IN THE SUPREME COURT OF IOWA

NO. 22-1619

JOHNSON COUNTY NO. CVCV 083447

EMILIO PUENTE,

Appellant,

v.

CIVIL SERVICE COMMISSION OF IOWA CITY,

Appellee.

ON APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
HONORABLE CHAD KEPROS, JUDGE

APPELLANT'S FINAL BRIEF

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CERTIFICATE OF FILING

The undersigned hereby certifies that the Appellants' Proof Brief was filed on February 10, 2023, by electronic means, to the Clerk of the Supreme Court, Judicial Building, 1111 E. Court Ave., Des Moines, Iowa 50319.

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PRAYER FOR RELIEF

Appellant prays that dismissal of this case be reversed, and it be remanded for answer, discovery, and a decision on its merits.

STATEMENT OF ISSUES PRESENTED

The district court erred in granting a pre-answer motion dismissing the case.

ROUTING STATEMENT

This case applies standard principles of law; Appellant sees no reason for Supreme Court retention.

STATEMENT OF THE CASE

Appellant appealed an adverse decision by the Iowa City Civil Service Commission to the district court of Johnson County. The Commission filed a pre-answer motion seeking to dismiss the case, claiming untimely service. The district court granted dismissal in response to the motion, but for a different reason, holding that the Appellant had failed to appeal at all. Appellant appeals that decision as erroneous.

STATEMENT OF FACTS

This appeal is an extremely pure procedural question for the appellate courts, so the underlying facts are abbreviated. Emilio Puente

was a police officer for Iowa City for nearly three years. A disciplinary dispute resulted in a high-pressure meeting on February 3, 2022, at which he was forced to resign. He later challenged that as a constructive discharge, by bringing an action before the civil service commission of Iowa City. Counsel for the City made a motion to dismiss that action as untimely. The civil service commission held a hearing on that motion, and granted the motion, dismissing Puente's action seeking review of the City's employment action (App. 6).

Puente appealed the dismissal to the district court (App. 3). The City brought a motion to dismiss the appeal for a different procedural reason (App. 9-12).[1] Puente resisted the motion(App. 14-16), but the district court granted the motion and dismissed the appeal (App 17-23). The district court denied a subsequent motion under rule 1.904, and this timely appeal followed. Thus, this appeal is solely about whether the district court property dismissed the appeal of the civil service commission dismissal, or erred in doing so.

[1] Perhaps it does not matter much, but at the hearing before the Commission, attorney Schwickerath represented City management against employee Puente, but also appeared in this matter in the district court in representation of the Civil Service Commission that decided the matter in which she represented a party. Again, perhaps it doesn't make much difference whether or not two different assistant city attorneys perform the advocacy in this appeal, but Appellant did consider it unusual for an attorney to represent a party before a tribunal and later represent the tribunal.

The civil service commission's decision was made on May 5, 2022. The Iowa Code is fairly uniform that appealing from any lower decision usually requires that appeal be taken within 30 days of decision, and an appeal of this sort is no different. Puente made a filing with the district court on May 31, 26 days following the civil service commission ruling (App 3). That pleading cited to the civil service commission ruling, and attached a copy (App 6-7), and stated that Puente was seeking review of that decision by the district court.

In response to this filing, the city made a motion to dismiss the matter, due to a failure to make timely service of the new district court action on the City. This was a 5-page pleading almost exclusively focused on arguments of timely service and the remedy for failure to make timely service (App 9-12). Puente resisted that motion, and in its ruling, the district court agreed with Puente that service of the action was timely.

However, in the City's motion, there was a single paragraph that also asserted that an appeal of the civil service dismissal had not even been filed(App 11). The reason for this was that Puente's pleading was styled as a "Petition for Judicial Review." Puente did not address this assertion in his resistance, focusing the response on the timely service issue—the main assertion in the motion to dismiss.

As stated above, the district court ruled on the motion to dismiss and agreed with the argument of Puente's counsel that service of the action was timely, and no dismissal would be granted for that reason. However, the district court agreed with the City that no appeal had been taken from the civil service commission decision, and therefore the matter would be dismissed. The reason the Court gave was that the pleading was styled as a "Petition for Judicial Review," and not a "Notice of Appeal." Because the pleading was not styled a "Notice of Appeal," then no timely appeal from the civil service commission ruling had been taken (App 21).

Puente made a timely motion under Rule 1.904, to enlarge or reconsider the dismissal (App 25-26). Puente argued that a petition seeking judicial review of an administrative decision within the court's jurisdiction **IS** a notice of appeal. In the alternative, such a pleading can easily be **construed** as a notice of appeal. And finally, if it could not be construed as a notice of appeal, then the court should allow a minor **amendment** to the pleading, to allow it to be re-styled as a notice of appeal, and then ruled as timely made. The district court denied all of these positions, stating that Puente's counsel was simply re-hashing what had been argued before (App 30-31).

STANDARD OF REVIEW

The Court did not reach the merits in its decision; it dismissed for a procedural reason. This should be reviewed for errors of law, per Everett v. State, 789 N.W.2d 151, 155 (Iowa 2010); and Manning v. State, 654 N.W.2d 555, 560 (Iowa 2002). However, in the 1.904 motion, Appellant asked the Court for leave to amend his case heading, which motion was denied. That particular action may be subject to abuse-of-discretion review.

PRESERVATION OF ERROR

Appellant asserts that the record on appeal demonstrates preservation of error. The opposing party moved pre-answer to dismiss a case, the Appellant resisted that, and even filed a 1.904 motion to make sure the district court had every chance to avoid error.

ARGUMENT

1. Error in granting pre-answer dismissal to a timely-filed pleading

The district court used procedure like a bludgeon in this case to dismiss this petition, and in doing so, it actually erred in applying procedural rules. There are two ways to look at the foundational errors in the rulings below, and they largely overlap but are conceptually different, and are

described in these first two brief points. The more important of these two foundational points is the second, but this point must be addressed first.

A pre-answer motion is allowed for one reason only—that the court cannot exercise jurisdiction over the matter. This is most typically done in Iowa courts for two reasons. In each typical example, a named defendant is filing the motion as an "interested party" under I.R.C.P. 1.431(1), seeking dismissal, and not as an actual party to the case, arguing that the district court cannot exercise personal jurisdiction over them, and therefore the case should be dismissed. In one common such instance, the Defendant is arguing that Iowa courts cannot exercise personal jurisdiction over them because they are an out-of-state person or entity, and there is a constitutional barrier to haling them into the courts of Iowa. In another common instance, a named defendant has not been served with a filed action, and the matter has been on file so long, that any service of the action would be too late under I.R.C.P. 1.302(5), so they file an "interested person" motion in the action seeking dismissal for inability of the court to exercise personal jurisdiction over them.

The action filed by Puente was not dismissed due to a constitutional inability of the court to exercise personal jurisdiction over the named Respondent, the City of Iowa City, nor for failure of service. Therefore, the

only possible reason for dismissal, in response to a pre-answer motion to dismiss, of a timely-filed action, is an utter failure of subject matter jurisdiction.

The subject matter of the pleading is to seek judicial review of a civil service commission decision made in Johnson County, Iowa. There is no doubt that the district court of Johnson County has jurisdiction over that subject matter. In addition, while the Court below was extremely harsh in its rulings, one cannot help but notice that the City and the Court below, also lacked certain specificity in their statements. For example, the City's motion nowhere uses the phrase "subject matter jurisdiction." The motion states that "The matter must be dismissed because the district court lacks jurisdiction due to Appellant Puente's failure to serve a notice of appeal as required by 400.27." This is a complaint about lack of personal jurisdiction. (It also referred to Puente as "Appellant," yet the court would not agree with the moving party as to Puente's position in the matter).

The Court's ruling likewise completely lacks use of the phrase "subject matter jurisdiction." The Court below agreed with the Appellant that the Court had personal jurisdiction over the moving party, but dismissed for lack of jurisdiction anyway.

This Appellant asserts that a dismissal on a pre-answer motion to dismiss by an "interested party" should be very clear regarding the exact jurisdictional basis for which dismissal is sought, and the court ruling on such a motion should be equally clear regarding the lack of jurisdiction that is leading to dismissal. Unless the lack of subject matter jurisdiction is absolutely inarguable, then the issue is actually a question of whether the pleading states a claim upon which relief must be granted, and must be more carefully considered by the district court, after appearances, answers, and argument over the claims (potentially novel in nature) being made.

The district court in this case erred in dismissing this case for lack of subject matter jurisdiction in response to a motion that did not ask for that remedy for that reason; it allowed an argument about personal jurisdiction to essentially become a sua sponte dismissal on subject matter jurisdiction in a way that denied this Appellant some basic due process and mis-applied the Iowa rules of procedure.

2. Error in the motion to dismiss standard

Closely related to part one above, yet distinct, is the high bar for dismissing cases in Iowa under a motion to dismiss. The appellate courts regularly instruct the district courts that dismissals prior to discovery are extremely disfavored at law (for example in Benskin Inc. v West Bank, 952

N.W.2d 292 (Iowa 2020)). It must be demonstrated that the petitioning party essentially has no way of prevailing in their action at all, before such a dismissal can be granted. In making that decision, a district court must assume the truth of all allegations made in the petition, and then look at the relief being sought based on those facts, and decide that it is not possible for the petitioner to prevail.

In this case, Puente noted the civil service commission decision of 5/5/22, alleged that it was mistaken and should be reversed, and sought review and reversal of that decision, with a remand to the commission for further relief. Obviously, if Puente made the required showing of his allegations, against a defense on the merits by the respondent, then he could obtain the relief sought in his petition. A motion to dismiss is typically granted for very limited reasons. For example, if a petition seeks a remedy that has been foreclosed by prior Iowa supreme court precedent, then a district court, which does not have the discretion or power to grant the remedy being sought, can dismiss a petition seeking such a remedy. The dismissed party can then make an argument on appeal for the reversal or extension of existing law. But there is no use in having a full-blown district court proceeding regarding a remedy that the lower courts have been instructed that they have no power to grant. Another example might be if a

plaintiff filed an action in small claims for $10,000, when that court only has jurisdiction over controversies involving $6500 or less. Such a petition could be subject to a motion to dismiss for clear lack of subject matter jurisdiction.

This was not such a case. If one looks at the district court petition in this case, one cannot say, taking as true all of the allegations in the petition, that the relief sought could not be granted as a matter of law. The district court did not properly apply the standards for dismissing an action on a motion to dismiss, and the dismissal must be reversed.

3. Error in not denying motion because the pleading qualifies as an appeal under 400.27 as it is.

When a city employee asserts that they have suffered adverse employment action, they can seek a remedy from the civil service commission of the employing city under Chapter 400 of the Iowa Code. And if they are denied relief by the commission, they may seek review of that decision in the district court. Such an action is described in Section 400.27, and is referred to as an "appeal." Such an appeal needs to be filed within 30 days of the civil service commission decision.

Black's Law dictionary defines "appeal" as "seeking review from a higher court of a decision below." In other words, an appeal is to seek

judicial review. Plaintiff filed a petition seeking judicial review of a body subject to the jurisdiction of the Johnson County district court, the action was timely filed, it referred to the action below complained of, and attached a copy of the decision. It is therefore an error of law for the lower Court not to consider this pleading to be an appeal of the civil service commission. It should also be noted that, regarding the pleading that begins an action in district court, I.R.C.P. 1.401 begins: "There shall be a petition . . .". If the rules command that the initiating pleading be styled as "petition," but the district court dismisses that pleading precisely for being styled as a "petition," then the rules have ceased to make much sense.

Appellant considers this the most important, straightforward issue for the appellate courts to address—did the district court, presented with a "Petition for Judicial Review" of a decision by the civil service commission, with the decision attached, have the power to treat such a pleading as if it was **not** an appeal of that decision? It is apparently the decision of the district court that, as a matter of law, this pleading cannot qualify as an appeal of the civil service commission ruling. And that allows the court to dismiss for an utter lack of jurisdiction.

Appellant asserts that affirming such a ruling would mark the ultimate in form over substance. While procedure is important, and can sometimes

be decisive, courts also should guard against creating a culture where proceedings must avoid an endless series of vaguely visible trapdoors that drop litigants into the “loser bin” and deny them meaningful access to the courts for redress of grievances.

There is no way that a pleading, timely-filed, and styled as a petition for judicial review, that attaches a decision of the decision for which review is sought, when such review is a right afforded to this Appellant by Iowa Code 400.27, should be dismissed for not stating that it was an “appeal.” To appeal is to seek judicial review. It’s the same thing. Courts should not dismiss actions for such minutiae.

Much is made of judicial review under 17A, and how it compares with Chapter 400. An appeal to a district court of a final decision by a department of state government is indeed properly styled as a “Petition for Judicial Review.” It is also true that the Appellant’s pleading below contained a paragraph claiming that venue was proper in Johnson County, and cited to the venue section in 17A, rather than to 400.27(3)—the venue provision in Chapter 400. And that was an oversight on the part of counsel.

The City, in its motion to dismiss, asserted that the petition was an attempt to seek a remedy under Chapter 17A of the Code (even though that Chapter was mentioned only in the venue paragraph). The District

Court accepted this assertion as gospel. The Court states "Petitioner makes clear that he is bringing this action pursuant to [Chapter 17A] and that he is challenging `final commission action.'"[2] Thus, the district court assumed that the action was brought pursuant to 17A, and based on that assumption, dismissal followed.

Once again, this is clear error by the court below. The Court erred in concluding that the Appellant's initial pleading could only be considered as seeking a remedy under Chapter 17A of the Code, and could not be considered as seeking a remedy under Chapter 400. The Court should note that extensive arguments were made, all about language of Chapter 400, in the underlying hearing before the civil service commission. The district court petition refers to the civil service commission decision being appealed, as concerning the 14-day deadline for appealing adverse employment action, which is a provision in Chapter 400, not in 17A. It is error for the lower court to put its own gloss on the words in the pleading, and then use that gloss as a basis for subject matter dismissal.

4. Error in not construing pleading as invoking 400.27

[2] Notice that the pleading does not state "final agency action" as it likely would in an action under 17A. By stating the petition sought review of "final commission action," Appellant was merely re-assuring the district court that the ruling appealed from was not an interlocutory ruling by the civil service commission, but a final ruling.

If the Court did not deem a petition for judicial review to BE an appeal, then it should have granted Appellant's 1.904 motion and construed the pleading to be a functional appeal of the civil service commission decision of 5/5/22.

To "construe" a pleading is to interpret it or explain what it means practically; for a Court to ask itself what is most likely meant by phrasing that the Court sees as inartful, or not quite correct. Construing documents in district court was well-covered in the two rulings in Rethamel v Havey, 679 N.W.2d 628 (Iowa 2004); and 715 N.W.2d 253 (Iowa 2006). Certainly before dismissing a petition pre-answer, a Court should ask itself if the pleading can easily be construed in a way that removes any defect, real or perceived. The district court in this case did not construe the petition in this matter at all. It lacked the word "appeal," and was therefore dismissed.

Construing a pleading in a way that avoids letting minor procedural errors from denying litigants a chance to have their arguments heard is commonly done in this area. The most obvious example is the non-existent practical difference between a notice of appeal, and a petition for writ of certiorari. Long before 2008, if a litigant brought the latter before this Supreme Court when they should have filed a pleading styled as the former, the Supreme Court "construed" the filing as a notice of appeal, and

entertained it on that basis. And vice versa. An example of such construction of pleadings is seen in Bousman v Iowa District Court of Clinton County, 630 N.W. 2d 789 (Iowa 2001). In 2008, the Supreme Court went ahead and established a rule of appellate procedure (I.R.App.P. 6.108) stating this rule of construction. Therefore, the Court has made clear that a perceived error in styling a pleading as perceived by the district court below, when the basis and prayer for relief are clear and allowed by statute, are not to be dismissed for procedural reasons, but construed in a way to give the pleading its practical effect. That was not done by the district court below in this case, and it erred in dismissing this case without construing the pleading as a "notice of appeal."

5. Error in refusing to allow re-styling of petition

This is the one area of argument where the Appellant does believe that the lower court comes under an "abuse of discretion" standard. In the 1.904 motion, Appellant asked the district court, if it believed that the pleading filed was somehow defective for failing to state it was a "Notice of Appeal" instead of a "Petition for Judicial Review," then could the petitioning party be granted leave to amend the pleading by changing that title, and then consider sufficiency of the pleading as amended. Allowing amending of the pleading does allow for at least a modicum of discretion by

the lower court, though the courts have been instructed to be lenient in allowing amendments to pleadings, so long as they do not unfairly prejudice a respondent.[3]

The district court would not allow any re-styling, re-titling, or amendment to the petition. In response to this portion of the Rule 1.904 motion, the court stated, "The Court finds that Plaintiff is seeking to rehash a legal issue already decided and his 1.904 Motion is not appropriate."[4]

The Appellant argues that this ruling was an abuse of discretion. A district court should freely allow amendments early in a case, the more minor the amendment the more likely should it be granted, and this proposed amendment was extremely minor. There are a million ways in which a Court, if it wanted to, could choose specific words, ascribe a high degree of magic to them, and dismiss or grant cases based on that ascribed magic. That's not the culture Iowa should cultivate in its courts; it

[3] Appellant asserts that it is clear that any such amendment would relate back to the petition filed in May. All amendments relate back so long as they are not prejudicial. The only times that amendments raise issues of prejudice concern whether the amendment identifies new claims or new parties to the case. That latter example is often the only reason that relation back can be denied. New claims against the same named parties do not prejudice those parties. It is also not considered a "new" claim if the claim arises out of the same event/course of dealing as the original claim. The Appellant asserts that allowing an amendment to the title of the initial pleading does not constitute a "new claim," but even if it did, it would relate back under the important precedents in this area, including Schiavone v Fortune, 106 S.Ct. 2379 (1986).

[4] The district court not only denied the 1.904 motion, but stated that the motion was inappropriate, as if it violated the rules or showed un-professional conduct. Appellant asserts the Court's language in its ruling on the motion goes too far and should be corrected.

hasn't up to this time, and it should not start now. Refusing such a minor proposed amendment to an initial pleading must be considered an abuse of discretion, and is another reason to reverse this purely procedural dismissal.

Finally, Appellant points out a couple of Iowa cases that come very close to commanding reversal of the decision below, which overlap some of the various arguments above.

In Cooksey v Cargill Meat Solutions Corp., 831 N.W.2d 94 (Iowa 2013), an unemployment claimant sought judicial review of a decision by the Employment Appeal Board. The petition in district court, timely filed, named the employer as the defendant, instead of properly naming the EAB.[5] The petitioner sought to amend the case heading to change the respondent party to the EAB from the employer. Courts below the supreme court would not allow that, and dismissed the appeal. The Supreme Court of Iowa reversed those rulings, ordered lower courts to allow the minor amendment, and it related back to the petition, making the appeal timely, and directed that the appeal be addressed on its merits. *Cooksey*, 831 N.W.2d at 103-104.

[5] Undersigned notices that claimant's counsel in that case is one of the more prominent workers' compensation attorneys in Iowa. In workers' compensation cases, the employer is the proper named defendant in an action for judicial review. In most other administrative appeals, the administrative agency deciding the matter is the proper named defendant.

In Jacobs v. Iowa DOT, 887 N.W.2d 590 (Iowa 2016), an appeal of an administrative decision was filed electronically on the last day for such an appeal. The following day, the clerk returned the filing, un-filed, noting that the "civil cover sheet" was missing the petitioner's address, and the box on the cover sheet for "administrative appeal" was not checked. Jacobs quickly made those corrections and re-submitted the filing. It was accepted for filing on that second day, and the clerk did not consider it filed on the day it was first submitted. The appeal was later dismissed for being one day late. On appeal of that dismissal, the Supreme Court stated that those minor corrections, including properly marking the pleading as an "appeal" should relate back to what was originally a timely filing, and the dismissal below was error.

Appellants assert that Cooksey and Jacobs make clear that the dismissal in this case was erroneous and must be reversed. There is just no way to logically distinguish those cases from this case. In Cooksey, an error in naming the wrong party was corrected and related back to the original filing. In Jacobs, a perceived failure to properly mark the pleading as an "appeal" was corrected and related back to the original submission. Appellant asserts that the reason for these conclusions is extremely obvious. In each case, the pleading that was filed made it abundantly clear

that review in court of an administrative decision was being sought; and the decision being appealed from was attached; and the pleading that sought review was timely filed. Under such facts, the pleading should not be dismissed; any minor faults, real or perceived, should be allowed correction and such a pleading should not be dismissed.

CONCLUSION

Appellant asks the Court to stop for a moment and think about this case in a hypothetical reverse context. Suppose that the district court had taken one of the following paths in response to the City's motion—

---outright denial of the motion to dismiss, because it wasn't clearly attacking subject matter jurisdiction, or because the court obviously has jurisdiction over the subject matter of the case;

---denial of the motion because a petition for judicial review essentially is a notice of appeal;

---denial of the motion because Appellant's pleading should be construed as a notice of appeal;

---denial of the motion because a minor amendment to the pleading—re-titling it as a notice of appeal, rather than its styling as a petition for judicial review—cures any possible defect.

Then, further suppose that the lower court proceeded to judgment and granted Appellant police officer a remedy, and the city appealed that decision. On appeal, the City seeks to reverse the court below for entertaining this action at all, arguing the reasons that the district court actually dismissed this case. In that hypothetical appeal, would the City's arguments carry the day? Would Iowa's appellate courts rule that 3 or 4 words that swap "appeal" for "review" mean that a court must dismiss an otherwise timely-filed action provided for in the Code?

This appellant is betting that such an appeal and those arguments would be swiftly denied, and a lower court taking any of the above-described paths would be affirmed as properly applying the Code and the rules, and well within its discretion. If the Court agrees, then the actual ruling in this case must be reversed. This was a precipitous, capricious dismissal pre-answer, without properly applying the standards for a motion to dismiss, without clearly stating the basis, without properly treating or construing the petitioner's pleading, and an abuse of discretion in not allowing the most minor of curative amendments to the pleading.

WHEREFORE the Appellant prays that the district court be reversed, and that this case be remanded for a proceeding that hears and decides

the merits of the action and rules on the legal propriety of the decision of the civil service commission of Iowa City.

REQUEST FOR ORAL ARGUMENT

Appellant requests the Oral argument in this appeal. Thank you.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies as follows:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,598 words, excluding the parts of the brief exempted by rule 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 pt. Arial.

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CERTIFICATE OF COSTS

I certify that the actual cost of printing the foregoing Appellants' Proof Brief and Appendix was the sum of $_0_____.

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