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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1099

Lowell Trom, et al.,
Appellants,

vs.

County of Dodge, et al.,
Respondents,

Masching Swine Farms, LLC,
Respondent.

Filed April 17, 2017
Vacated
Hooten, Judge

Dodge County District Court
File No. 20-CV-15-17

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Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D   O P I N I O N

HOOTEN, Judge

Appellants Lowell Trom and Evelyn Trom (the Troms) challenge the district court's summary judgment upholding respondent Dodge County's (the County) issuance of a conditional use permit (CUP) to respondent Masching Swine Farms, LLC (Masching) for a feedlot operation (the project). Appellants argue that the County's decision was unreasonable and arbitrary because it failed to consider environmental and public health concerns posed by the project as required by ordinance, and the expedited approval process lacked fundamental fairness. In their related appeal, respondents argue that the district court lacked subject matter jurisdiction because appellants failed to timely serve the County with the summons and complaint. Because the district court lacked subject matter jurisdiction, we vacate the district court's decision.

FACTS

In February 2014, Masching applied for a CUP from Dodge County to operate a swine farm on six acres of land. The swine farm was to house hogs equivalent to 720 animal units under Minnesota rules. In April 2014, the County approved the CUP. In May 2014, the Troms appealed the County's decision to grant the CUP to the district court.

While the Troms' appeal to the district court was pending, Masching applied for a Minnesota Pollution Control Agency (MPCA) feedlot permit. As part of that application, Masching indicated that it had obtained sufficient manure spreading agreements with landowners to sell all manure produced at the farm, effectively rendering the farm waste-neutral. The County approved the MPCA feedlot permit in August 2014.

On November 18, 2014, the district court vacated the CUP due to an incomplete application, as it was missing five required items. However, the district court passed no judgment on the merits of the application, and stated that "Masching [was] at liberty to re-apply for a CUP." Masching re-applied for the CUP on November 20, 2014, and the County approved the CUP immediately after a public hearing on December 11, 2014.

In January 2015, the Troms appealed to the district court a second time. The Troms raised several issues, alleging that the second CUP application was also incomplete, that the Dodge County Board of Commissioners (the Board) was biased, that the County utilized a rushed process with an unfair hearing in approving the second CUP application, and that the Board failed to adequately consider the CUP application on its substantive merits. Masching and the County (collectively, respondents) argued that due to insufficient service of process, the district court lacked subject matter jurisdiction over the appeal.

In June 2015, the district court issued an order in which it determined that the Troms substantially complied with the service of process rules, and that the district court had subject matter jurisdiction over the appeal. In May 2016, the district court issued a detailed and thoughtful order granting respondents' motions for summary judgment. After an

exhaustive review of the administrative record, the district court determined that the County's grant of the CUP was reasonable. Both parties now appeal.

D E C I S I O N

In their related appeal, respondents argue that the district court lacked subject matter jurisdiction to hear the Troms' appeal because the County was not properly served with the notice of appeal. The sufficiency of service of process is a question that we review de novo. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

The relevant facts related to service of process are undisputed. On January 7, 2015, within the 30-day timeframe outlined in Dodge County, Minn., Zoning Ordinance § 18.8.6(A) (2016), the Troms delivered their summons and complaint to the Dodge County Sheriff.[1] The Dodge County Sheriff was given instructions to serve one copy on the County Board of Commissioners, specifically "on Commissioner Rodney Peterson, Chair." However, on January 6, 2015, the day before the Troms delivered their summons and complaint to the sheriff, the Dodge County Board of Commissioners held a regularly scheduled election, and Commissioner Peterson, who was the Chair at the time of the December 11, 2014 public hearing, was replaced as chair by Commissioner John Allen. Although Dodge County had actual notice of the Troms' suit, it is undisputed that neither

[1] Service may be effectuated by delivering a summons to the sheriff in the county in which the defendant resides, but "such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant." Minn. R. Civ. P. 3.01(c).

Commissioner Allen nor the county auditor were served with the Troms' summons and complaint within the appropriate time period.

Using a standard, non-descript boilerplate iteration of every affirmative defense allowable, respondents averred in their answer that the Troms' claims "are barred in whole or in part for insufficient service of process" and that "subject matter jurisdiction is lacking." In April 2015, the Troms moved to amend their complaint. Respondents opposed the motion on grounds that the district court lacked subject matter jurisdiction based on insufficient service of process. In June 2015, the district court issued an order denying the Troms' request to amend their complaint, but only after determining that the Troms had substantially complied with the service of process rules and that the district court had subject matter jurisdiction over the appeal.

Quasi-judicial CUP decisions are normally reviewable only by certiorari to this court. *In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007). However, when the ordinance in question authorizes direct review by a district court, a district court may review the CUP determination. *Toby's of Alexandria, Inc. v. County of Douglas*, 545 N.W.2d 54, 56 (Minn. App. 1996), *review denied* (Minn. May 21, 1996). The Dodge County ordinance governing CUPs authorizes district court review provided that an appeal be filed "within thirty (30) days after receipt of notice of the decision." Dodge County Ordinance § 18.8.6(A).

An appeal of a quasi-judicial municipal decision is in fact the commencement of a new civil action, and therefore service of process is governed by Minn. R. Civ. P. 4.03. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477 (Minn. 2013). Rule 4.03(e)(1) requires that service upon the Dodge County Board may be effectuated by delivering a copy of the

summons and complaint "[t]o the chair of the county board or to the county auditor of a defendant county." Failure to comply with the rule 4.03 service requirements results in a lack of subject matter jurisdiction, and mandates dismissal.[2] *In re Skyline Materials, Ltd.*, 835 N.W.2d at 473.

The district court determined that because Dodge County had actual notice of the suit, they were not prejudiced by service upon the wrong person. The district court reasoned that by directing service "to the proper *office*, if not the right *person*," the Troms substantially complied with the rule 4.03 requirements for service. Based on this combination of actual notice and substantial compliance, the district court determined that this case "merits a minimal expansion of the substantial compliance doctrine to cover situations where plaintiffs, except for a technical error made in good faith, an error which does not prejudice the governmental defendant in the least, complied with [r]ule 4(e) in serving a county board." While perhaps well intentioned, this expansion of the substantial compliance doctrine was error.

At the time of the district court's order, whether actual notice combined with substantial compliance was sufficient to confer jurisdiction in substitute service situations was still unclear. *See Turek*, 618 N.W.2d at 612. However, after the district court issued

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[2] The Troms argue that by not averring Commissioner Peterson's inability to be sued in his representative capacity with peculiarity as required by Minn. R. Civ. P. 9.01, respondents have waived the jurisdictional argument. However, where a district court's authority to review a quasi-judicial decision is created by ordinance, as here, compliance with the ordinance is required in order for the district court to obtain subject matter jurisdiction. *In re Skyline Materials, Ltd.*, 835 N.W.2d at 473. Contrary to the Troms' argument, a defense that the court lacks subject matter jurisdiction cannot be waived and may be raised at any time. Minn. R. Civ. P. 12.08(c).

its order, the Minnesota Supreme Court clarified the relationship between actual notice, substantial compliance, and rule 4.03. See *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601 (Minn. 2016). In *Jaeger*, the supreme court held that even in cases of substitute service at a defendant's residence, strict compliance with rule 4.03 was required. *Id*. at 609.

Jaeger clarifies that Minnesota law does not recognize a good faith, actual notice exception to the service of notice rules. *Id*. Thus, service provisions in statutes or ordinances which confer jurisdiction to a district court must be *strictly* followed in order for the district court to acquire jurisdiction. *In re Skyline Materials, Ltd.*, 835 N.W.2d at 477; *cf. Land O'Lakes Dairy Co. v. Hintzen*, 225 Minn. 535, 538, 31 N.W.2d 474, 476 (1948) ("[W]here jurisdiction is specially conferred by statute and the court is expressly prohibited from exercising it unless certain conditions have been complied with, its judgment is not valid unless it appears affirmatively that conditions were complied with.").

Because Minnesota law does not recognize a good faith, actual notice exception to service on a county board, and because it is undisputed that the Troms did not properly serve the sitting Chair of the Dodge County Board of Commissioners or the county auditor as required by rule 4.03 by the deadline in the enabling ordinance, we conclude that the district court lacked subject matter jurisdiction to hear this appeal. We therefore cannot reach the merits of the Troms' appeal.

Vacated.