

SUPREME COURT OF SOUTH DAKOTA

Bison Township v. Perkins County

640 N.W.2d 503 (S.D. 2002) · No. Nos. 22036, 22037, 22038 · Decided February 13, 2002

SUMMARY

The Supreme Court of South Dakota held that notice of an appeal from a county commission decision was timely served when mailed within the statutory 20-day period, because service by mail was complete upon mailing. The court also held that failure to file the required appeal bond within the statutory period did not deprive the circuit court of jurisdiction. The dismissal was reversed and the matter remanded for consideration of the townships’ substantive challenges to Perkins County’s property assessments.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Sabers, Justice; Gilbertson, Chief Justice; Amundson, Justice; Konenkamp, Justice; Gors, Acting Justice
JURISDICTION	South Dakota
DECIDED	February 13, 2002
DOCKET	Nos. 22036, 22037, 22038
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The townships appealed the circuit court's dismissal of their appeals from Perkins County's property-assessment actions. The circuit court ruled that the notices of appeal and bond were untimely and dismissed for lack of jurisdiction without reaching the merits.
STANDARD OF REVIEW	A motion to dismiss is reviewed under the same standard as a motion for summary judgment: whether the pleader is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Bison Township, Lincoln Township, Lone Tree Township, Scotch Cap Township, Rainbow Township, Wilson Township, Vickers Township, Strool Township v. Perkins County, South Dakota

TOPICS

appellate procedure

service of process

statutory interpretation

municipal law

real estate

PRACTICE AREAS

appellate procedure

civil procedure

municipal law

real estate

statutory interpretation

QUESTIONS PRESENTED

1. Whether service of a statutory notice of appeal by mail was complete upon mailing under SDCL 15-6-5(b), thereby satisfying the twenty-day appeal period in SDCL 7-8-29.
2. Whether failure to file the statutorily required appeal bond within the statutory period deprived the circuit court of jurisdiction.
3. Whether the circuit court erred by dismissing the appeals without reaching the substantive challenges to the County's reassessment actions.

HOLDINGS

1. A notice of appeal is a notice governed by SDCL 15-6-5, and service by mail is complete upon mailing. The townships therefore complied with the twenty-day requirement when they mailed the notice of appeal and bond within that period.
2. Failure to file the appeal bond within the statutory period does not deprive the court of jurisdiction when the notice of appeal has been duly served and an undertaking has been executed.
3. The circuit court erred in dismissing the appeals as untimely and the matter must be remanded for determination of the substantive issues on the merits.

KEY QUOTATIONS

“Service of a notice of appeal falls within this chapter and therefore can be deemed complete upon mailing.”
(640 N.W.2d at 506)

“The act of failing to file the bond within the statutory period does not deprive the court of jurisdiction.” (640 N.W.2d at 506)

FACTUAL BACKGROUND

Perkins County created property-assessment zones in 1993, producing disputed results for the 1998 assessment year. After prior litigation, the circuit court ordered the County to reassess property in eight townships. The County conducted an executive-session review and later reassessed the entire county at a public meeting, prompting the townships to appeal and seek contempt and mandamus relief.

PROCEDURAL HISTORY

The Office of Hearing Examiners initially reversed the County's 1998 property assessments, but the Eighth Circuit Court reversed that decision. The Supreme Court of South Dakota later reversed and remanded for proper reassessment, after which the circuit court ordered the County to reassess property in eight townships. Following the County's December 15, 2000 reassessment meeting, the townships filed appeals, a motion for contempt, and

a petition for writ of mandamus. The circuit court dismissed the appeals as untimely; the Supreme Court reversed and remanded for consideration of the substantive issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to determine the substantive issues raised by the townships on the merits. The court was also reminded that the procedural appeals did not constitute adequate remedies at law for purposes of denying the requested writ of mandamus.

CASES CITED

- Weekley v. Weekley, 1999 SD 162, 604 N.W.2d 19, 22-23
- Steiner v. County of Marshall, 1997 SD 109, 568 N.W.2d 627, 631
- Stumes v. Bloomberg, 1996 SD 93, 551 N.W.2d 590, 592
- Fullerton Lumber Co. v. Tinker, 21 S.D. 647, 115 N.W. 91, 92 (1908)
- Gesinger v. Gesinger, 531 N.W.2d 17, 22 (S.D. 1995)
- Hein v. Marts, 295 N.W.2d 167, 171 (S.D. 1980)
- Bison Township v. Perkins County, 2000 SD 38, 607 N.W.2d 589, 596