

CASE NO. AO6-1943

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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GARY REYNOLDS

*Appellant,*

v.

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

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APPELLANT'S REPLY BRIEF

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**Respondents' interpretation of Minn. Stat. § 256.045, subd 7 and Minn. Rule of Civil Procedure 6.05 is incorrect and not supported by applicable law.**

The fundamental issue in this case is quite simple; i.e., when the Commissioner “issues” a decision pursuant to Minn. Stat. § 256.045, subd. 7 does Rule 6.05 of the Minn. Rules of Civil Procedure authorize the addition of 3 days to the time for filing an appeal in District Court? Respondents argue, essentially, that the term “issue” means the same the same thing as “dated” - that the decision is “issued” on the same day it is dated (and thus beginning the appeal time period) regardless of how the decision is in fact communicated to the parties. Obviously, the statute does not define this term. However, this court has quite clearly construed this term to mean the same thing as “mailed” because this is in fact how the Commissioner “issues” these decisions.<sup>1</sup> The Court in *D.F.C. v. Minnesota Comm’r of Health*, 693 N.W.2d 451, 453 (Minn App 2005) made this quite clear:

We conclude that under Minn. Stat. 256.045, subd 7, the commissioner “issues” a the order by *mailing* the order to the person involved. Issuing is not the same as signing, contrary to respondent’s position. We find it entirely possible for someone to sign an order but then leave it on a desk or in a drawer for days while contemplating revisions or contemplating whether or not to sign the order. It would be illogical to count those days against the recipient for appeal purposes. (Emphasis in original; footnote omitted)

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<sup>1</sup>There is no factual dispute in this case, as there was none in *D.F.C.*, that the Commissioner mailed a copy of the decision to Appellant and that this is how the Commissioner routinely notifies parties in all such cases when a decision is “issued.” *D.F.C.*, at 453

Respondents in this case take essentially the same position as the Commissioner in *D.F.C.* and argue that a decision is “issued” when it is dated or signed by the Commissioner, not when it is sent to the parties. As the Court noted in its opinion, adopting this interpretation would raise significant due process issues if a party was effectively precluded from seeking court review of a decision because the decision was “issued” by simply dating or signing the decision on a date that had no connection to when it was actually sent to or otherwise communicated to the parties. The term “issue” must mean more than simply the date on a decision or the date when it is signed. For this reason the Court construed this term to mean the act of making its decision known to the parties so that they could, if they wished, have the full statutory appeal time within which to decide whether to file an appeal and then actually do so.

Respondents argues that if the legislature had intended the term “issued” to mean the same thing as “served” it would have used terminology to that effect. Respondents’ Brief p. 5. But neither did the legislature draft the statute to clearly specify that the appeal time runs from the date of the decision or when it was actually signed regardless of when or how it is communicated to the parties. This argument provides no support for Respondents’ position and begs the question of how to interpret a statute which, as the *D.F.C.* noted, “is not abundantly clear.” *id.*

Respondents also argue that issuing a decision under § 256.045, subd. 7 is “akin” to the filing of a Court of Appeals decision which, in *In re Conservatorship of Klawitter*

(Respondents' Brief, p. 7), was held to not be subject to Rule 6.05 even though the Court of Appeals decision was mailed to the parties. But this case clearly involved interpreting the term "filing," a term that as applied to court decisions is not ambiguous, describes a physical action under its own rules that triggers notice to the parties, and can be independently verified as a public record. These characteristics of court issued decisions are not comparable to those of the Commissioner under § 256.045., subd. 7. There is little in these two processes that is "akin" to one another.

Respondents seek to distinguish the many cases cited in Appellant's Brief that apply Rule 6.05 to extend applicable statutory appeal time periods by three days when the decision was sent to the parties by mail. Respondents' Brief, p. 9. Respondents point to no concrete basis for how to distinguish the holdings in these cases other than to note somewhat different terminology, e.g., "date of mailing" in *Kenzie v. Dalco Corp.*; "date the court administrator mailed notice" in *Wilkins v. City of Glencoe*; "delivery" in *Holm v. Casino Resource Corp.*

However, as noted earlier, the exact meaning of the language used by the legislature in these statutes is not abundantly clear nor is it uniform. Nonetheless, as is equally apparent in these cases, the courts have quite consistently interpreted these varying provisions, with their differing terminology, to be subject to the provision of Rule 6.05. In effect, the courts have held that when a decision capable of appeal is mailed to the parties it is subject to Rule 6.05 in the absence of quite clear language specifying that

the appeal time period begins at a different point, as in the context of seeking review or an appeal of a lower court ruling. No such clear cut statute or rule has been cited by Respondents.

Respondents further argue that Appellant is trying to apply Rule 6.05 both to the beginning and the end of the appeal time period, Respondents' Brief, p. 3, but fails to cite to a portion of appellant's brief where any such claim is made. Appellant made no such argument; respondents are in error. Rule 6.05 applies to add three days to the appeal period simply because the Commissioner sent the decision to the parties by mail. The appeal statute itself authorizes Appellant to initiate the appeal through service accomplished by mail: "Service by mail is complete upon mailing." Minn. Stat. § 256.045, subd. 7; cf. Rule 5.02, Minn. Rules of Civ Procedure ("Service by mail is complete upon mailing."). So long as the documents to be served are deposited in the mail within the applicable time period, there is no deadline for actual delivery to or receipt by the other party.

Respondents' treatment of *State v. Hugger*, 640 N.W.2d 619 (Minn. 2002) and *Lerro v. Quaker Oats Co.*, 84 F.3d 239 (7 Cir. 1996), are also off the mark. *Hugger* concerned the 5 day appeal time limit from a pretrial dismissal of a criminal charge. Both the criminal and civil rules have substantially similar language addressing when time periods will be counted to include Saturdays, Sundays, and legal holidays. Compare Minn. Rules of Crim. Proc, Rule 34.01 ("When a period of time prescribed or allowed is

seven days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.”), *with* Minn. Rules of Civil Pro, Rule 6.01 (“When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.”). Since the court administrator in *Hugger* had mailed the parties a notice of filing the dismissal order, the issue was whether the time period really was 5 days plus 3 for mailing, equaling an 8 day period in which intermediate Saturdays, Sundays, and legal holidays *would* be counted; or whether the 5 day period should be computed by excluding the intervening Saturdays, Sundays and holidays, and *then* adding the 3 day mailing extension.

The court’s analysis was to preserve the application of the 3 day extension which would otherwise be obliterated by an interpretation that negated the 3 day extension by counting the weekends and holidays. “This approach ensures that a litigant has approximately the same effective time to respond whether service is accomplished in person or by mail.” *Hugger*, 640 N.W.2d at 624. The Minnesota Supreme Court aligned itself with the Eighth Circuit’s decision in *Treanor v. MCI Telecommunications Corp.*, 150 F.3d 916, 918 (8 Cir. 1998), and the Seventh Circuit’s decision in *Lerro v. Quaker Oats Co.*, 84 F.3d 239, 242 (7 Cir. 1996), that “the only way to carry out Rule 6(e)’s function of adding time to compensate for delays in mail delivery is to employ Rule 6(a) first.”

Respondents miss the point by arguing that using Rule 6.05 here “would defeat the

purpose of the service-by-mail rule by granting Appellant a greater period of time in which to appeal than if he had served his notice in person, and this interpretation would run afoul of *Hugger*.” Respondents. Brief p. 13. To the contrary, the 3 days of Rule 6.05 is needed to give appellant roughly the same amount of time to act – to serve and file his appeal by mail or in person, as he chooses – as if the Commissioner had personally served him with the order.

Finally, the arguments made in the separate letter brief of Commissioner of Human Services should be disregarded for two reasons. First, Respondents’ arguments under Rule 81 and 82 were never presented to the District Court. Only Respondent Dakota County appeared at and submitted an argument at the hearing before the District Court and it did not assert an argument based on Rules 81 or 82. Respondents cannot advance new claims on appeal that were not relied on below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Second, even if these arguments are considered they are not persuasive. Respondent Commissioner cites to Rule 81.02, and also Rule 82, to argue that Rule 6.05 cannot apply because the rule would somehow “supersede the provisions of statutes relating to appeals” (Rule 81.02) and because applying Rule 6.05 would somehow “extend the jurisdiction of the district courts” (Rule 82). However, neither rule has even been cited to the effect urged by respondent.

Respondent cites no case supporting the argument that Rule 82 precludes the

application of Rule 6.05 to the facts of this case. Essentially, Respondent argues that Appellant's interpretation of Rule 6.05 would extend the appellate jurisdiction of the District Court. But this argument is no more than saying that any unwarranted application of Rule 6.05 to add 3 days to a statutory appeal time limit would unlawfully extend the jurisdiction of the District Court. The suggestion that service of a late pleading under the rules of civil procedure extends the jurisdiction of the court was rejected in a case cited in Respondent's brief, *Hayle Floor Covering, Inc. v. First Minn. Const. Co.* 253 N.W.2d 809, 814. The issue in this case is how to appropriately interpret the applicable statute. Accepting the interpretation argued for by Appellant would not extend the jurisdiction of the District Court any more than the essentially identical interpretations of the statutes in the cases cited in Appellant's Brief.

For the reasons expressed above, Appellant respectfully requests that this Court reverse the decision of the District Court and remand this matter for a hearing on the merits of his appeal.

Respectfully Submitted,



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Dated: December 26, 2006

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*Certification*

The undersigned certifies that Appellants' Reply Brief complies with the word count limitation and typeface requirements under Rule 132.01, subd 3 of the Minnesota Rules of Civil Appellate Procedure.

Appellant's Reply Brief was composed using Wordperfect 9. The word count for Appellant's Reply Brief is 1,716.

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