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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 REPLY

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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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PROOF OF SERVICE

The undersigned hereby certifies that the Appellants' Proof Brief was served via email to the following counsel of record, on February 10, 2023.

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IOWA CODE SECTIONS, RULES, REGULATIONS:

Iowa Code Chapter 17A 6-12

Iowa Code Chapter 400 6-12

Appellant Puente will specifically respond to the City's arguments, but begins by noting that he cited at the end of his appeal argument to two Iowa Supreme Court cases that are very similar to his case, and nearly command directly the reversal of the decision below in this case. Those cases were Cooksey v Cargill Meat Solutions Corp., 831 N.W.2d 94 (Iowa 2013), and Jacobs v. Iowa DOT, 887 N.W.2d 590 (Iowa 2016).

The City did not distinguish those cases from this case in any meaningful way.

The City begins its argument by quoting Chapter 400 and placing in bold type the word "appeal" wherever it appears. Puente hopes that this mantra-like technique will not cast a trance upon the Court as the City apparently intends.

Puente asserts that that word, itself, is not magic. Yes, if a civil servant claims to be aggrieved by a decision of a city civil service commission, their remedy is to appeal that decision to the local district court. Puente argues that filing a petition seeking judicial review, and identifying the decision below, suffices to invoke that remedy. The City disagrees, claiming that the word "appeal" must appear in the title to the pleading. The reviewing court will either agree with Puente that his petition

was sufficient to invoke the district court's appellate jurisdiction, or will agree with the City that the pleading was fatally deficient. But that answer shouldn't rise or fall based on how many times the word "appeal" appears in Chapter 400.

The City disparages Puente for citing to the City's motion below which complained almost exclusively of a personal jurisdiction problem with the case. Yet the first case cited to in support (Appeal of Elliott, 319 N.W.2d 244 (Iowa 1982)) is indeed a case concerning personal jurisdiction due to timely service of process under the rules of procedure, not a case supporting the City's main argument. Appellee does not cite to a case supporting a view that the word "appeal" is indispensable to subject matter jurisdiction. Puente maintains his position previously stated that his petition was sufficient to invoke his appeal right under Chapter 400.

The City continues its argument that Puente's petition below must be considered a petition brought under Chapter 17A of the Code, and cannot be considered an appeal brought under Chapter 400. Puente maintains his position that the City is adding a gloss to his pleading and then insisting that their infused meaning must lead to its dismissal.

Seeking review in Johnson County District Court of an identified decision by the Iowa City civil service commission is an appeal pursuant to Chapter 400. The City's argument proceeds down various rabbit holes discussing how un-workable an action under Chapter 17A would be based on this civil service decision. All of that is a distraction—this was an action seeking the remedy available under Chapter 400. The City can go on and on about how un-workable a Chapter 17A action would be in this situation, but that is a strawman argument.

The City would like the reviewing court to conclude that Puente's district court petition had the following flavor:

Title: PETITION FOR JUDICIAL REVIEW BROUGHT UNDER CHAPTER 17A AND NOT BROUGHT UNDER CHAPTER 400

COMES NOW the Petitioner, and notes that he brought a claim before the civil service commission of Iowa City, a remedy allowed under Chapter 400 of the Code, and the claim was dismissed by the commission. Petitioner hereby seeks judicial review of that decision under Chapter 17A of the code, and does not seek review of it under Chapter 400.

------------------end of example--------------------------

Again, the City's arguments on appeal have the flavor of assuming that Puente's initial pleading below was as specific and clear as the example above, and then, based on that characterization of the pleading, they want its dismissal upheld.

In the end, the actual pleading below just won't support the weight of that argument. It is true that the pleading made a reference to the venue provision that appears in Chapter 17A, and did not refer to the venue provision from Chapter 400. And that was an oversight by Puente's counsel, But there is no basis, and no cited case, to support a view that *mentioning* a Chapter of the Iowa Code that is not the basis for an action must result in dismissing the action. The City seeks a "camel through the eye of a needle" standard for pleading that was abandoned by Iowa courts long ago.

The City goes on to acknowledge that multiple court decisions implore trial courts not to dismiss cases based on minor mistakes or perceived oversights in pleadings, and then goes on to assert that the claimed problem in Puente's pleading is totally different than those cases, and obviously fatally flawed. Why is the fatal flaw so obvious? Essentially because the CIty claims emphatically that it is.

The City cites to a case where dismissal occurred because the case was filed in the wrong county. But that's not the issue in this case—no one is saying that this case was filed in the wrong county. The cited Anderson case is thus inapposite. The City cites to a case that seems supportive—Ball v. Iowa Dept. of Job Services, 308 N.W.2d 54 (Iowa 1981).[1] However that case dates to 1981. The City continues to ignore the much more recent rulings cited by Puente in Cooksey, and Jacobs. Those cases make clear that issues, real or perceived, such as the district court cited with Puente's petition are to be corrected, and not lead to dismissal.

The City concludes by citing to Sioux City Brick & Tile Co. v EAB, 449 N.W.2d 634 (Iowa 1989) for support. That was a case where several claims for unemployment benefits involving different workers were consolidated by the UE division for a single trial. After final agency action, the employer filed for judicial review in one of those cases, but not the

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[1] To give more detail, Ball actually supports Puente as much as it supports the City. The appellant in Ball was appealing denial of UE benefits at a time when the employer was the proper appellee to name. But Ball did not name the employer in the petition for judicial review, nor attach an administrative pleading showing the caption and findings below. The employer sought dismissal for failure to properly invoke jurisdiction under 17A. In Ball, the Supreme Court did dismiss the case in favor of that argument. However, the Court took pains to state that substantial compliance with the statutory requirements for judicial review would have prevented dismissal, and noted a prior case (Green v. Job Services, 299 N.W.2d 651 (Iowa 1980)), where the UE appellant had failed to name the right party defendant, but had attached a copy of the administrative ruling, which the Court had considered to qualify as "substantial compliance."

others. Later on, the employer sought to amend the judicial review action, and add in appeals against the other employees. That was not allowed.

Once again, the City cites to a case that is completely inapposite, in an attempt to shore up the ruling below. In Sioux City Brick & Tile, the stymied party was trying to file a notice of appeal in a case where no pleading had been filed at all within the time limit. That is not the case here. Emilio Puente filed a pleading seeking review of his dismissal by the civil service commission, attaching the commission's decision, and he filed it in a timely fashion. He does not seek to add new claims or new parties. He wants the decision of the civil service commission reviewed by his local district court. That is his right under Chapter 400. If he is asking in a pleading for review of that decision, and he is granted that remedy by the Code, and the only place that remedy appears is Chapter 400, it should take an extraordinary pleading indeed to conclude that that is NOT the remedy he is seeking. The pleading below is not such an outlier; it is sufficient to proceed upon and should not be dismissed.[2]

[2] Appellant also considers it interesting that the City claims that an inadvertent reference to Chapter 17A in Puente's district court petition is fatal to that pleading, yet the City argues extensively for dismissal based on precedent governing—not Chapter 400—Chapter 17A. Apparently what the City claims is good for Puente's goose does not apply to the City's gander.

Puente returns, finally, to his last two cited cases, Cooksey, and Jacobs. The Cooksey appellant was allowed to change the heading of the case to list an agency as defendant instead of an employer and relate that back to the original filing. Dismissals below were reversed, and that was a 2013 Supreme Court ruling. The Jacobs appellant was allowed to add more specificity that the pleading was an "appeal" and that related back to the day it was submitted to the clerk for filing; that was a 2016 Supreme Court ruling. These two cases are both recent, and clear in their instructions to lower courts not to dismiss timely-submitted pleadings unless there is a complete lack of any ability to succeed in the stated action. Here, Puente filed a timely pleading seeking review of a civil service commission within the court's jurisdiction, and attached the commission decision. Such review can result in reversal or correction of the civil service commission under Chapter 400.

WHEREFORE the Appellant prays that the appellate courts of Iowa overrule the City's arguments, and reverse the district court dismissal in this matter.

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 1,611 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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