

STATE OF MINNESOTA
IN COURT OF APPEALS



Energy Transfer LP (formerly known as
Energy Transfer Equity, L.P.), et al.,

Appellants,

vs.

Greenpeace International (also known as
Stichting Greenpeace Council), et al.,

Defendants,

Unicorn Riot, et al.,

Respondents.

**SPECIAL
TERM
ORDER¹**

A23-0257

Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Smith, Tracy
M., Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This appeal was filed on February 14, 2023. According to the notice of appeal,
appellants Energy Transfer LP, Energy Transfer Operating LP, and Dakota Access LLC
seek review of a December 16, 2022 order denying appellants' motion to compel
respondents Unicorn Riot and Niko Georgiades to comply with third-party subpoenas.

¹ Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order is nonprecedential, except
as law of the case, res judicata, or collateral estoppel.

Respondents filed a notice of related appeal (NORA) seeking review of the portion of the December 16, 2022 order “to the extent that it orders [respondents] to provide a privilege log in response to [appellants’] subpoenas.”

In a March 1, 2023 order, this court questioned (a) whether respondents’ pending motion for relief is a proper and timely tolling motion under Minn. R. Civ. App. P. 104.01, subd. 2, and (b) if so, whether this appeal must be dismissed as premature under Minn. R. Civ. App. P. 104.01, subd. 3. The parties filed informal memoranda.

The district court administrator’s register of actions indicates that appellants initiated the underlying district court file in June 2022 by filing a motion to compel respondents to comply with subpoenas related to a North Dakota action. Respondents opposed the motion, arguing that the subpoenas sought documents and newsgathering materials privileged from compelled disclosure by the Minnesota Free Flow of Information Act and the First Amendment.

In a December 16, 2022 order, the district court denied appellants’ motion to compel compliance with the subpoenas. In the order, the district court required respondents to produce a log of all responsive documents and answers claimed as privileged and stated that “[i]f called by the Court, [respondents] shall produce, for in camera inspection, any and all documents identified in their respective privilege logs.”

On February 15, 2023, the day after appellants filed this appeal, respondents filed a motion titled “MOTION FOR RELIEF FROM ORDER UNDER MINN. R. CIV. P.

60.02.” Respondents requested relief from the portion of the December 16, 2022 order requiring them to produce a privilege log.

On February 16, 2023, respondents filed a motion to deem their motion for relief filed on February 14, 2023, under Minn. R. Gen. Prac. 14.01(c)(1) because of technical issues with an attempt to electronically file the motion on February 14, 2023. On March 1, 2023, the district court granted respondents’ motion and deemed respondents’ motion for relief filed at 4:54 p.m. on February 14, 2023, before appellants’ filing of this appeal at 8:39 p.m. that day.

Unless otherwise provided by law, if any party serves and files a proper and timely postdecision motion of a type specified in Minn. R. Civ. App. P. 104.01, subd. 2, the time for appeal of the order or judgment that is the subject of the motion runs for all parties from service by any party of notice of filing of the order disposing of the last such motion outstanding. Minn. R. Civ. App. P. 104.01, subd. 2. A notice of appeal filed before the disposition of a postdecision tolling motion listed in Minn. R. Civ. App. P. 104.01, subd. 2, is premature and of no effect, and does not divest the district court of jurisdiction to dispose of the motion. Minn. R. Civ. App. P. 104.01, subd. 3.

To be proper, a postdecision motion must be authorized. *Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168, 172 (Minn. 2000). A motion is authorized if “on the face of the document the party has filed a motion that is expressly allowed under [rule 104.01,] subdivision 2.” *Id.*; see *Stern 1011 First St. S., LLC v. Gere*, 979 N.W.2d 216, 220-24

(Minn. 2022) (explaining that form, rather than relief sought, is determinative under *Madson*).

The list of tolling motions in Minn. R. Civ. App. P. 104.01, subd. 2, includes motions for relief under Minn. R. Civ. P. 60 if the motion is filed within the time for a motion for a new trial. Minn. R. Civ. P. 52.02. A motion for a new trial must be served within 30 days after a general verdict or service of notice by a party of the filing of the decision or order. Minn. R. Civ. P. 59.03.

Appellants concede that respondents' motion for relief under Minn. R. Civ. P. 60.02 is a proper postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2. But they argue that the motion was untimely because it was filed "well past thirty days after the trial court's December 16, 2022 ruling." Appellants assert that service of notice of filing of an order does not trigger the time to file a motion for relief under rule 60.02.

Respondents contend that this appeal must be dismissed as premature under Minn. R. Civ. App. P. 104.01, subd. 3, because it was filed before the disposition of respondents' postdecision motion requesting relief under Minn. R. Civ. P. 60.02. Respondents argue that their postdecision motion was timely because it "was filed before both the time to appeal the order had run and appellants' notice of appeal."

Minn. R. Civ. App. P. 104.01, subd. 2, provides that a motion for relief under Minn. R. Civ. P. 60 is timely "if the motion is filed within the time for a motion for new trial." Minn. R. Civ. P. 59.03 provides that a motion for a new trial must be served "within 30 days after a general verdict or service of notice by a party of the filing of the decision or

order.” Appellants do not provide any authority that would allow this court to ignore the plain language of Minn. R. Civ. App. P. 104.01, subd. 2, and Minn. R. Civ. P. 59.03. Because there was no general verdict in this case, respondents’ rule 60 motion was timely if it was filed within 30 days after service of notice by a party of the filing of the December 16, 2022. And the register of actions does not indicate that any party served notice of filing of the December 16, 2022 order. Respondents’ motion for relief is a timely postdecision tolling motion under Minn. R. Civ. App. P. 104.01, subd. 2.

Appellants also argue that respondents’ motion for relief is untimely because it was filed after the notice of appeal was filed. Appellants acknowledge that the district court’s March 1, 2023 order deemed respondents’ motion filed on February 14, 2023, but argue that the district court “also lacked authority to issue that order due to operation of Minn. R. Civ. App. P. 108.01, subd. 2.” Respondents argue that this court should consider their motion for relief filed before this appeal because the district court’s March 1, 2023 order deemed it filed on February 14, 2022, before the appeal.

Because motions for relief under Minn. R. Civ. P. 60 filed within the time for a motion for a new trial are included in the list of postdecision tolling motions in Minn. R. Civ. App. P. 104.01, subd. 2, respondents’ postdecision motion was a proper postdecision tolling motion under *Madson*. Because no party served notice of filing of the December 16, 2022 order to limit the time to file a postdecision motion, respondents’ postdecision motion is a timely postdecision tolling motion. We note that respondents attempted to file their postdecision motion before this appeal was filed but were unable to do so because of

technical difficulties with the district court's electronic filing system. Given the circumstances of this case, we conclude that respondents' postdecision motion is a proper and timely postdecision motion under Minn. R. Civ. App. P. 104.01, subd. 2, and tolled the time to appeal the December 16, 2022 order.

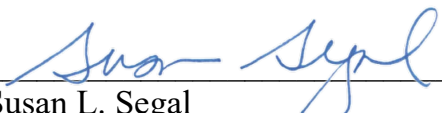
This appeal was filed before the disposition of respondents' proper and timely postdecision tolling motion. This appeal and the related appeal therefore must be dismissed as premature pursuant to Minn. R. Civ. App. P. 104.01, subd. 3.

IT IS HEREBY ORDERED:

1. The direct appeal and related appeal are dismissed as premature.
2. Appellants may seek review of the December 16, 2022 order in a timely appeal after the district court rules on respondents' motion for relief. Appellants' filing fee for that appeal shall be waived. Appellants shall file a copy of this order with the appeal documents for any such future appeal, if filed.
3. The clerk of the appellate courts shall provide copies of this order to the Honorable Joseph R. Klein, counsel of record, and the district court administrator.

Dated: March 21, 2023

BY THE COURT



Susan L. Segal
Chief Judge