br. at 21. Later, Appellants argue "[t]he extinguishment of a property owner's right to just compensation through a failure to provide notice to a county which has no interest in the property raises issues of constitutional magnitude. ..." App. Br. at 25.

Appellants argue that a fundamental right is at stake in this case, and that procedural requirements that arbitrarily deny such rights are subject to strict scrutiny.¹⁴ App. Br. at 22-3. However, the alleged denial of a fundamental right is not due to the notice requirements of the condemnation statute. Rather, it is Appellants' decision to choose to not serve all respondents and all parties with an interest in the property that is the cause of the alleged impediment. This important distinction was addressed by the Iowa Supreme Court in a condemnation case with facts essentially identical to those present here. In *Merritt v. Interstate Power Co.*, 261 Iowa 174, 153 N.W.2d 489 (1967) a landowner in a condemnation case filed an appeal in the district court and served the condemning authority and the sheriff, but failed to serve a mortgagee. *Id.*, 261 Iowa at 175, 153 N.W.2d at 491. The condemning authority moved to dismiss the appeal and the district court granted the motion on the basis that it had no jurisdiction over the appeal. *Id.*, 261 Iowa at 176, 153 N.W.2d at 491. The landowner appealed, arguing, *inter alia*, that in dismissing the appeal the district court failed to fully protect his interest under eminent domain and the Iowa Constitution. *Id.*, 261 Iowa at 177, 153 N.W.2d at 491. The Iowa Supreme Court affirmed the dismissal, stating:

The right to appeal or to have a judicial determination of damages, although constitutionally provided in Article I, Section 18, of the Iowa Constitution, is limited by reasonable and proper statutory procedure for perfecting an appeal to the district court. If district court review is desired by either party, notice thereof must be given in substantial compliance with the statutes. If

¹⁴ Appellants have not cited any authority to support the proposition that statutory notice requirements are arbitrary when they simply provide that all respondents and all parties who have an interest in the subject properties are entitled to notice of an attempted appeal.

one fails to follow the legally-prescribed manner and procedure in giving notice, the district court obtains no jurisdiction, and condemnee can blame only himself if his damage is not passed upon by a jury.

This does not mean that appellant is not entitled to compensation for his property taken for a public use. That is guaranteed him by the constitution, but he is only entitled to it in the manner prescribed by law. If an appeal is not taken, the commissioner's award stands.

Clearly, the legislature has the power to prescribe and fix the terms and conditions upon which condemnations may be made, including reasonable terms and conditions upon which the landowner may perfect his appeal to the district court.

Section 472.18 does not deny plaintiffs' right to appeal the condemnation award to the district court. It merely prescribes the time limit and the procedure by which the appeal may be taken. The legislature properly enacted the procedural sections in chapter 472 of the Code. They must be followed by interested parties in order to claim the constitutional guarantee. It was plaintiff's failure to follow the procedural requirements of section 472.18 to obtain district court review of the award that prevented the appeal, not any act of defendant.

Id., 261 Iowa at 179-80, 153 N.W.2d at 493 (citations omitted).

Like the landowner in *Merritt*, the Appellants did not serve all respondents and all the other parties with an interest in the subject properties. Whether the basis of Appellants' decision was the misinformed belief that service on those people was unnecessary because they did not have an interest in the properties or was merely due to an oversight, it was Appellants' own decision, not the statutory procedure, that caused the alleged impediment to just compensation. And, as the Court in *Merritt* concluded, a party's constitutional right to just compensation is not impaired by their own decision to disregard the statutory notice requirements. For this same reason, this constitutional argument is unavailing.

III. A DISTRICT COURT DISMISSAL OF AN ATTEMPTED APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION IS NOT A RADICAL DEPARTURE FROM ORDINARY CONDEMNATION PRACTICE.

This Court's order granting review in these cases asks the parties to address the issues raised in the concurring opinion in *Housing and Redev. Auth. for the City of Richfield v. Adelmann*, 590 N.W.2d 327 (Minn. 1999). But before addressing the concerns of the concurrence, a few points from the main opinion bear discussion. The issue in *Adelmann*, like here, was whether an appealing party had complied with the notice requirements of Minn. Stat. §117.145. That statute refers to Minn. Stat. §117.115, subd. 2, which requires service of the notice of the filing of the commissioners' award on each respondent and each respondent's attorney. Minn. Stat. §117.115, subd. 2 (1) and (3) (2004). In *Adelmann*, the condemning authority served notice of its appeal on a party's attorney, but not on the party. *Id.* at 329. The issue was, therefore, whether the requirement to serve both a party and her attorney was a jurisdictional prerequisite to an appeal from a commissioners' award. *Id.* The Court held it was not. *Id.* at 333.

This Court began its analysis in *Adelmann* with the observation that “[a]t the outset, we note that there is no suggestion that any party was deprived of notice either of the filing of the commissioners' award or of the notice of appeal.” *Id.* at 330. Shortly thereafter, the Court stated that “[a]ll parties agree, as they must, that section 117.145 prescribes the steps necessary to perfect an appeal from a condemnation commissioners' award.” *Id.* These two statements point out a very important distinction between this case and *Adelmann*. In *Adelmann*, each party involved in the case received notice of the

appeal, one way or another. The fact that the Court placed considerable emphasis on that point is demonstrated by the Court's decision to make that point at the opening of the decision. The Court implied that the analysis that follows flowed from the fact that each respondent in the case received notice one way or another. In contrast, in this case none of the parties received notice of the Appellants' attempted appeals except the State. As a result, as the main *Adelmann* opinion states, all parties to *this* case should agree, as they must, that the district court properly dismissed the attempted appeals for lack of jurisdiction.

The main *Adelmann* opinion supports the dismissals in this case in other important respects as well. In *Adelmann* the Court reversed the court of appeals, concluding that the court of appeals' reliance on *Condemnation by Housing & Redev. Auth. v. Suh*, 553 N.W.2d 115 (Minn. Ct. App. 1996) was misplaced. In rejecting the court of appeals' reliance on *Suh*, this Court reasoned that "*Suh* involved distinctly different circumstances, namely, certain of the respondents in the condemnation proceeding had not received any notice of the filing of the commissioners' award, either directly or through their counsel." *Adelmann*, 590 N.W.2d at 331. The fact that this Court in *Adelmann* distinguished *Suh* on the basis that some respondents in that case had not received any notice suggests that when certain respondents in a condemnation case do not receive the notice of appeal, either directly or indirectly, the appeal has not been perfected and the district court lacks jurisdiction over the matter.

The main *Adelmann* opinion also states that “[t]he present language in section 117.145 clarifies that service of a copy of the notice of appeal need only be made on those property interest holders who were entitled to receive the section 117.115 notice of filing.” *Id.* at 332. Minn. Stat. §117.115, subd. 2 (2004) provides that petitioner shall notify the following listed persons of the filing of the commissioners’ report: (1) each respondent listed in the petition as having an interest in any parcel described in the report; (2) each other party to the proceeding whose appearance has been noted by the court in its order approving the petition under section 117.075; and (3) each respondent’s attorney. Thus, applying the reasoning of the main *Adelmann* opinion to the facts of this case, the County, the mortgagee, and the contract vendors were all entitled to notice of Appellants’ attempted appeals because they are interest holders entitled to receive notice pursuant to §117.115, subd. 2 (1) and because they were all respondents listed in the condemnation petition as having an interest in these parcels.

Thus, the main *Adelmann* opinion supports the dismissals in these cases because: (1) notice of the appeal must be served on someone, either a party or its attorney; (2) section 117.145 prescribes the steps necessary to perfect an appeal; (3) pursuant to *Suh*, when certain respondents do not receive notice, the jurisdictional prerequisite to an appeal has not been met; and (4) notice of the appeal must be served on each respondent listed in the petition as having an interest in any parcel described in a filed commissioners’ report. Nevertheless, *Adelmann* declined to rule on the issue of whether a failure to comply with

the appeal statute's service requirements deprives the court of subject matter jurisdiction over the appeal. *Id.* at 333.

The main assertion of the *Adelmann* concurring opinion is that a district court in a condemnation case obtains subject matter jurisdiction by the presentment of the petition and that it retains that jurisdiction all the way through appeals to the district court for jury trials, regardless of whether an appealing party complies with the statutory notice requirements. This position is not supported by the main *Adelmann* opinion or by the precedent of this Court, which provides that if an appealing party does not strictly comply with the notice requirements of the appeal statute, the district court obtains *no* jurisdiction over the appeal. *State v. Radosevich*, 249 Minn. 268, 271, 82 N.W.2d 70, 72 (1957); *County of Hennepin v. Holt*, 296 Minn. 164, 168, 207 N.W.2d 723, 726 (1973); *County of Ramsey v. Ball*, 291 Minn. 225, 227, 190 N.W.2d 495, 496 (1971); *State v. Goins*, 286 Minn. 54, 57, 174 N.W.2d 231, 233 (1970). When this Court holds that *no* jurisdiction is obtained, that includes subject matter jurisdiction.

In support of the *Adelmann* concurring opinion four cases are cited.¹⁵ While the State agrees that the district court obtains subject matter jurisdiction over pre-appeal

¹⁵ Those cases are *Rheiner v. Union Depot St. Ry. & Transfer Co.*, 31 Minn. 289, 17 N.W. 623 (1883); *Whitely v. Mississippi Water-Power & Boom Co.*, 38 Minn. 523, 38 N.W. 753 (1888); *State v. Frisby*, 260 Minn. 70, 108 N.W.2d 769 (1961); and *Oronoco Sch. Dist. v. Oronoco*, 170 Minn. 49, 212 N.W. 8 (1927).

proceedings upon presentment of the petition,¹⁶ it does not agree that the district court simultaneously obtains appellate subject matter jurisdiction over any future appeals of future commissioner awards.

The four cases relied upon in the concurring opinion do not hold or otherwise state that a district court's original subject matter jurisdiction extends over an appeal when the party attempting the appeal fails to comply with the notice requirements. *Rheiner* and *Whitely* add little to this issue because they appear to involve only questions of personal jurisdiction. *Frisby* is similarly not helpful because it involved a landowner's motion for a new trial, the basis of which was the landowner's argument that a jurisdictional defect existed in the case because the commissioners made a lump sum award rather than separate awards for the land taken and severance damages. *Frisby*, 260 Minn. at 75, 108 N.W.2d at 772. The case does not specify whether the jurisdictional issue is personal or subject matter jurisdiction, but in either case, the landowner had evidently complied with the statutory appeal notice provisions because the issue raised does not involve compliance with statutory appeal requirements. As a result, *Frisby* does not address the issue of whether a landowner's failure to comply with statutory notice requirements deprives the district court of jurisdiction over an attempted appeal.

¹⁶ Thus, the State agrees that the district court has pre-appeal subject matter jurisdiction to appoint new commissioners if one is unable to serve; to assist with any procedural difficulties encountered during proceedings before commissioners; to address issues involving claims involving loss of a going concern, and so forth. See, *Adelmann* at 336 (concurring opinion of J. Paul Anderson).

Oronoco is similar to *Frisby* in that it too involved a post-trial motion. *Oronoco*, 170 Minn. at 50-51, 212 N.W. at 8. Pursuant to the post-trial motion, the district court divided the jury verdict between the town and heirs of those who originally platted a public square. *Id.*, 170 Minn. at 51, 212 N.W. at 8. After the district court granted the division motion, the town moved for a new trial, which motion was denied. *Id.* On appeal, this Court stated that there was a question of the power of the court to direct an assessment, by the commissioners, in gross. *Id.*, 170 Minn. at 52, 212 N.W. at 9. But whether the question in *Oronoco* involved the power of the district court during the commission hearing phase of a case, or the power of the district court during the trial stage, *Oronoco* again does not shed light on the question of whether the district court has subject matter jurisdiction over an appeal when the statutory appeal requirements have not been followed. Thus, these four cases do not support the proposition that a district court's original subject matter jurisdiction continues through to the appeal stage of a condemnation case when a landowner fails to follow the statutory appeal requirements.

The *Adelmann* concurring opinion also states that the parties before the Court in that case appear to take for granted that the district court's subject matter jurisdiction is divested upon appointment of commissioners. *Adelmann*, 590 N.W.2d at 334. The concurrence then states that “[t]he basis of this erroneous assumption appears to be the court of appeals decision in *Independent Sch. Dist. No. 194 Lakeville v. Tollefson Dev., Inc.*, 506 N.W.2d 346 (Minn. Ct. App. 1993), pet. for rev. denied (Minn. Nov. 16, 1993).”

Id. But there is nothing in *Tollefson* that speaks to an assumption that the district court's subject matter jurisdiction is divested upon appointment of commissioners.

The *Adelmann* concurrence asserts that *Tollefson* constitutes a radical departure from normal condemnation proceedings because it holds that a district court does not obtain subject matter jurisdiction over an appeal that disregards statutory requirements. *Id.* at 335. Minnesota law does not support that interpretation of *Tollefson* in at least three important respects.

First, condemnation proceedings involve two essentially distinct phases: first, the hearing on petition, appointment of commissioners, commissioner hearings, and then the filing of commission awards; and second, an appeal from a commission award to the district court for a trial de novo. In the first phase of a condemnation proceeding, the district court has original subject matter jurisdiction. Minn. Stat. §484.01 subd. 1 (2004) (the district courts shall have original jurisdiction in all civil actions within their respective districts). In the second phase of the proceeding, the district court's jurisdiction is appellate. *City of Mankato v. Hilgers*, 313 N.W.2d 610, 612 (Minn. 1981).

The pre-appeal phase of a condemnation is a special proceeding. Minn. R. Civ. P. 81.01 and Appendix A. A special proceeding is defined as follows:

The statutory phrase 'a special proceeding' is a generic term for any civil remedy in a court of justice which is not of itself an ordinary action and which, if incidental to an ordinary action, independently of the progress and course of procedure in such action, terminates in an order which, to be appealable pursuant to [a statute] must adjudicate a substantial right with decisive finality separate and apart from any final judgment entered or to be entered in such action on the merits. A special proceeding usually means such a proceeding as may be commenced independently of a pending action

by petition or motion, upon notice, in order to obtain special relief. Its existence is not necessarily dependent upon the existence of any other action.

Chapman v. Dorsey, 230 Minn. 279, 283, 41 N.W.2d 438, 440-41 (1950) (citations omitted).

The pre-appeal phase of a condemnation action has the characteristics of a special proceeding. *Oak Center Creamery Co. v. Grobe*, 264 Minn. 435, 438, 119 N.W.2d 729, 731 (1963), *overruled on other grounds by Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974) (while eminent domain proceedings have the aspect of special proceedings at the outset, an appeal becomes adversary and judicial in nature, making the Rules of Civil Procedure applicable). In the pre-appeal stage the condemnor presents its petition to the district court for approval. That proceeding is distinct from subsequent pre-appeal proceedings because the district court's ruling on the petition is immediately appealable. *County of Blue Earth v. Stauffenberg*, 264 N.W.2d 647, 650 (1978). If the petition is approved, commissioners are appointed, valuation hearings are conducted and awards are filed. This portion of the condemnation process has been characterized as an "inquest." *Antl v. State*, 220 Minn. 129, 133, 19 N.W.2d 77, 79-80 (1945); *State v. Rapp*, 39 Minn. 65, 67-68, 38 N.W. 926, 928 (1888); *Boom Co. v. Patterson*, 98 U.S. 403 (1878) (construing Minnesota condemnation law). In describing the commission hearing phase as an inquest, the United States Supreme Court stated:

The proceeding in the present case before the commissioners appointed to appraise the land was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred to the District Court by appeal from the award of the

commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents.

Id. at 406-07.¹⁷

As recognized by the Supreme Court in *Boom*, once the “inquest” phase of a condemnation proceeding has concluded, the parties have a right to appeal to the district court. The appeal to the district court changes the fundamental nature of a condemnation proceeding from an inquest regarding value to an ordinary civil action. *State v. Pearson*, 260 Minn. 477, 489, 110 N.W.2d 206, 215 (Minn. 1961) (after the filing of an appeal from the viewers’ report in district court in an eminent domain proceeding it becomes a judicial proceeding and the Rules of Civil Procedure thereafter apply). When this Court promulgated the General Rules of Practice for The District Courts, it codified the distinction recognized in the common law at Minn. Gen. R. Prac. 141.02, which provides that “[i]n condemnation cases the notice of appeal from the award of the commissioners shall be deemed the filing of the first paper in the case for purposes of Minn. Gen. R. Prac. 104 and 111[,]” both of which rules involve the preliminary papers that must be

¹⁷ *Accord, Chicago, R.I. & P.R. Co., v. Stude*, 346 U.S. 574, 578-79 (1954) (proceeding before sheriff is administrative until appeal to district court; then the proceeding becomes a civil action; when the proceeding has reached the stage of a perfected appeal and the jurisdiction of the state district court is invoked, it then becomes in the nature of a civil action) (citing *Boom Co. v. Patterson*); *United States v. Federal Land Bank of St. Paul*, 127 F.2d 505, 507-08 (8th Cir. 1942) (proceeding up to time awards made is legislative and only quasi-judicial; but as soon as the amount of the commissioners’ award becomes controversial by the taking of an appeal the matter assumes the nature of a judicial proceeding, and rules relative to such proceedings apply; notice of appeal within the statutory time is the very thing that confers jurisdiction on the district court; if that is not done, appellant conferred no jurisdiction upon that court).

filed in the district court at the commencement of an ordinary civil action. Thus, the common law, and the Rules of Practice promulgated by this Court, both recognize that there are two fundamentally distinct phases of a condemnation case and they differ in their nature.

Because the 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, this Court's established precedent requires strict compliance with statutory notice requirements to properly establish subject matter jurisdiction in the appellate stage.

Thus, the second reason *Tollefson* does not constitute a radical departure from normal condemnation proceedings is because it merely restates this Court's established precedent that in order to invest the district court with appellate subject matter jurisdiction, an appealing party must strictly comply with the notice requirements of the statute.¹⁸ This principle of law has been applicable in Minnesota condemnation law for well over one hundred years. For example, this Court has stated:

In these [condemnation] proceedings the district court gets jurisdiction only by an appeal such as the statute allows, and if the question were there presented whether the statute gave an appeal from the decision of the commissioners, sought to be removed by the appeal, the court would have to decide it. To sustain the jurisdiction the appeal must be valid, not merely in form, but in substance; it must bring to the district court a matter which the statute intends may be removed by appeal and reheard there. An appeal,

¹⁸ Specifically, the concurring opinion cautions against reliance on the "strict adherence" rule as stated in *Radosevich*, which it notes was subsequently followed by this Court in *Holt, Ball and Goins. Adelman*, 590 N.W.2d at 335.

bringing to that court any other matter, could not give the court jurisdiction to rehear such matters. This act, and it is probably the same with every act regulating condemnation proceedings, did not intend to give an appeal and a retrial in the district court upon any award which it did not authorize the commissioners to make.

In Re Stees, 28 Minn. 326, 329, 9 N.W. 879, 881 (1881); *see also*, *Schwede v. Town of Burnstown*, 35 Minn. 468, 469, 29 N.W. 72 (1886) (the appeal, being purely statutory, must be taken as the statute directs, and hence the filing of the duly-approved bond within the 30 days is a jurisdictional requisite of an effectual appeal).¹⁹

Moreover, the “strict adherence” rule is a rule applicable in a wide variety of statutory actions, making its application in a condemnation case by no means unique.²⁰ Thus, *Tollefson’s* application of the strict adherence requirement did not constitute a radical departure from ordinary condemnation practice. To the contrary, its application in condemnation cases has been this Court’s ordinary historic practice.

¹⁹ The *Adelmann* concurrence cautioned against reliance on cases that did not directly involve Chapter 117 or its antecedents. *Adelmann*, 590 N.W.2d at 335. Nevertheless, in construing Chapter 117 this Court has stated that while a condemnation statute may not be identical to Chapter 117, when the provisions are similar, the rationale of a case may be applied by analogy. *State v. Radosevich*, 249 Minn. 268, 273, 82 N.W.2d 70, 73 (1957).

²⁰ *See, e.g.*, *State v. Bies*, 258 Minn. 139, 147-48, 103 N.W.2d 228, 234-35 (1960) (taxation); *Ortiz v. Gavenda*, 590 N.W.2d 119, 120-22 (Minn. 1999) (wrongful death action); *Acton Constr. Co. v. Commissioner of Revenue*, 391 N.W.2d 828, 835 (Minn. 1986) (taxation); *Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 767-68 (Minn. 1977) (real estate assessments) *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 714 (Minn. Ct. App.), *rev. denied*, (Minn. April 27, 1997) (action pursuant to Minnesota Human Rights Act).

Third, *Tollefson's* holding that a district court does not obtain subject matter jurisdiction over an attempted appeal unless the statutory requirements are met does not constitute a radical departure from normal condemnation procedure. Rather, in this regard *Tollefson* actually applies this Court's established precedent.

This Court recently stated that “[a]ll parties agree, *as they must*, that section 117.145 prescribes the steps necessary to perfect an appeal from a condemnation commissioners’ award.” *Housing and Redev. Auth. for the City of Richfield v. Adelman*, 590 N.W.2d 327, 330 (Minn. 1999) (emphasis added). If the steps necessary to perfect an appeal are not taken, a court lacks subject matter jurisdiction over an appeal. *State v. Sullivan*, 265 Minn. 161, 163-65, 121 N.W.2d 590, 592-94 (1963) (trial court correctly determined that it had no jurisdiction over the subject matter of an untimely attempted appeal from municipal court to district court) (citing, *State v. Johnson*, 242 Minn. 148, 64 N.W.2d 145 (1954) and *Jesmer Co. v. Wurdemann-Hjelm Corp.*, 250 Minn. 458, 85 N.W.2d 207 (1957)). Other jurisdictions are in accord.²¹ Here, Appellants failed to perfect their attempted appeals when they failed to serve all respondents with their notices

²¹ See, e.g., *Ganey v. Barefoot*, 749 F.2d 1124 (4th Cir. 1984) (district court lacked subject matter jurisdiction because appellant failed to perfect appeal); *White v. Board of Med. Registration and Examination of Indiana*, 235 Ind. 572, 577, 134 N.E.2d 556, 560 (Ind. 1956) (failure to perfect an appeal from a court within time deprives the court of review of jurisdiction of the subject matter of the particular appeal); *DuPaul v. North Dakota Dept. of Transp.*, 672 N.W.2d 680, 681 (N.D. 2003) (affirming district court’s dismissal of administrative appeal because appellant failed to properly perfect the appeal under the statutory requirements); *Petta v. Department of Labor and Indus.*, 68 Wash.App. 406, 407, 842 P.2d 1006, 1007 (Wash. Ct. App. 1992) (dismissing appeal from Board to superior court because appellant’s failure to perfect the appeal deprived the superior court of subject matter jurisdiction).

of appeal. And, as discussed above in Section II, this Court has consistently held that “[i]t is elementary that the right of appeal under our condemnation proceedings is governed by statute and that, unless the conditions prescribed by the statute are observed, the court acquires no jurisdiction.” *State v. Radosevich*, 249 Minn. 268, 271, 82 N.W.2d 70, 72 (1957); *accord*, *County of Hennepin v. Holt*, 296 Minn. 164, 168, 207 N.W.2d 723, 726 (1973); *County of Ramsey v. Ball*, 291 Minn. 225, 227, 190 N.W.2d 495, 496 (1971); *State v. Goins*, 286 Minn. 54, 57, 174 N.W.2d 231, 233 (1970). If “no jurisdiction” is acquired, subject matter jurisdiction over an attempted appeal is not acquired and, in that circumstance, the district court shall dismiss the action. Minn. R. Civ. P. 12.08(c). Because the conditions prescribed in Minn. Stat. §117.145 (2004) were not observed in this case, the district court properly dismissed the appeals.

Tollefson does not represent a radical departure from the normal condemnation procedure. To the contrary, it actually applies established precedent and that precedent should continue to apply to condemnation appeal requirements.

CONCLUSION

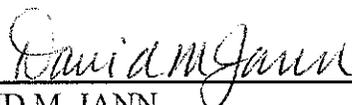
The Minnesota Legislature has defined the requirements necessary to perfect an appeal of a commissioners’ award to the district court. Appellants did not comply with those requirements. The district court properly dismissed the attempted appeals on the basis that it did not obtain jurisdiction over appeals that were attempted in disregard of

the statutory requirements. The district court properly applied this Court's precedent. The State therefore respectfully requests that this Court affirm the decision of the court of appeals.

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