

CASE NO. AO6-1943

STATE OF MINNESOTA
IN COURT OF APPEALS

GARY REYNOLDS
Appellant,

v.

MINNESOTA DEPARTMENT OF HUMAN SERVICES and
DAKOTA COUNTY EMPLOYMENT AND ECONOMIC ASSISTANCE,
Respondents,

APPELLANT'S BRIEF AND APPENDIX

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I. STATEMENT OF LEGAL ISSUE

WHETHER RULE 6.05 OF THE MINNESOTA RULES OF CIVIL PROCEDURE APPLIES TO AN APPEAL OF A DECISION OF THE COMMISSIONER OF THE DEPARTMENT OF HUMAN SERVICES UNDER MINN. STAT. § 256.045, SUBD. 7 WHEN THE DECISION BEING APPEALED HAS BEEN ISSUED BY MAIL, THEREBY ADDING 3 DAYS TO THE TIME PERIOD WITHIN WHICH SUCH AN APPEAL MUST BE FILED.

The trial court held in the negative.

Minn. Stat. § 256.045, subd. 7.
D.F.C. v. Commissioner of Health, 693 N.W.2d 451, 453 (Minn. App. 2005)
Kenzie v. Dalco Corp., 309 Minn. 495, 245 N.W.2d 207 (1976)

II. STATEMENT OF THE CASE AND OF THE FACTS

Gary Reynolds applied for General Assistance Medical Care (GAMC) in April

2005. At the time he applied Mr. Reynolds was in the hospital recovering from a heart attack and he was seeking help in paying for his cost of care since he had no insurance. The application was denied by Dakota County Employment and Economic Assistance (county agency) because he stated on his application that he owned certain stocks and an individual retirement account the values for which the county agency asserted exceeded the \$1000 asset limit for GAMC.

Mr. Reynolds appealed this decision to the Department of Human Services under Minn. Stat. § 245.045, subd 7. A hearing on the appeal was conducted on September 27, 2005 before a human services judge who issued a recommended order which was approved by the Commissioner's representative. The decision, dated November 10, 2005, affirmed the denial of Mr. Reynold's GAMC application on the ground that the value of the stocks he owned did exceed the GAMC limit and rejected his claim that he was self-employed and they should be treated as his stock in trade.

Mr. Reynolds requested reconsideration of the decision by the chief human services judge but this was rejected in a notice dated November 15, 2005. He served a Notice of Appeal of this decision on the Commissioner and county agency by mail on December 19, 2005 and filed the Notice of Appeal with the Dakota County Court Administrator on the same day.

A hearing before District Court Judge Richard G. Spicer was held on August 9, 2005. Judge Spicer signed his decision the same day, holding that the appeal to the District Court was untimely because it had been served and filed 34 days after the Commissioner.

Appellant's Notice of Appeal to the Court of Appeals was filed by this court on October 13, 2006.

III. STANDARD OF REVIEW

The standard of review in cases involving appeals under Minn. Stat. § 256.045, drawn from Minn. Stat. § 14.69 of the Minnesota Administrative Procedure Act, is whether the decision of the Commissioner is supported by substantial evidence or is otherwise arbitrary, capricious, or erroneous as a matter of law. *Brunner v. Minn. Dept. of Public Welfare*, 285 N.W.2d 74 (Minn. 1979). This standard applies even when the district court has already reviewed the Commissioner's decision and has not itself made independent factual determinations.

[W]here the district court itself acts as an appellate court regarding the agency decision, this court will independently review the agency's record. . . . Thus, this court conducts a de novo review of legal issues, and is not bound by the legal conclusions of the district court or of the agency. [citing *In re Occupational License of Hutchinson*, 440 N.W.2d 171, 175 (Minn. Ct. App. 1989)]

Dullard v. Minn. Dept. of Human Services, 529 N.W.2d 438, 442 (Minn. Ct. App. 1995). See also *Matter of Kindt*, 542 N.W.2d 391, 394 (Minn. Ct. App. 1996).

Similarly in *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 822 (Minn. 1977) the Minnesota Supreme Court held:

We are of the opinion that in reviewing the decisions of administrative agencies this court performs essentially the same functions as the district court and is governed by the same scope of review. Accordingly, the usual rule requiring deference to trial court decisions does not apply.

The Supreme Court made the same holding in *Appeal of Signal Delivery Serv., Inc.*, 288 N.W.2d 707, 710 (Minn. 1980):

On review of decisions of administrative agencies, an appellate court is not bound by a district court's decision; rather, the appellate court may conduct an independent examination of the record and decision and arrive at its own conclusions as to the propriety of the determination.

IV. ARGUMENT

Rule 6.05 of the Rules of Civil Procedure applies to determine the deadline for filing an appeal to District Court under Minn. Stat. § 256.045, subd. 7. The dismissal of the Appellant's appeal to the District Court should be reversed.

The very simple issue in this case is whether the 30 day appeal time limit under Minn. Stat. § 256.045, subd. 7 is extended by 3 days under Rule 6.05 of the Minn. Rules of Civil Procedure when a decision of the Commissioner of Human Services is mailed.

The relevant facts concerning this case are not in dispute. Appellant was notified of the Commissioner's denial of his request to reconsider the original decision in his case by a letter dated November 15. This letter was mailed to Appellant, although there is no evidence in the record as to when it was actually placed in the mail. Mr. Reynolds served and filed his appeal to the District Court on December 19, 2006, 34 days after the date of the letter denying reconsideration¹.

The District Court held that since the statute provides that the 30 day period begins when the decision is "issued," Rule 6.05 does not apply because that rule only authorizes an additional 3 days "...when someone is required to do something within a prescribed period after *service* of a paper by mail." (emphasis in original)

¹The Commissioner's decision was issued on November 15, 2005, making the 33rd day December 18. But that day was a Sunday. Minn. Stat. § 645.15 as well as Rule 6.01 of the Rules of Civil Procedure provide that the applicable time period is extended to the following day.

The issue in this case was referenced, but not decided, by this court in *D.F.C. v. Minn. Commissioner of Health*, 693 N.W.2d 451 (Minn. App. 2005). Nonetheless, in that case this court held that when a decision under §256.045, subd . 7 is mailed to the parties the date when the decision is “issued” for purposes of appeal is the date it is mailed, not when it is dated: “We conclude that under Minn. Stat. § 256.045, subd. 7, the commissioner “*issues*” the order by mailing the order to the person involved.” (emphasis in original) Because the decision in *D.F.C.* rested on separate and independent grounds this court declined to address the specific issue of whether Rule 6.05 applied to add three more days when the decision is “issued” by being mailed. 693 N.W.2d at 455.

Nonetheless, the holding *D.F.C.* clearly rejects the holding of the trial court in this case that the term “issue” in § 256.045, subd. 7 places that statute outside the scope of Rule 6.05 solely because that rule only uses the term “serve.” *D.F.C.* construes the term “issued” to be synonymous with the term “mailed” when in fact the Commissioner “issues” a decision by mail for purposes of applying the other provisions of that section.

While *D.F.C.* did not decide the specific issue of whether Rule 6.05 applies to appeals under § 256.045, subd. 7, other cases have clearly held that Rule 6.05 does apply in highly similar contexts to add three days to the applicable appeal time limits when the decision of an administrative body being appealed to a court is sent to the parties by mail. In *Kenzie v. Dalco Corp.*, 245 N.W.2d 207 (Minn. 1976) the court held that Rule 6.05 applied to extend the appeal period under Minn. Stat. § 268.10, subd. 8 which at that time provided that review by writ of certiorari of an unemployment compensation decision could be obtained provided the writ was issued and served “within 30 days after the date

of mailing notice...” See also *Sorenson v. Lifestyle, Inc.*, 674 N.W.2d 439 (Minn App. 2004) (same holding, citing *Kenzie*)

Similarly, in *Flame Bar, Inc. v. City of Minneapolis*, 295 N.W.2d 586 (Minn 1980) the Minnesota Supreme Court noted that the 30 day appeal period under Minn. Stat. 15.024, subd 2, in combination with Rule 6.05, required that the appeal under that statute had to be filed within 33 days after being served by mail. And in *Wilkins v. City of Glencoe*, 479 N.W.2d 430 (Minn App 1992) this court held that Rule 6.05 applied to add three days to the time period within which to perfect removal of a conciliation court case to the District Court under Minn. Stat. § 487.30, subd. 9 and Minnesota Rules of Conciliation Court 1.21 where, as here, the decision was sent to the parties by mail.

The *Wilkins* case is particularly instructive as applied to this case because the Conciliation Court rules being interpreted in that case provided that the appeal time period began when the notice of the decision was mailed to the parties. Clearly, the Court in *Wilkins* did not find that the absence of the term “serve” in the Conciliation Court rule was significant in concluding that Rule 6.05 applied.

The *Wilkins* court noted as well the relevance of Rule 81.01(a) of the Minnesota Rules of Civil Procedure which provides that the Rules “...do not govern pleadings, practice and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent or in conflict with the rules.” Appendix A did not except Conciliation Court proceedings from the application of the Rules in the *Wilkins* case. Nor does Appendix A except proceedings under Minn. Stat. Chap 256 from the application of the Rules in this case.

This court also applied Rule 6.05 to extend the time period in which to file a motion to vacate an arbitration award under Minn. Stat. § 579.19, subd. 2 when the award was mailed to the parties. *Holm v. Casino Resource Corp.*, 632 N.W.2d 238, 241 (Minn App 2001) In this case the statutory time period in which to move to vacate the award was triggered by “delivery” of the award. This court noted, as did the trial court in this case, that Rule 6.05 uses the term “service” not “delivery.” But this court concluded:

“The term “service” used in Rule 6.05 is analogous with the term “delivery” found in Minn. Stat. § 579.19, subd. 2. Thus we conclude that delivery of the arbitration award occurred when the arbitration award was mailed on June 5, 2000.

This court clearly concluded that the applicability of Rule 6.05 to extend the period in which to seek judicial review of decisions in administrative and non-judicial proceedings does not hinge on the unique and at times idiosyncratic terminology used to describe the manner in which those decisions are sent to the parties. If the decision is mailed, the appellate courts have consistently held that Rule 6.05 applies to add an additional three days to the applicable time period in which to seek review.

The concept that the Rules of Civil Procedure can be and have historically been applied outside the strict confines of District Court proceedings was explicitly recognized in *E.N. v. Special School District No. 1*, 603 N.W.2d 344, 348 (Minn App 1999) In this case the court ultimately held that Rule 6.05 did not apply to extend an appeal period in an appeal from one administrative body to another. But it noted the Rule had been applied in appeals from an administrative body to the district courts: “We begin by recognizing that courts have applied the rules of civil procedure beyond the district court arena.” (citing *Kenzie* and *Wilkins*, *supra*). And the court commented specifically that *Kenzie*

involved the applicability of the Rules to an appeal from an administrative body to a state court proceeding. *Id.*

In conclusion, the case law in Minnesota is well established that Rule 6.05 applies to extend the relevant time period in which to seek judicial review by the District Court of a decision in administrative proceedings such as those under § 256.045, subd. 7. The trial court's ruling to the contrary is clearly not consistent with those decisions and should be reversed.

Respectfully Submitted,



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Dated: November 10, 2006

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).