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

APPLICATION FOR FURTHER REVIEW

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With Ryan J. Ellis

QUESTIONS PRESENTED

ONE: When a municipal employee suffers an adverse decision from a civil service commission, does a timely-filed petition seeking review of that decision, and attaching the adverse decision sufficiently trigger the jurisdiction of the district court under Chapter 400?

CERTIFICATE OF FILING

The undersigned hereby certifies that the Appellants' Application for Further Review was filed on September 21, 2023, by electronic means, to the Clerk of the Supreme Court, Judicial Building, 1111 E. Court Ave., Des Moines, Iowa 50319.

/s/ Peter M. Sand

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PROOF OF SERVICE

The undersigned hereby certifies that the Appellants' Application for Further Review was served via email to the following counsel of record, on September 21, 2023.

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APPLICATION

Appellant prays that the Supreme Court grant further review of this case, vacate the ruling by the Court of Appeals, and reverse the dismissal of his petition seeking review of adverse action by a municipal civil service commission. Appellant respectfully asserts that the Court of Appeals decision includes legal error.

STATEMENT OF FACTS

Emilio Puente was an Iowa City police officer. In April, 2022, he brought a claim before the Civil Service Commission of Iowa City. They decided that matter adversely to Puente, ruling that he had no remedy available there. That decision was rendered on May 6, 2022. On May 31, 2022, Puente filed a pleading in Johnson County District Court. It was styled "Petition for Judicial Review." It stated that it was seeking review of the civil service commission decision, and the civil service decision was attached to the petition.

The issue in this case is whether such a pleading is sufficient to trigger the jurisdiction of the district court. The City made a motion to dismiss the petition, mostly about whether the service of the petition on the City was timely, but did claim in one sentence that Puente had failed to appeal at all.

The district court seized on that claim by the City, and dismissed the case for lack of jurisdiction. Puente brought a 1.904 motion, but that was denied. On appeal, the Court of Appeals has affirmed this decision, holding that there was a failure to appeal.

ARGUMENT

It has been Puente's position since the motion to dismiss that the petition filed May 31 last year, standing by itself, is sufficient to trigger the jurisdiction of the district court to review the decision by the civil service commission. It was timely-filed (there is a 30-day deadline), it stated it was seeking review of that decision, and the decision for which review was sought was attached to the pleading.

The Court of Appeals refused to approach the question in this manner. Instead, the City has consistently asserted that the pleading in question can only be considered an attempt by Puente to file an action under Chapter 17A of the Code, and cannot be considered an appeal under Chapter 400 of the Code. And the Court of Appeals accepted this premise asserted by the City. No matter what arguments Puente made below that the pleading should be viewed in a light most likely to see it as sufficient to trigger jurisdiction, the Court always returned to an assumption that the pleading could only possibly be considered a petition claiming a

remedy under Chapter 17A and not under Chapter 400. The Court of Appeals even cited to a case where a pleading styled as a petition for writ of certiorari in a district court was treated as an appeal of a civil service commission decision under Chapter 400 (Bogue v. Ames Civ. Serv. Comm'n, 368 N.W.2d 111 (Iowa 1985)), yet decided that that case was *adverse* to Puente in this matter, and not supportive.

At one point, the Court of Appeals supported its myopic view of the district court petition by looking to another pleading—Appellant's resistance to the district court motion to dismiss. The Court of Appeals claimed that, because that resistance continued to show Puente was seeking only a remedy under Chapter 17A (not available to him), that his petition should be dismissed. This strikes the Appellant as borderline Orwellian. First, the original petition should rise or fall on its own, regarding its ability to trigger jurisdiction, and not be given a gloss based on other pleadings. But second, the term "17A" *doesn't even appear in the resistance*. The only way in which the Court of Appeals can decide that only a 17A remedy is sought is because both pleadings use the phrase "judicial review" rather than the word "appeal." Appellant asserts that there is no difference between seeking judicial review or seeking to appeal—they both mean the same thing. It was error for the Court of Appeals to conclude that

petitioning for judicial review makes the initiating pleading "wholly different" than an appeal of the commission decision.[1]

What this matter comes down to is the phrase "judicial review" vs. the word "appeal," and the fact that the term "17A" did appear in the initiating pleading in a venue paragraph. Appellant maintains that judicial review is the same as appeal. The Court of Appeals claimed that they couldn't possibly be considered the same thing because the standard of review under 17A is so different than the one under Chapter 400. But that is yet another conclusion that buys wholesale the City's argument that the only way to look at the initiating pleading is as one that cannot possibly be construed as seeking anything but a remedy under 17A. The Court of Appeals put the cart before the horse. Yes, the standard of review used under 17A is different than under 400. So give this petition the correct standard of review available under Chapter 400—don't dismiss it. The Court of Appeals pours so much meaning into a perceived huge difference between "judicial review" and "appeal." But in a generic sense, appealing a decision is to seek judicial review of that decision—they are the same thing. Appellant persists in arguing that there is too much magic being ascribed to

[1] Appellant also maintains that it is not fair for the Court of Appeals to hold that styling the pleading as a "Petition for Judicial Review" is fatal to the pleading when a rule of procedure requires that the initiating pleading of all actions be styled as a "Petition." *See* I.R.C.P. 1.401.

certain words in a pleading meant to perform the mundane function of seeking the available remedy in district court, and suddenly, abracadabra, Puente's case disappears.

Appellant maintains that the decisions below in this case are simply not in keeping with the many cases where Iowa courts have taken a more practical approach to pleading, rather than looking for reasons to kick cases out of court.

It is true that Chapter 17A was mentioned in the initiating pleading in the venue paragraph. That was an oversight by undersigned counsel, for which he has apologized. He asks how one could foresee that oversight so damaging a claim. Can't he have an opportunity to fix such a slight error in the pleading? We have an initiating pleading that is timely-filed, and it seeks review of a civil service commission decision, and attaches the decision. The initiating pleading mentions Chapter 17A in its venue paragraph. Is this a simple mistake? Or is the filing party seeking only a remedy under Chapter 17A and not Chapter 400? Appellant asserts that an opportunity to clarify any possible ambiguity on this point should have been afforded the Appellant who would have (and quickly did) clarified that an appeal under 400.27 <u>was the remedy being sought</u>.

Contrary to footnote 3 from the Court of Appeals, the case of Jacobs v. Iowa Department of Transportation, 887 N.W.2d 590 (Iowa 2016) was supportive of Puente's appeal. In that case, the filing party had failed to clearly mark their pleading as an "appeal." They were allowed to clarify that their pleading was an appeal, and that related back to the date of the original submission of the document. Appellant believes that case supports his position that if he needs to clarify the word "appeal" somewhere, that should be allowed and his Chapter 400 action should proceed.

WHEREFORE the Appellant prays that the Supreme Court vacate the Court of Appeals' decision in this case, grant further review, and grant the relief sought in this appeal.

Appellant requests oral argument.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies as follows:

1. This application complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) because this brief contains 1,280 words, excluding the parts of the document exempted by rule 6.903(1)(g)(1).

2. This application 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 document 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' Application for Further Review was the sum of $_0_____.

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