

CARGILL MEAT SOLUTIONS v. COLFAX CTY. BD. OF EQUAL. 93
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Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law. . . .

. . . . The maintenance of product value and quality is precisely the purpose of express and implied warranties. . . .

Contract law, and the law of warranty in particular, is well suited to commercial controversies of the sort involved in this case because the parties may set the terms of their own agreements.²²

In this case, the only damage done was to Dobrovolny's truck, and therefore, the economic loss doctrine bars recovery under products liability law.

CONCLUSION

We find that the economic loss doctrine prevents recovery under a products liability theory where the damage is solely to the product. We therefore reverse the decision of the Court of Appeals and remand the matter with directions to reinstate the decision of the district court.

REVERSED AND REMANDED WITH DIRECTIONS.

²² *East River S.S. Corp.*, *supra* note 16, 476 U.S. at 870-73.

CARGILL MEAT SOLUTIONS CORPORATION, APPELLEE, v.
COLFAX COUNTY BOARD OF EQUALIZATION, APPELLANT.
798 N.W.2d 823

Filed February 4, 2011. No. S-09-1252.

1. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
2. **Statutes.** Statutory interpretation is a question of law.
3. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction.
4. **Statutes: Legislature: Intent: Appeal and Error.** In discerning the meaning of a statute, the Supreme Court gives effect to the purpose and intent of the

Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.

5. ____: ____: ____: _____. When possible, an appellate court determines the legislative intent from the language of the statute itself.
6. **Statutes: Appeal and Error.** An appellate court will not read into a statute a meaning that is not there.

Appeal from the Tax Equalization and Review Commission.
Appeal dismissed.

Edmond E. Talbot III, of Talbot & Truhlsen Law Offices, L.L.P., for appellant.

Edward E. Embree II and Linda A. Terrill, of Neill, Terrill & Embree, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

Colfax County Board of Equalization (the Board) appeals a decision of the Tax Equalization and Review Commission (TERC). TERC vacated and reversed the Board's valuation of a meatpacking facility owned by Cargill Meat Solutions Corporation (Cargill) and assigned a lower value to the facility. Unfortunately for the Board, the Legislature's 1997 amendment to the statute governing appeals from TERC created a jurisdictional trap that ensnared the Board. Because the Board did not comply with any statute which would confer jurisdiction upon this court, we conclude that we do not have jurisdiction over this appeal. The appeal is dismissed.

BACKGROUND

Because we ultimately decide this appeal on a jurisdictional issue, a lengthy recitation of the facts is unnecessary. We provide only a brief overview.

Cargill owns a facility that it uses to slaughter cattle and pack meat. Colfax County (the County) had an appraisal conducted to value the property as of January 1, 2000. Using a cost approach, the appraiser valued the property at \$21,300,700. The County did not have a full appraisal done after the 2000 appraisal. Instead, the County just updated the 2000 appraisal.

To do this, it calculated the value of any improvements made to the property and simply added that number to the value of the property from the previous year. This approach did not account for any depreciation on the improvements from year to year.

The County repeated this process every year from 2001 to 2008. The value that the County arrived at for the year 2008 was \$26,191,375. Cargill protested this value. The Board, after considering the protest, recommended that no change be made in the valuation. Cargill then appealed to TERC.

TERC ultimately vacated and reversed the Board's determination of value. TERC rejected the Board's valuation because there was "clear and convincing evidence that the . . . Board's determination of actual value [was] based on a use of the cost approach that did not consistently apply a method for determining either physical or functional depreciation." According to TERC, a value reached using such an approach was "unreasonable or arbitrary."

TERC also considered the methodologies used by Cargill's appraiser, who used both a cost approach and a sales comparison approach. TERC concluded that Cargill's appraisal based on the sales comparison approach was "not persuasive." It determined that the appraiser had not made adjustments based upon the use of the property, the location of the property, and the physical characteristics of the property other than refrigeration. But while Cargill's cost approach appraisal was less detailed than the Board's, TERC found that it still met professional standards. TERC ultimately concluded that the value of the land and the improvements together was \$14,809,190.

After TERC vacated and reversed the Board's valuation, the Board appealed. The Board filed a "Petition for Judicial Review and Notice of Appeal" in the Nebraska Court of Appeals. The Court of Appeals then issued a summons to be served upon Cargill. The Court of Appeals instructed the Board to "serve the summons on the respondent and file a return of service directly with our office." But instead of serving the summons upon Cargill, the Board sent the summons to Cargill's attorney. We then moved the case to our docket under our statutory

authority to regulate the caseloads of the appellate courts of this state.¹

Cargill moved to dismiss under Neb. Ct. R. App. P. § 2-107(B)(1) (rev. 2008). Cargill argued that the Board had not complied with Neb. Rev. Stat. § 77-5019(2)(a) (Reissue 2009). This statute provides the procedure for commencing a review of TERC decisions in the Court of Appeals. Cargill argues that because the Board did not comply with this statute, we do not have jurisdiction over the case.

STANDARD OF REVIEW

[1,2] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.² Statutory interpretation is also a question of law.³

ANALYSIS

[3] Before reaching the legal issues presented for review, we must determine whether we have jurisdiction.⁴ That determination requires us to interpret § 77-5019(2)(a).

[4-6] In discerning the meaning of a statute, we give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.⁵ When possible, we determine the legislative intent from the language of the statute itself.⁶ And we will not read into a statute a meaning that is not there.⁷

The statute governing appeals from TERC to the Court of Appeals, § 77-5019(2)(a), in relevant part, provides:

¹ See Neb. Rev. Stat. § 24-1106 (Reissue 2008).

² *State v. Yos-Chiguil*, 278 Neb. 591, 772 N.W.2d 574 (2009); *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

³ See, *State v. Fuller*, 278 Neb. 585, 772 N.W.2d 868 (2009); *State v. Hilding*, 278 Neb. 115, 769 N.W.2d 326 (2009).

⁴ See, *Yos-Chiguil*, *supra* note 2; *South Sioux City Ed. Assn. v. Dakota Cty. Sch. Dist.*, 278 Neb. 572, 772 N.W.2d 564 (2009).

⁵ See, *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010); *In re Adoption of Kailynn D.*, 273 Neb. 849, 733 N.W.2d 856 (2007).

⁶ See *In re Adoption of Kailynn D.*, *supra* note 5.

⁷ See *id.*

Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals within thirty days after the date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. . . . Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02.

Neb. Rev. Stat. § 25-510.02 (Reissue 2008) provides the manner for serving the state or a political subdivision. Obviously, Cargill, a private corporation, is not an entity covered by § 25-510.02. Cargill cannot possibly be served in accordance with § 77-5019(2)(a), so it cannot apply.

In an attempt to escape this procedural maze, the Board argues that the applicable rule is Neb. Ct. R. App. P. § 2-101(D) (rev. 2010), which is based on Neb. Rev. Stat. § 25-1937 (Reissue 2008). Section 2-101(D) states: “In an appeal from an order of [a] tribunal from which an appeal can be taken directly to this court, the procedure shall be that provided for in appeals from the district court, except as otherwise provided by statute.” Because § 77-5019(2)(a) appears to provide the means for appeal only by parties other than the State or a political subdivision, this rule could conceivably apply. We thus consider the procedure for appeals to be taken from the district court, which is found at Neb. Rev. Stat. § 25-1912 (Reissue 2008).

To perfect an appeal under § 25-1912, a party must take two steps. First, the party wishing to appeal must file a notice of appeal with the district court clerk of the court where the judgment was rendered. Second, the party must deposit a docket fee with the district court clerk.

Although the Board urges us in this direction, it did not comply with the rule. The Board filed its notice of appeal in the Court of Appeals; it did not file its notice with TERC, as would be the procedure analogous to an appeal from district court. Thus, the Board’s appeal was not properly perfected under § 2-101(D).

Because the Board failed to comply with any statute that would grant us jurisdiction, we conclude that we do not have jurisdiction.

Summing up, one thing has become abundantly clear—the Legislature has inadvertently created a procedural minefield. Section 77-5019(2)(a) does not make sense. The statute states “[s]ummons shall be served *on all parties* . . . in the manner provided for service of a summons in section 25-510.02.” As mentioned, § 25-510.02 governs service of process on a state or political subdivision. But not all parties to a TERC hearing or a subsequent appeal are political subdivisions. It defies the language of § 25-510.02 to require a county board of equalization to serve a private party, such as Cargill, as if it were a political subdivision. In effect, the current version of § 77-5019(2)(a) leads to two different means for perfecting an appeal based upon the appellant’s status. We can think of no sensible reason for doing this.

As Cargill points out in its brief, the previous version of § 77-5019(2)(a) required that summons be served “in the manner provided for service of a summons in a civil action.”⁸ This language was workable. It provided the flexibility to allow a corporation to be served as a corporation,⁹ an individual to be served as an individual,¹⁰ and a political subdivision to be served as a political subdivision.¹¹ Stating the obvious, the Legislature needs to correct this procedural trap.

CONCLUSION

Because the Board did not comply with any statute which would confer jurisdiction upon this court, we conclude that we lack jurisdiction. Accordingly, we dismiss this appeal.

APPEAL DISMISSED.

⁸ § 77-5019(2)(a) (Reissue 1996).

⁹ Neb. Rev. Stat. § 25-509.01 (Reissue 2008).

¹⁰ Neb. Rev. Stat. § 25-508.01 (Reissue 2008).

¹¹ § 25-510.02.