

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1568**

In the Matter of the Petition of
Melvin J. Cummins for an Order
Determining Boundary Lines

**Filed December 26, 2017
Appeal to proceed
Cleary, Chief Judge**

Hubbard County District Court
File No. 29-CV-11-1453

Paul R. Haik, Krebsbach and Haik, Ltd., Eden Prairie, Minnesota (for appellants Anthony Urdahl, et al.)

Katherine L. Wahlberg, Thomas B. Olson, Olson, Lucas, Redford & Wahlberg, P.A., Edina, Minnesota (for respondent Melvin J. Cummins)

Considered and decided by Cleary, Chief Judge; Ross, Judge; and Bratvold, Judge.

S Y L L A B U S

1. The 60-day appeal period under Minn. Stat. § 508.29(4) (Supp. 2017) applies to any appealable order relating to registered land after its original registration, including an order denying a motion for a new trial.
2. A proper and timely motion of a type specified in Minn. R. Civ. App. P. 104.01, subd. 2, extends the time to appeal an order or judgment that is appealable under Minn. Stat. § 508.29 (Supp. 2017).

SPECIAL TERM OPINION

CLEARY, Chief Judge

In this appeal, which was filed on October 5, 2017, appellants Anthony Urdahl, et al., seek review of an April 19, 2017 order granting respondent Melvin J. Cummins's petition for an order determining boundary lines and an August 17, 2017 order denying appellants' motion for a new trial. The parties are neighboring landowners. In 2011, respondent filed a petition under Minn. Stat. § 508.671 (2010) (amended 2017) to establish a boundary line between his property and appellants' property under the theory of boundary by practical location. The district court granted summary judgment to appellants, ruling that the registration of appellants' title to land conclusively established the boundary line between the parties' properties.

Respondent appealed the dismissal of his petition. In an unpublished opinion, we affirmed in part, reversed in part, and remanded for a trial on respondent's petition. *In re Cummins*, No. A14-0737, 2015 WL 404648 (Minn. App. Feb. 2, 2015), *review denied* (Minn. Apr. 14, 2015).

In December 2016, a court trial was held on respondent's petition. The district court granted the petition in an order filed on April 19, 2017. On May 9, 2017, appellants filed a notice of motion and motion for amended or supplemental findings or a new trial. In an order filed on August 17, 2017, the district court amended three findings and denied appellants' motion for a new trial.

We questioned whether the 30- or 60-day appeal period under Minn. Stat. § 508.29 (Supp. 2017) applies and whether appellants' motion for amended findings or a new trial extended the time to appeal the April 19, 2017 order. The parties filed informal memoranda.

D E C I S I O N

Unless a different time is provided by statute, an appeal may be taken from an appealable order within 60 days after service by any party of written notice of its filing. Minn. R. Civ. App. P. 104.01, subd. 1. Certain types of proper and timely postdecision motions extend the time to appeal the order or judgment that is the subject of the motion. *Id.*, subd. 2.

Respondent argues that the April 19, 2017 and August 17, 2017 orders were appealable under Minn. Stat. § 508.29(3), and that the 30-day appeal period specified in that subsection expired before this appeal was filed. Appellants contend that Minn. Stat. § 508.29(3) does not apply to orders in a proceeding subsequent to registration, and that the 60-day appeal period under Minn. Stat. § 508.29(4) applies. Appellants also argue that their timely motion for amended findings or a new trial extended the time to appeal the April 19, 2017 order. We agree with appellants that Minn. Stat. § 508.29(4) applies to any appealable order relating to registered land after its original registration, and that a proper and timely postdecision tolling motion of a type specified in Minn. R. Civ. App. P. 104.01, subd. 2, extends the appeal period specified in Minn. Stat. § 508.29. Accordingly, this appeal is timely and shall proceed.

A.

The law governing registration of land contains the following appeal provision:

An appeal may be taken to the Court of Appeals from any order or judgment of the district court under this chapter as follows:

(1) from any final decree, within 90 days from its date except that the appeal period for those parties who were not personally served shall be six months from the date of the final decree; upon appeal from the decree, the Court of Appeals may review any intermediate order involving the merits or necessarily affecting the decree;

(2) from any order granting or denying an application to open, vacate, or set aside the decree, within 30 days from the date of the filing of the order;

(3) from any order granting or refusing a new trial, or from any order involving the merits of the proceeding, or some part of them, within 30 days from the filing of the order;

(4) from any order relating to registered land after its original registration, within 60 days from the filing of the order.

All appeals from any order or decree in any proceeding under this chapter shall be as in other civil cases.

Minn. Stat. § 508.29.

Respondent argues that the April 19, 2017 and August 17, 2017 orders were both appealable under Minn. Stat. § 508.29(3), because the April 19, 2017 order involves the merits of the proceeding and the August 17, 2017 order denies appellants' motion for a new trial. Respondent contends that this appeal is untimely because it was filed on October 5, 2017, more than 30 days after the filing of the April 19, 2017 and August 17, 2017 orders.

The time to appeal an order denying a motion for a new trial in an action brought under chapter 508 is governed by Minn. Stat. § 508.29(3). *In re Chesterman*, 420 N.W.2d 263, 264 (Minn. App. 1988). Appellants argue that *Chesterman* is distinguishable because the order in that case denying the motion for a new trial was issued in the original registration action rather than in a proceeding subsequent to registration. We agree.

At the outset, we observe that Minn. Stat. § 508.29 is not a model of clarity. The language in Minn. Stat. § 508.29(3) authorizing an appeal from “any order involving the merits of the proceeding, or some part of them,” if applied literally, would make almost any order in a proceeding under chapter 508 immediately appealable and subject to a 30-day appeal time. As to orders relating to registered land after the original registration, the 30-day appeal period under Minn. Stat. § 508.29(3) conflicts with the 60-day appeal period specified by Minn. Stat. § 508.29(4).

When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both provisions. Minn. Stat. § 645.26, subd. 1 (2016). If the conflict between the two provisions is irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision was enacted at a later session and it is the manifest intention of the legislature that the general provision shall prevail. *Id.*

Subsection (3) of Minn. Stat. § 508.29, authorizing an appeal from any order granting or refusing a new trial or from any order involving the merits of the proceeding or some part of them, is more general than subsection (4) of Minn. Stat. § 508.29, which is

limited to appeals from orders relating to registered land after its original registration. In accordance with the rule of statutory construction under Minn. Stat. § 645.26, subd. 1, the special provision under section 508.29(4), which applies to orders relating to registered land after its original registration, prevails over the general provision, section 508.29(3). Because the April 19, 2017 and August 17, 2017 orders are orders relating to registered land after the original registration, the 60-day appeal period under Minn. Stat. § 508.29(4) applies.

B.

“Unless otherwise provided by law,” certain types of proper and timely postdecision motions extend the time to appeal the order or judgment that is the subject of the motion. Minn. R. Civ. App. P. 104.01, subd. 2. Motions for amended findings and a new trial are included in the list of tolling motions. *Id.*, subd. 2(b), (d).

Unless Minn. Stat. § 508.29 provides otherwise, appellants’ proper and timely motions for amended findings or a new trial extended the time to appeal the April 19, 2017 order granting respondent’s petition. No language in Minn. Stat. § 508.29 precludes the operation of Minn. R. Civ. App. P. 104.01, subd. 2. On the contrary, Minn. Stat. § 508.29 specifies that the appeal shall be as in other civil cases. *Cf. Hous. & Redevelopment Auth. v. Main St. Fridley Props., LLC*, 755 N.W.2d 789, 791 (Minn. App. 2008) (holding that Minn. R. Civ. App. P. 104.01, subd. 2, does not apply to an appeal of an order approving the public use or public purpose, necessity, and authority for the taking under Minn. Stat. § 117.075, subd. 1(c) (2006), because the statute specifies that the order becomes final

unless the appeal is taken within the 60-day appeal period and the statute does not indicate that the matter is to proceed as in other civil actions).

Appellants' proper and timely motions for amended findings or a new trial tolled the time to appeal the April 19, 2017 order under Minn. R. Civ. App. P. 104.01, subd. 2. This appeal of the April 19, 2017 and August 17, 2017 orders is timely, because it was filed within the 60-day appeal period under Minn. Stat. § 508.29(4).

Appeal to proceed.