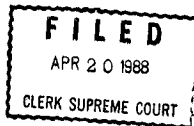


IN THE COURT OF APPEALS OF IOWA



59

DONALD COULTER and LINDA)
COULTER, d/b/a SUGAR BOTTOM)
STABLES,)

Petitioners-Appellants,)

Filed April 20, 1988

vs.)

DEBRA BELTZ,)

8-46
87-619

Respondent-Appellee.)

Appeal from the Iowa District Court for Johnson County (No. 50504),
Harold J. Swailes, Judge.

Petitioners appeal from the district court's ruling granting summary judgment in favor of claimant-respondent. **AFFIRMED.**

Clemens Erdahl, Iowa City, for petitioners-appellants.

Deborah Leonard, Cedar Rapids, and Bruce Washburn, Des Moines, for
respondent-appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Petitioners appeal from the district court's ruling granting summary judgment in favor of claimant-respondent. We affirm.

Jack Beltz was an employee of Sugar Bottom Stables, a business operated by Donald and Linda Coulter. While so employed, Beltz was killed in a fire on the Coulters' property. Beltz's widow later obtained a workers' compensation award from the Industrial Commissioner.

The Coulters challenged the workers' compensation award by filing the present petition for judicial review. The petition was timely filed on January 28, 1987. Initially, the petition named only the Industrial Commissioner. However, on February 9 the district court ruled that naming the Industrial Commissioner as a respondent was prohibited by statute. Therefore, on February 10, the Coulters filed an amendment to their petition naming Debra Beltz as respondent. This amendment was served on Beltz on February 10, 1987.

Beltz filed a motion for summary judgment, alleging that the court lacked subject matter jurisdiction because the original petition for judicial review had not been served on her within ten days of its filing, as required by Iowa Code section 17A.19(2). That statute provides in relevant part as follows:

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.

The district court agreed with Beltz's position that jurisdiction over her was absent due to the lack of service. The district court therefore granted Beltz's motion for summary judgment. The Coulters have appealed from the summary judgment in favor of Beltz.

The Coulters argue that under the circumstances of this case they were in substantial compliance with the requirements of section 17A.19(2). They point out that the amendment was served on Beltz within a few days of the time the original petition should have been served on her. They also point out that the delay was caused by confusion about who should be named as respondent.

The district court does not acquire jurisdiction of a petition for judicial review in absence of substantial compliance with the statutory service requirements. Dept. of Transportation v. Iowa Dept. of Job Service, 341 N.W.2d 752, 754 (Iowa 1983). Failure to comply with section 17A.19(2) notice requirements deprives the district court of jurisdiction of the case. Dawson v. Iowa Merit Employment Commission, 303 N.W.2d 158, 160 (Iowa 1981).

The petition for judicial review in this case was filed by the Coulters on January 28, 1987. Beltz was served on February 10, 1987. Because Beltz was not served within the ten-day notice requirement provided for in section 17A.19(2), we affirm the district court's finding that it lacked jurisdiction over the Coulters' appeal of the Industrial Commissioner's decision.

The Coulters also argue that under the circumstances of this case, the summary judgment against them denied them due process. The Coulters complain about the dilatoriness of their counsel in responding to a deputy industrial commissioner's order to show cause which ultimately resulted in the deputy's closing of the record to any further activity on their party and prohibited them from introducing evidence at the arbitration hearing.

We do not find that the Coulters were deprived of due process. They were requested to file appropriate documentation for case progression and failed to do so. The deputy's order closing the record to the Coulters for this failure was not violative of any of the Coulters' constitutional rights. Procedural rules are necessary to carry forth the administrative process. See Temple v. Vermeer

Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979). The closing of the record by the deputy when the Coulters did not comply with the order to show cause was not in excess of statutory authority. 343 Iowa Admin. Code 4.36.

The Coulters' prior attorney represented them up until the time of their appeal, at which time he was disbarred. While we recognize the Coulters' dissatisfaction with what may be perceived as a deficient performance on the part of their prior counsel, we must find that they are bound by the actions of their attorney. In addition, we note that the district court's decision with respect to its lack of jurisdiction of the petition for judicial review pertains to the situation created by present counsel, not prior counsel. We find that the Coulters' statutory and constitutional rights were not violated.

Accordingly, we affirm the district court's dismissal of the Coulters' petition for judicial review and the entry of judgment on the Industrial Commissioner's decision.

AFFIRMED.