STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0525

Cheryl L. Stinski,
Appellant,

vs.

Jim Ruedebusch, et al.,
Respondents,

Carlton County,
Respondent.

Filed October 28, 2019
Affirmed
Larkin, Judge

Carlton County District Court
File No. 09-CV-18-1161

Neil Polstein, Polstein Law Offices, P.C., Minneapolis, Minnesota (for appellant)

Curt N. Trisko, Rudy Law Firm, Cloquet, Minnesota (for respondents Jim Ruedebusch and Brenda Ruedebusch)

Jason J. Kuboushek, Francine M. Kuplic, Iverson Reuvers Condon, Bloomington, Minnesota (for respondent Carlton County)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

LARKIN, Judge

Appellant challenges the district court's dismissal of her appeal of respondent county's variance decision as untimely, arguing that the county's notice of the decision was insufficient to trigger the 30-day appeal deadline under Minn. Stat. § 394.27, subd. 9 (2018). We affirm.

FACTS

On April 23, 2018, respondents Jim and Brenda Ruedebusch requested variances from respondent Carlton County for their Barnum property. They sought to add an attached garage and a deck to their home on the property. On May 15, appellant Cheryl L. Stinski, the Ruedebusches' neighbor, emailed the zoning administrator for the county, asking the Carlton County Board of Adjustment to deny the Ruedebusches' variance requests. Later that day, the board held a hearing regarding the variance requests and voted to approve the variance for the attached garage and deny the variance for the deck. On May 23, the county mailed Stinski a written "Notice of Decision," which stated, "Request is hereby **GRANTED** for Jim and Brenda Ruedebusch for the following purpose: *Construct a 24 feet by 24 feet attached garage onto existing nonconforming dwelling.*" The notice also stated, "Request is hereby **DENIED** for Jim and Brenda Ruedebusch for the following purpose: *Construct a deck onto existing nonconforming dwelling.*" Although the record does not indicate the date on which Stinski received that notice, she does not dispute that she received it.

On June 20, Stinski filed a motion in district court, challenging the board's decision. Stinski named the Ruedebusches as the sole defendants.[1] On August 16, Stinski filed an "Amended Summons" and "Amended Complaint" in district court, challenging the board's decision. The parties and district court construed Stinski's amended complaint as an appeal. On August 17, Stinski served her "Amended Summons" and "Amended Complaint" on the county. Stinski served the Ruedebusches on August 23. Respondents moved to dismiss Stinski's appeal, arguing that it was untimely and that the district court therefore lacked jurisdiction. The district court agreed with respondents and dismissed the appeal. This appeal follows.

D E C I S I O N

The issue in this case concerns the application of Minn. Stat. § 394.27, subd. 9, which provides:

> All decisions by the board of adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the state shall have the right to appeal within 30 days, *after receipt of notice of the decision*, to the district court in the county in which the land is located on questions of law and fact.

(Emphasis added.)

The 30-day appeal deadline in Minn. Stat. § 394.27, subd. 9, is jurisdictional. *See Elbert v. Tlam*, 830 N.W.2d 448, 452 (Minn. App. 2013) (holding that failure to serve notice of appeal under Minn. Stat. § 394.27, subd. 9, within the 30-day time period set forth

[1] Stinski's June 20, 2018 motion is not at issue in this appeal.

in the statute is an incurable jurisdictional defect), *review granted* (Minn. Jul. 16, 2013) *and order granting review vacated* (Minn. Sept. 25, 2013). Jurisdiction is an issue of law that this court reviews de novo. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 474 (Minn. 2013).

Stinski contends that "[t]he District Court erred in finding that [her] Receipt of the Mailing started the thirty-day period allowed by [Minn. Stat. § 394.27, subd. 9,] for appealing the grant of the garage variance." Specifically, Stinski complains that the mailing did not include the board's findings, an adequate description of "who won," information regarding the right to appeal, or the timeline for appealing. As to information regarding the appeal process, Stinski argues, "It would seem anomalous, when viewed through a due process lens, to say that a document starts the clock running on any appeal when that document doesn't mention any appeal period."[2] But Stinski agrees that if the written notice was sufficient, then her appeal was untimely and the district court did not err by dismissing it on that ground.

Stinski relies on *Graham v. Itasca Cty. Planning Comm'n*, 601 N.W.2d 461 (Minn. App. 1999), and *In re Appeal of Saldana*, 444 N.W.2d 892 (Minn. App. 1989), in support of her position. In *Saldana*, this court held, "Oral announcement by the Board of Adjustment of its decision does not trigger [the] 30–day appeal period under Minn. Stat. § 394.27, subd. 9 (1988)." 444 N.W.2d at 892. In *Graham*, this court held, "An aggrieved

[2] Although Stinski mentions due process, she does not expressly argue that her right to due process was violated. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S. Ct. 893, 902-03 (1976) (setting forth traditional procedural-due-process analysis).

party's right to appeal a variance decision of a county adjustment board under Minn. Stat. § 394.27, subd. 9 (1998), begins to run when the party receives written notice of the decision." 601 N.W.2d at 463.

Stinski argues that "[t]he Mailing failed to include the kinds of meaningful information required by [Minn. Stat. § 394.27, subd. 9], as construed in *Saldana* and *Graham*." She cites language in *Saldana* and *Graham* that explained that one of the reasons for requiring written notice is the possibility that it could provide more information regarding the basis for the decision and therefore enable informed consideration of the merits of an appeal.[3] For example, in *Saldana* this court said, "[I]t was not until appellants received the Board's order and findings that they were made aware of the basis upon which the Board made its decision. Appellants were thus unable to make a cogent decision whether to launch an appeal until that time." 444 N.W.2d at 894. In *Graham* this court said, "[W]ritten notice would facilitate judicial review by providing aggrieved individuals with the basis for the decision sought to be reviewed." 601 N.W.2d at 465. Stinski concludes that "[i]n the *Saldana* and *Graham* cases, this Court interpreted the phrase 'notice of the decision,' as used in [Minn. Stat. § 394.27, subd. 9,] to include a requirement

[3] That was one of multiple reasons provided for the holdings in *Saldana* and *Graham*. Other reasons included the fact that the county's actual practice was to send written notice, traditional notions of fairness, due-process concerns, previous supreme court decisions construing similar statutes, lack of an undue burden on the governing body, a more definite and unambiguous establishment of the appeal period, reduction in disputes regarding whether a party had actual notice, establishment of a more uniform system of practice, and the preference for written notice in other contexts under the rules of civil procedure. *Graham*, 601 N.W.2d at 465; *Saldana*, 444 N.W.2d at 894.

that any purported notice, to be deemed legally sufficient, must inform the recipient of the bases for the decision."

Stinski reads this court's holdings in *Saldana* and *Graham* too broadly. The relevant issue in those cases was whether oral or actual notice was sufficient to trigger the 30-day appeal deadline. *See Graham*, 601 N.W.2d at 464 (describing relevant issue as whether "Minn. Stat. § 394.27, subd. 9 (1998), require[s] written notice of a board of adjustment's variance decision to commence the running of the 30-day limitations period for appeal"); *Saldana*, 444 N.W.2d at 893 ("Appellants argue that oral notice is insufficient to trigger the 30–day appeal period in subd. 9."). This court held that written notice is required. *Graham*, 601 N.W.2d at 463; *Saldana*, 444 N.W.2d at 892-94. But this court was not asked to determine, and therefore did not determine, whether the written notice must contain the information Stinski demands.

Nonetheless, Stinski argues that "it seems obvious that the Statute contemplates notice actually sent to and received by the aggrieved party and actually containing whatever information this Court interprets the Statute to impart." Stinski urges this court to "make express what it plainly implied in *Saldana* and *Graham*: that a purported notice that provides no information regarding the basis of the decision is not a legally sufficient 'notice' under [subdivision 9]."

Stinski's approach raises an issue of statutory interpretation, which is reviewed de novo. *State v. Overweg*, 922 N.W.2d 179, 182-83 (Minn. 2019). "The goal of statutory interpretation is to effectuate the intent of the Legislature." *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018). "When the language of a statute is plain and unambiguous, it is

assumed to manifest legislative intent and must be given effect." *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). Appellate courts "will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently." *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006). The legislature has set forth factors that may be considered when ascertaining legislative intent including the occasion and necessity for the law; the circumstances under which it was enacted; the mischief to be remedied; the object to be attained; the former law, if any, including other laws upon the same or similar subjects; the consequences of a particular interpretation; the contemporaneous legislative history; and legislative and administrative interpretations of the statute. Minn. Stat. § 645.16 (2018); *see Marks v. Comm'r of Revenue*, 875 N.W.2d 321, 326-28 (Minn. 2016) (applying factors in section 645.16); *see also* Minn. Stat. § 645.08 (2018) (setting forth canons of construction); Minn. Stat. § 645.17 (2018) (setting forth presumptions in determining legislative intent).

Although statutory interpretation is necessary to reach Stinski's desired result, she does not present her argument in that analytical framework. Indeed, Stinski's briefing does not cite or discuss any of the statutory-interpretation principles set forth above. Instead, Stinski relies on this court's statements in *Saldana* and *Graham* and notes that "this Court has repeatedly declared that the Statute is rather bare-bones in its language and thus in need of construction in order to flesh out its particulars," suggesting that this court should add to the language of subdivision 9 because it has done so in the past. For the reasons that follow, we decline to do so.

First, we "will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently." *Reiter*, 721 N.W.2d at 911. Second, as noted above, in *Saldana* and *Graham*, this court was not asked to determine, and therefore did not determine, the necessary content requirements of a notice of decision under Minn. Stat. § 394.27, subd. 9. And third, although the supreme court caselaw on which this court relied in *Saldana* and *Graham* addresses content requirements for notices in other contexts, that caselaw does not support Stinski's argument that a notice of decision must contain the underlying findings of fact, the basis for the decision, and information regarding the right to appeal the decision. For example, in *Rieman v. Joubert*, the supreme court interpreted the meaning of "service of notice . . . of the filing of the decision or order" in Minn. R. Civ. P. 59.03. 376 N.W.2d 681, 683 (Minn. 1985) (quoting Minn. R. Civ. P. 59.03). The supreme court concluded, "It is implicit in the requirement of service that the notice be a written notice. While it does not appear that any particular form of notice must be given, plainly the writing must call to the attention of the recipient *what it is that has been filed and when*." *Id.* (emphasis added). The county's notice in this case satisfied that requirement.

We understand why this court's statements in *Saldana* and *Graham* prompted Stinski's argument. But the holdings of those cases alone do not support Stinski's assertion that a notice of decision under Minn. Stat. § 394.27, subd. 9, is insufficient to trigger the statutory appeal timeline unless it contains the underlying findings of fact, the basis for the decision, and information regarding the right to appeal the decision. Thus, Stinski has not shown that the county's notice of decision was insufficient to trigger the 30-day appeal

deadline. Because it is undisputed that Stinski did not file her notice of appeal within 30 days of receipt of that notice, the district court did not err by dismissing Stinski's appeal as untimely. We therefore affirm.

Affirmed.