

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0348
A22-0349**

Phillip T. Kruger,
Appellant (A22-0348),

Harvey Kruger, et al.,
Appellants (A22-0349),

vs.

Kevin Nordquist,
Defendant (A22-0349),

Heron Lake Watershed District, Acting as Drainage Authority
for Jackson County Judicial Ditch No. 3,
Respondent.

**Filed September 6, 2022
Affirmed
Frisch, Judge**

Jackson County District Court
File Nos. 32-CV-21-144, 32-CV-21-149

Daniel T. Donnelly, Austin, Minnesota (for appellants)

Louis Smith, Smith Partners PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellants argue that the district court erred by dismissing their drainage appeals for insufficient service of process. Because the district court properly determined that Minn. R. Civ. P. 4.02 applies to appellants' appeals, and appellants did not comply with the rule's requirement that a nonparty effect service of process, we affirm.

FACTS

The facts of these consolidated appeals are uncontested. Respondent Heron Lake Watershed District is the drainage authority for Jackson County Judicial Ditch No. 3 (the ditch).¹ Appellants Harvey and James Kruger own an 80-acre parcel abutting the ditch. Harvey's brother, appellant Phillip T. Kruger, also owns land adjacent to the ditch.

In September 2021, the drainage authority issued an order approving a petition to improve the ditch and determining benefits and damages. In October, the Krugers each attempted to appeal the drainage authority's order to the district court. *See* Minn. Stat. §§ 103E.091 (providing for appeal from drainage authority's determination of benefits and damages), .095 (providing for appeal of drainage authority's establishment order) (2020). On October 27, Phillip hand-delivered his appeal papers to the drainage authority's drainage coordinator and office manager, and Harvey hand-delivered his appeal papers to the president of the drainage authority's board of managers. The Krugers were self-represented at the time.

¹ “‘Drainage authority’ means the board . . . having jurisdiction over a drainage system or project.” Minn. Stat. § 103E.005, subd. 9 (2020).

In December 2021, the drainage authority moved to dismiss the appeals for insufficient service of process pursuant to Minn. R. Civ. P. 12.02(d). The drainage authority argued that the Krugers failed to comply with Minn. R. Civ. P. 4.02 because the Krugers themselves served the notices of appeal. *See* Minn. R. Civ. P. 4.02 (“Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age *and not a party to the action*, may make service of a summons or other process.” (emphasis added)).

In February 2022, the district court granted the drainage authority’s motions and dismissed the Krugers’ appeals for insufficient service of process. The district court specifically determined that the rule 4.02 nonparty service requirement applies to the Krugers’ appeals and that rule 4.02 does not conflict with the drainage code.

The Krugers appeal.

DECISION

The Krugers argue that the district court erred by dismissing their appeals for insufficient service of process.

We review de novo whether service of process was effective. *Roehrdanz v. Brill*, 682 N.W.2d 626, 629 (Minn. 2004). Absent proper service, the district court lacks jurisdiction and the action must be dismissed. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 475 (Minn. 2013).

I. The Krugers identify no conflict between the drainage code and rule 4.02.

The Krugers argue that certain provisions of the drainage-appeal statutes conflict with, and therefore supersede, the requirement in Minn. R. Civ. P. 4.02 that a nonparty must effect service of process.

The Minnesota Rules of Civil Procedure “govern . . . in all suits of a civil nature.” Minn. R. Civ. P. 1. Minnesota Rule of Civil Procedure 81, however, sets forth a limited exception to the application of the rules. Rule 81.01(a) provides that “[t]hese 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 or in conflict with the rules.*” (Emphasis added.) Appendix A, in turn, provides “a list of statutes . . . which will be excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.” Accordingly, a statute supersedes a rule of civil procedure when: (1) the statute at issue is listed in Appendix A and (2) the statute is “inconsistent or in conflict with” the rules.

The drainage authority acknowledges that the drainage-appeal statutes are included in Appendix A. *See* Minn. R. Civ. P. App. A (listing Minnesota Statutes chapters 103A through 110A); *In re V & J Farm, LLC*, 974 N.W.2d 582, 587 (Minn. App. 2022) (noting that drainage proceedings under chapter 103E are “special proceedings” under rule 81 and Appendix A). But the drainage authority disputes that the drainage-appeal statutes are “inconsistent or in conflict with” the requirement under rule 4.02 that a nonparty effect service of process. We agree that sections 103E.091 and 103E.095 do not conflict with rule 4.02.

“A rule of civil procedure is inconsistent or in conflict with the provisions of a statute if the essential purpose of the statute would be frustrated by application of the rule.” *In re Petition of Brainerd Nat’l Bank*, 383 N.W.2d 284, 286 (Minn. 1986). “[I]n the absence of a clear intention to the contrary the ordinary rules of civil procedure apply to a claim unless clearly inconsistent with the statute.” *In re Civ. Commitment of Lonergan*, 811 N.W.2d 635, 641 (Minn. 2012) (quotation omitted). “Generally, in cases in which we have interpreted rule 81.01 and found a rule of civil procedure to be inconsistent with a statute, we have determined that the conflict appeared distinctly.” *Id.* (quotation omitted).

The language of the relevant statutes and rules guides our analysis in determining whether such a conflict exists. We review the construction and application of the Minnesota Rules of Civil Procedure *de novo*. *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016). We review questions of statutory interpretation *de novo* as well. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015).

Rule 4.02 provides: “Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age *and not a party to the action*, may make service of a summons or other process.” (Emphasis added.) Section 103E.091, subdivision 2(a), part of the benefits-and-damages appeal statute, provides:

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*

(Emphasis added.) And section 103E.095, subdivision 1, part of the establishment-appeal statute, provides:

A party may appeal an order made by the board that . . . establishes . . . a drainage project to the district court of the county where the drainage proceedings are pending. *The appellant must serve notice of the appeal to the auditor* within 30 days after the order is filed.

(Emphasis added.)

The Krugers argue that sections 103E.091 and .095 conflict with rule 4.02 because the statutes use the preposition “to”—as in “Notice of the appeal must be served *to* the auditor,” Minn. Stat. § 103E.091, subd. 2(a) (emphasis added)—while rule 4.03 uses the preposition “upon”—as in “Service of summons . . . shall be . . . *Upon* an individual,” Minn. R. Civ. P. 4.03(a) (emphasis added). We do not agree that these different prepositions create a conflict as it pertains to this case.

First, we observe that the Krugers’ argument does not concern rule 4.02 at all. Rule 4.02 is titled “by whom served” and sets forth procedures for who may *effect* service of process, including the nonparty requirement. The Krugers instead focus on rule 4.03, which sets forth procedures for who may *receive* service of process. Rules 4.02 and 4.03 relate to distinct procedural requirements for effecting service; a purported material difference in the prepositions used in the drainage-appeal statutes and rule 4.03 (the rule governing whom to serve) does not create a conflict between the statutes and rule 4.02 (the rule governing who may serve).

Even assuming that a conflict between the drainage-appeal statutes and rule 4.03 could create a conflict with rule 4.02, the Krugers do not identify a material conflict between rule 4.03 and the drainage-appeal statutes. The Krugers allege that the statutes conflict with the rule because they use different prepositions following the verb “serve.”

The statutes use the preposition “to” (e.g., serve *to* the auditor) while rule 4.03 uses the preposition “upon” (e.g., serve *upon* specified individuals).² But both prepositions refer to the *recipient* of the service, not the *provider* of the service—i.e., the prepositions “to” and “upon” each concern the person to be served, not the party who must provide the service. Whether any conflict exists between “serving *to*” and “serving *upon*” is immaterial to the question presented in this case. The only issue before us is whether the drainage-appeal statutes conflict with rule 4.02’s requirement that parties themselves cannot *provide* service. Because the purported conflict that the Krugers identify concerns only the *recipient* of the service, rather than the *provider* of service, they identify no conflict germane to this appeal.

Second, even if the prepositions “to” and “upon” somehow relate to the *provider* of service, we observe no conflict between the statutes and the rule. To accept the Krugers’ argument, we would need to conclude that the terms “serve *to*” and “serve *upon*” are so inconsistent with one another that “the essential purpose of the statute would be frustrated by application of the rule.” *Brainerd Nat’l Bank*, 383 N.W.2d at 286. We do not find such a conflict given the definitions of the prepositions “to” and “upon.”

The *Random House Dictionary* sets forth two relevant definitions for the preposition “upon”: “in or into complete or approximate contact with” and “on (in any of various senses, used as an equivalent of *on* with no added idea of ascent . . .).” *The Random House*

² We note that the district court did not address, and no party raises on appeal, whether the Krugers delivered the appeal papers to the appropriate individuals under either the drainage code or rule 4.03.

Dictionary of the English Language 2093 (2d ed. 1987) (emphasis in original). The same dictionary provides numerous definitions of the preposition “to,” including: “(used for expressing contact or contiguity) *on*; against; beside; *upon*.” *Id.* at 1989 (emphasis added); *see also The Compact Oxford English Dictionary* 2071-163 (2d ed. 1991) (defining “to” as “[i]nto (or in) contact with; on, against. Often expressing more than mere position, and so passing into transferred senses.”). These definitions are strikingly similar, with one definition even equating “to” and “upon.” It is unclear to us how these different prepositions create a conflict between the drainage-appeal statutes and rule 4.03 or how the preposition “upon” as used in the rule could frustrate “the essential purpose” of the statutes that use the preposition “to.” *Brainerd Nat’l Bank*, 383 N.W.2d at 286. And the Krugers offer no explanation as to how the meanings of these prepositions evidence a conflict. Based on these similar definitions, we discern no substantive difference between the prepositions “to” and “upon” in this context, and certainly none that rises to the level of “conflict” between the drainage-appeal statutes and rule 4.03. *See Lonergan*, 811 N.W.2d at 641 (providing that the rules of civil procedure apply absent a “clear intention to the contrary”).

Instead, the Krugers focus on the fact that the legislature recodified the drainage code in 1985 and 1990. They note that in the recodification process, the legislature altered the preposition affixed to the verb “to serve,” from the preposition “upon” to the preposition “to”—i.e., the legislature changed the statute’s phrasing from “to serve upon” to “to serve to.” The Krugers summarily argue that “[t]he change is meaningful” and imply that this change created a conflict between the drainage-appeal statutes and the civil rules.

But the legislature expressly preempted such an argument. In its 1985 recodification, it stated: “The legislature intends this act to be a clarification and reorganization of the drainage law. The changes that have been made are *not* intended to alter the drainage law and shall *not* be construed by a court or other authority to alter the meaning of the law.” 1985 Minn. Laws ch. 172, § 132, at 562 (emphasis added); *see also* 1990 Minn. Laws ch. 391, art. 10, § 1, at 750-51 (same). We will not infer that the legislature intended to substantively change the drainage code when the legislature explicitly stated that it intended to do no such thing. *See In re Petition for Establishment of Cnty. Ditch No. 11*, 511 N.W.2d 54, 56 (Minn. App. 1994) (noting in special-term opinion on timeliness of appeal from district court that the legislature’s 1985 and 1990 recodifications of drainage code did not change its substance), *rev. denied* (Minn. Mar. 31, 1994); *see also Pestka v. County of Blue Earth*, 654 N.W.2d 153, 159 (Minn. App. 2002) (acknowledging that the legislature did not intend recodification to alter the drainage law).

Because the Krugers’ arguments do not support a conflict between the drainage-appeal statutes and rule 4.02, we conclude that rule 4.02 applies to the Krugers’ district court appeals.³

³ The Krugers also appear to argue that Minn. Stat. § 103E.041 (2020) conflicts with rule 4.02. The argument is conclusory, consisting only of quoting the statute and stating, “The statute clearly recognizes Rule 4 service as an alternative to another method of service.” *See* Minn. Stat. § 103E.041 (“If notice is to be given under this chapter, personal service at least ten days before the date of hearing may be given in lieu of the manner provided. The notice must be served in the manner provided for the service of summons in a civil action in district court.”). The Krugers do not identify how or why this statute permits them to serve appeal papers themselves or how section 103E.041 otherwise conflicts with rule 4.02. Because the Krugers fail to present any argument explaining how section 103E.041 conflicts with rule 4.02, we conclude that the argument is inadequately briefed and decline

II. Minnesota Rule of Civil Procedure 4, not Minnesota Rule of Civil Procedure 5, applies to the Krugers' drainage appeals.

The Krugers argue in the alternative that rule 5 rather than rule 4 applies to service of their district court appeal papers. They assert that a civil action was already ongoing at the time of their appeals—in the form of the drainage authority's ditch-improvement proceedings—and therefore they needed only to provide service according to rule 5. We disagree.

Rules 4 and 5 both describe methods of providing service. Rule 4 concerns service of a “summons,” the operative document commencing a new civil action. Minn. R. Civ. P. 4.01; *Skyline Materials*, 835 N.W.2d at 475. Rule 5, on the other hand, “applies only to service of documents after an action has been initiated.” *Kmart Corp. v. County of Clay*, 711 N.W.2d 485, 490 (Minn. 2006); see Minn. R. Civ. P. 5 (providing that “every pleading *subsequent to the original complaint* . . . shall be served upon each of the parties” (emphasis added)).

to consider it. *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that we decline to consider inadequately briefed issues); see *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (“[O]n appeal, error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.”).

Even if we considered the Krugers' argument, it fails. Section 103E.041 sets forth a chapter-wide alternative manner of providing notice. It specifically provides that this alternative notice “must be served in the manner provided for . . . in a civil action in district court.” Nothing about this statute conflicts with rule 4.02. Nor does it indicate that other notice provisions, like the service provisions in sections 103E.091 and .095, do *not* require compliance with the rules of civil procedure. We discern no conflict between section 103E.041 and rule 4.02's nonparty service requirement.

The Krugers argue that rule 4 does not apply because their appeals of the drainage authority's order are not new civil actions and are instead merely subsequent stages in ongoing civil actions. But in *Skyline Materials*, the Minnesota Supreme Court rejected an analogous argument. The appellants in *Skyline Materials* sought to challenge a zoning variance. 835 N.W.2d at 473; see Minn. Stat. § 394.27, subd. 9 (2020) (providing appeal procedures to challenge zoning variance). The appellants followed the service procedures under rule 5 to initiate the appeal in district court, and the county then moved to dismiss for insufficient service of process. 835 N.W.2d at 474. Just like the Krugers, the appellants in *Skyline Materials* argued “that their appeal is not a summons, but rather an appeal of an ongoing proceeding.” *Id.* at 475. The supreme court disagreed, holding that “[a] ‘civil action’ under the Rules of Civil Procedure is a judicial proceeding” and “[a] proceeding before a county board of adjustment is *not* a judicial proceeding.” *Id.* at 476 (emphasis added). “Because the [appellants] invoked, for the first time, the jurisdiction of the courts . . . , service of the appeal was the event that would have commenced a civil action.” *Id.* Therefore, the supreme court held that the appellants’ zoning-variance appeal to district court was a new civil action which required them to follow the new-civil-action service requirements in rule 4. *Id.* Because the appellants failed to properly serve the respondents, the supreme court concluded that the judiciary lacked jurisdiction and dismissed their suit. *Id.* at 478.

The Krugers’ drainage appeals are analogous to the variance appeal in *Skyline Materials*. The drainage authority is a nonjudicial body, and a drainage proceeding is not a judicial proceeding. Just as in *Skyline Materials*, the Krugers’ appeals to the district court

invoked the jurisdiction of the judicial branch for the first time, thereby commencing a new civil action. The Krugers were therefore required to follow the rule 4 service procedures rather than the service procedures in rule 5. But the Krugers did not properly follow the procedures in rule 4. Thus, “dismissal of the action necessarily follows.”⁴ *Id.*

III. The Krugers’ equity argument fails because absence of jurisdiction requires dismissal of the action.

Finally, the Krugers argue that the district court should have accepted jurisdiction and allowed their appeals to proceed as a matter of equity. But the district court lacked jurisdiction to do so.

“Until the service of a proper notice of appeal, the district court has no jurisdiction for any purpose.” *Amundson v. Arndt (In re Mikkelson’s Est.)*, 228 N.W. 174, 175 (Minn. 1929). The district court “cannot appropriate to itself a jurisdiction which the law does not give it by correcting or permitting the correction of a notice of appeal after the time for taking the appeal has expired.” *Id.* Lacking proper service of notice, and therefore jurisdiction, “dismissal of the action necessarily follows.” *Skyline Materials*, 835 N.W.2d at 478.

The Krugers argue that dismissal of their appeals on jurisdictional grounds “would be technical in the extreme,” and cite to *County Ditch No. 27* for the proposition that their appeals should be permitted to continue as a matter of equity because “there was no bad faith on the part of the plaintiffs . . . , nor has there been any prejudice to the opposing

⁴ The Krugers attempt to distinguish *Skyline Materials* because that case did not concern rule 81. However, the Krugers do not explain the relevance of rule 81 to their argument that their drainage appeals were the continuation of an existing civil action.

party.” See *In re Petition to Enlarge, Etc., Cnty. Ditch No. 27, Renville Cnty.*, 45 N.W.2d 555 (Minn. 1951). But *County Ditch No. 27* states that equitable remedies are available only for *nonjurisdictional* defects. *Id.* at 559 (“Appellant will not be denied the right of an appeal on the ground of nonjurisdictional defects.”). While we are sympathetic that the jurisdictional rules create a harsh result to the Krugers, “making an exception here, even if we were free to do so, would be incongruous with the policy to construe the rules concerning the commencement of an action to provide a single, uniform course of procedure that applies alike to all civil actions.” *Skyline Materials*, 835 N.W.2d at 478 (quotation omitted); see also *Gieseke v. Nicollet Cnty. Drainage Auth. for Cnty. Ditch No. 86A*, No. A19-0955, 2020 WL 1129962, at *3 (Minn. App. Mar. 9, 2020) (same).

Because the district court lacked jurisdiction, we discern no error in its dismissal of the actions.

Affirmed.