

IN THE SUPREME COURT OF IOWA

Appeal No. 20-0997

JENNIFER ANN ASKVIK,
Petitioner/Appellant

-v-

**SNAP-ON LOGISTICS COMPANY a/k/a SNAP-ON TOOLS
CORPORATION,**
Respondent/Appellee

**ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY**

HONORABLE JEFFREY FARRELL, PRESIDING

LAW NO. CVCV060212

APPELLEE'S PROOF BRIEF

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STATEMENT OF THE ISSUES

I. THE DISTRICT COURT DID NOT ERR IN RULING THAT ASKVIG'S PETITION WAS UNTIMELY AND THEREFORE BARRED UNDER IOWA CODE SECTION 17A.19(3).

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II. THE DISTRICT COURT DID NOT ERR IN RULING THAT THE IOWA SUPREME COURT'S COVID-19 ORDERS RELATING TO THE TOLLING OF STATUTES OF LIMITATIONS DO NOT APPLY TO JUDICIAL REVIEW PROCEEDING DEADLINES.

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ROUTING STATEMENT

This matter involves an underlying workers' compensation proceeding. Being dissatisfied with the Commissioner's Appeal Decision, Askvig applied for judicial review. Yet, her Judicial Review Petition was not filed by the deadline contained in Iowa Code section 17A.19(3). Askvig admits her Judicial Review Petition was untimely, but claims substantial compliance saves her judicial review action, and in the alternative, the Iowa Supreme Court's COVID-19 orders tolled the jurisdictional deadline.

Given it is firmly settled law that the substantial compliance doctrine does not apply to jurisdictional deadlines, and jurisdictional deadlines cannot be tolled by the courts, these are not issues of first impression. This case also does not present new, urgent issues of broad public importance given these legal principles have been on the books since at least 1980, unchanged by court orders. *Logan v. Bon Ton Stores, Inc.*, 943 N.W.2d 7, 10-11 (Iowa 2020) (discussing substantial compliance and Iowa Code Chapter 17A since 1980); *Sharp v. Iowa Dep't of Job Serv.*, 492 N.W.2d 668, 669 (Iowa 1992) (holding Iowa court rules cannot toll jurisdictional deadlines). Instead, the issues presented on appeal deal with the application of existing legal principles and are issues appropriate for summary disposition, which should be decided by the Iowa Court of Appeals. Iowa R. App. P. § 6.1101(3).

STATEMENT OF THE CASE

I. NATURE OF THE CASE.

This is an appeal from the District Court's Ruling on Motion to Dismiss ("Ruling"), filed by Snap-on Tools. The underlying matter involves a workers' compensation proceeding that was appealed to the District Court on judicial review. At the Agency level, in his Appeal Decision, Workers' Compensation Commissioner Joseph Cortese affirmed Deputy Heather Palmer's Arbitration Decision awarding temporary total disability benefits and denying permanent partial disability benefits for a right upper extremity injury. The Commissioner affirmed and reversed other portions of the Arbitration Decision, but none of those holdings are relevant to this appeal.

II. COURSE OF THE PROCEEDINGS.

Snap-on Tools agrees with Askvig's statement relating to the course of the proceedings. (Askvig Proof Brief, p. 6). Specifically:

- 02/05/20 - Appeal Decision filed (with the Agency).
- 02/25/20 - Askvig filed her Rehearing Application (with the Agency).
- 05/18/20 - Askvig filed her Judicial Review Petition (with the District Court).
- 06/05/20 - Snap-on Tools filed its Pre-Answer Motion to Dismiss (with the District Court).

In addition, Snap-on Tools states that its Pre-Answer Motion to Dismiss was based on Askvig's failure to timely file her Judicial Review Petition within thirty days after her Rehearing Application was deemed denied. After a hearing on July 7, 2020, Judge Farrell dismissed the Judicial Review Petition. (Ruling, p. 5). In Judge Farrell's July 9, 2020 Ruling, he concluded that the Judicial Review Petition was untimely under Iowa Code section 17A.19(3) and that the Iowa Supreme Court's COVID-19 orders did not toll the judicial review deadline. (Ruling). Askvig timely filed her Notice of Appeal on July 29, 2020. (Notice of Appeal).

STATEMENT OF THE FACTS

Snap-on Tools agrees with Askvig's Statement of Facts insofar as she admits that her Rehearing Application was deemed denied on March 16, 2020 pursuant to Iowa Code section 17A.16(2) and Iowa Administrative Code section 876-4.24 (providing that an application for rehearing is deemed denied unless the application is granted within twenty days after its filing); she had not filed her judicial review action by the April 15, 2020 deadline pursuant to section 17A.19(3) (providing that a petition for judicial review must be filed within thirty days after an application for rehearing has been deemed denied). (Rehearing App.; Ruling, p. 1; Askvig Proof Brief, p. 7).

Askvig did not file her Judicial Review Petition until May 18, 2020, more than a month after the deadline. (JR Petition; *see* Ruling, p. 1).

In addition to Askvig's Statement of Facts, Snap-on Tools states that it sent a letter to Askvig's attorney on May 5, 2020 asking him to confirm the Appeal Decision calculations so the award payment could be made in an amount agreed upon by the parties. (Ex. B to Motion). It was only at that time that Askvig realized she had not filed her judicial review action and attempted to argue the Iowa Supreme Court's COVID-19 orders tolled the deadline to do so. "[I]t was first realized from Snap-On's 5/05/20 letter that this [judicial review] deadline had been missed." (Askvig Proof Brief, p. 33). In a response letter dated May 18, 2020, Askvig's attorney indicated a judicial review action had been initiated. (Ex. C to Motion).

At no time before the deadline expired, did Askvig's attorney inform the undersigned of his busy work schedule, office closures, technology issues, or his inability to otherwise file a timely judicial review action. Askvig never requested an extension or an agreement from Snap-on Tools that it would not contest an untimely judicial review action.¹

¹ Though, as discussed below, the parties cannot agree to extend a jurisdictional deadline, which is at issue in this case. *Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466, 468 (Iowa 1978) (holding that jurisdiction cannot be established by consent, waiver, or estoppel).

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN RULING THAT ASKVIK'S PETITION WAS UNTIMELY AND THEREFORE BARRED UNDER IOWA CODE SECTION 17A.19(3).

Askvig admits that her Judicial Review Petition was untimely under Iowa Code section 17A.19(3). (Askvig Proof Brief, p. 23, 33). Instead, she argues that because she substantially complied with section 17A.19(3), this saves her action. (Askvig Proof Brief, p. 17-33). However, error was not preserved on the substantial compliance argument as discussed below. Even so, the substantial compliance doctrine is inapplicable to jurisdictional deadlines, like the one at issue in section 17A.19(3). Thus, Snap-on Tools respectfully requests that the District Court's Ruling be affirmed, concluding Askvig's Judicial Review Petition was barred by the jurisdictional deadline set forth in section 17A.19(3).

A. Preservation of Error.

While the issue of the timeliness of the judicial review action was preserved for error, Snap-on Tools disagrees that the substantial compliance legal argument was preserved for error. Although Askvig presented her substantial compliance argument to the District Court², this argument was

² Askvig presented her substantial compliance argument in her Resistance to Pre-Answer Motion to Dismiss. However, this Resistance was untimely.

never ruled on and Askvig never requested reconsideration. In fact, Askvig admits this argument was never considered by the District Court. (Askvig Proof Brief, p. 17 (stating, “[c]onsequently, it did not consider the advocacy made on behalf of Askvig in her resistance’s page 1-22 [relating to her substantial compliance argument].”)).

“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised *and* decided by the district court before we will decide them on appeal.” *Meier v. Seneca*, 641 N.W.2d 532, 537 (Iowa 2002) (citations omitted) (emphasis added). An appellate court cannot analyze an issue without the benefit of a full record from the lower court, including a decision on the issue. *Id.* When a district court fails to rule on a legal theory, a motion under Iowa Rules of Civil Procedure 1.904(2) is the proper means to preserve error. *Homan v. Branstad*, 887 N.W.2d 153, 161 (Iowa 2016) (citation omitted). When the issue involves a matter of law, it is not necessary that the party seeking to preserve error do so specifically via a 1.904(2) motion, but the undecided issue must still be raised again to the lower court for a decision before appeal, to preserve error. *Meier*, 641 N.W.2d at 537-541.

(Resistance). It was filed on July 3, 2020, more than 10 days after the Motion to Dismiss had been filed on June 5, 2020. Iowa R. Civ. P. 1.431(4). (Resistance).

In the Ruling, there is no mention of “substantial compliance” or the “pari materia” Iowa Code section 17A.19(2).³ (*See Ruling*). This was a “red flag that the court had not decided the issue” and yet Askvig failed to file a motion to raise the issue again for a decision. *See UE Local 893/IUP v. State*, 928 N.W.2d 51, 61 (Iowa 2019) (noting the lack of any mention in a district court order as to a particular issue will mean error is not preserved unless the issue is brought before the district court again before an appeal is filed). When a substantial compliance argument is raised in the context of the issue of lack of jurisdiction under Iowa Code Chapter 17A.19, but not decided by the district court, the appealing party does not preserve error if it fails to raise the issue again with the lower court before appealing. *See Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94, 96-98 (Iowa 2013) (discussing error preservation on substantial compliance argument under section 17A.19(4)); *c.f.*, *Bruss v. Grout Scouts, Inc.*, 947 N.W.2d 683, FN 2 (Iowa Ct. App. 2020) (unreported) (noting error preservation on equitable estoppel argument under section 17A.19(2)).

³ Iowa Code section 17A.19(2) is only referenced once by Judge Farrell in his Ruling and it was in the context of Askvig’s argument as to whether the Iowa Supreme Court’s COVID-19 orders tolled the judicial review deadline. (Ruling, p. 4). It was not referenced in the context of Askvig’s substantial compliance argument.

Thus, given the lack of ruling on the substantial compliance argument, as well as Askvig's failure to raise the argument again after the Ruling was entered and before an appeal was filed, it was not preserved for appeal.

B. Standard of Review.

When reviewing a district court's ruling on a motion to dismiss, this is for errors at law. Iowa R. App. P. 6.907; *Meier*, 641 N.W.2d at 537. The appellate court is not bound by the district court's application of legal principles or conclusions of law. *McCormick v. Meyer*, 582 N.W.2d 141, 144 (Iowa 1998). However, the appellate court is bound by findings of fact, if supported by substantial evidence. *Id.*

C. Iowa Code Section 17A.19(3) Bars Untimely Judicial Review Actions Due To Lack Of Subject Matter Jurisdiction.

The District Court concluded that Askvig's Judicial Review Petition was untimely. (Ruling, p. 1-2, 5). On February 25, 2020, Askvig filed a Rehearing Application, but no decision was issued, so it was deemed denied on March 16, 2020, twenty days after the application for rehearing was filed. (Ruling, p. 1; Rehearing Application); Iowa Code § 17A.16(2); Iowa Administrative Code § 876-4.24. Askvig had thirty days, or until April 15, 2020 to file her Judicial Review Petition. Iowa Code §17A.19(3). She did not file her Judicial Review Petition until May 18, 2020, more than a month after the deadline to file a petition for judicial review had passed. (Ruling, p.

1). Because the judicial review deadline is jurisdictional, the District Court concluded that the untimely Judicial Review Petition barred the action and deprived the District Court of subject matter jurisdiction to hear the appeal under Iowa Code section 17A.19(3). (Ruling, p. 2 (*citing Sharp*, 492 N.W.2d at 669)).

Section 17A.19(3) provides that a petition for judicial review must be filed within thirty days after an application for rehearing has been denied or deemed denied. An application for rehearing is deemed denied unless it is granted within twenty days after its filing. Iowa Code § 17A.16(2); Iowa Administrative Code § 876-4.24. “When the language of a statute is plain and its meaning clear, the rules of statutory construction do not permit [the court] to search for meaning beyond the statute’s express terms.” *Boehme v. Fareway Stores, Inc.*, 762 N.W.2d 142, 146 (Iowa 2009) (citation omitted). Section 17A.19(3) is clear and unambiguous -- a party “must” file a petition for judicial review within thirty days after a rehearing application has been deemed denied. Further, the unnumbered paragraph to section 17A.19 notes that the provisions are “the exclusive means by which a person or party who is aggrieved or adversely affected by the agency action may seek judicial review of such agency action.” Thus, it is also clear that the

deadline for filing a petition for judicial review is jurisdictional. *See Cooper v. Kirkwood Cmty. Coll.*, 782 N.W.2d 160, 167-68 (Iowa Ct. App. 2010).

In *Cooper*, the Iowa Court of Appeals found that Iowa Code section 17A.19(3) was plain and clear that a party *must* file a judicial review petition timely, otherwise the district court lacks subject matter jurisdiction over the petition. *Id.* This is because judicial review is a right conferred by statute, so the procedure prescribed by statute must be followed otherwise jurisdiction is lost. *Id.*; *Kerr v. Iowa Pub. Serv. Co.*, 274 N.W.2d 283, 287 (Iowa 1979); *Ford Motor Co. v. Iowa Dep't of Transp.*, 282 N.W.2d 701, 703 (Iowa 1979). The Iowa Supreme Court has declined to expand the district court's jurisdiction in judicial review proceedings beyond the statutory time limits. *Sharp*, 492 N.W.2d at 669; *e.g.*, *Ford Motor Co.*, 282 N.W.2d at 703; *Tristan Constr., Inc. v. Iowa Workforce Dev.*, 810 N.W.2d 896, *2 (Iowa Ct. App. 2012); *The Chicago Athenaeum v. Emp't Appeal Bd.*, 711 N.W.2d 733, *1 (Iowa Ct. App. 2006) (unreported); *Langel v. Carroll Cnty.*, 2002 WL 1973142, *3 (Iowa Ct. App.) (unreported).

Askvig's attempt to argue the statute is ambiguous is contradictory when she readily admits her judicial review action was untimely under section 17A.19(3). (Askvig Proof Brief, p. 23, 33). She argues the word "means" in the unnumbered paragraph to section 17A.19 is ambiguous as it

relates to subject matter jurisdiction. (Askvig Proof Brief, p. 20-23). Yet, the term “means” has already been interpreted that the judicial review procedures in section 17A.19 are the “exclusive means” by which a party can file for judicial review and properly vest jurisdiction with the district court, as admitted by Askvig. (Askvig Proof Brief, p. 19) (*citing Kerr*, 274 N.W.2d at 286-88; *Ford Motor Co.*, 282 N.W.2d at 702-03; *Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985); *Fort Dodge Sec. Police v. Iowa Dep’t of Revenue*, 414 N.W.2d 666, 670 (Iowa 1987); *Sharp*, 492 N.W.2d at 669-70). This is so because district courts do not have original jurisdiction, but rather limited, appellate jurisdiction; in other words, because the right to judicial review is “conferred by statute,” the procedures set forth by the Iowa Legislature in section 17A.19(3) must be followed. *Black*, 362 N.W.2d at 462; *Kerr*, 274 N.W.2d at 287. Because Askvig admits she did not follow those procedures/deadline, she did not properly vest the District Court with subject matter jurisdiction.

Further, Askvig attempts to argue that “means” can be interpreted as referring to injunctions or declaratory order actions, but this has no applicability to the case at bar; Askvig did not file an appeal by these other “means” but attempted to do so by filing a judicial review petition. (Askvig Proof Brief, p. 20-21). “Thus, because petitioners treated this case as

judicial review of a contested case, we determine petitioners were bound by the time requirements for judicial review set forth in § 17A.19(3).” *Fort Dodge Sec. Police*, 414 N.W.2d at 670 (citations omitted). Even if she had tried appealing via an injunction or declaratory order, the procedures set forth in section 17A.19(3) must still be followed. *See Kerr*, 274 N.W.2d at 286 (concluding there was no jurisdiction for the court to entertain an injunction proceeding when the judicial review statute applied). Yet again, Askvig failed to file her Judicial Review Petition within thirty days after her rehearing application was deemed denied, which she admits. (Askvig Proof Brief, p. 23, 33).

Because Askvig filed her Judicial Review Petition after the jurisdictional deadline in section 17A.19(3), the District Court was correct that it lacked subject matter jurisdiction over the matter and dismissed the case. The District Court’s Ruling should be affirmed on appeal.

D. Substantial Compliance Does Not Save A Judicial Review Action That Is Otherwise Barred For Lack Of Jurisdiction.

Askvig admits her judicial review action was untimely, but she argues she substantially complied with the statute when she filed her Judicial Review Petition over a month late. Assuming error was preserved on this issue, which Snap-on Tools denies, the merits of this argument are addressed below.

Askvig acknowledges that Iowa Code section 17A.19(3) has not been interpreted to permit substantial compliance; she argues this is contrary to substantial compliance being permitted for section 17A.19(2), a substantially similar section, and the contradiction should be re-examined. (Askvig Proof Brief, p. 17-18 (stating, “[i]t further is believed that it is time to re-examine how historically one subsection allows substantial compliance, and the other does not.”)).

The substantial compliance doctrine is defined as the “rule that if a good-faith attempt to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished.” BLACK’S LAW DICTIONARY (11th ed. 2019), *available at* Westlaw. In other words, if there is substantial, not literal, compliance with the statute, then that is all that is necessary for jurisdiction. *Logan*, 943 N.W.2d at 10 (citation omitted). It has been recognized in the context of section 17A.19(2) (notice) since 1980 and section 17A.19(4) (caption and pleading). *Id.* at 10-11 (relating to notice issues); *Ortiz v. Loyd Roling Const.*, 928 N.W.2d 651, 654 (Iowa 2019) (relating to notice issues); *Cooksey*, 831 N.W.2d at 96-98 (relating to caption and pleading issues). However, the doctrine has not been applied to the deadline for filing a judicial review action under section 17A.19(3).

After a diligent search, the undersigned could find no cases applying the substantial compliance doctrine to section 17A.19(3), in the context of an untimely judicial review petition, and Askvig cites to no authority. This makes sense because district courts do not have original jurisdiction, but rather limited, appellate jurisdiction of judicial review actions; in other words, because the right to judicial review is “conferred by statute,” the procedures set forth by the Iowa Legislature in section 17A.19 must be followed. *Black*, 362 N.W.2d at 462; *Kerr*, 274 N.W.2d at 287. Further, “jurisdiction does not attach, nor is it lost, on equitable principles. It is purely a matter of statute.” *Tristan Constr., Inc.*, 810 N.W.2d 896 at *2 (citing *Cunningham v. Iowa Dep’t of Job Serv.*, 319 N.W.2d 202, 204 (Iowa 1982) (rejecting argument of substantial compliance relating to rehearing process)). The Iowa Supreme Court has previously noted that while a court has some latitude in upholding an appeal on substantial compliance grounds, “this principle does not permit a court to extend the time within which an appeal may be taken.” *Waterloo Civic Ctr. Hotel Co. v. Bd. of Review*, 451 N.W.2d 489, 491 (Iowa 1990).

Although substantial compliance has been applied to sections 17A.19(2) (notice) and 17A.19(4) (caption and pleading), these sections do not deal with judicial review deadlines, like section 17A.19(3). A failure to

timely file an appeal affects the entire validity of the appeal, whereas the failure to perfect procedural steps related to the appeal do not; while the court may have discretion to “overlook procedural variations” to avoid harsh results when there is no prejudice, that is not so with untimely appeals. 5 AM. JUR. 2d Appellate Review § 748, *available at* Westlaw (noting that under the Federal Rules of Appellate Procedure, a failure to file a timely appeal affects the validity of the appeal, but the failure to take other procedural steps may not warrant dismissal). Appeal deadlines are in a class of their own. Failure to timely appeal is a jurisdictional defect and a complete bar to an action. *Jensen v. State*, 312 N.W.2d 581, 582 (Iowa 1981). In fact, the court can on its own raise the issue of timeliness of an appeal to dismiss an appeal proceeding. *Id.*

While the purpose of the Iowa Administrative Procedures Act is to “simplify the process of judicial review of agency action, as well as to increase its ease and availability,” it is also to “strike a fair balance between these purposes and the need for efficient, economical and effective government administration.” Iowa Code § 17A.1(3), (4). Strict enforcement satisfies the purpose of the statute because it avoids uncertainty. *See Christiansen v. Iowa Bd. of Educ. Exam’r*, 831 N.W.2d 179, 190 (Iowa 2013) (noting the underlying policies of section 17A.19(3) include a need

for finality); *Sioux City Brick & Tile Co. v. Emp't Appeal Bd.*, 449 N.W.2d 634, 638 (Iowa 1989). “Parties to the proceedings have a need for and a right to a prompt disposition of a dispute...Regrettable hardships may well result to litigants who are unaware of the ‘deemed denied’ provision of the statute. But it is in the over-all interests of litigants and the public at large that administrative proceedings move to a prompt conclusion.” *Ford Motor Co.*, 282 N.W.2d at 703.

If the substantial compliance doctrine was applied to section 17A.19(3), there would be many practical problems. For example, parties would have to wait an unspecified period of time before paying awards as it would serve as a reminder to the other party to file for judicial review. This would result in overdue or unpaid awards and the potential for penalties against the paying party. As another example, if a party has to wait an unspecified period of time for a judicial review action to be initiated, the party would lose their ability to timely cross-appeal. Both of these practical problems are seen in the case at bar. While Snap-on Tools paid the Appeal Decision award, it would not have done so if Askvig had timely filed for judicial review. If Askvig had timely filed for judicial review, Snap-on Tools would have cross appealed. This was part of Snap-on Tools’ cost-benefit analysis in deciding whether to appeal on its own, versus waiting for

Askvig to do so timely and filing a cross-appeal, versus paying the award. In order to maintain the integrity of the judicial review process, untimely judicial review petitions are not, and should not be permitted as seen by these practical problems that undermine “the need for efficient, economical and effective government administration.” Iowa Code § 17A.1(3), (4); *see Cooper*, 782 N.W.2d at 167-68.

Substantial compliance has never before been applied to the jurisdictional deadline for filing a judicial review action, nor should it be now given the uncertainty that would arise. Thus, the District Court’s Ruling dismissing the judicial review action should be affirmed.

II. THE DISTRICT COURT DID NOT ERR IN RULING THAT THE IOWA SUPREME COURT’S COVID-19 ORDERS RELATING TO THE TOLLING OF STATUTES OF LIMITATIONS DO NOT APPLY TO JUDICIAL REVIEW PROCEEDING DEADLINES.

Snap-on Tools respectfully requests that the District Court’s Ruling be affirmed, concluding the Iowa Supreme Court’s COVID-19 orders relating to the tolling of statutes of limitations do not apply to judicial review proceeding deadlines under Iowa Code section 17A.19(3).

A. Preservation of Error.

Snap-on Tools agrees that this issue has been preserved for review as asserted by Askvig. (Askvig Proof Brief, p. 10-11).

B. Standard of Review.

When reviewing a district court's ruling on a motion to dismiss, this is for errors at law. Iowa R. App. P. 6.907; *Meier*, 641 N.W.2d at 537. The appellate court is not bound by the district court's application of legal principles or conclusions of law. *McCormick v. Meyer*, 582 N.W.2d 141, 144 (Iowa 1998). The appellate court is bound by findings of fact, however, if supported by substantial evidence. *Id.*

C. The Courts Cannot Toll Jurisdictional Deadlines.

The District Court concluded that Iowa courts do not have the authority to toll jurisdictional deadlines, whether by rule or by supervisory order. (Ruling, p. 2). The District Court cited to two cases for support. In *Sharp*, 492 N.W.2d at 669, the Iowa Supreme Court held that the Iowa Rules of Civil Procedure cannot "expand judicial review jurisdiction beyond the time limit specified in the statute." (Ruling, p. 2). In *Cooper*, 782 N.W.2d at 167-68, the Iowa Court of Appeals held that the Iowa Rules of Appellate Procedure cannot cure a party's failure to timely file a petition for judicial review. (Ruling, p. 3). In other words, "jurisdiction of judicial review is solely a province of the statutory scheme in chapter 17A." (Ruling, p. 3).

Askvig argues the Iowa Supreme Court has "inherent powers to suspend or override statutes." (Askvig Proof Brief, p. 12). She contends

that when a court is, or is about to be incapacitated, it must utilize its inherent powers to perform its essential functions. (Askvig Proof Brief, p. 12-13). Askvig’s arguments are out of context. While the courts may use their inherent powers, which are “derived from the separation of powers between the three branches of government” to “do whatever is reasonably necessary to discharge their traditional responsibilities,” the courts’ inherent powers “cannot be used to offend the doctrine of separation of powers by usurping authority delegated to another branch of government.” *State v. Hoegh*, 632 N.W.2d 885, 888 (Iowa 2001). If the Iowa Supreme Court were permitted to use inherent powers to extend the jurisdictional deadline for judicial review proceedings, this would “usurp[] authority delegated to [the Iowa Legislature]” given it is the only branch of government that can confer the right to judicial review. *See Sharp*, 492 N.W.2d at 669; *Cooper*, 782 N.W.2d at 167-68; (Ruling, p. 3).

The Iowa Supreme Court has issued several orders relating to COVID-19. Specifically, Order dated April 2, 2020 and Order dated May 8, 2020 contain provisions impacting *statutes of limitation*. These orders state:

**FURTHER PROVISIONS RE: STATUTE OF
LIMITATIONS TOLLING**

3. Statute of Limitations Tolling. As previously ordered on April 2, 2020, any statute of limitations, statute of repose, or similar deadline for commencing an action in district court is

tolled from March 17 to June 1 (76 days). Tolling means that amount of time is added to the statute of limitations or similar deadline.

4. Expansion on Prior Supervisory Order. The court now expands on the earlier supervisory order to direct that the 76 days of tolling will apply if the deadline for commencing the action would otherwise expire *any time from March 17, 2020 to December 31, 2020*. In other words, if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later). However, after December 31, 2020, any tolling will be phased out and eliminated. Thus, if the deadline for commencing the action would otherwise expire on any date from December 31, 2020 to March 16, 2021 (the 76th day of 2021), inclusive, that deadline would become March 17, 2021, and thereafter there would be no tolling at all.

(05/08/20 Order, p. 2; *see* 04/02/20 Order, p. 9). After Askvig filed her Judicial Review Petition on May 18, 2020, the Iowa Supreme Court issued another Order on May 22, 2020, but this was “substantively identical” to the prior provisions relating to the tolling of statutes of limitation. (*Compare* 04/02/20 Order, p. 9 *and* 05/08/20 Order, p. 2 *to* 05/22/20 Order, pp. 2, 14). Askvig argues these tolling provisions apply to the deadline to file for judicial review. (Ex. C to Motion).

Yet it is clear on the face of these orders that the tolling provisions do not apply to judicial review proceedings. The orders relate to “statute of limitations, statute of repose, or similar deadline[s] for commencing an action in district court.” First, a judicial review proceeding is not a type of action that is “commenced” in district court, invoking the district court’s

original jurisdiction. (*See* Ruling, p. 3). Iowa Code section 17A.19 is the “exclusive means” by which a party may appeal an agency action. The district court hears judicial review proceedings in an appellate capacity; this is a continuation of the agency proceedings, not a new action. *Robbennolt v. Snap-on Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996); *Logan*, 943 N.W.2d at 11; (Ruling, p. 3). Because the district court acts in an appellate capacity and the matter is simply a continuation of the agency proceedings, this is not the type of “similar deadline for commencing an action in district court” contemplated by the Iowa Supreme Court in its orders.

Second, statutes of limitation and statutes of repose are different than jurisdictional deadlines. Jurisdictional deadlines dictate whether a court has subject matter jurisdiction, or the power “to hear and determine cases of the general class to which the proceedings in question belong.” *Kling v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006). Subject matter jurisdiction cannot be waived as it is conferred by constitutional or statutory power. *Id.* at 15-16. Jurisdictional deadlines include deadlines for a petition for judicial review or writ of certiorari. *E.g.*, *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 420 (Iowa 1994) (holding “[w]here a party attempts to invoke the district court’s appellate jurisdiction [on judicial review of a workers’ compensation ruling], compliance with statutory conditions is

required for the court to acquire jurisdiction”); *Rater v. Iowa Dist. Ct. for Polk Cnty.*, 548 N.W.2d 588, 589-90 (Iowa Ct. App. 1996) (noting “[w]e recognize a timely filing of a petition for certiorari is not a ‘statute of limitations’ but a condition precedent to an appellate court’s jurisdiction”). “A timely petition for judicial review from an administrative decision is a jurisdictional prerequisite.” *City of Des Moines v. City Dev. Bd.*, 633 N.W.2d 305, 309 (Iowa 2001).

Unlike jurisdictional deadlines/subject matter jurisdiction, statutes of limitation invoke the court’s authority to hear a particular case. *Guidry v. State of Iowa*, 834 N.W.2d 871, *1 (Iowa Ct. App. 2013) (unreported); (*see* Ruling, p. 3). A statute of limitations defense must be raised as an affirmative defense but can be waived, unlike subject matter jurisdiction, which can be raised at any time and cannot be waived. *Compare id.* (noting a statute of limitations defense can be waived) *with Cooper*, 782 N.W.2d at 164, FN 1 (noting subject matter jurisdiction (including cases involving the district court’s appellate jurisdiction) cannot be waived and can be raised at any time). This difference was noted by the District Court in concluding the COVID-19 orders were within the Iowa Supreme Court’s authority to grant more time in original jurisdiction cases, but not for judicial review proceedings. (Ruling, p. 3-4). “The order is within [the Iowa Supreme

Court's] authority to grant more time in original jurisdiction cases which it has authority to hear. However, the court cannot extend the court's jurisdiction to hear a Chapter 17A appeal if filed 30 days following the agency's decision on an application for rehearing." (Ruling, p. 3-4).

Through its COVID-19 orders, the Iowa Supreme Court did not toll judicial review filing deadlines; these were not specifically included in the tolling provision and should not be interpreted as such given their distinct nature from "statute of limitations, statute of repose, or similar deadline[s] for commencing an action in district court." There is no mention of Iowa Code Chapter 17A or judicial review actions. If the Iowa Supreme Court had wanted to toll judicial review filing deadlines, assuming it could even have done so, it would have done so unambiguously and would not have titled the provision "Statute of Limitations Tolling." The Iowa Supreme Court is well aware of its prior decisions distinguishing jurisdictional deadlines. *E.g.*, *Cooper*, 782 N.W.2d at 164, FN 1; (Ruling, p. 4). Given the language of the orders is plain and its meaning clear, meaning should not be searched for beyond the express terms of the orders. *Cf. Boehme*, 762 N.W.2d at 146 (citation omitted) (discussing rules of *statutory* construction). Likewise the District Court's Ruling should be affirmed dismissing the

untimely judicial review action as the orders did not toll that jurisdictional deadline.

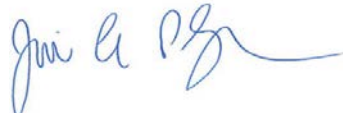
CONCLUSION

Askvig has failed to comply with the jurisdictional deadline for filing her Judicial Review Petition, which she admits. The substantial compliance doctrine does not apply to jurisdictional deadlines, so substantial compliance does not save her judicial review action. The Iowa Supreme Court's COVID-19 orders are likewise inapplicable to jurisdictional deadlines and does not save her action. Thus, Askvig's failure to file a timely judicial review action deprived the District Court of subject matter jurisdiction and the case must be dismissed. The District Court's Ruling should be affirmed.

REQUEST FOR ORAL SUBMISSION

Appellee desires to be heard in oral argument upon submission of this case.

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CERTIFICATE OF COST

I, Joni L. Ploeger, hereby certify that the cost of preparation and production of Appellee's Proof Brief was \$0.00, and that this cost has been paid in full.

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CERTIFICATE OF FILING

I, Joni L. Ploeger, attorney for the Appellee, certify I filed Appellee's
Proof Brief on October 19, 2020, via EDMS.

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CERTIFICATE OF SERVICE

I, Joni L. Ploeger, attorney for the Appellee, certify that on October 19, 2020, I served Appellee's Proof Brief on all parties to this appeal by emailing a copy to Mark Soldat, 3408 Woodland Avenue, Suite 502, West Des Moines, Iowa 50266 (MarkSPSLaw@aol.com) in full compliance with Iowa R. App. P. 6.702.

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