

IN THE COURT OF APPEALS OF IOWA

CONSUMER ADVOCATE DIVISION,)
DEPARTMENT OF JUSTICE,)

Petitioner-Appellee,)

vs.)

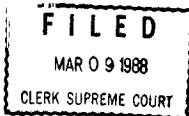
UTILITIES BOARD, UTILITIES DIVISION,)
DEPARTMENT OF COMMERCE,)

Respondent-Appellee,)

vs.)

AT&T COMMUNICATIONS OF THE)
MIDWEST, INC.)

Intervenor-Appellant.)



Filed March 9, 1988

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7-421
87-116

Appeal from the Iowa District Court for Polk County (No. AA4-1078),
A M Critelli, Judge.

An interlocutory appeal of a district court order in a judicial review proceeding dismissing an intervenor's cross-claim on jurisdictional grounds.
REVERSED AND REMANDED.

Mark McCormick of Belin, Harris, Helmick, Tesdell, Lamson & McCormick, Des Moines, and Mark Belmont and W. Richard Morris of Omaha, Nebraska, for intervenor-appellant.

David R. Conn of Des Moines for petitioner-appellee.

Dean F. Stoner and David J. Lynch, Assistant General Counsels, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

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This is an interlocutory appeal brought by the intervenor, AT&T Communications of the Midwest, Inc. (AT&T), challenging a district court order dismissing AT&T's cross-claim on jurisdictional grounds. AT&T asserts a district court has jurisdiction to review an intervenor's cross-claim for affirmative relief even though a petition for judicial review was not filed within thirty days of the agency decision. We reverse and remand.

AT&T applied to the Utilities Board for a rate increase for certain telecommunications services. The Consumer Advocate Division (CAD) resisted this application. The Utilities Board issued a decision, and on August 23, 1986, the last possible day, the CAD filed a petition for judicial review naming the Utilities Board as respondent. On October 6, 1986, AT&T filed a petition of intervention and a cross-claim against the Utilities Board.

The Board moved to strike the cross-claim on the ground that a cross-claim could only be made in a timely petition for judicial review. The district court sustained the motion on the ground it did not have jurisdiction to review the cross-claim because AT&T failed to raise the issues in a petition for judicial review. AT&T was then granted permission to bring this interlocutory appeal.

AT&T claims that under the supreme court's decision in Doerfer Division of CCA v. Nicol, 359 N.W.2d 428 (Iowa 1984), a district court has jurisdiction to review a claim for affirmative relief by a cross-claimant even though the cross-claimant has not petitioned for judicial review within thirty days of the agency decision. AT&T argues it has a right to intervene and become a party, and because it was a party, make a cross-claim seeking greater or additional relief.

We find the supreme court's decision in Doerfer to be dispositive of this case. Doerfer holds that a district court has jurisdiction to review claims for

affirmative relief by a cross-claimant even though the cross-claimant did not file a timely petition for judicial review. Doerfer, 359 N.W.2d at 436-37. The court explained that:

[b]y waiting until the thirtieth day before filing, a party could strip other parties, dissatisfied with the decision but nonetheless willing to acquiesce, of any opportunity for affirmative relief. Such a theory finds no support in our law or in sound public policy.

Id. at 436.

The Doerfer court then outlined the rights of an intervenor. Id. at 437. The court found that Iowa Rule of Civil Procedure 333(a) was not inconsistent with the Iowa Administrative Procedure Act and an intervenor could join with a party to the action. Id. The court also found that a cross-claim could be contained in the intervenor's filing. Id.

In this case AT&T, as an intervenor, joined with the respondent Utilities Board. Once joined as a coparty, AT&T had a right under Rule 33 to cross-claim against the Utilities Board. The issues raised in the cross-claim were issues that arose out of the transaction or occurrence that was the subject matter of the original action. See Iowa R. Civ. P. 33. The issues arose from the rate case decision and are logically related to the issue raised by the Utilities Board in its petition for judicial review. See Harrington v. Polk County Fed. Sav. & Loan Assoc. of Des Moines, 196 N.W.2d 543, 545-46 (Iowa 1972).

Based on the foregoing, we hold the district court erred in dismissing AT&T's cross-claim for jurisdictional reasons. We therefore reverse the judgment of the district court and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.