IN THE COURT OF APPEALS OF IOWA

No. 9-985 / 09-0908
Filed January 22, 2010

**ROXANNE SPARKS, PIERCE WILSON,
ELLA MAE BAIRD, JUDITH MANNING,
and SHARON DOZIER,**
Petitioners-Appellants,

vs.

**IOWA DEPARTMENT OF
INSPECTIONS & APPEALS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Don Nickerson, Judge.

Petitioners appeal the district court's dismissal of their petition for judicial review of agency action. **AFFIRMED.**

Jeffrey M. Lipman and Kristin M. Herrera of Lipman Law Firm, P.C., Des Moines, for appellants.

Thomas J. Miller, Attorney General, John R. Lundquist, Assistant Attorney General, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

I. Background Facts & Proceedings

Petitioners in this case are employees of the Iowa Department of Public Health, Bureau of Professional Licensure. They each held the position of Executive Officer 1 (EO1), and they sought reclassification from EO1 to Executive Officer 2 (EO2). A personnel officer with the Department of Public Health denied their request.

The Department of Administrative Services (DAS) is responsible for the classification of jobs in the executive branch. *See* Iowa Code § 8A.402(1)(c) (2007). Petitioners appealed the denial of their reclassification request pursuant to section 8A.413(1), which provides an "employee adversely affected by a classification or reclassification decision may file an appeal with the director [of DAS]."

Appeals of a reclassification decision are heard by a committee appointed by the director of DAS. Iowa Code § 8A.413(1); Iowa Admin. Code r. 11-52.5(2). The director of DAS appointed a Classification Appeal Committee comprised of Jeffrey Farrell, an administrative law judge in the Department of Inspections and Appeals (DIA), Keith Hyland of Iowa Vocational Rehabilitative Services, and Roger Stirler of the Iowa Department of Revenue. After a hearing, the committee determined the DAS had properly classified the employees in the EO1 job classification. The letterhead or heading on the committee's decision was "Iowa Department of Inspections and Appeals—Division of Administrative Hearings."

The committee's decision was a final agency action. *See* Iowa Admin. Code r. 11-52.5(4)(f).

Petitioners filed a petition for judicial review on December 15, 2008, naming DIA as the respondent. The DIA was served on February 4, 2009. The DIA filed a motion to dismiss, claiming there had been untimely service and petitioners had filed suit against the wrong agency. On March 9, 2009, petitioners sought to amend their petition to add the DAS as a respondent.

The district court granted the motion to dismiss. The court determined the DAS was a party of record in the action. The court found, "there is no dispute that DAS was not served with a copy of the petition for judicial review, nor was a copy of the petition for judicial review mailed to DAS." Proper service of a petition for judicial review is jurisdictional. *See* Iowa Code § 17A.19(2). Because the DAS was not properly served under section 17A.19(2), the district court concluded it did not have jurisdiction to consider the petition and it dismissed the case. The petitioners appeal the district court's decision.

II. Standard of Review

We review the district court's ruling on a motion for dismiss for the correction of errors at law. *Ritz v. Wapello County Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999).

III. Merits

The petitioners contend the district court incorrectly applied the law pertaining to section 17A.19(2). This section provides:

> Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, *all parties of record in that case* before the agency. Such personal service or mailing shall be jurisdictional.

Iowa Code § 17A.19(2) (emphasis added).

The right to appeal an agency decision to the district court is purely statutory and is controlled by section 17A.19. *Neumeister v. City Dev. Bd.*, 291 N.W.2d 11, 14 (Iowa 1980); *see also* Iowa Admin. Code r. 11-52.5(5) (providing judicial review of a Classification Appeal Committee decision is governed by Iowa Code section 17A.19). In order to seek relief from the district court in a petition for judicial review, a party must comply with the requirements of section 17A.19. *Neumeister*, 291 N.W.2d at 14. The service of notice requirements of section 17A.19(2) are mandatory and jurisdictional. *Cunningham v. Iowa Dep't of Job Serv.*, 319 N.W.2d 202, 204 (Iowa 1982). "Failure to comply with the statute deprives the court of jurisdiction of the case, not merely the parties." *Dawson v. Iowa Merit Employment Comm'n*, 303 N.W.2d 158, 160 (Iowa 1981).

However, "substantial—not literal—compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court." *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988). The Iowa Supreme Court has rejected a standard of strict or literal compliance with section 17A.19(2). *Cowell v. All-American, Inc.*, 308 N.W.2d 92, 94 (Iowa 1981). Substantial compliance means "actual compliance in respect to the substance

essential to every reasonable objective of the statute." *Brown*, 423 N.W.2d at 194 (citation omitted).

Petitioners first contend the DIA was the proper party to be named as the respondent in this case. They state the caption of the classification appeal decision clearly showed the decision was made by the DIA, Division of Administrative Hearings. The petitioners assert the Classification Appeal Committee is actually a body under the direction of the DIA.

We first note that an appeal of a classification decision is made to the director of the DAS. Iowa Code § 8A.413(1); Iowa Admin. Code r. 11-52.5(1). Also, section 8A.413(1) and rule 11-52.5(2) provide that a Classification Appeal Committee is appointed by the director of the DAS. However, even if the Classification Appeal Committee was under the governance of the DIA, the DAS was still a party of record in the case before the agency. The DAS was named as the respondent in the decision for which the petitioners were seeking judicial review. Under section 17A.19(2), the DAS, as a party of record, should have received notice of the petition for judicial review. *See Record v. Iowa Merit Employment Dep't*, 285 N.W.2d 169, 173 (Iowa 1979) (finding that agency that participated in underlying agency proceeding, as well as agency making the decision, was entitled to notice of petition for judicial review under section 17A.19(2)).

The petitioners raise an alternative argument that the DAS effectively received service because DIA received service. The petitioners state in their

appellate brief, "it is clear the two agencies are so closely related that providing notice to one of the agencies effectively provided notice to both."

In *Buchholtz v. Iowa Department of Public Instruction*, 315 N.W.2d 789, 792 (Iowa 1982), a petitioner improperly named as respondent the Iowa Department of Public Instruction, instead of the Iowa State Board of Public Instruction and the State Superintendent of Public Instruction. The court found there was substantial compliance with section 17A.19(2) because of the "virtual merger of identity which occurs when the three entities perform related duties." *Buchholtz*, 315 N.W.2d at 792. There, the superintendent was the executive officer of the board, and the department assisted the superintendent. *Id.* There is no such close relationship between the DAS, under the provisions of chapter 8A, and the DIA, under the provisions of chapter 10A. We determine that serving notice to the DIA did not substantially comply with the requirement that DAS be served notice of the petition for judicial review.

Finally, the petitioners claim DAS was not prejudiced by the failure to substantially comply with section 17A.19(2). An allegation of prejudice is not a requirement for substantial compliance. *Brown*, 423 N.W.2d at 195; *Buchholtz*, 315 N.W.2d at 793. However, in determining whether there has been substantial compliance with section 17A.19(2), one factor we may consider is whether a party has been prejudiced. *Id.* Here, the DAS received no notice of the petition for judicial review, and thus were unable to respond to the petition.

We conclude the district court properly granted the motion to dismiss. The petitioners did not take the steps necessary to vest the district court with

jurisdiction to consider their petition for judicial review. We affirm the decision of the district court.

AFFIRMED.