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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1311**

Walnut Towers,
Respondent,

vs.

Lori A. Schwan,
Appellant.

**Filed September 16, 2008
Reversed
Hudson, Judge**

Blue Earth County District Court
File No. 07-CV-07-1183

Walnut Towers, 105 East Walnut Street, Mankato, Minnesota 56001 (respondent)

Tashi Lhewa, Southern Minnesota Regional Legal Services, Inc., 12 Civic Center Plaza,
Suite 3000, Mankato, Minnesota 56002-3304; and

Michael Hagedorn, 166 East Fourth Street, Suite 200, St. Paul, Minnesota 55101-1448
(for appellant)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal in this eviction matter, appellant-tenant argues that the district court erred in (a) permitting respondent-corporation to appear in district court without the representation of a licensed attorney; (b) entering judgment in favor of respondent-corporation on the basis that appellant's request for reasonable accommodation would impose an undue financial and administrative burden on respondent-corporation; and (c) granting the request to evict appellant when appellant was not provided with the opportunity to meet with management before filing of the eviction action. Because the district court erred in allowing respondent-corporation to appear in district court without the representation of legal counsel, we reverse.

FACTS

In July 2006, appellant Lori Schwan entered into a lease agreement to rent a federally subsidized apartment from respondent Walnut Towers. In the following months, appellant was issued several "Notice of Lease/Rule Violations" for conduct that was allegedly in violation of her lease agreement. Finally, in March 2007, after a confrontation with her landlord, appellant was advised that her lease was terminated.

After an eviction action was filed against appellant in April 2007, appellant filed, in district court, a memorandum in support of reasonable accommodation. Appellant claimed to be disabled as defined in 42 U.S.C. § 3602 (h) (2003), and requested that Walnut Towers provide her with a reasonable accommodation. At the eviction hearing, Mary Dundas, the manager at Walnut Towers, appeared on behalf of Lasson Management, the corporation that

manages Walnut Towers. Appellant objected to Dundas appearing on behalf of the corporation because she is not a licensed attorney. The court overruled appellant's objection, stating that it is "the long standing tradition in Blue Earth County of not requiring incorporated landlords to be represented during eviction hearings." The district court then concluded that appellant "may have a disability as defined under 42 U.S.C. § 3602 (h)," but the "accommodation requested by [appellant] is unreasonable as it will impose undue hardships and/or undue financial and administrative burdens upon [Walnut Towers]." Thus, the district court entered judgment in favor of Walnut Towers. Appellant's eviction was stayed pending determination of this appeal.

D E C I S I O N

Appellant argues that the district court erred in permitting Walnut Towers, a corporation, to be represented by a non-attorney agent during eviction proceedings in district court. Questions concerning rules are questions of law, and we need not defer to the conclusions of law drawn by the district court from undisputed facts. *See Reichel v. Hefner*, 472 N.W.2d 346, 347 (Minn. App. 1991). Consequently, we review this issue de novo. *See Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984) (stating that appellate courts review legal issues de novo).

We initially note that appellant phrases the issue as one of jurisdiction, and that while appellant does not specify whether her argument refers to personal jurisdiction, subject-matter jurisdiction, in rem jurisdiction, or some other type of jurisdiction, the substance of her argument suggests that she is arguing that the district court lacked subject-matter jurisdiction. The issue presented, however, is not one of jurisdiction. In the past, this court

has been presented with similar issues and has loosely used the term “jurisdiction” to conclude that a corporation may not appear in district court without the representation of a licensed attorney. *See, e.g., World Championship Fighting, Inc. v. Janos*, 609 N.W.2d 263, 265 (Minn. App. 2000) (holding that because a corporation could not appear in district court without an attorney, the district court was correct to conclude that it lacked jurisdiction to hear the case). More recently, the United States Supreme Court has cautioned against the misuse of the term “jurisdiction.” *Kontrick v. Ryan*, 540 U.S. 443, 454–55, 124 S. Ct. 906, 915 (2004) (noting that “[c]ourts, including this Court . . . have more than occasionally [mis]used the term ‘jurisdictional’”). In an effort to add clarity to the issue, this court recently stated that “[b]ecause the common law rule requiring that a corporation be represented by counsel in legal proceedings does not describe the classes of cases or persons within the district court’s adjudicatory authority, the rule is not ‘jurisdictional.’” *Save Our Creeks v. City of Brooklyn Park*, 682 N.W.2d 639, 643 (Minn. App. 2004), *aff’d*, 699 N.W.2d 307 (Minn. 2005). The Minnesota Supreme Court, on review, found this reasoning to be “persuasive” and adopted it. *Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 310 (Minn. 2005). Therefore, we reiterate that the issue of corporations appearing in district court without counsel does not involve the court’s subject-matter jurisdiction to hear the case.

We now turn to the district court’s decision to allow Walnut Towers, a corporation, to proceed in the eviction action without the representation of legal counsel. In reaching this conclusion, the district court stated that:

[Appellant's] counsel has raised the issue of [Walnut Towers] appearing in District Court without the assistance of an attorney. The Court has addressed this issue with [appellant's] counsel and reiterated the long standing tradition in Blue Earth County of not requiring incorporated landlords to be represented during eviction hearings. This policy is akin to the policy in other informal proceedings such as conciliation court. Ultimately, whether [Walnut Towers] is represented in Court by counsel would not change the facts or outcome of this case.

Appellant argues that under Minnesota law, the district court's conclusion is erroneous. We agree. In Minnesota, a corporation must be represented by an attorney in legal proceedings. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992). "The purpose behind attorney licensing requirements 'is the protection of the public and the courts from the consequences of ignorance or venality.'" *Id.* (quoting *Strong Delivery Ministry Ass'n v. Bd. of Appeals of Cook County*, 543 F.2d 32, 33 (7th Cir. 1976)).¹

In *Nicollet Restoration*, the supreme court rejected the argument that Minn. Stat. § 481.02, subd. 2 (1990), authorized a corporation to appear by or through a non-attorney agent. 486 N.W.2d at 755. The court stated that under the common law, a corporation still must be represented by a licensed attorney when appearing in district court because "a

¹ In addition, Minn. Stat. § 481.02, subd. 3(12) (2006), provides that "any authorized management agent of an owner of rental property used for residential purposes, whether the management agent is a natural person, corporation, partnership, limited partnership, or any other business entity," is not authorized to "appear before a district court or the court of appeals or supreme court pursuant to an appeal" if the agent is not a licensed attorney. We think the language of this statute comports with *Nicollet Restoration*, but we recognize that there could be alternative readings of this statute. Nonetheless, because the statutory construction of Minn. Stat. § 481.02, subd. 3(12), was not briefed in this appeal, we decline to address it. See *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (stating that, generally, appellate courts will not consider issues not argued in the parties' briefs).

careful reading of Minn. Stat. § 481.02, subd. 2,” does not permit an officer, employee, or agent appearing on behalf of a corporation in district court to be a non-attorney. *Id.* The court further noted that “[e]ven assuming that Minn. Stat. § 481.02, subd. 2, could be construed to permit a corporation to appear by or through a non-attorney agent, such a construction would raise serious constitutional problems.” *Id.* The court then stated that under Article III, section I, of the Minnesota Constitution, the power to decide who may properly practice law before the courts of this state is vested solely in the judiciary. *Id.* Thus, the court held that “legislative enactments which purport to authorize certain classes to practice law in the courts of this state are not controlling upon the judiciary. As such, we reaffirm our conviction that a corporation must be represented by a licensed attorney when appearing in district court.” *Id.* at 756.

Here, despite the district court’s attempt to carve out an exception for incorporated landlords to appear in eviction hearings without representation by legal counsel, we conclude that on this record, *Nicollet Restoration* controls, and there is no legal support for such an exception. *See Save Our Creeks*, 699 N.W.2d at 309 (stating that under Minnesota common law, a corporation must be represented by an attorney in legal proceedings); *see also Nicollet Restoration*, 486 N.W.2d at 756 (holding that “a corporation must be represented by a licensed attorney when appearing in district court”); *Janos*, 609 N.W.2d at 265 (stating that the legislature did not intend that some corporations be allowed to institute district-court actions without the aid of counsel while others would not). We fully acknowledge that the conciliation court rules permit a corporation to appear by a non-attorney in conciliation-court proceedings. *See Minn. R.*

Gen. Pract. 512(c). We also recognize the supreme court’s adoption of the rules for the “housing courts” in Hennepin and Ramsey counties, which permit incorporated landlords to appear without counsel, if their agents have the required “Power of Authority.” *See* Minn. R. Gen. Pract. 603 (stating that “[n]o person other than a principal or a duly licensed attorney shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing”).² But those rules do not apply to eviction proceedings heard in district court. When appearing before this court, our supreme court, or in district court, the law in Minnesota requires that a corporation must be represented by a licensed attorney. Therefore, given our role as an error-correcting court, we conclude that the district court erred in permitting the non-attorney agent of Walnut Towers to appear on behalf of the corporation in the eviction proceedings.

Next, we address the appropriate remedy to be applied. In *Save our Creeks*, the issue before the supreme court was “whether a complaint filed and signed on behalf of a corporate entity by a non-lawyer is a legal nullity.” 699 N.W.2d at 309. The court held that it was not a legal nullity, but it presented a curable defect. *Id.* at 310. The court then explained that

an amendment to add an attorney’s signature to a corporation’s complaint should be permitted when the following four elements are met: (1) the corporation acts without knowledge that its action was improper; (2) upon

² We express no opinion at this time as to whether Minn. R. Gen. Pract. 603 is inconsistent with Minn. Stat. § 481.02, subd. 3. *See* Minn. R. Gen. Pract. 601 (stating that the rules pertaining to housing court “shall apply to housing court practice except where they are in conflict with applicable statutes”).

notice, the corporation diligently corrects its mistake by obtaining counsel, but in no event may it appear in court without an attorney; (3) the nonattorney's participation in the action is minimal; and (4) the nonattorney's participation results in no prejudice to the opposing party.

Id. at 311.

Under *Save Our Creeks*, the mere fact that an attorney did not sign the eviction complaint on behalf of Walnut Towers does not render the complaint void. *See id.* But in this case, unlike in *Save Our Creeks*, there was never any attempt to remedy the defect and Walnut Towers still has not retained counsel to represent it in this matter. Because the defect caused by the non-attorney appearance on behalf of Walnut Towers was not cured, the district court should have dismissed the eviction action, rather than proceeding to trial. Accordingly, we reverse the judgment in favor of Walnut Towers. In light of our decision, the additional issues raised by appellant are moot and, therefore, we decline to address them.

Reversed.