

IN THE IOWA SUPREME COURT

No. 22-1619

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**EMILIO PUENTE,**

Appellant,

v.

**CIVIL SERVICE COMMISSION OF IOWA CITY,**

Appellee

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR JOHNSON COUNTY  
THE HONORABLE CHAD KEPROS, JUDGE

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APPELLEE'S FINAL BRIEF

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## STATEMENT OF ISSUES FOR REVIEW

- I. WHETHER THE DISTRICT COURT CORRECTLY DISMISSED PUENTE’S IMPROPERLY FILED PETITION FOR JUDICIAL REVIEW FROM A CIVIL SERVICE COMMISSION DECISION BECAUSE PUENTE FAILED TO VEST THE DISTRICT COURT WITH JURISDICTION BY FAILING TO FOLLOW THE PROCEDURAL REQUIREMENTS OF IOWA CODE SECTION 400.27.

*Meier v. Senecaut*, 641 N.W.2d 521 (Iowa 2002)

*Ney v. Ney*, 891 N.W.2d 446 (Iowa 2017)

*Schaefer v. Putnam*, 841 N.W.2d 68 (Iowa 2013)

Rule 6.907, Iowa Rules of Appellate Procedure

*Hedlund v. State*, 875 N.W.2d 720 (Iowa 2016)

Rule 6.903(2)(g)(3), Iowa Rules of Appellate Procedure

§ 400.27, Code of Iowa

*Appeal of Elliott*, 319 N.W.2d 244 (Iowa 1982)

*Picray v. City of Des Moines*, 348 N.W.2d 645 (Iowa Ct. App. 1984)

*Dix v. Casey’s General Stores, Inc.*, 961 N.W.2d 671 (Iowa 2021)

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*Sioux City Brick & Tile Co. v. Employment App. Bd.*, 449 N.W.2d 634 (Iowa 1989)

*Ball v. Iowa Dept. of Job Serv.*, 308 N.W.2d 54 (Iowa 1981)

§ 17A.19(2), Code of Iowa

*Rethamel v. Havey*, 715 N.W.2d 263 (Iowa 2006)

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*Adair Holdings, L.L.C. v. Escher*, No. 14-0477, 2015 WL 576057 (Iowa Ct. App. Feb. 11, 2015)

## **ROUTING STATEMENT**

The Civil Service Commission of Iowa City (“Commission”) agrees this appeal should be routed to the court of appeals because it involves the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a) (2021).

## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

This is an appeal from the district court’s grant of the Commission’s motion to dismiss Puente’s improperly filed petition for judicial review from a civil service commission decision.

### **B. Relevant Events of the Prior Proceedings and Disposition in District Court**

Puente was a police officer for the City of Iowa City. (App. p. 3, ¶ 1). He submitted a letter of resignation on February 3, 2022. (App. p. 3, ¶ 2). Puente then sought to rescind his resignation on April 13, 2022, and on April 15, 2022, the City of Iowa City informed Puente it would not allow him to rescind his resignation. (App. p. 3, ¶¶ 4, 5).

In response, Puente filed a complaint with the City of Iowa City Civil Service Commission on April 27, 2022 where he sought reinstatement of his employment. (App. p. 6, ¶ 6). The City moved to dismiss Puente’s civil service commission complaint as untimely because it was made more than 14 days after



February 3, 2022—the date Puente submitted his letter of resignation. (App. p. 4, ¶ 7). The commission granted the City’s motion to dismiss Puente’s complaint as untimely filed on May 5, 2022. (App. p. 6).

Following the Commission’s decision, Puente commenced two separate district court actions. The first is the action that is the subject of this appeal—Puente’s “Petition for Judicial Review” filed on May 31, 2022. (App. pp. 3-8). The second is a petition in equity, where Puente alleged constructive discharge. (Amended Petition, Case EQCV083368).

In his petition for judicial review, Puente stated he “seeks judicial review of the decision of the civil service commission of Iowa City.” (App. p. 3). He also pled that he would “seek either consolidation of this petition with the pending action in equity” or “in the alternative will seek a stay of this judicial review pending the outcome of the equity petition.” (App. p. 4).

Puente never filed a notice of appeal from the Commission’s decision. (App. pp. 3-8).

In response to Puente’s petition for judicial review, on June 29, 2022 the Commission filed a pre-answer motion to dismiss on several grounds. (App. pp. 9-13). One ground was that “Puente has not filed a notice of appeal as required by Iowa Code Section 400.27 - he has filed a Petition for Judicial Review.” (App. p.

11). The Commission argued the improperly filed petition for judicial review should be dismissed. (App. p. 11).

On August 9, 2022 the district court entered a ruling granting the Commission's motion to dismiss, ruling Puente failed to file a notice of appeal as required by Iowa Code Section 400.27. (App. p. 21, ¶ 2). Puente filed a motion to reconsider, which the district court denied on September 12, 2022. (App. pp. 30-31).

Puente timely filed a notice of appeal from the district court's ruling on September 30, 2022. (App. p. 33).

### **STATEMENT OF FACTS**

Puente's statement of facts generally describes the relevant facts below but fails to cite to the portions of the record that support his factual assertions as required by the rules of appellate procedure. Iowa R. App. P. 6.903(2)(f). The Commission directs the Court to its Statement of the Case for a statement of the facts the Commission contends are relevant to this appeal.

## ARGUMENT

### **I. THE DISTRICT COURT CORRECTLY DISMISSED PUENTE’S IMPROPERLY FILED PETITION FOR JUDICIAL REVIEW FROM A CIVIL SERVICE COMMISSION DECISION BECAUSE PUENTE FAILED TO VEST THE DISTRICT COURT WITH JURISDICTION BY FAILING TO FOLLOW THE PROCEDURAL REQUIREMENTS OF IOWA CODE SECTION 400.27.**

#### **A. Preservation of Error**

The Commission agrees that error is preserved on the issue of whether the district court correctly dismissed Puente’s improperly filed petition for judicial review from a civil service commission decision. (App. pp. 11, 21). The issue was both raised and decided in district court. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

#### **B. Scope and Standard of Review**

Appellate review of a district court ruling on subject matter jurisdiction is for correction of errors at law. *Ney v. Ney*, 891 N.W.2d 446, 450 (Iowa 2017); *Schaefer v. Putnam*, 841 N.W.2d 68, 74 (Iowa 2013); *see also* Iowa R. App. P. 6.907. Similarly, appellate review of a ruling on a motion to dismiss is for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

## C. Merits

- 1. The district court correctly dismissed Puente’s petition for judicial review because it was an improper pleading that failed to vest the court with appellate jurisdiction over a civil service commission appeal.**

Puente first argues the district court “erred in applying procedural rules” when it dismissed his petition for judicial review. (Puente Brief, p. 10). He does not specify what procedural rules the district court violated nor cite any authority to support this allegation, so his argument should be deemed waived. Iowa R. App. P. 6.903(2)(g)(3).<sup>1</sup> Further, Puente is the one who erred below, failing to vest the district court with jurisdiction by using the wrong chapter of the Iowa Code to challenge the Commission’s decision. Iowa Code § 400.27 (2021) states, in pertinent part, as follows:

Jurisdiction — attorney — appeal.

1. The civil service commission has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter, and may affirm, modify, or reverse any case on its merits.

....

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<sup>1</sup> Likewise, Puente argues with no citation to authority that the district court “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 misapplied the Iowa rules of procedure.” (Puente Brief, p. 13). His arguments on this point should also be deemed waived for failure to cite any authority. Further, Puente never argued below that there was an issue related to personal jurisdiction or denial of due process. He failed to preserve error on these arguments. *Meier*, 641 N.W.2d at 537.

3. The city or any civil service employee shall have a right to **appeal** to the district court from the final ruling or decision of the civil service commission. The **appeal** shall be taken within thirty days from the filing of the formal decision of the commission. The district court of the county in which the city is located shall have full jurisdiction of the **appeal**. The scope of review for the **appeal** shall be limited to de novo **appellate review** without a trial or additional evidence.

4. The **appeal** to the district court shall be perfected by filing a **notice of appeal** with the clerk of the district court within the time prescribed in this section and by serving **notice of appeal** on the clerk of the civil service commission, from whose ruling or decision the **appeal** is taken.

Iowa Code § 400.27. “Under section 400.27 a district court acquires appellate jurisdiction only when the appellant substantially complies with its provisions.”

*Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982) (holding a mailed notice of appeal was insufficient to vest appellate jurisdiction in the district court because the notice should have been personally served); *Picray v. City of Des Moines*, 348 N.W.2d 645, 647 (Iowa Ct. App. 1984) (jurisdiction in civil services appeal is “wholly statutory and depends for its existence upon substantial compliance by the appealing party with statutory prerequisites.”). “Substantial compliance” with a statute “means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted.” *Dix v. Casey’s General Stores, Inc.*, 961 N.W.2d 671, 682 (Iowa 2021).

The district court correctly ruled Puente failed to substantially comply with Iowa Code § 400.27 because he never filed a notice of appeal with the clerk of district court. Rather, he filed a petition for judicial review under Chapter 17A, both titling his document a “petition for judicial review” and citing to Iowa Code § 17A.19. (App. p. 3, ¶ 1). But judicial review under Chapter 17A and appeal under Chapter 400 are not the same—the intent of the proceedings is different.

At the most basic level, Chapter 17A does not apply to municipal administrative bodies, it applies to state agencies. Iowa Code § 17A.1(2) (Chapter 17A “is intended to provide a minimum procedural code for the operation of all **state** agencies. . . .”); *Mensen v. Cedar Rapids Civ. Serv. Comm’n*, No. 21-0410, 2022 WL 2160679, at \*3 (Iowa Ct. App. June 15, 2022) (refusing to apply Chapter 17A’s requirement that an agency make written findings to a municipality’s civil service commission). In contrast, “chapter 400 proceedings must be considered the exclusive means of challenging the arbitrariness of a civil service employee’s discharge.” *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 156 (Iowa 1996), *abrogated on other grounds by Godfrey v. State*, 898 N.W.2d 844, 864, 872 (Iowa 2017). A Chapter 17A judicial review action cannot simply be swapped in for a statutory appeal; it has no application in this context. *Cf. Bogue v. Ames Civ. Serv. Com’n*, 368 N.W.2d 111, 113 (Iowa 1985) (district court erred when it treated a

certiorari action as a statutory appeal because “the parties could not confer appellate jurisdiction upon the court by consenting to try the case as an appeal.”).

Additionally, judicial review is “not truly an appeal . . . . It is in all respects dependent upon the statutes which authorize its pursuit.” *Anderson v. W. Hodgeman & Sons, Inc.*, 524 N.W.2d 418, 421 n.1 (Iowa 1994). There are important distinctions between the statutory proceedings initiated by a Chapter 17A judicial review action and an appeal under Chapter 400. Most significantly, in a 17A judicial review action, “a court may hear and consider such evidence as it deems appropriate.” Iowa Code § 17A.19(7). There is a process in a 17A judicial review action (even in a contested case proceeding) for the district court to either take evidence or order that additional evidence be taken by the agency. *Id.* But in a Chapter 400 appeal, “The scope of review for the appeal shall be limited to de novo appellate review without a trial or additional evidence.” Iowa Code § 400.27(3). In 2017, the Legislature amended Section 400.27 to narrow the scope of review in a civil service appeal and prohibit the introduction of additional evidence. Acts 2017 (87 G.A.) ch. 2, H.F. 291, § 62, eff. Feb. 17, 2017.

Further, in a 17A judicial review action, the “validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time that action was taken.” Iowa Code § 17A.19(8)(b). Those standards do not apply the Chapter 400 appeals, in which

there is one scope of review: de novo appellate review regarding whether the termination of a public employee was arbitrary. Iowa Code § 400.27(3).

If the district court had permitted Puente to prosecute a 17A judicial review action in this case, confusion would have resulted. What procedures would have applied? Would there have been a path to introduce additional evidence? What standard of review?

By specifically proceeding under Chapter 17A, Puente initiated a statutory legal action that not only has no applicability to his civil service action, but also differs in its procedural mandates from a civil service appeal. The district court therefore correctly ruled Puente failed to substantially comply with § 400.27's appeal provision when he filed a 17A judicial review petition. The court could not simply rewrite Iowa law to accommodate Puente's error. *Cf. State v. Boyer*, 941 N.W.2d 876, \*2 (Iowa Ct. App. March 12, 2020) (dismissing appeal for lack of jurisdiction where a notice of appeal specifically stated the date of the order appealed from because “[w]hen a party, even a pro se party, files a notice of appeal related to a specific order, we cannot rewrite it to include an order entered on a later date.”).



**2. The district court correctly applied the motion to dismiss standard.**

Puente argues the district court erred in applying the motion to dismiss standard. Though he does not specify the standard he is referencing, it appears he is referring to the standard applicable in the context of a motion to dismiss for failure to state a claim. *See* Iowa R. Civ. P. 1.421(1)(f); *Young v. HealthPort Tech. Inc.*, 877 N.W.2d 124, 127 (Iowa 2016) (“A court should grant a motion to dismiss only if the petition on its face shows no right of recovery under any state of facts.”) (Quotation omitted). But in this case there was no motion to dismiss for failure to state a claim. The motion to dismiss was made for lack of jurisdiction to hear a statutory appeal under Iowa Code § 400.27. The district court properly applied the standards set forth in § 400.27 in ruling on the motion to dismiss for lack of jurisdiction when it ruled Puente failed to substantially comply with the provisions of Iowa Code § 400.27. (App. p. 21); *Elliott*, 319 N.W.2d at 247. Therefore, the court did not err in applying the standard for a motion to dismiss.

**3. The district court correctly ruled Puente’s petition for judicial review does not qualify as an appeal under Iowa Code § 400.27.**

The Iowa Supreme Court has recognized that the “overarching goal of the law must be to achieve substantial justice among the parties.” *Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94, 103 (Iowa 2013) (finding naming error in a

petition for judicial review, where the agency was not named in the caption, but was named in the body of the petition, sufficiently vested jurisdiction in the district court despite error). Iowa courts therefore seek to avoid “highly technical requirements that might serve no useful purpose and yet deprive parties of their day in court.” *Id.*

This case, however, does not involve “highly technical” pleading requirements. The requirement that a notice of appeal be filed with the district court to vest appellate jurisdiction is plainly stated in Iowa Code § 400.27(4). Puente clearly understands the requirements, as he sets forth the process for a Chapter 400 appeal at length in his appeal brief. (Puente Brief, p. 15). He further provides no excuse for why these requirements were not followed below, other than “oversight of counsel.”

Though Iowa courts wisely eschew technical, pointless pleading requirements, the supreme court has simultaneously recognized that “courts must follow jurisdictional mandates imposed by valid statutes.” *Id.* (citing *Anderson*, 524 N.W.2d at 420 (no jurisdiction for judicial review where party filed in the wrong county—case could not be transferred to the correct county and the district court erred in so doing); *Sioux City Brick & Tile Co. v. Employment App. Bd.*, 449 N.W.2d 634, 638—39 (Iowa 1989) (no jurisdiction for judicial review where multiple contested cases had been consolidated for purposes of hearing at the EAB

and a single decision had been rendered for all, but separate petitions for judicial review were not filed for each individual case in district court); *Ball v. Iowa Dept. of Job Serv.*, 308 N.W.2d 54, 56 (Iowa 1981) (no jurisdiction for judicial review where party failed to name his employer in a judicial review petition, even though party mailed a file stamped copy of the petition to the other party, because there was a total lack of compliance with the statutory requirements for naming the other party). In this case, Puente utilized the wrong chapter of the Iowa Code, an error that had potentially meaningful consequences for the proceedings in district court. He accuses the district court of putting its own “gloss” on his petition for judicial review by not viewing it as an appeal under Chapter 400. But what Puente asked the district court to do was disregard both the content of his pleading and the mandates of Chapter 400. The district court correctly refused his request to find equivalence between these pleadings where the legislature has already stated that they are different.

**4. The district court correctly refused to construe the petition for judicial review as “invoking 400.27”.**

Preliminarily, nothing in Puente’s petition for judicial review would have permitted the district court to “invoke” Iowa Code § 400.27. The court only had jurisdiction upon the timely filing of an appeal. Puente never stated that his petition was an appeal. He never mentioned Chapter 400. He cited to the venue

provision for a judicial review action - Iowa Code § 17A.19(2). If to “construe” means to “analyze and explain the meaning of” a sentence or passage, as Puente argues, then the only way to construe his petition for judicial review was as a petition for judicial review under Chapter 17A.

Substantial compliance is the rule in this context, but a substantial deviation from statutory requirements will defeat jurisdiction. *Ball*, 308 N.W.2d at 56. The cases cited by Puente have no application in this context and do nothing to show substantial compliance on his part. *Rethamel v. Havey* did not involve construing a pleading at all. 715 N.W.2d 263, 265 (Iowa 2006). The issue in that case was district court authority to “construe” a commissioner’s workers’ compensation award in an entry of judgment. *Id.* The supreme court held that a district court’s function in that context is “ministerial” and that district courts should not take any action to change, review, reverse, or modify the award. *Id.* at 266. Here, Puente contends the district court should have changed and modified his petition for judicial review into an appeal under Iowa Code § 400.27, which it could not do.

*Bousman v. Iowa Dist. Court* is also inapposite because it did not involve construing a pleading at all. In that case the supreme court allowed an action filed as an appeal as of right to proceed as a certiorari action because the “case does not fall within the rules of civil cases or the statute giving criminal defendants the opportunity for appellate review . . . .” 630 N.W.2d 789, 793 (Iowa 2001). The

underlying issue involved the district court's issuance of a nontestimonial identification order for a person who had not been arrested or charged with a crime, making statutory appellate proceedings inapplicable. *Id.* The supreme court held that because there was no opportunity for appeal under the rules for civil cases or the statute giving criminal defendants the opportunity for appellate review, the case could be reviewed via certiorari action. *Id.* Puente's case is distinguishable because there is a fully applicable chapter of the Iowa Code that applied to provide Puente with an opportunity to appeal - he just did not use it.

The district court correctly dismissed Puente's petition for judicial review.

**5. The district court was within its discretion in denying Puente's 1.904 request that he be allowed to change the title of his pleading to a "Notice of Appeal."**

Puente argues the district court should have allowed him leave to amend his petition so that he could change the title to "Notice of Appeal." (Puente Brief, p. 20). However, Puente never actually filed a motion to amend, but rather requested in his 1.904 motion that the court give him "leave to simply change the title of that filing . . . ." (App. pp. 25-26). Puente characterized this as correction of "a scrivener's error." *Id.*

On a number of levels Puente's request was inadequate and the district court correctly denied him leave to simply change the title of his petition. A 1.904 motion is not a vehicle to introduce new evidence, such as new language, into a

previous pleading. *McKee v. Isle of Capri Casinos, Inc.*, 864 N.W.2d 518, 525 (Iowa 2015). Further, though Puente argued this change could be considered the correction of a “scrivener’s error” it was clearly substantive, as the whole point of changing the language was to correct Puente’s fatal error of not following Chapter 400’s appeal provisions. A “scrivener’s error” involves a clerical or typographical error, not a substantive error. *Adair Holdings, L.L.C. v. Escher*, No. 14-0477, 2015 WL 576057, at \*2 (Iowa Ct. App. Feb. 11, 2015). And finally, an amendment to the petition to change its title would have been inappropriate. The notice of appeal was not timely filed as required by statute. In *Sioux City Brick & Tile* the supreme court found the district court exceeded its authority by granting an employer leave to amend its petition for judicial review to add additional employees, despite those employees’ cases being consolidated below. 449 N.W.2d 634 at 639 (Iowa 1989). That amendment, like Puente’s request here, would have resulted in untimely filed notices of appeal. *Id.*; *see also Adair Holdings*, No. 14-0477 (district court abused its discretion by granting motion to amend petition to quiet title to change the legal description of the property because the legislature set specific requirements for notice in a quiet title action and the plaintiff failed to meet those requirements).

Puente never actually made a request to amend his pleading. But even if he had, the district court was well within its discretion in denying any such request.

## CONCLUSION

Puente failed to vest the district court with jurisdiction to hear an appeal of the Iowa City Civil Service Commission's decision because he failed to substantially comply with the requirement of timely filing a notice of appeal under Iowa Code Section 400.27. The Commission requests this court affirm the district court ruling dismissing Puente's improperly filed petition for judicial review.

## REQUEST FOR ORAL ARGUMENT

The Commission does not believe oral argument is necessary in this case because the issue involves a straightforward application of existing law to undisputed procedural facts. However, the Commission requests to be heard should Puente's request for oral argument be granted.

Respectfully submitted,

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COMMISSION OF IOWA CITY

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*/s/ Elizabeth Craig*\_\_\_\_\_

Elizabeth Craig

**CERTIFICATE OF FILING AND SERVICE**

The undersigned certifies that Appellee's Final Brief was filed with the Clerk of the Iowa Supreme Court and served on all counsel of record by using the EDMS filing system.

*/s/ Elizabeth Craig*\_\_\_\_\_

Elizabeth Craig

**CERTIFICATE OF COST**

The undersigned certifies that there was no cost associated with the production of this Final Brief.

*/s/ Elizabeth Craig*\_\_\_\_\_

Elizabeth Craig