

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1496**

Burl Peckman Individually and as Trustee of Burl W. Peckman Living Trust,
Appellant,

vs.

Roseau River Watershed District,
Respondent.

**Filed July 18, 2022
Affirmed
Smith, Tracy M., Judge**

Roseau County District Court
File No. 68-CV-21-284

Alan B. Fish, Alan B. Fish, P.A., Roseau, Minnesota (for appellant)

Michelle E. Moren, Law Offices of Patrick D. Moren, Roseau, Minnesota; and

Louis N. Smith, Charles B. Holtman, Smith Partners PLLP, Minneapolis, Minnesota (for
respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this drainage proceeding to establish an improvement to Roseau County Ditch 16,
appellant Burl Peckman, individually and as trustee of The Burl W. Peckman Living Trust,
challenges the district court's dismissal, for lack of jurisdiction, of his appeal to district

court under Minn. Stat. §§ 103E.091, .095 (2020). Peckman argues that the district court erred by (1) dismissing the appeal as untimely and (2) determining that respondent Roseau River Watershed District had jurisdiction to establish an improvement. Because Peckman's appeal to the district court was untimely, we affirm.

FACTS

Peckman is a landowner affected by the improvement of Ditch 16. On March 6, 2019, the watershed district received a petition for improvement of Ditch 16. The watershed district held a public hearing for review of the preliminary survey report on the Ditch 16 improvement project on July 3, 2019. On June 3, 2020, and July 16, 2020, the watershed district held a two-part final public hearing on the project. Peckman attended the July 16 meeting.

At its next regularly scheduled board meeting on August 5, the watershed district adopted findings and issued an order for improvement of Ditch 16. That order included the watershed district secretary's signed statement, dated August 5, stating, "The above order was filed with me, Roseau River Watershed District Secretary." On August 24, the watershed district emailed the findings and order to the Roseau County auditor.

Peckman served notice of judicial appeal of the August 5 order on the watershed district and the county auditor on May 14, 2021. Peckman challenged the establishment of the improvement plan as well as the watershed district's determination of benefits and damages. Additionally, he argued that the watershed district did not have jurisdiction to establish the project.

The matter came before the district court. The watershed district moved to dismiss the appeal as untimely, asserting that the district court therefore lacked jurisdiction. The district court granted the watershed district's motion.

Peckman appeals.

DECISION

Peckman advances two arguments, both involving jurisdiction. First, he argues that, contrary to the district court's ruling, the district court had jurisdiction over his appeal of the August 5 order and therefore should not have dismissed his appeal. Second, Peckman argues that the watershed district did not have jurisdiction to issue the August 5 order in the first place and that the district court therefore erred by dismissing his challenge. We begin with the district court's jurisdiction.

I. The district court did not have jurisdiction over Peckman's appeal because the appeal was untimely.

A district court properly dismisses an action when the district court lacks jurisdiction over the subject matter. Minn. R. Civ. P. 12.08(c). The subject matter jurisdiction of the district court is a question of law that we review de novo. *See In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007). "Time limits on appeals are jurisdictional and untimely appeals must be dismissed." *In re Establishment of Cnty. Ditch No. 11 (Bevens Creek)*, 511 N.W.2d 54, 57 (Minn. App. 1994), *rev. denied* (Minn. Mar. 31, 1994); *see also In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477 (Minn. 2013) (holding that the district court lacked jurisdiction over an appeal to the district court regarding a county's variance decision that was not initiated within the 30-day statutory period).

Ditch proceedings are governed by Minn. Stat. §§ 103E.005 to .812 (2020), which is titled “Drainage” and is part of a broader statutory scheme related to water. A “drainage system” is “a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority.” Minn. Stat. § 103E.005, subd. 12. A “drainage authority” is “the board or joint county drainage authority having jurisdiction over a drainage system or project.” *Id.*, subd. 9. A watershed district can be a drainage authority, as is the case here. *See* Minn. Stat. §§ 103D.201, .225, 103E.005, subds. 4, 9, 28a, 29 (2020). A drainage authority can establish drainage systems and improvements. Minn. Stat. §§ 103E.212, .215.

A party may appeal to the district court a drainage authority’s order establishing an improvement. Minn. Stat. §§ 103E.005, subd. 11 (defining “drainage project” to include improvements), .095 (providing for appeal of establishment of drainage project). A party may also appeal a drainage authority’s order determining the benefits and damages affecting property owners as a result of the improvement. Minn. Stat. § 103E.091. Under section 103E.095, a party is entitled to a court trial, without a jury, to determine whether an order dismissing, establishing, or refusing to establish a drainage project is lawful and reasonable. Under section 103E.091, a party is entitled to a jury trial to challenge the determination of benefits and damages. If an appeal involves both the establishment of an improvement and the benefits and damages relating to the improvement, a district court first decides the establishment appeal; if the establishment order is affirmed, the benefits-and-damages appeal follows. Minn. Stat. § 103E.095. In his appeal, Peckman challenged

both the establishment of the improvement and the benefits and damages, though his claims were largely focused on the establishment order.

Although the two types of appeal differ, the relevant appeal period, which is at issue here, is the same for both. Both types of appeal require action within 30 days after the drainage authority's order is filed. *See* Minn. Stat. §§ 103E.091, subd. 2 (providing that, for a benefits-and-damages appeal, “[t]he appellant must file a notice of appeal with the auditor within 30 days after the order to be appealed is filed”), .095, subd. 1 (providing that, for an establishment appeal, “[t]he appellant must serve notice of the appeal to the auditor within 30 days after the order is filed”).

The deadline for taking the required action to appeal the watershed district's order thus would normally have been 30 days after the August 5 order was filed. But, due to the COVID-19 pandemic, the legislature had taken action to extend statutory deadlines. Under legislation passed in 2021, “[d]eadlines imposed by statutes . . . shall not expire from the beginning of the peacetime emergency declared on March 13, 2020 . . . through April 15, 2021.”¹ 2021 Minn. Laws ch. 3, § 1.

Peckman served the county auditor on May 14, 2021. In the district court, Peckman argued that the statutory deadline extension meant that the 30-day appeal period did not start running until after April 15, 2021, making the deadline for taking the required action to appeal the watershed district's order May 15, 2021, and thus making his May 14, 2021

¹ This legislation amended a 2020 session law suspending statutory deadlines, which had said that “[t]he running of deadlines . . . is suspended.” 2020 Minn. Laws ch. 74, § 16.

service on the county auditor a timely appeal. But Peckman did not make this argument in his appellate brief to this court. Issues that are not argued in briefs are forfeited. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).² Therefore, we do not address Peckman’s argument that the appeal deadline was May 15, 2021, and we apply the deadline of April 15, 2021.

Peckman did not serve the county auditor with his notice of appeal by April 15, 2021. Thus, his appeal was untimely, and the district court lacked jurisdiction to hear the appeal. *See Establishment of Cnty. Ditch No. 11*, 511 N.W.2d at 57.

Peckman, though, argues that the 30-day appeal period was not triggered because the watershed district did not file its August 5, 2020, order with the county auditor—filing it instead with the secretary of the watershed district—and his May 14, 2021, appeal was therefore timely. Peckman reasons that, though section 103E.095 does not explicitly say that the watershed district must file its order with the county auditor, because the county auditor has certain responsibilities under Minn. Stat. § 103E.325, section 103E.095 must require the watershed district to file its order with the county auditor. We are not persuaded. Section 103E.325 merely details the county auditor’s role in providing notice for the final public hearing and does not mention where or how a watershed district must file an order.

Moreover, neither section 103E.095 nor section 103E.091 specifies where or how a watershed district must file its order. Section 103E.095 requires the party appealing a drainage authority’s establishment order to serve notice of the appeal to the county auditor

² Though he did not brief it, Peckman reasserted the argument in oral argument to this court. The argument is nevertheless forfeited for failure to brief.

“within 30 days after the [drainage authority’s] order *is filed*.” Minn. Stat. § 103E.095, subd. 1 (emphasis added). Section 103E.091 requires the party to file notice of appeal from a benefits-and-damages order with the county auditor “within 30 days after the order to be appealed *is filed*.” Minn. Stat. § 103E.091, subd. 2(b) (emphasis added). The plain language of the statutes does not require a watershed district’s order to be filed with the county auditor. *See State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019) (holding that if the meaning of a statute is unambiguous, then the plain language of the statute controls). If the legislature intended to require that the order be filed with the county auditor, it could have so provided, but it did not. Therefore, Peckman’s argument that the filing of the order with the secretary of the watershed district was insufficient to trigger the appeal period fails.

Peckman also argues that, by filing the order with the watershed district’s secretary rather than with the county auditor, the watershed district did not give proper notice to the affected landowners. But sections 103E.091 and .095 do not require the watershed district to give notice of the order to the affected landowners. Again, if the legislature intended that the watershed district had to give notice of the order to affected landowners, it could have so provided, but it did not. Thus, Peckman’s notice argument also fails.

In sum, Peckman failed to timely appeal, and the district court did not err by dismissing the appeal for lack of jurisdiction.

II. We do not reach the issue of whether the watershed district had jurisdiction to establish the Ditch 16 improvement.

Peckman additionally argues that, because the watershed district failed to follow statutory requirements, it did not have jurisdiction to establish the Ditch 16 improvement, so the August 5 order is void. If the August 5 order is void, Peckman asserts, then the appeals period has not yet begun to run. But Peckman confuses the jurisdiction of the watershed district with the jurisdiction of the district court. And because the district court lacked jurisdiction over this appeal, it did not have jurisdiction to address Peckman's challenge to the watershed district's jurisdiction.

In general, "a drainage authority does not retain perpetual jurisdiction to conduct drainage proceedings . . . but must instead follow the prescribed statutory procedures to establish jurisdiction over each individual proceeding." *In re Bd. of Managers of Bois de Sioux Watershed Dist.*, 818 N.W.2d 583, 586 (Minn. App. 2012). A drainage authority must "strictly comply with statutory procedures for commencing the proceeding" in order to establish jurisdiction over a drainage proceeding. *Id.* at 587.

The way to challenge a drainage authority's jurisdiction to issue an order is to appeal the order to the district court. But if the district court lacks jurisdiction to hear the appeal, it cannot rule on the jurisdiction of the drainage authority. "Until the service of a proper notice of appeal, the district court has no jurisdiction *for any purpose.*" *In re Mikkelson's Estate*, 228 N.W. 174, 175 (Minn. 1929) (emphasis added) (quotation omitted). "The right to an appeal [to the district court] *cannot* be granted after the expiration of the statutory period." *Id.* (emphasis added). Peckman's appeal to the district court was untimely.

Therefore, the district court did not have jurisdiction to hear Peckman's challenge to the watershed district's jurisdiction. Peckman suggests in his briefing that the district court in fact determined that the watershed district had jurisdiction to issue its establishment order. We disagree. The district court rightly did not address the jurisdiction of the watershed district in its order dismissing the appeal for lack of subject matter jurisdiction.

Affirmed.