

FILED

February 8, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A20-1654

Edwin Hahn, Janine Hanson,
Laurie Christianson, Lisa Hahn, Marilyn Proulx,
Ronald White, John Kowalski, Janine Kowalski,

Appellants,

vs.

Steve Simon, only in his official capacity as the
Minnesota Secretary of State, Lori Johnson,
only in her official capacity as the Auditor-Treasurer for
Clay County, Heather Keeler,

Respondents.

MINNESOTA
JUDICIAL
BRANCH

ORDER

A contest challenging the election of respondent Heather Keeler to seat 4A in the Minnesota House of Representatives was filed in Clay County District Court on November 30, 2020. *See* Minn. Stat. § 209.02, subd. 1 (2020) (allowing an eligible voter to contest the election of any person elected to a legislative office). The contestees—respondents Secretary of State Steve Simon, Clay County Auditor-Treasurer Lori Johnson, and Keeler—moved to dismiss the contest on several grounds. The district court granted those motions and dismissed the notice of election contest with prejudice on December 14, 2020. Judgment was entered the same day, and a copy of the district court’s decision and notice of the entry of judgment was mailed to appellants on December 14, 2020.

On December 28, 2020, appellants filed by mail a notice of appeal from the district court's decision.¹ See Minn. R. Civ. App. P. 125.01(c)(2) (stating that filing occurs on mailing). Respondent Simon, joined by respondent Keeler, moved to dismiss the appeal, asserting that this court lacks jurisdiction because the appeal was not filed within 10 days after the entry of judgment in the district court. We established a briefing schedule and directed appellants to respond to the motion to dismiss.

The deadline for an appeal taken in an election contest brought under chapter 209 is established by statute. “The judge’s decision may be appealed to the supreme court no later than ten days *after its entry* in the case of a general election contest . . .” Minn. Stat. § 209.10, subd. 4 (2020) (emphasis added).

Relying on two provisions in Rule 6.01 of the Minnesota Rules of Civil Procedure, appellants contend that the appeal was timely. First, appellants state that the district court administrator served notice of the court’s order dismissing the election contest and the entry of judgment *by mail* on December 14, 2020. Based on this form of service, appellants argue that they were entitled to 3 additional days to file the notice of appeal, or until December 27, 2020. See Minn. R. Civ. P. 6.01(e). Next, because December 27 was a

¹ The notice of appeal is dated December 28, 2020, and the affidavit of service included with that notice states that the appeal was mailed on December 28, 2020. The envelope in which the appeal was mailed to the Clerk of the Appellate Courts has a postmark of December 29, 2020. Although a postmark can be evidence of the date of mailing, see *Kay v. Elsholtz*, 164 N.W. 665, 666 (Minn. 1917) (“The postmark was evidence of the date of mailing, or at least evidence that it was not mailed” on the date claimed), for purposes of this decision we have used December 28 as the mailing date.

Sunday, appellants further argue that based on Rule 6.01(a)(1)(C), they had until Monday, December 28, 2020, to file the notice of appeal.

As relevant here, rule 6.01 is used to compute time periods that are set by statute to take certain actions. *See* Minn. R. Civ. P. 6.01(a) (explaining that the rule is used to “comput[e] any time period specified . . . in any statute that does not specify a method of computing time”); Minn. R. Civ. App. P. 126.01 (using Rule 6.01 to compute time periods for appeals under “any applicable statute”). In some circumstances, the time set by statute can be extended by 3 days when a party must take some action after the party is served by mail. *See* Minn. R. Civ. P. 6.01(e) (providing that when a party “is required to do some act . . . within a prescribed period *after the service of a notice or other document upon the party*, and the notice or document is served upon the party by United States Mail, 3 days shall be added to the prescribed period” (emphasis added)).

We have said, however, that this rule “does not extend a deadline that runs from the date of filing or the date of judgment.” *Soyka v. Comm’r of Revenue*, 842 N.W.2d 682, 687 (Minn. 2014); *see also* 1 David F. Herr & Roger S. Haydock, *Minnesota Practice—Civil Rules Annotated* § 6:8 (2017) (“If a time period runs from the date of filing or date of judgment, then [the rule] does not serve to extend the time period.”).² The Legislature has said that the time to file an appeal in an election contest involving a state legislative office

² At the time of the decision in *Soyka*, the rule governing the 3-day extension based on service by mail was codified as Rule 6.05 of the Rules of Civil Procedure. That rule was re-codified in 2019 as Rule 6.01(e), without changing the substance of the rule. *See* Herr & Haydock, *supra*, § 6.8 (Supp. 2020) (noting that “no substantive change in the operation of” the rule occurred with the re-codification in 2019).

is based on the *entry of judgment*, not the date of notice of, or service of notice of, the district court’s entry of judgment. *See* Minn. Stat. § 209.10, subd. 4 (“The judge’s decision may be appealed to the supreme court no later than ten days *after its entry* in the case of a general election contest” (emphasis added)); *cf. Tombs v. Ashworth*, 95 N.W.2d 423, 428 (Minn. 1959) (stating that “the law is clear that the time for appealing from a judgment commences to run upon the entry thereof and that failure of the clerk” to serve a party with notice of the entry of judgment as directed in Rule 77.04 “does not affect the time for appealing”). Thus, the 3-day extension provided by Rule 6.01(e) does not apply to the appeal period in this case. As a result, the deadline to file an appeal expired on December 24, 2020.³

The time in which to file an appeal is jurisdictional. *Ford v. State*, 690 N.W.2d 706, 709 (Minn. 2005) (“We have held . . . that the time requirements for the filing of an appeal are jurisdictional.”); *see also Kenzie v. Dalco Corp.*, 245 N.W.2d 207, 208 (Minn. 1976) (“This court does not review a judgment or order when the appeal is not timely”). Our authority over election contests “is purely statutory,” *Phillips v. Ericson*, 80 N.W.2d 513, 517 (Minn. 1957), and the statutory requirements that govern these proceedings must be complied with to properly invoke our jurisdiction. *See Petrafeso v. McFarlin*, 207 N.W.2d

³ December 24 is not a legal holiday. Thus, the provision in Rule 6.01 for deadlines that fall on a legal holiday or weekend also does not apply. *See* Minn. R. Civ. P. 6.01(a)(1)(C) (stating that “[w]hen the period is stated in days,” and “the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday”); *see also* Minn. Stat. § 645.44, subd. 5 (2020) (defining “holiday” without reference to December 24); Minn. R. Civ. P. 6.01(d) (defining “legal holiday” in part by reference to section 645.44, subdivision 5).

343, 346 (Minn. 1973) (stating that a contestant must perform “within a specified time and manner the acts that are necessary to invoke the court’s jurisdiction”); *Christenson v. Allen*, 119 N.W.2d 35, 38 (Minn. 1963) (“It is elementary that both the right to contest an election and the authority of courts to hear and determine an election contest are purely statutory; and, absent statutory compliance, courts are powerless to entertain such proceedings.”).

Under the plain language of the statute, the appeal deadline expired on December 24, 2020, 10 days after judgment was entered. Minn. Stat. § 209.10, subd. 10. Appellants filed their appeal 4 days later, on December 28, 2020. Because that filing was late, we lack jurisdiction over this appeal and the appeal must be dismissed.⁴

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the Notice of Appeal filed with this court on December 28, 2020, be and the same is, dismissed.

Dated: February 8, 2021

BY THE COURT:



Lorie S. Gildea
Chief Justice

CHUTICH, MOORE, III, JJ., took no part in the consideration or decision of this appeal.

⁴ Because we conclude that we do not have jurisdiction over this appeal and that the appeal must be dismissed, we do not address appellants’ motions for discovery, to inspect ballots, and to amend the caption for this appeal.