

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0932**

Thomas Hecker,
Respondent,

vs.

Crow Wing County Board,
Appellant,

Sunset Shores WF, LLC,
Respondent.

**Filed April 19, 2021
Affirmed
Cochran, Judge**

Crow Wing County District Court
File No. 18-CV-19-4224

Mark A. Severson, Joseph T. Pates, Severson Porter Law, Crosslake, Minnesota (for respondent Thomas Hecker)

Scott T. Anderson, Rupp, Anderson, Squires & Waldspurger, Minneapolis, Minnesota (for appellant)

Sunset Shores WF, LLC, Oak Grove, Minnesota (respondent)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas, Judge.

SYLLABUS

1. A draft decision document is not effective “notice of the decision” for purposes of commencing the 30-day period to appeal a board of adjustment’s variance decision under Minn. Stat. § 394.27, subd. 9 (2020).

2. An aggrieved person appealing a board of adjustment's variance decision under Minn. Stat. § 394.27, subd. 9, may invoke the jurisdiction of the district court by serving a notice of appeal, pursuant to Minn. R. Civ. P. 4.03, within the 30-day appeal period.

OPINION

COCHRAN, Judge

This case involves a decision by appellant Crow Wing County¹ (the county) to grant a variance to respondent Sunset Shores WF, LLC, and the subsequent filing of an appeal to the district court by an aggrieved neighbor, respondent Thomas Hecker, under Minn. Stat. § 394.27, subd. 9. The county argues that the district court erred by denying its motion to dismiss because (1) Hecker's variance appeal was untimely, and (2) Hecker failed to serve a formal summons. Because we conclude that Hecker commenced his appeal within the statutorily prescribed time frame and that Hecker's notice of appeal was sufficient to commence the civil action, we affirm.

FACTS

The following facts are undisputed. Sunset Shores² applied to the county for three zoning variances and a conditional-use permit related to property it owned. The county held a hearing on the requests on August 15, 2019. At the hearing, the county granted one

¹ The named appellant is Crow Wing County Board, but appellant refers to itself as Crow Wing County. We defer to appellant's nomenclature.

² Sunset Shores is a named respondent but took no part in this appeal.

of the three variance requests, but it denied the other two. The county also granted the conditional-use permit.³

On September 13, 2019, an attorney representing Hecker contacted the Crow Wing County Land Services Department to inquire about the status of the requested variances and conditional-use permit. At the time, the attorney did not identify himself as representing Hecker. In response, a customer-service supervisor sent an email to Hecker's attorney with an attached document entitled "Sunset Shores Draft.pdf." The body of the email stated only, "Attached is the draft findings." The attached document included a summary of the record, findings of fact, a summary of the decision, and a signature line for the board chair. The document was watermarked as "DRAFT," was unsigned, and was postdated to September 19, 2019.

Within two minutes of receiving the draft document, Hecker's attorney responded: "Because the [board] has not yet signed the Findings (and will not do so until 9/19), may I also assume that the decision has not been served on applicant?" The customer-service supervisor replied that she was copying an environmental-services supervisor on the email because she believed that "he ha[d] been in contact with the applicant." The environmental-services supervisor never responded.

On September 29, 2019, Hecker's attorney sent an email to the environmental-services supervisor, saying that he believed that the document had been

³ The county operates a joint board of adjustment/planning commission, which acted on the variance requests and the request for a conditional-use permit on the same day. The conditional-use permit is not at issue in this appeal.

signed. He further stated, “No secrets here, we plan to appeal the decision.” On October 9, 2019, an attorney who represented the county in land-use matters responded. The county’s attorney, mistakenly assuming that Hecker’s attorney was representing Sunset Shores, wrote: “Your client was handed that written notice of the decision on both the variance decision and the conditional use decision on August 15, 2019.” There is no indication in the record that Hecker was provided with written notice of the county’s decision on August 15, 2019—the date of the hearing.

On October 17, 2019, Hecker filed a notice of appeal with the district court under Minn. Stat. § 394.27, subd. 9, challenging the county’s decision to grant the variance. In the notice of appeal, Hecker asserted that he had not yet received the “final signed decision or notice of the decision.” Hecker served the notice of appeal on the county on October 18, 2019. He did not serve a separate summons. The county filed an answer later in October, alleging that Hecker failed to timely commence an appeal.

In January 2020, the county moved the district court to dismiss Hecker’s appeal on the basis of lack of subject-matter jurisdiction. The county argued that the appeal was untimely and also argued that the appeal was not properly commenced because Hecker failed to serve a summons. Hecker responded to the county’s motion with a memorandum of law and argued that the appeal was timely because the draft document did not trigger the 30-day statutory deadline. He also argued that the notice of appeal fulfilled the requirements of a summons. In support of Hecker’s argument, his attorney submitted an affidavit stating that the county did not post its decision and findings from the August hearing to its website until October 24, 2019.

After holding a hearing on the matter, the district court issued an order denying the county's motion to dismiss. The district court found that the county approved the decision and findings on September 19, 2019, but it did not publish them "until at least October 24, 2019." Based on this finding, the district court concluded that Hecker's appeal—which was filed on October 17 and served on October 18, 2019—was timely. The district court rejected the county's argument that the draft document provided to Hecker's attorney on September 13, 2019 constituted official notice of the decision for purposes of the statute. The district court emphasized that the document was "still in draft form," was marked as a "draft," and was not signed. The district court concluded that Minn. Stat. § 394.27, subd. 9, as interpreted by case law, "requires written notice and the notice provided to [Hecker's] attorney was not sufficient." The district court did not address the county's argument that Hecker failed to invoke its jurisdiction by failing to serve a summons but implicitly rejected that argument by denying the county's motion to dismiss. This appeal follows.

ISSUES

- I. Did the district court err by concluding that Hecker's appeal was timely?
- II. Did the district court err by concluding that the notice of appeal was sufficient to invoke its jurisdiction?

ANALYSIS

The county argues that the district court erred by denying its motion to dismiss. The county contends that the district court lacked jurisdiction to hear Hecker's appeal because (1) the appeal was untimely, and (2) Hecker failed to serve a formal summons on the county along with his notice of appeal. We are not persuaded.

I. The district court did not err by concluding that Hecker’s appeal was timely.

Under Minn. Stat. § 394.27, subd. 9, an aggrieved person may appeal a county’s decision to grant a variance to the district court. The statute provides, in relevant part:

All decisions by the board of adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final except that any aggrieved person or persons . . . *shall have the right to appeal within 30 days, after receipt of notice of the decision, to the district court* in the county in which the land is located on questions of law and fact.

Minn. Stat. § 394.27, subd. 9 (emphasis added).

Failure to serve an appeal within the 30-day deadline set forth in Minn. Stat. § 394.27, subd. 9, deprives the district court of jurisdiction over the action. *See In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477 (Minn. 2013) (concluding district court lacked jurisdiction over appeal under Minn. Stat. § 394.27, subd. 9, due to failure to properly serve county within 30-day time period); *Elbert v. Tlam*, 830 N.W.2d 448, 452 (Minn. App. 2013) (holding failure to serve notice of appeal under Minn. Stat. § 394.27, subd. 9, within 30-day period is incurable jurisdictional defect), *review granted* (Minn. July 16, 2013) *and order granting review vacated* (Minn. Sept. 25, 2013). An incurable jurisdictional defect deprives the district court of jurisdiction over the matter. *Elbert*, 830 N.W.2d at 450. We review the legal issues regarding jurisdiction de novo when, as

here, there are no facts in dispute. *Schulz v. Town of Duluth*, 936 N.W.2d 334, 338 (Minn. 2019).⁴

The county argues that the district court erred by concluding that Hecker’s appeal of the county’s variance decision was timely. The county maintains that Hecker’s appeal was untimely because Hecker commenced his appeal more than 30 days after his attorney received the draft document from the county on September 13. Hecker argues that the district court correctly concluded that the draft document was insufficient to trigger the 30-day appeal period because the draft document did not constitute “notice of the decision” as used in Minn. Stat. § 394.27, subd. 9. Hecker emphasizes that the document was unsigned, postdated, and watermarked as “DRAFT.”

The issue of when the 30-day appeal period began to run turns on the interpretation of the undefined phrase “notice of the decision” as used in Minn. Stat. § 394.27, subd. 9. Issues of statutory interpretation are questions of law that we review de novo. *State v. Overweg*, 922 N.W.2d 179, 182-83 (Minn. 2019). The object of statutory interpretation is to ascertain and effectuate the legislature’s intent. *Tapia v. Leslie*, 950 N.W.2d 59, 61 (Minn. 2020). The first step is to determine whether the statute is ambiguous on its face. *Id.* A statute is ambiguous if it is “subject to more than one reasonable interpretation.” *Id.* “If the [l]egislature’s intent is apparent from the plain and unambiguous language of the statute, we do not engage in any further statutory

⁴ This appeal involves the denial of a motion to dismiss for lack of subject-matter jurisdiction. We have appellate jurisdiction over “orders denying a motion to dismiss for lack of subject-matter jurisdiction.” *Cruz-Guzman v. State*, 916 N.W.2d 1, 7 (Minn. 2018).

construction.” *Id.* We generally interpret phrases in a statute according to their common meanings, but we construe technical terms according to their special meaning or definition. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012).

The county argues that we should interpret the phrase “notice of the decision” as used in Minn. Stat. § 394.27, subd. 9, broadly. The county suggests, without support, that “[n]otice simply means to give an announcement, or give information of something.” The county next contends, again without support, that “[a] ‘decision’ is merely an act of deciding something.” Putting the two together, the county maintains that “[a]ll the statute requires is that the county give the aggrieved person the information of what action was taken.” And the county contends that Hecker received notice of “what action was taken” on September 13 when the county emailed his attorney a copy of the draft document because the draft document included a summary of the county’s decision on the variance requests. The county further contends that it is of no import that the document was marked as a draft, unsigned, and postdated. The county emphasizes that the decision regarding the variance requests was made in August, and only the factual findings needed to be finalized.

Hecker argues that the phrase “notice of the decision” as used in Minn. Stat. § 394.27, subd. 9, should be interpreted more narrowly. He contends that the term “notice” has acquired a special meaning when used in reference to “notice” of a legal right. Citing to the first definition of “notice” in *Black’s Law Dictionary*, Hecker suggests that “notice” as used in Minn. Stat. § 394.27, subd. 9, means “definite legal cognizance” of the decision. *Black’s Law Dictionary* 1277 (11th ed. 2019). And, citing to the first definition of “decision” in *Black’s Law Dictionary*, he contends that the word “decision” means “[a]

judicial or agency determination after consideration of the facts and the law.” *Id.* at 511. Taking these definitions together, Hecker argues that “notice of the decision” means “definite legal cognizance of the final and official decision” of the county. And he contends that the draft document was not sufficient notice for purposes of Minn. Stat. § 394.27, subd. 9, because the draft, unsigned document did not provide definite legal cognizance of the basis for the county’s decision. In support of his position, he also cites to this court’s decisions in *In re Appeal of Saldana*, 444 N.W.2d 892 (Minn. App. 1989), and *Graham v. Itasca Cty. Planning Comm’n*, 601 N.W.2d 461 (Minn. App. 1999).

We agree with the district court and Hecker that the draft document provided by the county to Hecker’s attorney did not constitute “notice of the decision” for purposes of triggering Hecker’s 30-day appeal period under Minn. Stat. § 394.27, subd. 9. Our opinions in *Saldana* and *Graham* as well as the definitions in *Black’s Law Dictionary* guide us to this conclusion.

In *Saldana*, we construed the phrase “receipt of notice of the decision” under Minn. Stat. § 394.27, subd. 9, to mean that the appeal period commences when an aggrieved person receives the county’s “formal” written order rather than oral notice. *Saldana*, 444 N.W.2d at 893-94. Despite the absence of the word “written” in Minn. Stat. § 394.27, subd. 9, we concluded that written notice was required for two reasons. First, we noted that the board of adjustment is “already required to prepare and file a written order under Minn. Stat. § 394.27, subd. 8.” *Id.* at 893. Second, we recognized that the applicants in *Saldana* were “unable to make a cogent decision whether to launch an appeal” until they received the written notice because “it was not until appellants received the [county’s]

order and findings that they were made aware of the basis upon which the [county] made its decision.” *Id.* at 894.

The next time that we had an opportunity to interpret Minn. Stat. § 394.27, subd. 9, we reiterated our conclusion that written notice is required. *Graham*, 601 N.W.2d at 464. We noted that “written notice comports with due process without unduly burdening the board of adjustment, which is already required to file a certified copy of its decision with the County Recorder or the Registrar of Titles.” *Id.* at 465. And we emphasized that the purpose of providing notice of the decision is to convey the required information and “afford a reasonable time for those interested to prepare adequately and to make their appearance.” *Id.* at 464.

Based on our precedent, we interpret the phrase “notice of the decision” to require a final, written decision document. This interpretation is supported by the definition of “notice” set forth in *Black’s Law Dictionary* as requiring “definite legal cognizance.” *Black’s Law Dictionary*, *supra*, at 1277. A final, written decision document is necessary to provide an aggrieved person with definite legal cognizance of a county’s decision regarding a variance request. *See id.* Our interpretation also fulfills the legislature’s intent of providing aggrieved persons with a right to appeal by ensuring aggrieved persons have clear notice of when the 30-day appeal period commences under the statute.

Following this interpretation of the phrase “notice of the decision” as used in Minn. Stat. § 394.27, subd. 9, we conclude that the draft document provided to Hecker’s attorney on September 13, 2019, did not satisfy the statutory notice requirement. The draft document did not constitute notice of the decision under Minn. Stat. § 394.27, subd. 9, for

three reasons. First, the document had a signature line for the board chair but the document was unsigned. Second, the document was dated September 19, 2019, even though it was received by Hecker's attorney on September 13, 2019. Third, the document was watermarked as "DRAFT." Together, these facts indicate that the document was not final and was not intended to provide notice of the decision for purposes of triggering the statutory appeal period. Viewing the document as a whole, there is no reasonable basis to conclude that it provided effective, written notice of the county's variance decision.

Because the draft document received by Hecker's attorney on September 13, 2019 was insufficient to trigger the 30-day appeal period under Minn. Stat. § 394.27, subd. 9, the district court did not err by denying the county's motion to dismiss for lack of jurisdiction on that basis. Further, no party challenges the district court's finding that the county did not finalize the document until September 19, 2019. We need not determine when Hecker received notice of the decision because, assuming for the purposes of our analysis that Hecker received notice on the day the document was finalized, Hecker's appeal was timely when commenced on October 18, 2019—within 30 days of September 19, 2019.

II. Hecker's notice of appeal fulfilled the requirements of a summons and was sufficient to invoke the jurisdiction of the district court.

The county next argues that the district court lacked jurisdiction over Hecker's appeal because Hecker did not serve a separate summons along with his notice of appeal. Hecker contends that his service of the notice of appeal on the county satisfied the mandate

of a summons under the rules of civil procedure for purposes of conferring jurisdiction on the district court. We agree with Hecker.

We review jurisdictional questions de novo when, as here, the facts are not in dispute. *Skyline*, 835 N.W.2d at 474. Similarly, our review of the “construction and application of the Minnesota Rules of Civil Procedure” is de novo. *Id.*

Under the rules of civil procedure, service of a summons generally is required to confer jurisdiction on the district court over an action. Minn. R. Civ. P. 3.01 (providing that a civil action is commenced upon service of a summons or a signed waiver of service); *see also Skyline*, 835 N.W.2d at 475. The issue here is whether the notice of appeal served by Hecker satisfied the requirements of a summons for purposes of the rules of civil procedure.

Both parties point to *Skyline* to resolve this question. *Skyline* also involved an appeal of a county variance decision under Minn. Stat. § 394.27, subd. 9. 835 N.W.2d at 473-74. The issue before the supreme court in *Skyline* was whether the respondents properly served their notice of appeal of the county’s variance decision when they served the county attorney. *Id.* In addressing the issue, the supreme court explained that an appeal under Minn. Stat. § 394.27, subd. 9, commences a new action for purposes of the rules of civil procedure; it is not a continuation of an ongoing action. *Id.* at 476. The supreme court then concluded that respondents had not served their notice of appeal in accordance with the rules of civil procedure because they served their notice of appeal under rule 5.02(a), which governs service upon a party represented by an attorney after an action has been commenced, rather than under rule 4.03, which governs service of a summons. *Id.* The

supreme court further concluded that respondents should have effected service under rule 4.03 by serving either the county board chair or the county auditor, rather than by serving the county attorney, and as a result the district court lacked jurisdiction over the appeal. *Id.* at 477-78.

In addressing the requirements of service under rule 4, the *Skyline* court noted that the rules of civil procedure “do not explicitly define a ‘summons.’” *Id.* at 475. The supreme court then stated that “both the [r]ules and our decisions support the conclusion that for purposes of service under [r]ule 4.03, a ‘summons’ is simply *any document that commences a civil action.*” *Id.* (emphasis added). The supreme court also noted that under rule 4, “the summons *or other process* is the document that invokes the jurisdiction of the court, compelling the defendant to appear.” *Id.* (emphasis added). The supreme court’s description of a summons in *Skyline* guides us in determining whether a notice of appeal under Minn. Stat. § 394.27, subd. 9, serves as a summons for purposes of the rules of civil procedure.

This court’s decision in *Elbert* provides further guidance. In *Elbert*, we held that “to perfect an appeal under section 394.27, subdivision 9, the appealing party must serve *notice of appeal* on the adverse party or parties within the 30-day time period set forth in the statute and that failure to do so is an incurable jurisdictional defect.” 830 N.W.2d at 452 (emphasis added). We note that the supreme court granted review of our decision in *Elbert* in July 2013, but then vacated the order granting review in September 2013, one month after the supreme court decided *Skyline*. Thus, our conclusion in *Elbert*, that timely service of the notice of appeal confers jurisdiction over the action in the district court, has

not been disturbed. Reading *Skyline* and *Elbert* together, we conclude that a notice of appeal of a county's variance decision constitutes a summons or other process sufficient to invoke the jurisdiction of the district court under Minn. Stat. § 394.27, subd. 9, provided that the notice of appeal complies with the language in *Skyline* describing a summons.

Here, Hecker's notice of appeal satisfied the description of a summons set forth in *Skyline*. First, the document gave the county formal notice that Hecker was commencing an action in district court appealing its variance decision. Second, the document notified the county of Hecker's claims. Third, the notice properly invoked the jurisdiction of the district court because, as provided by Minn. Stat. § 394.27, subd. 9, Hecker appealed to the district court of the county where the subject property lies. And, while the notice of appeal lacked explicit language requiring the county to appear and answer, the county did appear and file an answer. The county's conduct demonstrates that it understood the notice of appeal to constitute a summons or other process that commenced an action under Minn. Stat. § 394.27, subd. 9. In sum, the notice of appeal satisfied the requirements of a summons set forth in *Skyline* and invoked the jurisdiction of the district court. *See* 835 N.W.2d at 475.

The county argues that *Skyline* compels a conclusion that the rules of civil procedure required Hecker to serve a separate summons in addition to the notice of appeal. The county notes that rule 3.01 requires service of a summons to commence a civil action and argues that a separate summons is required to comply with the rule. The county contends that this conclusion is supported by the supreme court's language in *Skyline* emphasizing

a “single, uniform course of procedure” for the commencement of civil actions. *Id.* at 478 (quotation omitted).

We read *Skyline* differently. We note that *Skyline* cited *Andrusick v. City of Apple Valley*, 258 N.W.2d 766 (Minn. 1977), which involved an appeal from a special assessment under Minn. Stat. § 429.081 (1976). *Id.* at 477. The *Andrusick* court specifically concluded that the “appeal in an assessment proceeding initiates a civil action.” 258 N.W.2d at 768. That appeal, like the appeal at issue in *Skyline* and the appeal at issue here, was initiated by a notice of appeal. *Id.* at 766. And the *Andrusick* court specifically held that “the notice of appeal is ‘civil process.’” *Id.* at 768. The *Skyline* court’s citation of *Andrusick* with approval militates against the county’s interpretation that *Skyline* requires service of a separate summons in addition to a notice of appeal because *Andrusick* holds that a notice of appeal, in the context of Minn. Stat. § 429.081, initiates a civil action and constitutes civil process. And, while the *Skyline* court did not address the precise issue before us, the *Skyline* court also concluded that “service of the appeal was the event that would have commenced a civil action” had service been proper. 835 N.W.2d at 476. Thus, even though the *Skyline* court recognized the policy supporting a “single, uniform course of procedure” for commencement of a civil action, the *Skyline* court implicitly held that in some circumstances a statutory notice of appeal is sufficient to commence a civil action and invoke the jurisdiction of the district court. *Id.*

Importantly, the appeal process pursuant to the version of Minn. Stat. § 429.081 at issue in *Andrusick* is very similar to that for Minn. Stat. § 394.27, subd. 9. At the time *Andrusick* was decided, section 429.081 provided that “[w]ithin 20 days after the adoption

of the assessment, any person aggrieved may appeal to the district court by serving a notice upon the mayor or clerk of the municipality.”⁵ Similarly, Minn. Stat. § 394.27, subd. 9, allows “any aggrieved person” to appeal “within 30 days.” The type of civil action contemplated by both statutes is similar: an appeal from a proceeding that is originally legislative or administrative in nature that becomes “a civil action when a notice of appeal is filed in the state district court.” *Andrusick*, 258 N.W.2d at 767 (quoting *City of Owatonna v. Chicago, Rock Island & Pac. R.R. Co.*, 298 F. Supp. 919, 921 (D. Minn. 1969)). Based on the *Skyline* court’s discussion of *Andrusick*, we conclude *Skyline* requires service of a document that invokes the district court’s jurisdiction, but we conclude that *Skyline* does not require a separate summons in addition to a notice of appeal.

In a previous case, we addressed a similar issue and concluded “that the Minnesota Rules of Civil Procedure do not specifically require that a summons be filed with a notice of appeal to perfect an appeal to district court.” *Curtis v. Otter Tail Cty. Bd. of Adjustment*, 455 N.W.2d 86, 87 (Minn. App. 1990). In that case, we also concluded that a landowner filing an appeal under Minn. Stat. § 394.27, subd. 9, was not “commencing” a new action subject to the rules of civil procedure but rather was “seeking review of a decision in an ongoing case.” *Id.* We acknowledge that *Skyline* overruled our conclusion that the filing of a notice of appeal did not commence a new civil action. But we do not read *Skyline* as overruling our conclusion that the rules of civil procedure do not require a separate summons, because the *Skyline* opinion did not address that issue. And our conclusion in

⁵ The current version of the statute allows an aggrieved person to appeal an assessment within 30 days. Minn. Stat. § 429.081 (2020).

Curtis that a separate summons is not required for an appeal under Minn. Stat. § 394.27, subd. 9, is reinforced by *Skyline*'s citation to *Andrusick* as well as by *Skyline*'s own conclusion that service of a notice of appeal is the event that commences a new civil action under Minn. Stat. § 394.27, subd. 9.

DECISION

A draft decision document is not effective “notice of the decision” for purposes of commencing the 30-day period under Minn. Stat. § 394.27, subd. 9, to appeal a variance decision of a county board of adjustment. Because Hecker did not receive a final written decision document notifying him of the county’s variance decision until at least September 19, 2019, the district court did not err by concluding that Hecker’s appeal of that variance decision was timely when he served and filed his notice of appeal within the appeal period. And because the notice of appeal that Hecker served fulfilled the requirements of a summons for purposes of commencing an action under Minn. Stat. § 394.27, subd. 9, thereby invoking the district court’s jurisdiction, the district court did not err by denying the county’s motion to dismiss.

Affirmed.