

NO. A11-2030

State of Minnesota
In Court of Appeals

In Re Application of
Skyline Materials, Ltd. for Zoning Variance

APPELLANT'S REPLY BRIEF

Jay T. Squires (#204699)
RATWIK, ROSZAK & MALONEY, P.A.
300 U.S. Trust Building
730 Second Avenue
Minneapolis, MN 55402
(612) 339-0060

*Attorneys for Appellant
Houston County*

Michael Murphy (#0347449)
RIPPE, HAMMELL, MURPHY, PLLP
110 East Main Street
Caledonia, MN 55921
(507) 725-3361

*Attorneys for
Skyline Materials*

Gregory Schultz (#122099)
GREGORY SCHULTZ
LAW OFFICE
225 South Kingston Street
Caledonia, MN 55921
(507) 725-3737

Attorney for Respondents Fields

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ARGUMENT

I. INTRODUCTION

Respondents in their brief offer a number of policy-based arguments supporting their position in this case. These arguments ignore the fundamental fact that the district court lacked jurisdiction in this case as a result of defective service of process.

II. SUBJECT-MATTER JURISDICTION IS A BRIGHT LINE

Citing the district court's September 14, 2011 order, Respondents assert that the policy interest in resolving cases on their merits outweighs any "procedural technicality" that exists in this case. See Respondents' Brief, p. 9. However, subject-matter jurisdiction, or the absence thereof, is not a procedural technicality.

Subject-matter jurisdiction is a threshold issue that goes to the heart of a court's ability to act. Subject-matter jurisdiction is absent where a party fails to properly initiate a statutorily-based appeal within the statutorily-prescribed period. See, e.g., Marzitelli v. City of Little Canada, 582 N.W. 2d 904, 906 (Minn. 1988) (failure to properly effect appeal of special assessment within 30 day statutory period deprived district court of subject-matter jurisdiction); Judd v. State by Humphrey, 488 N.W. 2d 843, 844-45 (Minn. Ct. App. 1992) (failure to properly effect appeal of eminent domain decision within statutory appeal period deprived district court of subject-matter jurisdiction); Hansing v. McGroaty, 433 N.W. 2d 441, 442 (Minn. Ct. App. 1988) (court lacked jurisdiction over matters related to respondents who were not properly served within 90 day statutory appeal period).

III. A COURT’S POWER TO DEFINE THE PROCEDURES FOR A STATUTORY APPEAL, IN THE ABSENCE OF A STATUTORY PROCESS, DOES NOT INCLUDE THE POWER TO DEFINE THE METHOD OF SERVICE OF PROCESS

Respondents also argue that the district court in this case had the inherent authority to cloak itself with subject-matter jurisdiction based on its general authority to define “processes” for a statutory appeal. This argument is also misplaced.

A court’s power to define processes relates to how the district court action will be managed in a procedural sense; The power to define the process contemplates the notion that the matter is properly before the district court, i.e. that the district court has power to act so as to define the process. Stated another way, the power to define a process presumes the existence of subject-matter jurisdiction.

The case cited by Respondents for the above proposition Oronoco School District v. Town of Oronoco, 212 N.W. 7 170 Minn. 49 (Minn. 1927), states:

When jurisdiction over certain subject-matter is conferred upon a court and no procedure is provided by the statute, the court will proceed under its general powers and adopt such procedure as is necessary to enable it to exercise and make effective the jurisdiction thus granted.

Id. at 9, 52.

The deficiencies in service of process in this case deprived the district court of power to define the process. Consistent with the Oronoco pronouncement, the district court had not been conferred with certain subject-matter jurisdiction because Respondents did not properly serve the County.

IV. RULE 5.02 DOES NOT APPLY

Respondents argue, as they did in district court, that their original district court pleading was subject to the service requirements of Rule 5.02 of the Minnesota Rules of Civil Procedure. Rule 5.02 provides, however, that it applies to pleadings "...subsequent to the original Complaint." It is inapplicable on its face to the Complaint, Notice of Appeal, or whatever the appealing party wishes to call the first pleading filed in district court.

V. NO CATCH 22 CIRCUMSTANCE EXISTS

Finally, Respondents argue that the district court's order is consistent with the interests of justice because it avoids a service "quandary" for those wishing to appeal county variance decisions. To the contrary, nothing would prevent a party from serving the County Board Chair or Auditor, and serving a copy on the County Attorney as well if they felt it necessary. Notwithstanding the lack of a quandary, Appellant agrees it would be appropriate for this Court to render a clear decision consistent with the service requirements of Rule 4.03 (e)(1) of the Rules of Civil Procedure.

CONCLUSION

For the reasons discussed herein, and in Appellant's Principal Brief, this Court should reverse the district court's September 14, 2011 order.

RATWIK, ROSZAK & MALONEY, P.A.

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Jay T. Squitres
Atty. Reg. No. 204699
300 U.S. Trust Building
730 Second Avenue South
Minneapolis, MN 55402
(612) 339-0060

**ATTORNEYS FOR APPELLANT
HOUSTON COUNTY**

RRM: #160389/lmj