STATE OF MINNESOTA

IN SUPREME COURT

A21-0904

Court of Appeals — Moore, III, J.

Stern 1011 First Street South, LLC, et al.,

Respondents,

vs.

Filed: August 31, 2022
Office of Appellate Courts

Kenneth A. Gere, et al.,

Appellants.

Francis J. Rondoni, Christopher P. Renz, Gary K. Luloff, Chestnut Cambronne, P.A., Minneapolis, Minnesota, for respondents.

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S Y L L A B U S

1. A letter submitted to the district court citing Minn. R. Gen. Prac. 115.11 and requesting permission to file a motion to reconsider is not a proper motion under Minn. R. Civ. App. P. 104.01, subd. 2, that tolls the time for appeal.

2. Because Minn. R. Civ. App. P. 104.01, subd. 2, unambiguously excludes letters requesting permission to file a motion to reconsider from its list of motions with

tolling effect, the interests of justice do not compel the court to accept jurisdiction over an untimely appeal.

Reversed.

O P I N I O N

MOORE, III, Justice.

This case presents procedural and ultimately jurisdictional questions concerning the timeliness of an appeal in a civil case. On May 10, 2021, the district court granted summary judgment in favor of defendants and judgment was entered accordingly, but the summary judgment order mistakenly included language dealing with an entirely unrelated matter. Shortly thereafter, defendants submitted a letter to the district court under Minn. R. Gen. Prac. 115.11 requesting permission to file a motion for reconsideration to remove the errant language. On May 21, 2021, without responding to or referencing the letter, the district court issued an amended order removing the errant language but leaving unchanged the summary judgment analysis and determination. An amended judgment was entered on the same day. On July 19, 2021—70 days after the May 10 order and entry of judgment, but 59 days after the May 21 amended order and entry of judgment—plaintiffs filed a notice of appeal, referencing the May 21 order. Defendants questioned the court of appeals' jurisdiction, asserting that plaintiffs' appeal was untimely. After receiving briefing from the parties on the timeliness issue, the court of appeals construed defendants' Rule 115.11 letter as a permissible tolling motion under Minn. R. Civ. App. P. 104.01, subd. 2, and accepted jurisdiction. We granted defendants' petition for review. Because a request for

permission to file a motion to reconsider pursuant to Rule 115.11 does not toll the time for appeal, we reverse.

FACTS

This case arises from a dispute between owners of a commercial property in Hopkins over the allegedly fraudulent behavior of one of the owners during the refinancing of the property. Specifically, in December 2017, respondents Stern 1011 First Street South, LLC and Haberman 1011 First Street South, LLC (the "Stern/Haberman parties") sued appellants Kenneth A. Gere,[1] Gere 1011 First Street South, LLC, and Planned Investments, Inc. (the "Gere parties"), asserting various claims of financial irregularities related to Gere's management of the property's refinancing in 2007. *See Stern 1011 First Street South, LLC v. Gere*, 937 N.W.2d 173, 175–76 (Minn. App. 2020) (providing details of the claims), *review denied* (Minn. Mar. 25, 2020).

The Gere parties moved for summary judgment, arguing that the Stern/Haberman parties' claims were untimely and lacked merit. On May 10, 2021, the district court granted the Gere parties' motion, ordered that judgment be entered on the order, and dismissed the Stern/Haberman parties' complaint with prejudice. Judgment was entered that same day. The district court's May 10, 2021 order also included discussion of an overlong reply brief, which led the court to strike the last 25 pages of the Gere parties' reply brief on the basis that it exceeded the page limits set in Minn. R. Gen. Prac. 115.05. This portion of the

[1] Appellant Kenneth Gere died on January 16, 2022, while this appeal was pending. Gere's counsel notified the court on March 3, 2022, that his son, Brian Gere, would be proceeding as his father's successor in interest in this matter.

order, however, clearly referred to memoranda submitted in a different case, involving different parties.

On May 19, 2021, counsel for the Gere parties, who had prevailed at summary judgment, electronically filed and served a two-paragraph letter to the district court seeking to correct the order's erroneous reference to the reply brief from another case. The letter stated it was sent "pursuant to Minn. R. Gen. Prac. 115.11 to request permission to seek limited review of a portion of the Court's May 10, 2021 Order granting Defendants' motion for summary judgment." Specifically, the letter identified the confusion between the two cases and concluded that because "Defendants' reply brief complied with applicable page limits, Defendants respectfully request permission to seek reconsideration merely to amend this portion of the Court's May 10 Order."

Two days later, on May 21, 2021, the district court issued an amended summary judgment order without directly responding to the Gere parties' letter or holding a hearing on a motion to reconsider. The updated order struck the misplaced discussion of an overlength reply memorandum and explained in a new asterisked sentence on the first page that the order had "been amended due to the Court accidentally including verbiage from another matter in the original Order, causing this one to be edited and to be an Amended Order."[2] The district court directed that judgment be entered on the amended order and

[2] A line-by-line comparison of the initial order and amended order reveals that the amended order was identical to the initial order except for the asterisked sentence and the elimination of the section discussing an overlong reply brief.

dismissed Stern's complaint with prejudice. An amended judgment was accordingly entered by the court administrator the same day.

On July 19, 2021, the Stern/Haberman parties filed a notice of appeal from "an Order of the Court filed on" May 21, 2021. On July 20, 2021, the court of appeals issued an order construing the notice of appeal as seeking review of the May 21, 2021 judgment. On July 30, 2021, the Gere parties filed their statement of the case, asserting that the court of appeals lacked jurisdiction over the appeal because it was untimely. Specifically, the Gere parties cited *Dennis Frandsen & Co., Inc. v. Kanabec Cty.*, 306 N.W.2d 566, 570 (Minn. 1981), for the proposition that the "time to appeal an issue determined by the trial court begins to run upon entry of judgment 'and does not begin to run anew by reason of an amendment which leaves that determination undisturbed.' " In response, the court of appeals formally questioned its jurisdiction and the parties submitted informal memoranda on the topic.

On August 17, 2021, the court of appeals issued the order from which the Gere parties now appeal. *See Stern 1011 First Street South, LLC v. Gere*, No. A21-0904, Order at 1 (Minn. App. Aug. 17, 2021). The court of appeals accepted the Stern/Haberman parties' argument that the Gere parties' May 19, 2021 correspondence was functionally a motion to amend to correct a clerical error in the May 10, 2021 order in compliance with Minn. R. Civ. P. 60.01 and therefore tolled the time to appeal the May 10, 2021 judgment under Minn. R. Civ. App. P. 104.01, subd. 2. *Id.* at 2–4. Noting that "[t]he register of actions does not indicate that a party has served notice of filing of the May 21, 2021 amended order to limit the time to appeal," the court of appeals concluded that "[t]he time

to appeal the May 10, 2021 judgment therefore has not expired." *Id.* at 4. The court construed the appeal as taken from the May 10, 2021 order and accepted jurisdiction. *Id.*

We granted the Gere parties' petition for review.

ANALYSIS

The Gere parties assert that the Stern/Haberman parties' appeal from the amended summary judgment order was untimely and therefore there is no appellate jurisdiction. Construction and application of the Rules of Civil Appellate Procedure is a question of law, which we review de novo. *Klapmeier v. Cirrus Indus., Inc.*, 900 N.W.2d 386, 391 (Minn. 2017). When the facts—such as dates—governing a jurisdictional issue are not in dispute, we also review the jurisdiction question de novo. *Madson v. Minnesota Mining & Mfg. Co.*, 612 N.W.2d 168, 170 (Minn. 2000). We interpret procedural rules in accordance with their plain language and purpose. *Rubey v. Vannett,* 714 N.W.2d 417, 421 (Minn. 2006).

I.

The Gere parties argue that the court of appeals erred by treating their Minn. R. Gen. Prac. 115.11 request for reconsideration (which does not toll the time for appeal) to remove inadvertently included language in the order granting summary judgment in their favor as a Minn. R. Civ. P. 60.01 motion to correct a clerical error in the judgment (which does). The Stern/Haberman parties, on the other hand, maintain that the framing of the letter as a request for reconsideration is irrelevant because the letter effectively sought the relief afforded by Minn. R. Civ. P. 60.01—that is, correction of a clerical error. Because what the Gere parties filed was a request for permission to file a motion to reconsider pursuant

to Minn. R. Gen. Prac. 115.11—a request that does not toll the time for appeal—and not a Minn. R. Civ. P. 60.01 motion, we reverse.

Motions for reconsideration in district court civil cases are governed by Minn. R. Gen. Prac. 115.11. The rule states that motions to reconsider are generally prohibited without express permission from the court, which will be "granted only upon a showing of compelling circumstances." Minn. R. Gen. Prac. 115.11. Thus, before a party can even file a motion to reconsider, counsel must first ask the court for permission. The rule requires that these requests "shall be made only by letter to the court of no more than two pages in length." *Id.* The Advisory Comment to the 1997 Amendments to Minn. R. Gen. Prac. 115.11 explains that courts will "rarely" exercise their power to reconsider decisions, and "are likely to do so only where intervening legal developments have occurred . . . or where the earlier decision is palpably wrong in some respect."

The deadline to file a notice of appeal in a civil case is 60 days after entry of judgment. Minn. R. Civ. App. P. 104.01, subd. 1. Unless otherwise provided by law, "if any party serves and files a *proper and timely motion*" expressly listed under Minn. R. Civ. App. P. 104.01, subd. 2, the time for appeal tolls until the district court rules on the last outstanding motion.[3] *Id.*, subd. 2 (emphasis added); *Madson*, 612 N.W.2d at 172.

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[3] The list of tolling motions under Minn. R. Civ. App. P. 104.01, subd. 2, includes proper and timely motions:

> (a) for judgment as a matter of law under Minn. R. Civ. P. 50.02;
> (b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;
> (c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;

Subdivision 2 was among several significant amendments made to the appellate rules in 1998. The amendments were intended to simplify appellate practice "in the hopes of creating 'less confusion' about the timing of appeals." *Madson*, 612 N.W.2d at 171 (quoting Minn. R. Civ. P. 104, 1998 Advisory Comm. Cmt.); *see also* Eric J. Magnuson, *New Steps to Climb: Amendments to the Appellate Rules*, 56 BENCH & B. MINN. 29, 29 (1999) (noting that "[t]he rules amendments were guided by a committee devoted to 'eliminating traps for the unwary' ").

Before the 1998 amendments to Rule 104.01, "the district court's jurisdiction to decide posttrial motions terminated when the time for appeal ran, even if the motion had not been decided." *Madson*, 612 N.W.2d at 171. Consequently, under the previous rule, even if a "posttrial motion was not yet decided, parties had to file a timely appeal and then apply to the appellate court for a stay of the appeal to allow time for the district court to decide the motion." *Id.* The purpose of the amendments to Rule 104.01, then, was twofold: "to make it clear that an appeal is not necessary until the proper motion is decided, and *to avoid a party's erroneous assumption that an improper or unauthorized motion would prevent the running of an appeal deadline*." Minn. R. Civ. App. P. 104, 1998 Advisory Comm. Cmt. (emphasis added).

(d) for a new trial under Minn. R. Civ. P. 59;
(e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time for a motion for new trial; or
(f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)–(e).

But the rule amendments did not expressly say what constitutes a "proper" motion under Minn. R. Civ. App. P. 104.01, subd. 2. We addressed that issue in *Madson*. 612 N.W.2d at 171–72. In that case, a former employee against whom summary judgment was entered moved to vacate the adverse judgment pursuant to Minn. R. Civ. P. 60.02. *Id.* at 169. Specifically, she asked the district court to reopen the record and admit evidence that she believed established a factual dispute, but that her previous counsel had inadvertently failed to append to the summary judgment reply memorandum. *Id.* at 169–70. The district court denied the motion. *Id.* at 170. On the employee's appeal, the court of appeals determined that it lacked jurisdiction because the time for appeal had lapsed. *Id.* The court of appeals held that employee-appellant's Rule 60.02 motion did not toll the appeal timeline because Rule 60.02 did not allow the type of relief she was seeking, and therefore hers was not a "proper" tolling motion under Minn. R. Civ. App. P. 104.01. *Id.*

We reversed. In doing so, we explained that the standard for determining whether a motion is "proper" should not be associated with the merits of the underlying motion because that approach "would inject back into postjudgment motion practice the very uncertainty that the 1998 amendments were designed to eradicate." *Id.* at 171. Instead, we held that to be "proper," a post-decision motion must simply (1) comply with the rules of civil procedure for motions, and (2) be authorized, meaning that "on the face of the document the party has filed a motion that is expressly allowed under [Rule 104.01,] subdivision 2." *Id.* at 171–72. We then determined that employee-appellant's Rule 60.02 motion was proper because it was one of the motions enumerated in Minn. R. Civ. App. P. 104.01, subd. 2, and it was not procedurally deficient. *Id.* at 172.

Notably, the exhaustive list of "proper" tolling motions in Minn. R. Civ. App. P. 104.01, subd. 2, pointedly does *not* include motions for reconsideration. Because motions to reconsider are not listed, such motions do not toll the appeal period. The Advisory Comment to the 1998 Amendments to Rule 104.01, while not binding on us, reinforces our conclusion: "[t]he motions enumerated in this subdivision exclude 'motions for reconsideration' because these motions are never required by the rules and are considered only if the trial court permits the motion to be filed." Minn. R. Civ. App. P. 104, 1998 Advisory Comm. Cmt.; *see Madson*, 612 N.W.2d at 171 (referencing the 1998 Advisory Comment to Minn. R. Civ. App. P. 104—which describes the purpose of the rule—to support our conclusion about how the rule is meant to operate). The Advisory Comment to the 2008 Amendments to Rule 104.01 reiterates that the absence of motions for reconsideration from the list of motions giving tolling effect is "intentional." Indeed, "[n]either requesting leave to file such a motion . . . , the granting of that request so the motion can be filed, nor the actual filing of the motion will toll or extend the time to appeal." Minn. R. Civ. App. P. 104, 2008 Advisory Comm. Cmt. The Advisory Comment to the 1997 Amendments to Minn. R. Gen. Prac. 115.11 similarly directs counsel to "remember that a motion for reconsideration does not toll any time periods or deadlines, including the time to appeal." Minn. R. Gen. Prac. 115.11, 1997 Advisory Comm. Cmt.[4]

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[4] *See also* Eric J. Magnuson, *Motions for Reconsideration*, 54 Bench & B. Minn. 36, 37 (1997) ("[I]n Minnesota state court, a request for reconsideration, no matter what the basis, does not extend the time for appeal and is not a substitute for a timely appeal of the order which is subject to the reconsideration request."); David F. Herr, *Rule 115 Motion Practice, in* 3A Minn. Prac. *Gen. Rules of Prac. Ann. R. 115* (2021 ed.) ("The motion for

Therefore, to determine whether the document the Gere parties submitted to the court requesting permission to file a motion for reconsideration was a "proper" tolling motion under Minn. R. Civ. App. P. 104, subd. 2, we apply the two-prong test established in *Madson*. A document's failure to satisfy either prong is dispositive. Because we conclude that the Gere parties' letter does not satisfy the second prong of the *Madson* test, we focus our analysis there.[5]

The second prong of the *Madson* test requires that the face of the document demonstrate that the party has filed a motion "expressly allowed" under Rule 104.01, subd. 2. 612 N.W.2d at 172. The plain language of Minn. R. Civ. App. 104.01, subd. 2, does not include a motion for reconsideration in the list of six types of motions given tolling effect in the rule (nor does it include a request for permission to file such a motion). Moreover, the Advisory Comments to both Minn. R. Civ. App. P. 104.01 and Minn. R. Gen. Prac. 115.11 emphasize that the absence of motions for reconsideration from the list of tolling motions in Rule 104 "is intentional" and unequivocally state that letters requesting reconsideration have no tolling effect. The Gere parties' letter complied with the requirements of a Rule 115.11 request to file a motion for reconsideration: it was in the

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reconsideration is severely limited in one important respect: bringing it does not extend the time to appeal.").

[5] Though failure to satisfy either prong is dispositive, we note that the letter does not meet the first prong of the *Madson* test either because it does not comply with the requirements for a motion under the rules of civil procedure. The letter request was expressly titled as a request to move for reconsideration. It did not contain a caption, notice of motion, notice of hearing, or case-type designation, nor were its paragraphs numbered. *See* Minn. R. Civ. P. 7.02, 10.01, 10.02. Failure on this prong alone means it was not a "proper" *motion* for tolling purposes under Minn. R. Civ. App. P. 104.01, subd. 2.

format specified by the rule (that is, a short letter); it specifically stated that the request was made "pursuant to" Rule 115.11; and it "respectfully request[ed] permission to seek reconsideration" of the May 10, 2021 order. Thus, on its face, the Gere parties' letter was clearly a letter requesting reconsideration, which is not a tolling motion "expressly allowed" under Minn. R. Civ. App. 104.01, subd. 2.

The Stern/Haberman parties assert that the letter is not even a proper request for reconsideration because correcting an error in an order is not a legitimate ground for reconsideration. They urge us to accept the court of appeals' characterization of the letter as a Rule 60.01 motion because the relief the letter sought was correction of a clerical error. We are not persuaded for two reasons.

First, nothing in the language of Rule 115.11 requires that a request for reconsideration amount to a substantive challenge to the merits of the district court's decision or precludes a party from using the rule as a basis for seeking correction of an alleged clerical error in a district court order.[6] Litigants are entitled to choose the basis for their filing; the fact that multiple avenues were available for the same type of relief does not make their decision to pursue one over the others incorrect. The Gere parties' letter was a rule-compliant request for reconsideration, which the rules of appellate procedure

[6] Though not binding, the Advisory Comment to the 1997 amendment to Minn. R. Gen. Prac. 115.11 contemplates that parties might use the rule as a basis for requesting reconsideration where the district court's earlier decision is "palpably wrong in some respect." The Stern/Haberman parties offer no compelling explanation for how the district court's mistake can be a clerical error under Minn. R. Civ. P. 60.01, but not "palpably wrong" under Minn. R. Gen. Prac. 115.11.

clearly state neither tolls nor extends the time for appeal. The court of appeals erred by disregarding the plain language of Minn. R. Civ. App. P. 104.01, subd. 2.

The second reason we decline to accept the court of appeals' framing of the letter as a Rule 60.01 tolling motion is that this characterization focuses exclusively on the relief sought—an approach we rejected in *Madson*. There, one of the parties argued that a motion was not "proper" because it was not the correct motion to accomplish the movant's intended purpose. 612 N.W.2d at 171. We rejected that argument because it "associate[d] the standard for determining whether a motion is 'proper' with the merits of the underlying motion." *Id.* Here, the Stern/Haberman parties' and court of appeals' approach similarly elevates function and substance over form, which is inconsistent with the facial inquiry we established in *Madson*.

In short, the document the Gere parties filed was, both facially and substantively, a fully compliant request for reconsideration under Minn. R. Gen. Prac. 115.11, and it should therefore have been treated as such. If a document is clearly not one specified in Minn. R. Civ. App. P. 104.01, subd. 2, then it is not a proper tolling motion, and we need look no further. The appellate procedure rules clearly state—and have clearly stated for decades—that requests for reconsideration under Rule 115.11 have no impact on tolling. The court of appeals erred when it held otherwise.

Because the Gere parties' letter was not a proper tolling motion, it did not toll or extend the Stern/Haberman parties' time to appeal the district court's May 10, 2021 order and entry of judgment. Pursuant to Minn. R. Civ. App. P. 104.01, subd.1, the Stern/Haberman parties had 60 days from entry of judgment—that is, until July 9, 2021—

to appeal. They did not do so until 10 days later, on July 19, 2021. The Stern/Haberman parties' appeal was therefore untimely, and the court of appeals erred in accepting jurisdiction.

II.

The Stern/Haberman parties alternatively contend that if we determine—as we do above—that the Gere parties' letter did not toll the time for appeal, then we should nevertheless accept jurisdiction in the interests of justice.

"The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require." Minn. R. Civ. App. P. 103.04. It is true we have recognized our inherent authority to accept an appeal in the interests of justice "even when the filing or service requirements set forth in a rule or statute have not been met." *In re J.R., Jr.*, 655 N.W.2d 1, 3 (Minn. 2003). We have noted, however, that we will only exercise this authority "on the basis of peculiar facts, such as recent changes in the law or interpretation issues," and we have emphasized that "it is an exceptional case that merits such a departure from the rules that we have recognized as jurisdictional and leads the court to invoke our inherent powers." *Id.* at 4. We will not invoke our inherent authority "solely on the basis of simple attorney negligence, inadvertence, or oversight." *Id.*

We decline to invoke our inherent authority to accept jurisdiction in this case because the Stern/Haberman parties have not presented peculiar facts or interpretation issues like our previous cases presented that would warrant a departure from the procedural rules here. *See Ruberg v. Skelly Oil Co.*, 297 N.W.2d 746, 749 (Minn. 1980) (involving a

recent rule amendment permitting appeals from orders for judgment); *Krug v. Indep. Sch. Dist. No. 16*, 293 N.W.2d 26, 29 (Minn. 1980) (involving close question of whether amended order raised a new, previously unappealable issue and whether the appeal period ran from the original order or the amended order). The governing procedural rules here do not present the "risk of confusion" that prompted us to accept jurisdiction over an untimely appeal in *In re S.M.E.*, 725 N.W.2d 740, 744 (Minn. 2007), nor could the Stern/Haberman parties "reasonably understand" the clear direction from Advisory Comments to Minn. R. Civ. App. P. 104.01, subd. 2, or Minn. R. Gen. Prac. 115.11 to say anything other than that a request for reconsideration is not a tolling motion. *In re S.M.E.*, 725 N.W.2d at 743–44.

Even the closest factual case, *E.C.I. Corp. v. G.G.C. Co.*, 237 N.W.2d 627 (Minn. 1976), is distinguishable. The case involved the issue of whether an appeal timeline began to run from the original entry of judgment or the date of an amended, corrected entry of judgment. *E.C.I. Corp.*, 237 N.W.2d at 629. We accepted jurisdiction in the interests of justice, but our holding applied to modified judgments on issues that were *not* appealable before the modification—in other words, judgments that were not final. *Id.* The corollary principle is likewise long established: that when an issue is appealable under the first judgment, the "[t]ime to appeal this determination . . . does not begin to run anew by reason of an amendment which leaves that determination undisturbed." *Dennis Frandsen & Co., Inc. v. Kanabec Cty.*, 306 N.W.2d 566, 570 (Minn. 1981). The Stern/Haberman parties acknowledged before this court that they could have appealed from the May 10, 2021 judgment. Thus, *E.C.I.* is inapposite, and the rule from *Frandsen* controls.

We have been reluctant to make exceptions that would "eviscerate the uniform, impartial application of the rules" of civil procedure. *In re J.R.*, 655 N.W.2d at 4. Accepting jurisdiction here would do just that. The Advisory Comments to the Rules of Civil Appellate Procedure could not have been more direct and clear in warning all counsel considering an appeal about the potential adverse consequences of the precise tolling issue in this case, regardless of which party initiated the request to reconsider.[7] Because the Stern/Haberman parties have not presented sufficiently compelling reasons to depart from this court's precedent in *Madson* or the clear direction of the advisory comments to Minn. R. Civ. App. P. 104.01, subd. 2 or Minn. R. Gen. Prac. 115.11, we decline to exercise our inherent authority to accept jurisdiction over this case in the interests of justice.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and dismiss the appeal for lack of appellate jurisdiction.

Reversed.

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[7] "A party seeking to proceed with a motion for reconsideration should pay attention to the appellate calendar and must perfect the appeal regardless of what progress has occurred with the reconsideration motion. Failure to file a timely appeal may be fatal to later review." Minn. R. Civ. App. P. 104, 2008 Advisory Comm. Cmt. This language suggests that the party seeking reconsideration of an adverse order issued by the district court is most commonly going to be the appellant, but there is no suggestion in the comment that the party opposing a request to file a motion to reconsider should pay less attention to this issue.