

STATE OF MINNESOTA

IN SUPREME COURT

A22-0068

Court of Appeals

Moore, III, J.

In the Matter of Issuance of Air Emissions

Permit No. 13700345-101 for PolyMet Mining Inc.,
City of Hoyt Lakes, St. Louis County, Minnesota.

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Office of Appellate Courts

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Jay C. Johnson, Kathryn A. Kusske Floyd, Venable LLP, Washington, D.C., for respondent Poly Met Mining, Inc.

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SYLLABUS

To invoke appellate jurisdiction under the judicial review provisions of the Minnesota Administrative Procedure Act, a petitioner may effectuate service on “parties to the contested case,” Minn. Stat. § 14.63, and “parties to the proceeding before the agency,” Minn. Stat. § 14.64, by serving those parties directly, whether or not they are represented by counsel.

Reversed and remanded; appeal reinstated.

OPINION

MOORE, III, Justice.

In this case, we consider whether the court of appeals properly dismissed an administrative appeal for lack of appellate jurisdiction. The underlying dispute involves an air emissions permit issued by the Minnesota Pollution Control Agency (the Agency) for the NorthMet mining project. The narrow legal issue before us, however, is whether the service requirements in the judicial review provisions of the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.63–.69 (2022), require petitioners to serve appeal papers on a represented party’s counsel.¹

¹ This case and the air emissions permit at issue is distinct from the other case regarding the NorthMet mining project currently pending with our court, which concerns a permit to allow Poly Met Mining, Inc. to discharge water from the mine’s facilities. *In re Denial of Contested Case Hearing Requests & Issuance of NPDES/SDS Permit No. MN0071013*, Nos. A19-0112, A19-0118, A19-0124, A20-1271, A20-1380, A20-1385, 2022 WL 200338 (Minn. App. Jan. 24, 2022), *rev. granted* (Minn. Apr. 19, 2022).

After the Agency issued an air emissions permit to respondent Poly Met Mining, Inc. (PolyMet),² appellants Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters Wilderness, and Sierra Club challenged the permit by filing a certiorari appeal in the court of appeals. PolyMet moved to dismiss the appeal for lack of jurisdiction, arguing that appellants had failed to serve PolyMet's counsel within 30 days of receiving the decision in accordance with the Minnesota Administrative Procedure Act and the Minnesota Rules of Civil Appellate Procedure. The court of appeals granted PolyMet's motion to dismiss. Because we conclude that the judicial review provisions of the Minnesota Administrative Procedure Act do not require service on a represented party's attorney when initiating judicial review if the parties were otherwise served directly, we reverse the decision of the court of appeals, reinstate the appeal, and remand to the court of appeals.

FACTS

On December 20, 2021, the Agency issued an air emissions permit to PolyMet for the NorthMet mining project in northern Minnesota.³ The Agency issued the permit

² After oral argument, respondent filed a notice of name change, requesting to proceed under its new name, NewRange Copper Nickel LLC. Appellants opposed this request, arguing that allowing a name change in ongoing judicial proceedings would be premature until the Agency has evaluated the impact of PolyMet's new name on its permit decision and has issued a permit amendment. We continue to refer to respondent as PolyMet and express no opinion about any permit amendments reflecting the name change.

³ This case is not the first appeal involving an air emissions permit issued for the NorthMet project. The Agency initially issued an air emissions permit to PolyMet in 2018. A certiorari appeal challenging that decision was filed, and the court of appeals ruled that the Agency's findings were insufficient for judicial review of the permitting decision. *In re Issuance of Air Emissions Permit No. 13700345-101*, 943 N.W.2d 399, 402 (Minn. App.

without holding a contested case hearing.⁴ Appellants challenged the issuance of the permit under environmental protection statutes, which provide for judicial review of a final Agency decision under the Minnesota Administrative Procedure Act. Minn. Stat. § 115.05, subd. 11(1) (2022). The manner in which appellants initiated judicial review—specifically, their service of the appeal papers on PolyMet—is the subject of this appeal.

On January 18, 2022—29 days after receiving the Agency’s permitting decision—appellants filed a petition for writ of certiorari, a proposed writ, and a statement of the case in the court of appeals. The following day, January 19, the court of appeals issued the requested writ. Upon receiving the writ, appellants served, via certified mail, the petition, the writ, and other documents on the Agency, the Minnesota Attorney General, PolyMet’s chief executive officer, and PolyMet’s registered agent.

Later that same day, after appellants had filed their proof of service, the court of appeals sua sponte issued an order requiring appellants to file an amended statement of the case and proof of service. *In re Issuance of Air Emissions Permit No. 13700345-101*, No. A22-0068, Order at 1–2 (Minn. App. filed Jan. 19, 2022). The court of appeals stated that

2020). We granted further review, reversed on federal law grounds, and remanded to the court of appeals to consider state permitting rules. *In re Issuance of Air Emissions Permit No. 13700345-101*, 955 N.W.2d 258, 265–68 (Minn. 2021). The court of appeals subsequently remanded the matter to the Agency for further consideration and additional findings. *In re PolyMet Mining, Inc.*, 965 N.W.2d 1, 12 (Minn. App. 2021), *rev. denied* (Minn. Sept. 30, 2021). The Agency issued a new air emissions permit after making additional findings.

⁴ The Minnesota Administrative Procedure Act defines “contested case” to mean “a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.” Minn. Stat. § 14.02, subd. 3 (2022).

“[b]ecause PolyMet was the permit applicant, PolyMet is a respondent in this appeal and relators must serve the certiorari petition and other appeal papers on PolyMet.” *Id.* at 1.

The court of appeals’ order required appellants to file the following documents:

(1) an amended statement of the case listing Poly Met Mining Inc. as a respondent and identifying its counsel; (2) proof of service of the certiorari petition, amended statement of the case, and issued writ of certiorari on counsel for Poly Met Mining Inc.; and (3) proof of service of the amended statement of the case on counsel for the [Agency].

Id. at 2. The order stated that appellants had until January 31, 2022, to file the documents.

Id.

Appellants complied the following day, January 20, which was 31 days after they received the Agency’s permitting decision. The amended statement of the case identified PolyMet as a respondent and listed four attorneys as PolyMet’s counsel. Appellants served the amended statement of the case, along with the other documents identified in the order, upon PolyMet’s counsel as well as the Agency’s counsel, and appellants filed a new proof of service. The case proceeded to merits briefing, at which time PolyMet moved to dismiss the appeal for lack of jurisdiction. PolyMet argued that appellants had failed to serve the certiorari petition on PolyMet’s counsel within the 30-day appeal period under Minn. Stat. § 14.63 and therefore had not invoked the court of appeals’ jurisdiction under the Minnesota Administrative Procedure Act.

The court of appeals agreed, concluding that the Minnesota Administrative Procedure Act and the civil appellate rules required appellants to serve the petition on PolyMet’s counsel within 30 days of receiving the Agency’s decision. *In re Issuance of Air Emissions Permit No. 13700345-101*, No. A22-0068, Order at 2 (Minn. App. filed June

21, 2022). Because appellants had served the petition on PolyMet’s counsel 31 days after receiving the Agency’s decision, the court of appeals determined that it lacked appellate jurisdiction. *Id.* at 2–3. Accordingly, the court of appeals dismissed the appeal and discharged the writ of certiorari. *Id.* at 3–4. We granted appellants’ petition for further review.⁵

ANALYSIS

The issue in this case is whether the court of appeals has appellate jurisdiction to review the air emissions permit that the Agency issued to PolyMet. “The court of appeals has appellate jurisdiction over executive branch administrative decisions ‘as prescribed by law.’ ” *In re Midway Pro Bowl Relocation Benefits Claim*, 937 N.W.2d 423, 425 (Minn. 2020) (quoting Minn. Const. art. VI, § 2). The law that prescribes the procedures for judicial review of many agency decisions—including the permitting decision at issue here—is the Minnesota Administrative Procedure Act. *See* Minn. Stat. § 115.05, subd. 11 (2022) (providing for judicial review of “any final decision” of the Agency “pursuant to sections 14.63 to 14.69”).

Sections 14.63 to 14.69 are the judicial review provisions of the Minnesota Administrative Procedure Act, which was enacted “to simplify the process of judicial review of agency action as well as increase its ease and availability.” Minn. Stat. § 14.001(7) (2022). Petitioners seeking judicial review must follow all applicable steps established by the Legislature in these provisions because “[t]he court of appeals lacks

⁵ The Agency has not participated in this appeal before our court.

jurisdiction over an administrative appeal that is not initiated in accordance with the requirements of the [Minnesota] Administrative Procedure Act.” *Midway Pro Bowl*, 937 N.W.2d at 425; *see also Dennis v. Salvation Army*, 874 N.W.2d 432, 435 (Minn. 2016) (explaining that “we adhere strictly to the statutory requirements for appeals from an executive branch agency”). Whether appellants’ service of the appeal papers on PolyMet complied with the requirements of the Minnesota Administrative Procedure Act presents questions of statutory interpretation, which we review de novo. *Midway Pro Bowl*, 937 N.W.2d at 425.

Two sections of the judicial review provisions prescribe service requirements: sections 14.63 and 14.64. Section 14.63 requires service on “all parties to the contested case” within 30 days of receiving the final decision:

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68 A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 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.

Minn. Stat. § 14.63.

The second statute, section 14.64, addresses instituting a proceeding for judicial review. It requires service on “all parties to the proceeding before the agency,” but includes no 30-day deadline:

Proceedings for review under sections 14.63 to 14.68 shall be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the agency and by promptly filing the proof of service in the Office of the

Clerk of the Appellate Courts and the matter shall proceed in the manner provided by the Rules of Civil Appellate Procedure.

.....

Copies of the writ shall be served, personally or by certified mail, upon all parties to the proceeding before the agency in the proceeding in which the order sought to be reviewed was made. For the purpose of service, the agency upon request shall certify to the petitioner the names and addresses of all parties as disclosed by its records. The agency's certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. A copy of the petition shall be provided to the attorney general at the time of service of the parties.

Minn. Stat. § 14.64.

The court of appeals determined, and PolyMet urges us to agree, that a petitioner serving appeal papers to initiate judicial review under the Minnesota Administrative Procedure Act must comply with Minn. R. Civ. App. P. 125.02, which provides that “[s]ervice on a party represented by counsel shall be made on the attorney.” Consequently, PolyMet argues, service is not effective when the petitioner serves the party directly if the party is represented by counsel. And because appellants served the appeal papers on PolyMet’s counsel more than 30 days after receiving the Agency’s decision, PolyMet contends that appellants failed to satisfy the service requirements of section 14.63.

Appellants assert two reasons for why service on PolyMet was effective. They argue here, as they argued at the court of appeals, that petitioners are not required to serve appeal papers on a represented party’s counsel to initiate judicial review under the Minnesota Administrative Procedure Act when service is made on the party directly. Alternatively, appellants contend that section 14.63—including its 30-day service deadline—does not apply to their appeal because the underlying agency decision did not

arise from a contested case. We need not reach appellants’ second argument because under both section 14.63 and section 14.64, service directly on a party is sufficient even if the party is represented by counsel.⁶

Our statutory analysis begins with the text of the Minnesota Administrative Procedure Act. “[T]he requirements for initiating appellate review of administrative decisions subject to [the Minnesota Administrative Procedure Act] are governed by [the Act] itself.” *In re Risk Level Determination of J.M.T.*, 759 N.W.2d 406, 407–08 (Minn. 2009); *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (“The plain language of the statute is our best guide to the Legislature’s intent.”). We will turn to the civil appellate rules, including Rule 125.02, to supplement the requirements of the Minnesota Administrative Procedure Act only “if [the Act] is silent on a matter of procedure.” *In re J.M.T.*, 759 N.W.2d at 408.

Accordingly, we begin with the text of sections 14.63 and 14.64 to determine whether the Legislature intended to require service on a represented party’s attorney under these provisions. This statutory interpretation question turns on the meaning of the term “parties.” The ordinary meaning of “parties,” in the legal context, is litigants. *Leer v. Chi., Milwaukee, St. Paul & Pac. Ry. Co.*, 308 N.W.2d 305, 307 (Minn. 1981) (“The meaning of the word ‘party,’ when used in the legal sense, is clear: ‘party’ means only the named plaintiff or defendant.”); *see also Party*, *Black’s Law Dictionary* (11th ed. 2019) (defining

⁶ Even if PolyMet is not considered a “part[y] to the contested case,” within the meaning of section 14.63, it is undisputed that service on PolyMet would nevertheless be required under section 14.64. PolyMet was a “part[y] to the proceeding before the agency,” meaning it was entitled to service of a copy of the writ. Minn. Stat. § 14.64.

“party” to mean “litigant”). This term is unambiguous and does not demonstrate a legislative intent to require service upon a party’s attorney.

But even if the word “parties” was ambiguous, surrounding statutory language and other provisions of the Minnesota Administrative Procedure Act bolster the interpretation that “parties” means the parties themselves. In addition to requiring service of copies of the writ “upon all parties to the proceeding before the agency,” section 14.64 provides that, “[f]or the purpose of service, the agency upon request shall certify to the petitioner the names and addresses of all parties as disclosed by its records.” The statute does not direct agencies to state whether the parties are represented by counsel and, if so, the names and addresses of their attorneys. If the Legislature had intended to require service on a represented party’s attorney, one would expect section 14.64 to require agencies to share this type of information along with identifying the parties “[f]or the purpose of service.”

Other sections of the Minnesota Administrative Procedure Act support the conclusion that by using the term “parties” in the service provisions, the Legislature intended to allow service on parties directly. When agencies issue final decisions in contested cases, the Minnesota Administrative Procedure Act requires that “[a] copy of the [agency’s] decision and order shall be *served upon each party or the party’s representative . . . by first class mail.*” Minn. Stat. § 14.62, subd. 1 (2022) (emphasis added). This language shows that when the Legislature uses the term “parties” in the Minnesota Administrative Procedure Act, it means the parties themselves, not their attorneys or representatives. *See Aberle v. Faribault Fire Dep’t Relief Ass’n*, 41 N.W.2d 813, 817 (Minn. 1950) (“The word ‘or’ is a disjunctive and ordinarily refers to different things as

alternatives.”). In sum, based on the ordinary meaning of “parties” and the way this term is used in other sections of the Minnesota Administrative Procedure Act, the directive to serve “all parties to the contested case” and “all parties to the proceeding before the agency” in sections 14.63 and 14.64, respectively, does not require service on parties’ attorneys. Instead, the statutory text shows a legislative intent to allow service on parties directly.

Nevertheless, PolyMet argues that we must incorporate Rule 125.02 of the Minnesota Rules of Civil Appellate Procedure into the service provisions because sections 14.63 and 14.64 are silent on how to serve parties who are a corporate entity and/or represented by counsel. We are unpersuaded by PolyMet’s overly circumscribed reading of the Minnesota Administrative Procedure Act. The touchstone for determining the acts required to invoke appellate jurisdiction is the applicable statute. *See* Minn. R. Civ. App. P. 115.01. Concluding that a statute is “silent on a matter of procedure,” *In re J.M.T.*, 759 N.W.2d at 408, suggests that the Legislature has set forth *no* intent regarding that matter. But the Legislature has stated its intent on the precise issue of whom can be served—the parties themselves, whether or not they are represented by counsel. Moreover, it is unclear why the Minnesota Administrative Procedure Act would need to specify how to serve a corporate entity for purposes of judicial review of agency decisions when other statutes already explicitly and broadly address that service issue. *See, e.g.*, Minn. Stat. § 5.25, subd. 1 (2022) (providing that “[a] process, notice, or demand required or permitted by law to be served upon an entity governed by chapter 221, 302A, 303, 317A, 321, 322C, 323A, 330, 540, or 543 may be served on . . . the registered agent”).

Because the Legislature’s intent is ascertainable from the statutory text, we conclude that sections 14.63 and 14.64 are not silent on the issue of whom must be served with the appeal papers. Incorporation of Rule 125.02 into these particular service requirements is unnecessary. To invoke appellate jurisdiction under the judicial review provisions of the Minnesota Administrative Procedure Act, a petitioner may effectuate service on “parties to the contested case,” Minn. Stat. § 14.63, and “parties to the proceeding before the agency,” Minn. Stat. § 14.64, by serving those parties directly, whether or not they are represented by counsel.

Appellants served their certiorari petition and writ on PolyMet’s chief executive officer and registered agent on January 19, 2022, by certified mail. PolyMet does not dispute that in doing so, appellants served PolyMet directly. This service—along with the other steps appellants took—was effective to invoke appellate jurisdiction and was timely under section 14.63’s 30-day service deadline. We therefore conclude that the court of appeals erred by dismissing the appeal.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed and remanded; appeal reinstated.