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NO. A10-528

State of Minnesota
In Court of Appeals

City of Saint Paul,

Appellant,

vs.

William A. Eldredge,

Respondent,

and

Nancy Dudley Kelly, William Carter, Mark Quayle, individually and as members of the Saint Paul Civil Service Commission,

Respondents.

APPELLANT CITY OF SAINT PAUL'S BRIEF, ADDENDUM AND APPENDIX

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STATEMENT OF THE ISSUE

DID THE TRIAL COURT PROPERLY CONSTRUE MINN. STAT. § 197.46 AS THE SOLE AVENUE FOR APPEAL BY AN EMPLOYER IN A VETERAN'S PREFERENCE ACTION?

District Court holding: In granting Respondent Eldredge's motion to dismiss the District Court held Minn. Stat. § 197.46 was the proper and sole avenue for appeal by the employer under the Minnesota Veteran's Preference Act. Add 2-5.

Apposite cases and authority:
Tuma v. Comm'r of Economic Security, 386 N.W.2d 702, 706 (Minn. 1986)
State v. Jarvis, 665 N.W.2d 518, 522 (Minn. 2003)
Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274 (Minn.1995)
Minn. Stat. § 197.46
Minn. Stat. § 645.08(1)

DID THE TRIAL COURT PROPERLY CONSTRUE MINN. STAT. § 484.01 AS INAPPLICABLE TO APPEALS BY AN EMPLOYER UNDER THE VETERAN'S PREFERENCE ACT?

District Court holding: In granting Respondent Eldredge's motion to dismiss the District Court held that Minn. Stat. § 484.01, subd. 2 was inapplicable to appeals by the employer under the Minnesota Veteran's Preference Act. Add 2-5.

Apposite cases and authority:
Septran, Inc. v. Indep. Sch. Dist. No. 271, Bloomington, Minn., 555 N.W.2d 915 (Minn. Ct. App. 1997)
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STATEMENT OF THE CASE AND FACTS

Appellant, City of Saint Paul, employs Respondent William Eldredge as a firefighter. A 12. On February 9, 2009, Appellant sent Respondent Eldredge a notice of intent to terminate his employment. A 1. Pursuant to the Veteran's Preference Act, Minn. Stat § 197.46, Eldredge requested a hearing regarding the Fire Chief's decision to terminate his employment. A 5. That hearing was to be held before the Respondent Saint Paul Civil Service Commission. Prior to the hearing Respondent Eldredge brought a motion for summary disposition. The Commission issued its decision regarding the motion on July 31, 2009, dismissing the Appellant's intent to terminate. A 3-10. It is from that decision that the Appellant petitioned for Writ of Certiorari. A 2.

The Appellant filed the Petition for Writ of Certiorari pursuant to Minn. Stat. § 484.01 on September 18, 2009. A 2. The District Court issued the Writ of Certiorari on September 22, 2009. A 16-17. On December 22, 2009, Respondent Eldredge brought a motion to dismiss the appeal pursuant to Rule 12, Minn. R. Civ. P. Respondent Eldredge maintained the Appellant's Petition for Writ of Certiorari was untimely. A 18-19. The District Court, the Honorable Dale B. Lindman heard arguments on January 13 , 2010. Add 2. On January 18, 2010 the District Court granted Respondent's motion, dismissing the action, holding that the Appellant's Petition for Writ of Certiorari was untimely. Add 2-5. Judgment was entered on January 21, 2010. Add 1.

On March 18, 2010, Appellant filed the Notice of Appeal to the Court of Appeals. A 29-36.

ARGUMENT

THE CITY'S PETITION FOR WRIT OF CERTIORARI UNDER MINN. STAT. § 484.01 IS TIMELY AND PROPER AND THE DISTRICT COURT'S JUDGMENT MUST BE REVERSED.

The Court below granted Respondent Eldredge's motion for dismissal pursuant to Minn. R. Civ. P. 12.03 finding the Appellant's petition for certiorari untimely. The District Court erred in its interpretation of Minn. Stat. § 194.46 and Minn. Stat. § 484.01, by inappropriately construing Minn. Stat. § 197.46 to apply to appeals by the employer or appointing authority. The District Court ignored the clear application of Minn. Stat. § 484.01, subd. 2, which provides the appropriate vehicle for the appeal.

I. Standard of Review.

This matter involves purely legal questions regarding the effect of a statue and this Court is not bound to accept the lower court's decision on them. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utilities Comm'n,* 358 N.W.2d 639, 642 (Minn. 1984). A reviewing court need not defer to the lower court's application of the law when, as in this case, the material facts are not in dispute. *Hubred v. Control Data Corp.,* 442 N.W.2d 308, 310 (Minn. 1989). When a district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, reviewed *de novo* by

appellate courts. *Lefto v. Hoggsbreath Enterprises, Inc.,* 581 N.W.2d 855, 856 (Minn. 1998) (*citing Wallin v. Letourneau,* 534 N.W.2d 712, 715 (Minn. 1995).

II. The District Court erred in its interpretation of Minn. Stat. § 197.46 and § 484.01.

In dismissing the action, the District Court ignored the plain meaning of the two statutes in question.

A. Minn. Stat. § 197.46 provides the right and process for an appeal by a veteran.

Minnesota Statute § 197.46 provides for a process of appeal by a veteran and does not provide for a similar process by the employer or appointing authority. It provides in relevant part:

> The **veteran** may appeal from the decision of the board upon the charges to the district court by causing written notice of appeal, stating the grounds thereof, to be served upon the governmental subdivision or officer making the charges within 15 days after notice of the decision and by filing the original notice of appeal with proof of service thereof in the office of the court administrator of the district court within ten days after service thereof.

Minn. Stat. § 197.46 (emphasis added).

The purpose of statutory construction is to determine and give effect to the legislature's intent. *Tuma v. Comm'r of Econ. Sec.,* 386 N.W.2d 702, 706 (Minn. 1986); *see also* Minn. Stat. § 645.16 ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."). In reviewing a statute, the "general rule" is that when the legislature uses a word or phrase lacking express statutory definition it uses the word or phrase "according to its commonly understood meaning."

Matter of Welfare of D.D.S., 396 N.W.2d 831, 832 (Minn. 1986). Thus, words and phrases not defined by statute "must be construed according to the rules of grammar and common usage." *McClish v. Pan-O-Gold Baking Co.,* 336 N.W.2d 538, 543 (Minn. 1983). This general principle is embodied in Minn. Stat. § 645.08(1) ("Words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to their special meaning or their definition.").

It is well established that if the legislature clearly expresses its intent in statutory language, the courts must give effect to this intent without looking beyond the statutory language. This principle of statutory construction, referred to as the "plain meaning rule," has often been articulated by the courts. "When the language is clear and unambiguous, we apply the plain meaning of the statute and must not engage in any further statutory construction." *State v. Jarvis,* 665 N.W.2d 518, 522 (Minn. 2003). "When the meaning of a statute is apparent from its language, no further statutory construction is permitted." *McCaleb v. Jackson,* 307 Minn. 15, 239 N.W.2d 187, 188 (1976). "Where the words of a statute are clear and free from ambiguity, we have no right to construe or interpret the statute's language. Our duty in such a case is to give effect to the statute's plain meaning." *Tuma,* 386 N.W.2d at 706. "It is not for us to rewrite a statute that has no

ambiguities." *Kealy v. St. Paul Hous. & Redevelopment Auth.*, 303 N.W.2d 468, 474 (Minn. 1981).

While Respondent Eldredge maintains that the Minn. Stat. § 197.46 should be read to direct the Appellant's right to appeal, the plain meaning of the words set forth is clear. Minn. Stat. § 197.46 does not control the employer's process to appeal the decision. This statute accords the honorably discharged veteran a right to appeal and sets forth the process. Application of the appeal provisions of Minn. Stat. § 197.46 to the Appellant City violates a basic tenant of construction. The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out. *Phelps v. Commonwealth Land Title Ins. Co.,* 537 N.W.2d 271, 274 (Minn. 1995). When a question of statutory construction involves a failure of expression rather than an ambiguity of expression, "courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature." *State v. Moseng,* 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959). Had the legislature wanted to include a right to appeal by the employer or appointing authority within the statute, it could have done so. Where a statute enumerates persons or things to be affected by its provisions, there is an implied exclusion of others. *Maytag Co. v. Comm'r of Taxation,* 218 Minn. 460, 463, 17 N.W.2d 37, 40 (1944). Here since the statute expressly provided for the veteran's right to appeal; there is an implicit exclusion of other entities and the courts cannot change that exclusion. *See Martinco v. Hastings,* 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963) ("[i]f there is

to be a change in the statute, it must come from the legislature, for courts cannot supply that which the legislature purposely omits or inadvertently overlooks.").

The appeal is triggered by serving the governmental subdivision or officer making the charges with a written notice of appeal within 15 days after notice of the decision. Thereafter, the veteran must file the original notice of appeal and proof of service within ten days after service upon the governmental subdivision or officer. Minn. Stat. § 197.46. Review of the plain meaning of the statute leads to the conclusion that the filing of the appeal [by the veteran] can occur up to 25 days following notice of the decision. In holding the City only "had 15 days in which to petition this Court for certiari [sic] review," the District Court erred by not only applying this statute to the governmental subdivision but also by shortening an inapplicable timeline even further. Add 5.

In the court below, supporting his proposition that the Appellant must appeal pursuant to Minn. Stat. § 197.46, Respondent relied upon the Supreme Court's decision in *Matter of Schrader,* 394 N.W.2d 796 (Minn. 1986). In *Schrader*, the court simply stated: "Upon issuance of the hearing board's report, both the veteran and the employer may appeal to the district court from the decision of the hearing board." *Id.* at 802.[1] The statement itself is an announcement of both parties right to appeal, it does not set forth the

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[1] This statement does not constitute the holding of the court. The holding of the court was set forth as "a hearing board, proceeding under the Veteran's Preference Act, has the power to modify the employer's disciplinary sanction upon a finding of extenuating circumstances." *Id.*

procedure for the appeal by the employer. The Supreme Court has recognized, "courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature." *Genin v. 1996 Mercury Marquis, VIN No. 2MEBP95F9CX644211, License No. MN 225 NSG,* 622 N.W.2d 114, 117 (Minn. 2001) (*quoting Moseng,* 254 Minn. 269, 95 N.W.2d at 11-12). Of further note is that the procedural history of *Schrader* reveals that the case was brought to the district court pursuant to writ of certiorari and not pursuant to Minn. Stat § 197.46. *See S. Minnesota Mun. Power Agency v. Schrader,* 380 N.W.2d 169, 172 (Minn. Ct. App. 1986) (SMMPA petitioned for writ of certiorari from the district court). Therefore, *Schrader* does not stand for the authority that the City must appeal under Minn. Stat. § 197.46.

The Respondent also relies upon the unpublished decision in *Stafne v. City of Ctr. City,* C1-98-835, 1998 WL 778931 (Minn. Ct. App. Nov. 10, 1998) (unpublished). A 31-36. This case is inapplicable here. In *Stafne*, the employee challenged the district court's decision to vacate a veteran's preference board's determination in his favor. The employee, as part of that challenge, alleged that the city's appeal to the district court was untimely because the city council failed to ratify the mayor's decision to appeal within fifteen days. The court, in dicta, referred to Minn. Stat. § 197.46 and *Schrader* in support of its proposition that "[a]n appeal from a VPA board's decision may be taken to the district court within 15 days after notice of the decision." *Stafne,* at *3. A 33. After examination of the powers of a statutory city, the court held that the city's appeal was

timely. The analysis set forth above encompasses the misconceptions of the court's statements.

Further, in the case at bar the appeal below was brought pursuant to Minn. Stat. § 484.01, subd. 2 which provides the avenue for appeal for cities of the first class. Center City, Minnesota has a population of 582 is not a city of the first class. The *Stafne* decision cannot be read to be dispositive of the issue before this court.

B. Minn. Stat. § 484.01, provides for an appeal by the employer or appointing authority.

Minnesota Statute § 484.01, subd. 2 provides the process by which an employer or appointing authority in a first-class city may take an appeal. It provides:

> Notwithstanding any law to the contrary, the district court has jurisdiction to review a final decision or order of a civil service commission or board upon the petition of an employee or appointing authority in any first-class city. The employee and appointing authority have standing to seek judicial review in all these cases. Review of the decision or order may be had by securing issuance of a writ of certiorari within 60 days after the date of mailing notice of the decision to the party applying for the writ. To the extent possible, the provisions of rules 110, 111, and 115 of the Rules of Civil Appellate Procedure govern the procedures to be followed. Each reference in those rules to the Court of Appeals, the trial court, the trial court administrator, and the notice of appeal must be read, where appropriate, as a reference to the district court, the body whose decision is to be reviewed, to the administrator, clerk, or secretary of that body, and to the writ of certiorari, respectively. This subdivision does not alter or amend the application of sections 197.455 and 197.46, relating to veterans preference.

Minn. Stat. § 484.01, subd.2.

In enacting Minn. Stat. § 481.01, subd. 2, the legislature has expressly provided an avenue of appeal through the vehicle of a writ of certiorari. The statute is unambiguous and this Court must give full effect to the legislature's intent and apply the plain meaning of the statute and not engage in further statutory construction.

Respondent has argued that the civil service commission was sitting or acting as the veteran's preference board, thus they are no longer an ordinary civil service commission and Minn. Stat. § 484.01, subd. 2 does not apply. Respondent presents no authority for this proposition. While it is true that Minn. Stat. § 197.46 directs the composition of the board in this case to be members of the Saint Paul Civil Service Commission, the commission does not take on an alternate persona. Further, the plain reading of Minn. Stat. § 484.01, subd. 2 provides for certiorari appeal not only from "commissions" but also from "boards."

Respondent has also argued that the last sentence of Minn. Stat. § 484.01, subd. 2 controls making the statute inapplicable to any appeal (either by the appointing authority or employee) in a veteran's preference case. This is clearly not what the language states. As noted above, Minn. Stat. § 197.46 provides a process for appeals by the veterans themselves. It is silent and inapplicable to an appeal brought by the employer or appointing authority.

If there is a conflict between the two statutes, the well established rules of statutory construction require this court to harmonize apparently conflicting provisions where

possible. *Septran, Inc. v. Indep. Sch. Dist. No. 271, Bloomington, Minn.,* 555 N.W.2d 915 (Minn. Ct. App. 1996) (*citing* Minn. Stat. § 626.25, subd. 1 (requiring that two conflicting laws be construed so as to give effect to both) and Minn. Stat. § 645.17(2) (directing courts to give effect to all statutory provisions)); *see also Country Joe, Inc. v. City of Eagan,* 548 N.W.2d 281 (Minn. Ct. App. 1996) *aff'd,* 560 N.W.2d 681 (Minn. 1997) (courts must assume that the legislature intends statutes to be effective and certain, Minn. Stat. § 645.17(2), and must construe statutes in such a way to give effect, where possible to each of two conflicting provisions).

Minn. Stat. § 197.46 is silent with respect to the right and procedure for appeal by an employer. Minn. Stat. § 484.01, subd. 2 provides the right and mechanism for appeal by the employer and appointing authority. The two are not mutually exclusive and both laws can be given their full effect. Yet the District Court erred by giving effect to only one statute.

Respondent has argued that providing the veteran only 15 days in which to appeal a veteran board's finding and providing the employer 60 days is unfair and prejudicial to the veteran. Respondent has argued that the 60 day period delays reinstatement to his position. However, the Veteran's Preference Act prohibits removal of the veteran from his or her position except for incompetency or misconduct shown after a hearing. Minn. Stat. § 197.46. The veteran's pay, benefits and position within the organization continues until the board determines removal is warranted. If as here, the board has not heard and

determined the issue of incompetency or misconduct, there is not "removal." There is no need for "reinstatement." The difference in appeal timelines has no prejudicial effect upon a veteran. The District Court erred in ordering "reinstatement," and the order should be vacated.

Here looking at the "plain meaning" of each of these statutes leads to but one conclusion, the City has properly brought its appeal under the authority and procedures provided in Minn. Stat. § 484.01, subd. 2. The City has met all the requirements to secure the writ. The City of Saint Paul is a first-class city.[2] The City is seeking review, as the appointing authority, of a decision rendered by one of its boards by petition for writ of certiorari. That petition was filed within 60 days after the date of mailing notice of the decision to the party applying for the writ.[3]

Minnesota Statute § 484.01 is clear and free from ambiguity, the Appellant (as the appointing authority) may secure a writ of certiorari within 60 days after the date of mailing the notice of decision. The Appellant has met this timeline and review pursuant to the writ of certiorari is proper.

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[2] A City of the First Class has more than 100,000 occupants. Minn. Stat. § 410.01. St. Paul's population exceeds 250,000. *See* Exhibit A, attached to the Affidavit of Gail Langfield. A 21–22.

[3] Respondent Eldredge has not yet provided the City with a Notice of Decision.

CONCLUSION

For the above stated reasons, Appellant respectfully requests this Court reverse the decision and judgment of the District Court, vacate the award of costs and disbursements, and remand this case for further proceedings.

Respectfully submitted,

Dated: April 19, 2010

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