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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0586**

Janet M. Bauch, et al.,
Appellants,

vs.

City of Pine Island,
Respondent.

**Filed April 8, 2019
Affirmed
Reyes, Judge**

Goodhue County District Court
File No. 25-CV-17-3262

John G. Hoeschler, John G. Hoeschler, P.A., Eagan, Minnesota (for appellants)

Peter G. Mikhail, Elizabeth C. Brodeen-Kuo, Kennedy & Graven, Chtd., Minneapolis,
Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Landowners appeal the district court's dismissal of their special-assessment appeal for lack of personal jurisdiction, arguing that (1) the district court had both personal and subject-matter jurisdiction over the city; (2) the special assessment is void under the takings

clause; and (3) the special-assessment-appeal statute is preempted by federal law. We affirm.

FACTS

On November 21, 2017, the City of Pine Island (the city) passed a resolution adopting an assessment for the reconstruction of a street within the city. The appellants, Janet M. Bauch; Elken, a Limited Partnership; Eugene Gutzmer; Church of St. Michael; and Edward Williams (the landowners), own property along the street. The city approved special assessments against each of the landowners' properties. Before the city passed the resolution, the landowners objected to the assessments in writing.

The landowners appealed the assessments to the district court under Minn. Stat. § 429.081 (2018). On December 11, 2017, the landowners' attorney sent an email with an attachment consisting of the summons, notice of appeal, and appeal of the special assessment to the city administrator, mayor, and deputy clerk. The email stated, "We trust that this is in a form acceptable to the city and we understand that electronic service is also acceptable. If not, please contact me so that we can adjust the form accordingly." The city did not agree to receive service via email or otherwise waive proper service.

The city moved to dismiss the appeal for lack of personal jurisdiction due to insufficient service of process. The district court held a hearing on the motion to dismiss on January 30, 2018. That morning, the landowners' attorney personally served the city administrator and the deputy clerk of the city, and also left a copy on the mayor's desk.

The district court granted the city's motion to dismiss on February 26, 2018, based solely on a lack of personal jurisdiction due to the landowners' failure to comply with the

service requirement of Minn. Stat. § 429.081. The landowners filed a motion to reconsider shortly thereafter asking the district court to consider their constitutional claims, which the district court denied. This appeal follows.

D E C I S I O N

I. The district court properly dismissed the landowners’ appeal under Minn. Stat. § 429.081 for lack of personal jurisdiction.

The landowners argue that the district court has subject-matter jurisdiction over the case because Minn. Stat. § 429.081 is a claims-processing rule, not a notice requirement. The landowners also argue that the district court has personal jurisdiction over the city because the city had actual notice of the appeal because the landowners effectuated personal service on the city on January 30, 2018. As to personal jurisdiction, we are not persuaded.

An aggrieved person can appeal the adoption of a special assessment to the district court by serving notice upon the mayor or clerk of the municipality within 30 days after the adoption of the assessment. Minn. Stat. § 429.081. The supreme court has stated that “[t]he appeal in an assessment proceeding initiates a civil action.” *Andrusick v. City of Apple Valley*, 258 N.W.2d 766, 768 (Minn. 1977). A civil action commences against a defendant when the summons is served upon that defendant. Minn. R. Civ. P. 3.01(a). Because an assessment appeal is a civil action, Minn. R. Civ. P. 4.03 governs service of process. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477 (Minn. 2013). Service of a summons upon a municipal or other public corporation shall be made by delivering a copy to the clerk of the defendant city. Minn. R. Civ. P. 4.03(e)(2). Service of process in a

manner that is not authorized by rule 4.03 is ineffective. *Tullis v. Fed. Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997).

“[S]ervice of process is the means by which a court obtains personal jurisdiction over a defendant. . . .” *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016) (*McCullough I*). Jurisdiction is a “threshold issue” that must be addressed prior to addressing the merits of a case. *State v. Eibensteiner*, 690 N.W.2d 140, 149 (Minn. App. 2004). Whether service of process is effective, and therefore, whether personal jurisdiction exists, is a question of law that we review de novo. *Cox v. Mid-Minnesota Mut. Ins. Co.*, 909 N.W.2d 540, 547 (Minn. 2018).

The landowners failed to comply with the service-of-notice requirements of Minn. Stat. § 429.081 because the rules governing service of process do not provide for email service. Moreover, when the landowners did eventually effect personal service, it was outside the 30-day timeframe specified in the statute. A party must strictly comply with statutory service requirements in order for the district court to acquire jurisdiction. *Skyline Materials*, 835 N.W.2d at 477.¹ Here, the landowners did not properly serve the city under the statute, and as a result, the district court lacked personal jurisdiction.

¹ We note that this use of the word “jurisdiction” has been somewhat imprecise. In *Skyline Materials*, the supreme court used the term “subject-matter jurisdiction” to refer to the inadequate service of process involved in that case, but it later clarified in *McCullough I* that *Skyline Materials* did not actually involve subject-matter jurisdiction. *McCullough I*, 883 N.W.2d at 592 n.3 (“We are skeptical, however that the isolated references to subject-matter jurisdiction in *Skyline Materials* were anything more than an oversight on our part. After all, *Skyline Materials* did not purport to overrule our long line of decisions treating insufficient service of process as a defect relating to personal jurisdiction, not subject-matter jurisdiction.”). Therefore, as the supreme court clarified in *McCullough I*, insufficient service of process deprives the district court of personal jurisdiction.

The landowners rely on *McCullough I* to argue that their failure to technically conform to service requirements does not divest the district court of subject-matter jurisdiction. But this argument by the landowners focuses on subject-matter jurisdiction, which is not at issue here.

The landowners briefly argue that the email provided the city with actual, timely notice of the appeal adequate for the district court to acquire personal jurisdiction over the city. But the supreme court recently clarified in *Jaeger v. Palladium Holdings, LLC* that Minnesota law does not recognize an actual-notice exception to the service-of-notice rules. 884 N.W.2d 601, 609 (Minn. 2016) (citing Minn. R. Civ. P. 4.03) (“By using the word ‘shall’ to describe its requirements, Rule 4.03 mandates strict compliance with its terms.”). Therefore, delivery by email does not allow the landowners to overcome their failure to abide by the requirements of Minn. Stat. § 429.081.² As a result, the district court properly dismissed the landowners’ special-assessment appeal.

² The landowners rely on *Vernco, Inc. v. Twp of Manyaska, Martin Cty.*, which held that, in a special-assessment appeal, service of notice was sufficient to confer jurisdiction on the district court when the plaintiff left a copy at the home of the township clerk with his mother, despite that being an impermissible method of service. 290 N.W.2d 443, 444 (Minn. 1980). But the supreme court has since stated that, even in cases of substitute service at a defendant’s residence, strict compliance with rule 4.03 is required. *Jaeger*, 884 N.W.2d at 609. Moreover, this is not at issue here because the landowners did not attempt to effect service on a residence, nor did they attempt to comply with rule 4.03.

II. Because the landowners did not comply with Minn. Stat. § 429.081, the district court cannot hear their takings-clause claim.

The landowners assert that the special assessment violates the takings clause of the state and federal constitutions. They argue that, because they eventually effected personal service on the city, even if this court affirms the dismissal of the statutory claims, their separate takings-clause claim still stands. We are not persuaded.

First, we note that the district court did not consider the merits of the landowners' takings-clause claim. This court generally will not consider matters not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). In addition, the record before us lacks sufficient information for us to conduct a meaningful review of this claim.

The issue here is whether the landowners can circumvent the requirements of section 429.081, despite their failure to comply with its service requirements, allowing their takings-clause claim to proceed. The Minnesota Legislature expressly created the right for an aggrieved person to appeal the adoption of a special assessment to a district court in Minn. Stat. § 429.081, which states, “[a]ll objections to the assessment shall be deemed waived unless presented on such appeal.” In 1978, the legislature added the following language to the section: “This section provides the exclusive method of appeal from a special assessment levied pursuant to this chapter.” The supreme court commented on this addition, stating that the amendment “clarifies the legislature’s intent that the statutory appeal procedures be the exclusive method of appeals from special assessments.” *Krahl v. Nine Mile Creek Watershed Dist.*, 283 N.W.2d 538, 545 (Minn. 1979).

In addition to reviewing the special assessment in a section 429.081 appeal, a district court may also review constitutional claims, contract-related claims, or any other claims regarding the special assessment. *See David E. McNally Dev. Corp. v. City of Winona*, 686 N.W.2d 553, 558 (Minn. App. 2004) (addressing both of the landowner’s claims under Chapter 429: an unconstitutional-takings claim and his claim that the city failed to recognize the entire area benefitted by the improvements). When a district court reviews whether a special assessment adopted by the council of a municipality exceeds the special benefits to the property, it reviews whether an unconstitutional taking has occurred. *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 203 (Minn. 1979). The statutory framework provided in Chapter 429, in effect, implements these constitutional protections provided by the takings clause. *See Schumacher v. City of Excelsior*, 427 N.W.2d 235, 239 (Minn. 1988) (noting there is a “constitutionally permissible assessment ceiling” when a special benefit is conferred upon a property owner (quotations omitted)).

Under Chapter 429, the landowner may submit all objections to the proposed special assessment before the municipal council. *Sievert v. City of Lakefield*, 319 N.W.2d 43, 44 (1982); *accord Chard Realty, Inc. v. City of Shakopee*, 392 N.W.2d 716, 720 (Minn. App. 1986). But if a landowner fails to timely appeal the council’s adoption of a specific assessment as is required by Chapter 429, the landowner cannot maintain a suit attacking the special assessment in a separate proceeding because, by statute, the landowner has waived all objections to the special assessment. *Sievert*, 319 N.W.2d at 44. In *Sievert*, the supreme court declared that the legislature, in adopting the appeal process set forth in Chapter 429, intended that there was to be “no other avenue of contesting special

assessments.” *Id.* In *Sievert*, a developer recovered against the city based upon a contract claim for damages relating to the amounts of the allegedly wrongfully levied assessment. In reversing the judgment for damages against the city, the court held that while this claim was a claim for monetary damages rather than a vacation of the assessment, “[t]his difference in requested relief is . . . insufficient to transform the essence of the suit,” which was a challenge to the special assessment. *Id.*

Here, using the same analysis, the landowners have waived their objections to the city council’s adoption of the special assessments against them, including any constitutional challenges. Because they failed to comply with the procedural requirements of section 429.081, they cannot directly challenge the special assessments under the guise that they have a separate constitutional claim independent of their challenge to the assessments.

The landowners argue that *McCullough & Sons v. City of Vadnais Heights*, 905 N.W.2d 878 (Minn. App. 2017) (*McCullough II*) requires us to remand this case to allow their constitutional claim to proceed. In *McCullough II*, this court affirmed the district court’s grant of summary judgment to the city on the landowner’s section 429.061 and .081 claims due to the landowner’s failure to comply with the notice requirements of section 429.061. *Id.* at 883. But with respect to the landowner’s separate constitutional challenges to section 429.061, which were not considered by the district court, this court remanded for the district court’s further consideration. *Id.* at 884.

However, we conclude that *McCullough II* is not controlling here. First, in *McCullough I*, the original question was whether the district court had *subject-matter*

jurisdiction to hear the case because the landowners failed to comply with the written-objection requirement in Minn. Stat. § 429.061. *McCullough I*, 883 N.W.2d at 584. The supreme court determined that the written-objection requirement of section 429.061 was not a jurisdictional requirement but a claims-processing rule, and therefore, it did not divest the district court of subject-matter jurisdiction. *Id.* at 589-90. But here, an entirely different question is before us: whether the district court had *personal* jurisdiction over the city, which it did not because the landowners did not properly serve the city within the timeframe required by section 429.081. Second, in *McCullough II*, the landowner challenged the constitutional validity of the written-objection requirement in section 429.061 and raised several other claims “that the special-assessment process is unconstitutional.” 905 N.W.2d at 884. Here, the landowners argue that their “separate” constitutional claim was that the special assessment itself constituted an unconstitutional taking. These arguments are not analogous. Therefore, we affirm the district court’s dismissal of any constitutional challenges to the special assessment.

III. The landowners’ preemption claim is not properly before this court.

The landowners argue that federal law preempts the statutory requirements of Minn. Stat. § 429.081 because the special assessment involves their federal constitutional rights. The landowners did not raise this issue to the district court until their motion in opposition to the city’s motion to dismiss. Moreover, the district court did not address this claim. *Thiele*, 425 N.W.2d at 582. Therefore, we decline to address the landowners’ preemption argument.

Affirmed.