

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0847**

In the Matter of V & J Farm, LLC
and the Commissioner of North Fork Crow River Watershed District,
Acting as Drainage Authority for Stearns County.

**Filed April 18, 2022
Reversed and remanded
Slieter, Judge**

Stearns County District Court
File No. 73-CV-20-7123

Ryan R. Simatic, Biersdorf & Associates, P.A., Minneapolis, Minnesota (for appellant V & J Farm, LLC)

Gerald W. Von Korff, John C. Kolb, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondent North Fork Crow River Watershed District)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Rodenberg, Judge.*

SYLLABUS

To perfect an appeal and invoke the jurisdiction of a district court in an action initiated pursuant to Minn. Stat. § 103E.091, subd. 2 (2020), a party who appeals the amount of benefits or damages in a drainage proceeding must file a notice of appeal with the auditor within 30 days after the challenged order is filed and must serve notice of the appeal to the auditor. Service of the notice of the appeal to the auditor need not occur within 30 days after the challenged order is filed.

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

OPINION

SLIETER, Judge

Appellant-landowner challenges the district court's summary-judgment dismissal of landowner's appeal of respondent-watershed district's order redetermining benefits and damages for a drainage system. Landowner argues the district court erred in concluding that the 30-day time limit for filing a notice of appeal in Minn. Stat. § 103E.091, subd. 2(b), applies to the service requirement in subdivision 2(a). Because the plain language of Minn. Stat. § 103E.091, subd. 2(a), does not require service on the auditor within 30 days, and service was effected, we reverse the grant of summary judgment and remand for further proceedings.

FACTS

Appellant V & J Farm, LLC, owns land in Stearns County that benefits from the operation of Stearns County Ditch 37. Respondent North Fork Crow River Watershed District acts as the drainage authority for Stearns County Ditch 37. On February 19, 2020, the watershed district issued an order approving a redetermination of benefits and damages for Stearns County Ditch 37. On March 16, 2020, V&J Farm mailed a notice of appeal of the watershed district's redetermination order to the Stearns County Auditor, who received it on March 18.

On April 7, 2020, the watershed district's attorney contacted V&J Farm's attorney, asserting that "simply mailing the notice of appeal to the auditor does not constitute service or process consistent with the rules." On October 16, V&J Farm's notice of appeal was

filed in district court. After obtaining new counsel, V&J Farm personally served the notice of appeal on the county auditor on October 23, 2020.

The watershed district filed a motion for summary judgment contending that the district court lacked jurisdiction to consider the appeal because personal service of the notice of appeal was not effected within 30 days of the February 19, 2020 order. The district court granted the watershed district's motion for summary judgment. V&J Farm appeals.

ISSUES

- I. Is Minn. Stat. § 103E.091, subd. 2, “inconsistent or in conflict” with Minn. R. Civ. P. 4.03 rendering the civil rules of procedure inapplicable pursuant to Minn. R. Civ. P. 81.01?
- II. When an aggrieved party appeals a decision of a drainage authority pursuant to Minn. Stat. § 103E.091, subd. 2, must notice of the appeal be served to the county auditor within 30 days after the drainage authority's filing of the challenged order?

ANALYSIS

We review a district court's decision on a motion for summary judgment *de novo*. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). The effectiveness of service of process is a question of law that we review *de novo*. *Roehrdanz v. Brill*, 682 N.W.2d 626, 629 (Minn. 2004). Whether a district court has subject-matter jurisdiction is a question of law we review *de novo*. *Cnty. of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012). “When a party seeks review of a municipal decision, the reviewing court has subject matter jurisdiction, provided that the party challenging the decision timely seeks relief in the proper manner and forum.” *Id.*

Before we analyze the specific issues in this appeal involving a ditch proceeding, we provide an overview of key provisions of chapter 103E. We then consider the district court’s determination that Minn. R. Civ. P. 4.03 applies to the type of service required. Finally, we determine whether the required service was effected.

Chapter 103E, entitled “Drainage,” is part of a larger group of chapters, 103A-114B, broadly titled “Water.” Related to the issues on appeal, chapters 103A through 103G “constitute the water law of this state and may be cited as the ‘Water Law.’” Minn. Stat § 103A.001 (2020).

A “[d]rainage system’ means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority.”¹ Minn. Stat § 103E.005, subd. 12 (2020). A “[d]rainage authority’ means the board or joint county drainage authority having jurisdiction over a drainage system or project.” Minn. Stat. § 103E.005, subd. 9 (2020). Chapter 103E broadly provides mechanisms to establish, improve, repair, and assess drainage systems. *See, e.g.*, Minn. Stat. §§ 103E.212 (establishing new drainage systems), .215 (improving drainage systems), .315 (assessing benefits and damages), .351 (redetermining benefits and damages), .701 (repairing drainage systems) (2020).

¹ “Public drainage systems that are located totally within one county (and not within an established watershed district) are administered by the county board of commissioners. Joint county ditches are systems located in two or more counties. Judicial ditches are public drainage systems established through court order. . . .” Minnesota Pollution Control Agency, *Minnesota Public Drainage Manual: Overview* (Oct. 26, 2016, 7:52 PM), https://drainage.pca.state.mn.us/index.php/A._Overview.

When a drainage authority has approved a petition for a drainage project following a preliminary hearing, pursuant to Minn. Stat. § 103E.261, subd. 5 (2020), and an order for a detailed survey of the proposed drainage project is made, pursuant to Minn. Stat. § 103E.265 (2020), the drainage authority “shall, by order, appoint viewers consisting of three disinterested residents of the state qualified to assess benefits and damages.” Minn. Stat. § 103E.305, subd. 1 (2020). “Benefits” are assessed to those landowners who are beneficially affected by the drainage project. *See* Minn. Stat. § 103E.315, subds. 6, 7. The assignment of benefits is based on various criteria resulting from the project including, “an increase in the current market value of property,” “an increase in the potential for agricultural production,” or “an increased value of the property as a result of a potential different land use.” *Id.*, subd. 5. “Damages” are paid to a landowner to compensate for, among other reasons, loss of crops or diminished farm value resulting from the ditch project. *Id.*, subd. 8.

As it applies to this appeal, chapter 103E also authorizes a drainage authority to redetermine the benefits and damages “[i]f the drainage authority determines that the benefits or damages of record determined in a drainage proceeding do not reflect reasonable present-day land values or that the benefited or damaged areas have changed.” Minn. Stat. § 103E.351, subd. 1(a). The same procedure required to determine benefits and damages when a new ditch project is established, including the appointment of three viewers, is required to redetermine benefits and damages. *Id.*, subd. 2(a).

Procedural Background

V&J farm sought to challenge the watershed district's order redetermining the benefits of Stearns County Ditch 37 to the district court pursuant to Minn. Stat. § 103E.091, subd. 2, which provides:

(a) A person who appeals the amount of benefits or damages may include benefits and damages affecting property not owned by the appellant. *Notice of the appeal must be served to the auditor and to the owner or occupant of property included in the appeal or to the attorney representing the property owner in the proceedings.*

(b) The appellant must *file a notice of appeal with the auditor within 30 days after the order to be appealed is filed.* The notice must state the particular benefits or damages appealed and the basis for the appeal. Within 30 days after the notice is filed, the auditor must file the original notice with the court administrator of the district court.

(Emphasis added).

The parties disagree about the meaning of the service requirement in Minn. Stat. § 103E.091, subd. 2(a). The district court concluded that personal service is required pursuant to Minn. R. Civ. P. 4.03 and *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477 (Minn. 2013). The district court next concluded that the 30-day timeframe in Minn. Stat. § 103E.091, subd. 2(b), requiring filing of a notice of appeal with the county auditor, applies to the service of the county auditor provided in subdivision 2(a). The district court summarized that, because V&J Farms provided the “notice of” appeal to the county auditor by filing the notice of appeal pursuant to subdivision 2(b) within 30 days but did not personally serve the auditor within 30 days, the appeal was not perfected, and the district court lacked jurisdiction.

I.

Appellate courts review the “construction and application of the Minnesota Rules of Civil Procedure de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). Pursuant to the rules of civil procedure, drainage proceedings are “special proceedings” to which the civil rules do not apply if they are “inconsistent or in conflict.” Minn. R. Civ. P. 81.01(a) App. A.

The watershed district argues that the district court appropriately relied on *Skyline* by concluding that rule 4.03 applies because no “contradictory provision” excludes the application of the rules of civil procedure. V&J Farm argues that, because a conflict regarding the service requirements exists between Minn. Stat. § 103E.091 and rule 4.03, and drainage proceedings are listed as special proceedings in the appendix to rule 81, this court “must consider the statutory language” and the “context of how the statute[] create[s] the procedural framework.”

We therefore consider whether Minn. Stat. § 103E.091, subd. 2, is inconsistent or conflicts with the service requirements of Minn. R. Civ. P. 4.03. The relevant provisions of rule 4.03(e) specify who must be served when serving a public corporation: “To the chair of the county board or to the county auditor of a defendant county” or “To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.” Because Minn. Stat. § 103E.091, subd. 2(a), provides that the “[n]otice of the appeal must be served to the auditor,” it is inconsistent or in conflict with the provisions

of rule 4.03(e) specifying whom to serve.² Accordingly, service on the auditor—not the individuals specified in rule 4.03(e)—is required to appeal a redetermination order pursuant to Minn. Stat. § 103E.091, subd. 2, and invoke jurisdiction.

In *Skyline*, the supreme court concluded that an appeal pursuant to Minn. Stat. § 394.27, subd. 9, from a county variance decision “invoked, for the first time, the jurisdiction of the courts.” 835 N.W.2d at 476. The supreme court therefore held that an appeal to district court pursuant to Minn. Stat. § 394.27, subd. 9, commenced a new civil action pursuant to rule 3.01 and was subject to the service requirements of rule 4.03. *Id.* at 476-77; *Schulz v. Town of Duluth*, 936 N.W.2d 334, 339 (Minn. 2019) (observing that in *Skyline*, the court “said that ‘statutory 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)” (quoting *Skyline*, 835 N.W.2d at 477)); *see also Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) (“As a general rule a civil action is commenced, and the court thereby acquires jurisdiction, when personal service upon the defendant is actually made as prescribed by statute or rule.”).

Unlike the statute here, the appeal statute in *Skyline* did not specify how to file the notice of appeal or whom to serve. It provided, in relevant part: “All decisions by the board of adjustment . . . shall be final except that any aggrieved person . . . shall have the right to

² We need not resolve whether rule 4.03(e)(1) or 4.03(e)(5) applies to service on the watershed district under these circumstances because both conflict with Minn. Stat. § 103E.091, subd. 2.

appeal within 30 days, after receipt of notice of the decision, to the district court.” Minn. Stat. § 394.27, subd. 9 (2012). The specific question in *Skyline* was whether appellants had served the notice of appeal on the correct representative of the county decision-maker, which turned on whether Minn. R. Civ. P. 4.03 or 5.02 applied. *Skyline*, 835 N.W.2d at 474. Because the variance appeal commenced a new civil action, the supreme court concluded that rule 4.03 determined service requirements. *Id.* at 476.

Rule 4.03 identifies proper methods of service of a “summons,” defined in *Skyline* as “any document that commences a civil action.” *Id.* at 475. As described above, the rule specifies to whom a summons shall be delivered under various circumstances. *See* Minn. R. Civ. P. 4.03.

However, the rules of civil procedure “do not govern pleadings, practice and procedure in the statutory and other proceedings listed in Appendix A insofar as they are inconsistent with or in conflict with the rules.” Minn. R. Civ. P. 81.01(a). Drainage proceedings are a “special proceeding” listed in Appendix A to which conflicting rules of civil procedure do not apply. Minn. R. Civ. P. 81.01(a) App. A.

Therefore, we must interpret the plain language of Minn. Stat. § 103E.091, subd. 2, rather than rule 4.03, to determine the proper procedure to serve an appeal of an order of a drainage authority which redetermines benefits and damages of a drainage project.

II.

V&J Farm argues that the district court erred in concluding that the 30-day deadline to file notice in Minn. Stat. § 103E.091, subd. 2(b), applies to the service requirement in Minn. Stat. § 103E.091, subd. 2(a). Statutory interpretation presents a question of law that

appellate courts review *de novo*. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). “The goal of statutory interpretation ‘is to ascertain and effectuate the intention of the legislature.’” *Svihel Vegetable Farm, Inc. v. Dept. of Empl’t and Econ. Dev.*, 929 N.W.2d 391, 393 (Minn. 2019) (quoting Minn. Stat § 645.16 (2018)). If the language of the statute is clear, we apply the plain language of the statute. *Engfer*, 869 N.W.2d at 300. “[W]ords and phrases are construed according to . . . their common and approved usage” Minn. Stat. § 645.08(1) (2020); *see also Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). If the plain language of the statute is open to multiple reasonable interpretations, the statute is ambiguous and the court “may apply canons of construction to resolve the ambiguity.” *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). Neither party claims ambiguity in the language of Minn. Stat. § 103E.091, subd. 2. We agree that the subdivision is unambiguous.

Minn. Stat. § 103E.091, subd. 2, is separated into two subparts containing distinct requirements. Subdivision 2(a) requires, in relevant part, that “[n]otice of the appeal must be served to the auditor.” It includes no timeframe in its directive. The language of this subpart describes the person upon whom service is to be made—the auditor.

Subdivision 2(b) requires that “[t]he appellant must file a notice of appeal with the auditor within 30 days after the order to be appealed is filed.” The auditor, in turn, “must file the original notice with the court administrator of the district court” within 30 days of the filing of the notice.³ Minn. Stat. § 103E.091, subd. 2(b). The language of this subpart

³ No party argues, and the district court did not conclude, that the district court lacks jurisdiction because the notice of appeal was not filed with the district court within 30 days

directs a two-step process of when, where, and by whom, the notice of appeal must be filed. Based on the plain language of the two subparts of subdivision 2, we agree with V&J Farm that the district court erred in concluding that the 30-day limit on filing in subdivision 2(b) applies to the service requirement in subdivision 2(a).

“Every law shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. § 645.16; *see also Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). “When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used.” *General Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019); *see also Seagate Tech, LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 759 (Minn. 2014).

The legislature’s choice to separate service requirements in subdivision 2(a) from filing requirements in subdivision 2(b) demonstrates the legislature’s determination that service and filing are separate functions. And the inclusion of a 30-day limit in the filing subpart, but not in the service subpart, must be honored. *See State v. Jorgenson*, 946 N.W.2d 596, 607 (Minn. 2020) (“[E]very statutory word has meaning and none is surplusage.”). Based on the plain language used, the legislature required a 30-day limit only for the filing requirement of subdivision 2(b). We cannot add words to a statute that “the legislature has either purposely omitted or inadvertently overlooked.” *Hayden v. City of Minneapolis*, 937 N.W.2d 790, 796 (Minn. App. 2020), *rev. denied* (Minn. Apr. 14,

of the filing of the notice of appeal with the auditor. *See* Minn. Stat. § 103E.091, subd. 2(b).

2020) (quoting *Christiansen v. Univ. of Minn. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007), *rev. denied* (Minn. Aug. 21, 2007)).

Our conclusion that the 30-day limit for the filing requirement in subdivision 2(b), does not apply to the service requirement in subdivision 2(a), is further supported by an examination of a related statutory appeal provision. The legislature imposed a 30-day limit on serving notice to the auditor for a different type of drainage appeal. Minn. Stat. § 103E.095 (2020) provides for an appeal to district court from an order establishing or refusing to establish a drainage project. It states, “[t]he appellant must serve notice of the appeal to the auditor within 30 days after the order is filed.” Minn. Stat. § 103E.095, subd. 1.⁴

In sum, the plain language of subdivision 2 plainly separates into two parts, each with a distinct purpose. We conclude that the distinct purpose of subdivision 2(a) is to identify which representative of a drainage authority should be served with a notice of appeal from an order determining benefits or damages. The distinct purpose of subdivision 2(b) is to direct that the notice of appeal be filed with the auditor within 30 days after the challenged order is filed by the drainage authority.

Because V&J Farm filed its notice of the appeal with the auditor within 30 days, and served the notice of appeal on the auditor, V&J Farm satisfied the requirements of Minn. Stat. § 103E.091, subd. 2, to perfect its appeal.

⁴ Although the absence of an express filing requirement in Minn. Stat. § 103E.095 is a difference from the arguably duplicative filing and service requirements in Minn. Stat. § 103E.091, this difference does not alter the plain language of the service requirements in each statute.

DECISION

A party appealing an order redetermining benefits or damages pursuant to Minn. Stat § 103E.091, subd. 2, must file the notice of appeal with the auditor within 30 days of the challenged order and must serve the notice of appeal to the auditor. Because appellant filed the notice of appeal within 30 days and served the auditor personally, it satisfied the requirement of Minn. Stat. § 103E.091, subd. 2(a)-(b), to perfect its appeal and commence a new civil action. We therefore reverse the district court's grant of summary judgment and dismissal of the appeal and remand for further proceedings.

Reversed and remanded.