STATE OF MINNESOTA

IN SUPREME COURT

A18-0845

Court of Appeals | Chutich, J.

John Schulz, et al.,

Appellants,

vs.

Filed: December 4, 2019
Office of Appellate Courts

Town of Duluth,

Respondent,

Charles Bille, et al.,

Respondents.

William D. Paul, William D. Paul Law Office, Duluth, Minnesota, for appellants.

Robert A. Alsop, Joshua P. Devaney, Kennedy & Graven, Chartered, Minneapolis, Minnesota, for respondent Town of Duluth.

S Y L L A B U S

1. To perfect an appeal and confer jurisdiction on a district court in an action initiated under Minnesota Statutes section 462.361, subdivision 1 (2018), an aggrieved

party appealing a zoning variance is only required to serve the municipality that decided the variance application, rather than the municipality and all necessary parties.

2. The district court erred by dismissing the action with prejudice rather than joining the non-municipality defendants to the action under Minnesota Rule of Civil Procedure 19.01.

Reversed and remanded.

O P I N I O N

CHUTICH, Justice.

This case considers which parties must be served to perfect an action initiated under Minnesota Statutes section 462.361, subdivision 1 (2018). Appellants John Schulz, Rebecca Norine, and Jack Nelson (the Neighbors) sought judicial review of a zoning variance granted by the Town of Duluth (Duluth) to Charles Bille and Carol Danielson-Bille (the Billes), who want to build a retirement home on Lake Superior. The Neighbors properly served Duluth within the 30-day appeal period set forth in the local Duluth ordinance that authorized judicial review of the zoning variance decision, but failed to serve the Billes within the same 30-day period.

The district court dismissed the Billes from the case because they had not been timely served. It then dismissed the entire action, determining that the Billes were a necessary and indispensable party under Minnesota Rules of Civil Procedure 19.01 and 19.02, and that the action could not proceed without them. The court of appeals affirmed. The Neighbors seek review of this application of section 462.361 and Rules 19.01 and

19.02. We reverse the court of appeals and remand to the district court for reinstatement of the Neighbors' action and for further proceedings consistent with this opinion.

FACTS

The Billes are joint owners of real property in Duluth who sought a zoning variance to build a home on their property. The Neighbors are joint owners of land adjacent to the Billes. The Neighbors opposed the Billes' variance because they alleged that construction of the Billes' home would obstruct their view of Lake Superior.

The Billes filed their first variance application with the Town of Duluth Planning and Zoning Commission (the Commission) on March 7, 2017. The Commission granted the variance. Opposing the variance, the Neighbors appealed to the Town of Duluth Board of Supervisors (the Board). The Board granted the Neighbors' appeal and denied the Billes' variance application.

The Billes then filed an amended variance application with the Commission on July 15, 2017. Three weeks later, the Commission again granted the Billes' variance, and the Neighbors again appealed. This time, the Board *denied* the Neighbors' appeal and *granted* the Billes' variance application. A copy of the Board's decision was delivered to the Neighbors' attorney on September 8.

The Town of Duluth's zoning ordinance provides aggrieved persons a right to appeal a decision of the Board. Town of Duluth, Minn., Zoning Ordinance No. 5, art. XIV, § 3.E.4 (Sept. 10, 2015). The ordinance states in relevant part:

> All decisions made by the Town Board in hearing appeals from Planning Commission determinations shall be final, except that any aggrieved person or persons . . . shall have the right to appeal within thirty (30) days after

> delivery of the decision to the appellant, to the District Court in St. Louis County on questions of law and fact.

Id.

This ordinance and Minnesota Statutes section 462.361, subdivision 1, authorized the Neighbors' appeal to the Saint Louis County District Court. Each party agreed that, under the ordinance, the 30th day for filing was October 8, a Sunday; the following day was Columbus Day, a legal holiday; and the deadline for filing an appeal, therefore, was Tuesday, October 10.

To initiate their appeal from the Board's decision, the Neighbors personally delivered a copy of the summons and complaint to the Saint Louis County Sheriff on October 9, 2017, who then served Duluth on October 20, 2017. On October 10, 2017, the Neighbors faxed a copy of the summons and complaint to the Ramsey County Sheriff, who then served the Billes at their residence on October 18, 2017.

Duluth and the Billes filed motions to dismiss. Duluth argued that service was improper because the Neighbors had delivered the summons and complaint to the Saint Louis County Sheriff on a legal holiday. The Billes asserted that service was improper because service by fax was not effective to satisfy the deadline under the Duluth ordinance.

The district court held a motion hearing, and on the morning of the hearing, we issued our decision in *Cox v. Mid-Minnesota Mutual Insurance Co.*, holding that service is improper if the sheriff receives the summons and complaint by fax. 909 N.W.2d 540, 546 (Minn. 2018). Based on *Cox*, the district court dismissed the Billes from the case. Duluth then argued that the entire action should be dismissed because the Billes were a necessary

and indispensable party under Minnesota Rules of Civil Procedure 19.01 and 19.02, but as they were no longer a party, the action could not proceed without them. The district court agreed and granted Duluth's motion to dismiss with prejudice.

The Neighbors appealed, and the court of appeals affirmed the district court. *Schulz v. Town of Duluth*, 923 N.W.2d 703 (Minn. App. 2019). In a published decision, the court of appeals determined that the Neighbors' action had been properly dismissed because the district court did not abuse its discretion in determining that the Billes were a necessary and indispensable party under Rules 19.01 and 19.02. *Id.* at 709.

The Neighbors petitioned for review, asserting that they had properly perfected their appeal against Duluth and that the action should proceed. We granted review.

ANALYSIS

This case requires us to decide whether the district court had jurisdiction over the Neighbors' appeal. Because the facts are not in dispute, we review the legal issue de novo. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 474 (Minn. 2013). We also review the application of the Minnesota Rules of Civil Procedure de novo. *Id.*

I.

We first must determine whether the district court had jurisdiction over the Neighbors' appeal after it dismissed the Billes for improper service. Minnesota Statutes section 462.361, subdivision 1, and the local Duluth ordinance each provide the Neighbors with a right to appeal Duluth's decision to grant a zoning variance to the Billes.

Section 462.361, subdivision 1, provides a general remedy for aggrieved parties, and states in full:

> Any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals acting pursuant to sections 462.351 to 462.364 may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court, subject to the provisions of this section.

The local Duluth ordinance creates a 30-day appeal period for parties appealing a variance decision. It states that "any aggrieved person . . . shall have the right to appeal within thirty (30) days after delivery of the decision to the appellant, to the District Court." Town of Duluth, Minn., Zoning Ordinance No. 5, art. XIV, § 3.E.4.

The parties here dispute whether the district court had jurisdiction over the Neighbors' appeal of the zoning variance that Duluth granted to the Billes. The Neighbors contend that they perfected their appeal when they properly served Duluth, regardless of whether the Billes were parties to the action. The statute and ordinance, they assert, require no more than what they did—that is, effect proper service on the municipality, Duluth—and that requiring anything else would be adding a procedural hurdle to the statute and the ordinance.

Duluth maintains, however, that the court had *no* jurisdiction over the action because the Neighbors failed to properly serve the Billes, who were a necessary party under Rule 19.01. They argue that the statute and the ordinance require service on all necessary parties, and if the necessary parties are not served, the court has no jurisdiction over the matter.

We first note that the plain language of section 462.361 and the local Duluth ordinance do not require service on any party in particular. Section 462.361, subdivision 1, states only that "[a]ny person aggrieved by [a decision] of a governing body or board of adjustments and appeals . . . may have such [decision] reviewed by an appropriate remedy in the district court."

The Duluth ordinance is also silent about which parties should be served for appeals brought under the ordinance.[1] It simply grants an aggrieved person the right to appeal to the district court within 30 days of delivery of the decision to the appellant. Town of Duluth, Minn., Zoning Ordinance No. 5, art. XIV, § 3.E.4.

In these zoning cases, the municipality—or an entity representing the municipality—is the party that makes the variance decision. Aggrieved persons initially seek review from the *municipality* at the local level, as the Neighbors did here to the Town Board. Moreover, subdivision 2 of section 462.361 shows that the Legislature contemplated that a municipality would be a party to an appeal under this section because it allows the *municipality* to raise the failure to exhaust proper remedies as a defense. Because the municipality holds the decision-making power and is the party that retains an affirmative defense, service on the municipality—rather than on the municipality *and* the

[1] This statute and ordinance are in contrast to, for example, Minnesota's Administrative Procedure Act, which does state which parties should be served. *See* Minn. Stat. § 14.63 (2018) ("A petition for a writ of certiorari by an aggrieved person for judicial review . . . must be filed with the court of appeals and served on *all parties* to the contested case not more than 30 days after the party receives the final decision and order of the agency." (emphasis added)).

necessary parties like the variance applicants—is enough to perfect an appeal under section 462.361 and confer jurisdiction on the district court.

Our decision in *In re Skyline* is informative on this point. There, we said that "[s]tatutory provisions for service of notice must be strictly followed in order for a court to acquire jurisdiction," and held that a party must follow the service requirements of Rule 4.03 to perfect an appeal under Minnesota Statutes section 394.27 (2018).[2] *In re Skyline*, 835 N.W.2d at 477. Unlike here, however, the parties in *In re Skyline* had failed to effect proper service on the decision-maker, the county board of adjustment, rather than a necessary party. *Id.* at 474. We therefore remanded to the district court to dismiss for lack of subject-matter jurisdiction. *Id.* at 473. Here, the 30-day appeal period to serve the municipality was met.

In addition, other precedent shows that failure to join a necessary party is not a jurisdictional defect. *See Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956). In *Doerr*, we noted that Rule 12.02[3] differentiated between dismissals for failure to join an indispensable party[4] and those based upon a jurisdictional defect. *Id.* ("The fact that the

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[2] Section 394.27 is an analogous statutory provision providing a remedy for aggrieved parties appealing decisions of a county board of adjustment, rather than a municipality board like those in section 462.361. *See* Minn. Stat. § 394.27, subd. 9.

[3] Rule 12.02 allows parties to raise as defenses, among other things: lack of jurisdiction over the subject matter; lack of jurisdiction over the person; and failure to join a party pursuant to Rule 19. *See* Minn. R. Civ. P. 12.02(a)–(b), (f).

[4] We used "necessary party" and "indispensable party" somewhat interchangeably in our decision in *Doerr*. We use "necessary party" in this decision for clarity because we believe that a district court should first analyze whether a party is "necessary" under Rule

rules make this distinction indicates a controlling intent that the failure to join an indispensable party does not deprive the court of jurisdiction of the action."). We concluded that the failure to join an indispensable party may present due process concerns, but that a court retains jurisdiction over an action even if not all indispensable parties are joined. *Id.* at 511–12. This holding reinforces our view that a district court retains jurisdiction when the municipality is served, regardless of whether a necessary party is also served. Here, even if we agree with Duluth that the Billes are a necessary party—and we do—a failure to serve them and make them parties to the action does not mean that the district court loses jurisdiction over the entire action.

In sum, we read section 462.361 and the Duluth ordinance together to mean that timely service of the request for judicial review must be made only on the municipality that makes the challenged decision. The municipality, after all, is the decision-maker on the variance application—the variance applicant has no power over the decision regarding whether the application is granted other than its initial influence in advocating for its position. Here, the Saint Louis County District Court acquired jurisdiction over the action when the Neighbors properly served Duluth, regardless of the Neighbors' improper service on the Billes.

19.01. Then, only if it determines that it cannot add that party under Rule 19.01, will it reach the issue addressed in Rule 19.02, which is when a party is determined to be "indispensable." *See* Minn. R. Civ. P. 19.01–.02.

II.

With this interpretation of section 462.361 in mind, we now turn to Rule 19.01 of the Minnesota Rules of Civil Procedure to consider whether the district court erred in its application of the rule when it dismissed the action with prejudice.[5] The district court concluded that the Neighbors were "unable to effect service on the Billes" and dismissed the action because "an indispensable party must be joined or the action dismissed." The court of appeals affirmed, concluding that the district court did not abuse its discretion by determining that the Billes' presence was necessary, and that it could not proceed with the action in equity and good conscience. *Schulz*, 923 N.W.2d at 709.

The parties disagree about whether the district court should have added the Billes as a party under Rule 19.01. The Neighbors contend that, under our decision in *Doerr*, the better practice for courts in cases when a party is necessary and indispensable is to add that party to the action. Duluth asserts, however, that the failure to serve necessary parties is an "incurable jurisdictional defect." It contends that, because the district court no longer has jurisdiction when necessary parties are not served, a district court must dismiss the action without joining the necessary party. We find the Neighbors' arguments persuasive for the following reasons.

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[5] Although the Neighbors raised an issue as to whether the Minnesota Rules of Civil Procedure apply to these actions, they conceded at oral argument that the rules do apply to actions initiated under section 462.361.

Rule 19.01 operates in three parts.[6] First, the rule applies to "[a] person who is subject to service of process."[7] Minn. R. Civ. P. 19.01. Second, Rule 19.01 lays out the factors for determining which parties are necessary. These parties are those in whose absence complete relief cannot be accorded in the action, or those who "claim[] an interest relating to the subject of the action" and whose absence will "impair or impede [their] ability to protect that interest." *Id.* Third, the rule states, "[i]f the person has not been so joined, the court *shall order that the person be made a party*." *Id.* (emphasis added).

Here, the Billes were "subject to service of process" under Rule 19.01 because they were well within the broad meaning of that phrase—they were citizens of Minnesota and, as shown by the facts of the case, servable by the Neighbors. Next, we agree with the

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[6] Rule 19.01 states in its entirety:

> A person who is subject to service of process shall be joined as a party in the action if (a) in the person's absence complete relief cannot be accorded among those already parties, or (b) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (1) as a practical matter impair or impede the person's ability to protect that interest or (2) leave any one already a party subject to a substantial risk or incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

[7] We understand this phrase to refer generally to service of process rules such as the state's long-arm statute and whether a particular party can be haled into court. *Cf.* 7 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1610 (3d ed. 2001) (interpreting the phrase "subject to service" in Fed. R. Civ. P. 19 as referring to general service rules such as the territorial limits imposed by Rule 4(k), state long-arm statutes, and other federal statutes applicable to the litigation).

district court and the court of appeals that the Billes were necessary parties to this action. They own the property for which the variance is being sought and have invested a great deal into the construction of their home.[8] Under Rule 19.01, the Billes "claim an interest" in the action, and without their presence, their ability to protect that interest will be "impair[ed] or impede[d]."

Turning now to the last step contemplated by the rule, Rule 19.01 uses mandatory language: "[T]he court shall order that the person be made a party." Applying the rule in the past, we stated that "the better practice is to have the court join the indispensable party rather than dismiss the action," and that "the court has power to add indispensable parties during the course of the action." *Doerr*, 76 N.W.2d at 512.

Accordingly, applying Rule 19.01 and our precedent, we conclude that the necessary party—the Billes—must be added to the action here. Although the 30-day appeal period had run under the local Duluth ordinance, the district court was not prevented from adding the Billes to the case because the court had jurisdiction by way of the Neighbors' proper service on Duluth. Moreover, the parties had already appeared before the court, so joinder and service of process were feasible. The district court was aware of the Billes' presence and was required by Rule 19.01 to join them as parties. As discussed

[8] According to testimony at the motion hearing, the Billes had spent nearly $150,000 on the construction of their home at the time of the hearing.

above, Duluth's contention that failure to join a necessary party is a jurisdictional defect is inaccurate and inapplicable to the Billes.[9]

In sum, once a district court has jurisdiction over the matter, it must use Rule 19.01 to join all parties that it finds to be necessary under the rule.[10] Here, the Neighbors and the Billes each deserve their day in court—the Neighbors because their view of Lake Superior may be obstructed, and they timely served the decision-maker, Duluth. The Billes may participate because they are necessary parties who wish to build a home on the lake. Application of Rule 19.01 gives the parties an opportunity to receive a decision on the merits of the dispute.

Because we hold that the Billes should have been joined as a necessary party under Rule 19.01, we need not reach the issue of whether the Billes are "indispensable" under Rule 19.02.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court to reinstate the action and for proceedings consistent with this opinion.

Reversed and remanded.

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[9] Failure to serve Duluth within 30 days, however, would have been an incurable jurisdictional defect.

[10] Concerns about timeliness of joinder and finality can be addressed by court action requiring prompt service on the necessary parties that must be joined. *See* 1 David F. Herr & Roger S. Haydock, *Minnesota Practice—Civil Rules Ann.* § 19:3 (6th ed. 2017) (referring to joining necessary parties under Rule 19.01 and stating that "to assure compliance, a time limit for service can be set").