

IN THE COURT OF APPEALS OF IOWA

No. 0-126 / 09-1078
Filed June 16, 2010

**ROBERT WINSLOW and
CYNTHIA WINSLOW,**
Petitioners-Appellants,

vs.

**WARREN COUNTY BOARD OF REVIEW
and IOWA PROPERTY ASSESSMENT APPEAL BOARD,**
Respondents-Appellees.

Appeal from the Iowa District Court for Warren County, Peter A. Keller,
Judge.

Taxpayers appeal a district court order granting the Property Assessment
Appeal Board's motion to dismiss the taxpayers' petition for judicial review on
jurisdictional grounds. **REVERSED AND REMANDED.**

Robert Winslow and Cynthia Winslow, New Virginia, appellants pro se.

Jessica Braunschweig-Norris and Curtis Swain, Des Moines, for
appellees.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

In 2005, the legislature created the Property Assessment Appeal Board “for the purpose of establishing a consistent, fair, and equitable property assessment appeal process.” 2005 Iowa Acts ch. 150, § 121. Robert and Cynthia Winslow, who received an adverse property tax decision from the Warren County Board of Review, appealed to the board. The board affirmed the decision of the Warren County Board of Review.

The Winslows filed a notice of appeal in the Warren County District Court containing the following caption: “*Robert/Cynthia Winslow, Petitioner-Appellant v. Warren County Board of Review, Respondent-Appellee.*” They served the presiding officer of the Property Assessment Appeal Board, whose signature appeared on the board’s decision. The board responded with a motion to dismiss the petition on the ground that the Winslows named the incorrect party. The district court granted the motion and this appeal followed.

Iowa Code section 441.38B (2009) provides that anyone who is aggrieved by the decision of the board “may seek judicial review of the decision as provided in chapter 17A and section 441.38.” Section 17A.19(4), in turn, provides in part: “The petition for review shall name the agency as respondent.”

The district court found that the Winslows “did not substantially comply with Iowa Code section 17A.19(4).” The court reasoned as follows:

The proper party defendant is the Iowa Property Assessment Appeal Board. That agency must be named as the respondent or the district court fails to acquire jurisdiction. This court lacks jurisdiction and petition is dismissed at petitioner’s cost.

On appeal, the Winslows contend that the court’s ruling was erroneous.

We begin by reiterating the district court's statement that substantial compliance with section 17A.19 is all that is required. See *Buchholtz v. Iowa Dep't of Pub. Instruction*, 315 N.W.2d 789, 792–93 (Iowa 1982). In *Buchholtz*, the court essentially concluded that proper service cured a defect in the caption. The court stated, "It is undisputed that the board received timely mailed notice of the petition and suffered no prejudice from the mistaken designation." *Id.* at 792; cf. *Frost v. S.S. Kresge Co.*, 299 N.W.2d 646, 647–48 (Iowa 1980) (noting misnamed agency received mailed notice of pendency of action and finding sufficient compliance with notice requirements).

Based on *Buchholz*, we conclude the Winslows substantially complied with section 17A.19(4). Although they named the wrong board in their notice of appeal, they served a member of the correct board. The notice made specific reference to the date of the board's decision and included a copy of the decision as an attachment. The board did not argue—and there is no indication in the record—that the board misunderstood it was a party to this proceeding.¹ This is the key inquiry under *Buchholtz*.

We recognize that the Iowa Supreme Court declined to excuse a similar mistake in *Iowa Department of Transportation v. Iowa District Court*, 534 N.W.2d 457 (Iowa 1995). However, the procedural posture of that case was significantly different than the instant case. There, a party filed a document in a criminal matter that sought to affect a related but separate administrative matter. *Iowa*

¹ Iowa Code section 441.38 allows for direct appeals from local boards of review in lieu of appeals to the Property Assessment Appeal Board and the district court. Here, it is clear that the Winslows opted to pursue an appeal through the Property Assessment Appeal Board.

Dep't of Transp., 534 N.W.2d at 458. Neither the agency that would have been affected by the ruling nor an employee of that agency was named in the caption. *Id.* at 459. Under those circumstances, the Iowa Supreme Court concluded that the criminal filing “did not meet the statutory prerequisites [set forth in Iowa Code section 17A.19] for judicial review.” *Id.* Because the circumstances in this case are distinguishable from the *Iowa Department of Transportation* case, that opinion is inapposite.

This brings us to a two-part ground for affirmance raised by the board on appeal. The board maintains that (1) the Winslows failed to properly serve the board because notice was sent to the presiding officer rather than the secretary of the board, as required by Iowa Code section 441.38(2), and (2) the Winslows failed to serve the Warren County Board of Review, a party to the contested case proceeding. This ground was not raised in the district court. Therefore, we will not consider it. See *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002) (“[W]e will not consider a substantive or procedural issue for the first time on appeal, even though such issue might be the *only* ground available to uphold the district court ruling.”).²

We reverse the decision of the district court and remand for further proceedings.

REVERSED AND REMANDED.

² We recognize that these requirements could be viewed as jurisdictional and, therefore, subject to being raised for the first time on appeal. See *Buchholtz*, 315 N.W.2d at 791–92. However, we believe the requirements implicate “jurisdiction of a particular case” rather than “subject matter jurisdiction.” See *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 874 n.4 (Iowa 2007). This type of jurisdictional issue cannot be raised for the first time on appeal. See *id.* at 876.