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RANDY AND HELEN STRODE, APPELLANTS, V. SAUNDERS COUNTY BOARD OF EQUALIZATION, APPELLEE.

815 N.W.2d 856

Filed May 4, 2012. Nos. S-11-352 through S-11-355.

1. **Judgments: Jurisdiction.** A jurisdictional issue that does not involve a factual dispute presents a question of law.
2. **Judgments: Appeal and Error.** An appellate court independently reviews questions of law decided by a lower court.
3. **Actions: Statutes: Time.** The application of Neb. Rev. Stat. § 25-2221 (Reissue 2008) is not limited to proceedings in a court, and § 25-2221 applies to matters of practice which are not necessarily enunciated in statutes.
4. **Administrative Law: Actions: Time.** In the absence of a specific imperative to the contrary, Neb. Rev. Stat. § 25-2221 (Reissue 2008) applies to administrative rules and regulations.
5. **Administrative Law: Taxation: Time.** A motion for rehearing filed pursuant to 442 Neb. Admin. Code, ch. 5, § 023.01 (2009), is a "motion" under 442 Neb. Admin. Code, ch. 5, § 014.03C (2009), and therefore may be filed by facsimile if the original is mailed or delivered within 24 hours.

Petitions for further review from the Court of Appeals, INBODY, Chief Judge, and SIEVERS and MOORE, Judges, on appeal thereto from the Tax Equalization and Review Commission. Judgments of Court of Appeals reversed, and causes remanded with directions.

Terry K. Barber, of Barber & Barber, P.C., L.L.O., for appellants.

Scott Tingelhoff, Saunders County Attorney, for appellee.

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

MILLER-LERMAN, J.

NATURE OF CASE

In these consolidated appeals, we granted the petitions for further review filed by the appellants, Randy and Helen Strode. The underlying cases involve the Strodes' unsuccessful challenge to the valuation of certain property located in Saunders County. The Nebraska Court of Appeals concluded that the Strodes' appeals were not timely filed in the Court

of Appeals and dismissed their appeals for lack of jurisdiction. The jurisdictional issue hinges on whether the Strodes' motions for rehearing filed before the Tax Equalization and Review Commission (TERC) were timely filed and therefore tolled the time during which the Strodes could thereafter petition the Court of Appeals to judicially review the TERC's decisions.

We conclude that the motions were timely filed before the TERC and that therefore the time to petition to the Court of Appeals was tolled and the Court of Appeals had jurisdiction over the appeals. The Court of Appeals erred when it dismissed the appeals as untimely. We further conclude that because the motions for rehearing were timely filed before the TERC, the TERC erred when it denied the motions as untimely. We therefore reverse the ruling of the Court of Appeals and direct the Court of Appeals to remand the cause to the TERC with directions for the TERC to consider the merits of the Strodes' motions for rehearing.

STATEMENT OF FACTS

The dates and filings that are relevant on further review are the same in each of these consolidated appeals. Because the same set of facts recited below pertains to each of the appeals, for ease and clarity the appeals are discussed for the most part in this statement of facts and in our analysis as if they were a single appeal.

The Strodes appealed the Saunders County Board of Equalization's valuation for certain real property to the TERC. On March 16, 2011, a panel of the TERC filed a decision affirming the valuation. On March 28, the Strodes filed by facsimile a motion for rehearing seeking consideration by the full TERC. The Strodes followed the facsimile filing with the original motion, which was file stamped as being received by the TERC on March 29.

On March 30, 2011, the TERC concluded that the Strodes failed to timely file the motion for rehearing, and for that reason, the motion was denied. The TERC noted in its order that under its rule 442 Neb. Admin. Code, ch. 5, § 023.01 (2009), any party to a proceeding heard by a panel of the TERC may

file a motion for rehearing before the full TERC and such motion must be filed "within ten (10) calendar days of the date that the [d]ecision . . . was filed." The TERC noted in its order that "[o]n March 28, 2011, the Appellant filed a Motion for Rehearing via facsimile." Without further analysis, the TERC ordered the motion for rehearing denied as untimely.

On May 2, 2011, the Strodes filed a petition for review in the Court of Appeals. In their petition for review, they stated that the final decisions at issue were the March 16 order, which affirmed the valuation, and the March 30 order, which denied the motion for rehearing as untimely filed. With respect to the TERC's March 30 order, the Strodes asserted in the petition for review that the TERC erred when it determined that the "Motion for Rehearing dated and fax-filed on March 28 . . . was filed out of time."

The Court of Appeals determined that the appeal to it was untimely and dismissed the appeal for lack of jurisdiction. In its initial order dismissing the appeal, the Court of Appeals stated that the motion for rehearing "filed March 29, 2011" before the TERC was out of time and did not toll the filing of a petition for review by the Court of Appeals pursuant to Neb. Rev. Stat. § 77-5005(4) (Reissue 2009), which provides in part, "The thirty-day filing period for appeals under subsection (2) of section 77-5019 [which provides for judicial review by the Court of Appeals of a final decision of the TERC] shall be tolled while a motion for rehearing [before the TERC] is pending." In the view of the Court of Appeals, the motion for rehearing filed before the TERC was a nullity, and it therefore examined timeliness to it based on the March 16, 2011, order. The Court of Appeals determined that because the Strodes' petition for review to the Court of Appeals was filed on May 2, which was more than 30 days after the March 16 order, and the motion for rehearing filed before the TERC was untimely and did not toll the time to appeal to the court, the appeal was not timely and should be dismissed.

The Strodes filed a motion for rehearing in the Court of Appeals in an effort to persuade the Court of Appeals that their motion for rehearing filed before the TERC was timely and tolled the time to file for judicial review by the Court of

Appeals. The Strodes noted that the 10th and 11th calendar days following the March 16, 2011, decision were a Saturday and a Sunday. They asserted that Neb. Rev. Stat. § 25-2221 (Reissue 2008), which provides generally for the manner by which days shall be computed, applied to the calculation of time to file a motion for rehearing with the TERC. The Strodes contend that under § 25-2221, the motion for rehearing in this case was due before the TERC by the first business day following the 10th calendar day, and that therefore their filing of the motion by facsimile on Monday, March 28, was timely.

The Court of Appeals adhered to its view that the appeal to it was untimely and denied the motion for rehearing. In the order denying the motion, the Court of Appeals stated that the "[m]otion for rehearing [in the TERC] was file-stamped on March 29, 2011, which was untimely as such motion needed to be filed by March 28." With regard to the facsimile filing of the motion on March 28, the Court of Appeals stated that the "TERC is not a 'court' within the meaning of Neb. Ct. R. 6-601 authorizing filing by fax in 'courts.' See also, 442 Neb[.] Admin. Code, ch. 5, § 001.07C (TERC does not accept appeals by fax)." The Strodes' appeal to the Court of Appeals was thus dismissed as untimely.

We granted the Strodes' petition for further review.

ASSIGNMENT OF ERROR

The Strodes assert that the Court of Appeals erred when it concluded they did not timely file their petition for review to the Court of Appeals and dismissed their appeal for lack of jurisdiction.

STANDARDS OF REVIEW

[1,2] A jurisdictional issue that does not involve a factual dispute presents a question of law. *Big John's Billiards v. State, ante* p. 496, 811 N.W.2d 205 (2012). We independently review questions of law decided by a lower court. *Id.*

ANALYSIS

The question whether the Strodes timely filed their petition for review with the Court of Appeals depends on whether their

motion for rehearing filed before the TERC was timely and therefore tolled the time to petition the Court of Appeals for judicial review. Under Neb. Rev. Stat. § 77-5019 (Cum. Supp. 2010), a party aggrieved by a final decision in a case appealed to the TERC is entitled to judicial review in the Court of Appeals and a petition for judicial review must be filed within 30 days after the date a final, appealable order is entered by the TERC. Under § 77-5005(4), the 30-day filing period is tolled while a motion for rehearing is pending.

The question whether the time was tolled depends on whether the motion for rehearing of the March 16, 2011, decision was timely filed before the TERC. In the present case, the Strodes' motion filed by facsimile on March 28 was timely if (1) § 25-2221 is applicable to the calculation of time to file a motion for rehearing with the TERC and (2) a motion for rehearing filed before the TERC may be filed by facsimile. The TERC and the Court of Appeals both concluded that the motion for rehearing filed before the TERC was not timely, albeit for different reasons. The TERC determined that although facsimile filing was proper, § 25-2221 did not apply and the March 28 filing was untimely; the Court of Appeals determined that § 25-2221 applied but that facsimile filing was not proper and the March 29 filing was untimely. Because we conclude that § 25-2221 applies and that facsimile filing of a motion for rehearing is proper, we conclude that both lower tribunals erred. As explained below, we specifically conclude that the Strodes timely filed their motion for rehearing before the TERC by facsimile on March 28 and that because they were entitled to tolling, their petition for judicial review with the Court of Appeals was timely.

We must first determine the date by which the Strodes were required to file the motion for rehearing before the full TERC. Under the TERC's rule § 023.01, any party to a proceeding heard by a panel of the TERC may file a motion for rehearing before the full TERC and such motion must be filed "within ten (10) calendar days of the date that the [d]ecision . . . was filed." The decision at issue in this case was filed on March 16, 2011, and the 10th calendar day following the

decision was March 26. Because March 26 was a Saturday, if § 25-2221 applies, then the Strodes had until the next business day, Monday, March 28, to file a motion for rehearing.

Section 25-2221 provides in part:

> Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

[3,4] In *Geddes v. York County*, 273 Neb. 271, 276, 729 N.W.2d 661, 666 (2007), we stated that § 25-2221 "establishes a uniform rule applicable alike to the construction of statutes and to matters of practice. We have regularly applied § 25-2221 and its predecessors in computing time periods specified in other statutes." In *State ex rel. Wieland v. Beermann*, 246 Neb. 808, 811, 523 N.W.2d 518, 522 (1994), we concluded that the application of § 25-2221 was not limited to court proceedings, stating that "[a]lthough the term 'action or proceeding' generally refers to business before a court or judicial officer, the term is not restricted in application to those actions which occur within the walls of a courtroom." We further stated:

> "A statutory rule for the computation of time is usually construed as a general provision relating to all acts required and permitted by law, unless an intention to the contrary affirmatively appears or a different construction seems imperative, and it may be applied in matters of practice as well as in the construction of statutes . . . ."

246 Neb. at 812, 523 N.W.2d at 523 (quoting 86 C.J.S. *Time* § 8 (1954)). The application of § 25-2221 is not limited to proceedings in a court, and § 25-2221 applies to matters of practice which are not necessarily enunciated in statutes. We therefore conclude that in the absence of a specific imperative

to the contrary, § 25-2221 applies to administrative rules and regulations, such as the TERC's rule § 023.01 regarding the time to file a motion for rehearing.

We find nothing in the statutes or rules and regulations governing the TERC that makes specific provision for computing time when the last day for filing a motion for rehearing falls on a Saturday, Sunday, or holiday. Because nothing is otherwise specifically provided with regard to the calculation of time for filing a motion for rehearing with the TERC, we conclude that § 25-2221 applies to such calculation and that therefore the last day to file the motion for rehearing of the TERC panel's March 16, 2011, decision was Monday, March 28, which was the first business day following the 10th calendar day after the decision.

In related areas, we note for completeness that the TERC's rule 442 Neb. Admin. Code, ch. 5, § 001.08E (2009), provides that with regard to the filing of an appeal to the TERC, "[i]f a filing deadline is on a weekend or state or federally recognized holiday, the next business day becomes the filing deadline." See, also, Neb. Rev. Stat. § 49-1203 (Reissue 2010) ("[i]f the date for filing any . . . tax valuation, equalization, or exemption protest, . . . petition, [or] appeal . . . falls upon a Saturday, Sunday, nonjudicial day, or legal holiday, such filing . . . shall be considered timely if performed in person or postmarked on the next business day"). These provisions are compatible with our determination that the method for computing time in § 25-2221 should be applied in this case.

Based on the foregoing, the TERC erred when it determined that the Strodes' motion that was filed on March 28, 2011, was not timely. And although the Court of Appeals correctly determined that § 25-2221 applied and that the motion for rehearing had to be filed by March 28, it erred when it did not recognize that the motion for rehearing could be filed with the TERC by facsimile and that the March 28 motion for rehearing, filed by facsimile on March 28, was in fact timely.

A review of the Court of Appeals' orders shows the Court of Appeals reasoned that the Strodes' filing by facsimile on March 28, 2011, was not filed by a proper method and that

therefore the motion was not filed until March 29, when the TERC received the original motion. In concluding that filing the motion for rehearing by facsimile was not proper, the Court of Appeals cited 442 Neb. Admin. Code, ch. 5, § 001.07C (2009), which provides, "Facsimile copies of an *appeal/petition* will not be accepted for filing by the [TERC]." (Emphasis supplied.) However, we note that elsewhere, 442 Neb. Admin. Code, ch. 5, § 014.03C (2009), provides that "[a]ny motion or objection to a motion may be filed with the [TERC] by facsimile if the original is mailed or delivered to the [TERC] within twenty-four (24) hours of the facsimile transmission."

[5] Under the TERC's rules, although an appeal or petition to the TERC may not be filed by facsimile, a motion may be filed by facsimile if the original is mailed or delivered with 24 hours. There is no suggestion in this case that this facsimile rule exceeded the TERC's statutory authorization. Compare *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000) (stating that Neb. Rev. Stat. § 77-1510 (Cum. Supp. 2000) as it was then written did not authorize TERC to promulgate "mailbox rule"). We decide the jurisdictional issue in this case as a matter of law. See *Big John's Billiards v. State, ante* p. 496, 811 N.W.2d 205 (2012). We conclude that a motion for rehearing filed pursuant to the TERC's rule § 023.01 is a "motion" under its rule § 014.03C and therefore may be filed by facsimile if the original is mailed or delivered within 24 hours. Therefore, where the Strodes filed their motion for rehearing by facsimile on March 28, 2011, and the original was stamped as being filed with the TERC on March 29, the Strodes timely filed their motion for rehearing before the TERC.

In sum, the TERC correctly concluded that the filing by facsimile on March 28, 2011, was proper, but the TERC erred when it failed to apply the manner by which to compute days under § 25-2221 and concluded that the motion was not timely filed. By contrast, the Court of Appeals correctly applied § 25-2221 and concluded that the Strodes had until March 28 to file the motion, but the Court of Appeals erred when it concluded that filing a motion for rehearing by

facsimile was not allowed and that the motion was untimely because the original was not filed until March 29. As noted above, we conclude that § 25-2221 applied and that filing the motion for rehearing by the full TERC by facsimile was allowed; therefore, the Strodes timely filed their motion for rehearing on March 28.

Because the motion for rehearing was timely filed before the TERC on March 28, 2011, pursuant to § 77-5005(4), the motion tolled the time for the Strodes to petition for judicial review in the Court of Appeals. In this case, the time was tolled until the TERC ruled on the motion for rehearing on March 30. The 30th day following the TERC's March 30 order denying the motion was Friday, April 29, 2011, which was a court holiday in Nebraska—Arbor Day. The next 2 days were a Saturday and a Sunday, and therefore, the next business day following April 29 was Monday, May 2. Because § 25-2221 applies to the time to file a petition for review with the Court of Appeals, the Strodes' petition for review was timely filed on May 2. Therefore, the Court of Appeals had jurisdiction of the appeal and erred when it determined that the appeal to that court was untimely and dismissed the appeal for lack of jurisdiction.

As noted above, the Strodes asserted in their petition for judicial review by the Court of Appeals that the TERC erred when it determined in its March 30, 2011, order that the "Motion for Rehearing dated and fax-filed on March 28 . . . was filed out of time." As discussed above, we agree with the Strodes that the TERC erred in such determination. Rather than denying the motion as being filed out of time, the TERC should have considered the merits of the Strodes' motion for rehearing before the full TERC. The proper resolution of this appeal on further review is to make provision in our order that the TERC consider the Strodes' motion for rehearing. We therefore reverse the order of the Court of Appeals which dismissed the Strodes' appeal as untimely and direct the Court of Appeals to reverse the March 30, 2011, TERC order denying the motion for rehearing as untimely and to remand the cause to the TERC to consider the Strodes' timely filed motion for rehearing on its merits.

CONCLUSION

In these consolidated appeals, we conclude that the Strodes' motions for rehearing before the full TERC were timely filed by facsimile on March 28, 2011, thus tolling the time for filing petitions for review with the Court of Appeals until the TERC ruled on the motions, which ruling occurred on March 30. The Strodes timely filed their petitions for judicial review with the Court of Appeals on May 2, and the Court of Appeals erred when it dismissed these appeals for lack of jurisdiction as untimely filed. The TERC erred when it determined that the motions for rehearing were filed out of time, and instead of denying the motions as untimely, the TERC should have considered the motions for rehearing on their merits. On further review, we reverse the Court of Appeals' dismissal of these appeals and remand these appeals to the Court of Appeals with directions to reverse the TERC's denial of the motions for rehearing as untimely and to remand the causes to the TERC with directions to the TERC to consider the merits of the motions for rehearing.

REVERSED AND REMANDED WITH DIRECTIONS.

CHRISTY SPITZ, AS SURVIVING SPOUSE OF ROGER MCCANNON AND AS NEXT FRIEND OF DANIELLE E. SPITZ-MCCANNON, APPELLANT, V. T.O. HAAS TIRE CO., AND ITS INSURER, CINCINNATI CASUALTY CO., APPELLEES.

815 N.W.2d 524

Filed May 4, 2012. No. S-11-620.

1. **Workers' Compensation: Appeal and Error.** In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the trial judge's findings of fact, which will not be disturbed unless clearly wrong.
2. ____: ____. An appellate court independently reviews questions of law decided by a lower court.
3. **Marriage: Proof.** In Nebraska, a couple cannot create a common-law marriage by agreement or cohabitation and reputation.

Appeal from the Workers' Compensation Court. Affirmed.