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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0045**

Beverly S. Lundberg,
Appellant,

vs.

Shelly J. Brown, et al.,
Respondents.

**Filed July 29, 2019
Affirmed
Kirk, Judge***

Crow Wing County District Court
File No. 18-CV-18-2493

Beverly S. Lundberg, Baxter, Minnesota (pro se appellant)

Matthew D. Lutz, Eden Prairie, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges the dismissal of her complaint, arguing that the district court erred by determining that it lacked subject-matter jurisdiction due to appellant's failure to perfect removal from conciliation court to district court. We affirm.

FACTS

In 2012, appellant Beverly Lundberg's dog died from injuries allegedly sustained during an interaction with respondents' Shelly J. Brown and McKinley A. Brown's dog. In 2018, Lundberg filed a claim in conciliation court, which was dismissed and notice of entry of judgment was given on May 18, 2018.

On June 9, 2018, Lundberg sent, by certified mail, an affidavit of service to the Browns. Lundberg signed the affidavit as the person who served the Browns, despite the fact that, as a party to the matter, she was not permitted to serve the Browns. Additionally, Lundberg failed to include in the mailing the demand for removal intended to be served.

On June 11, 2018, Lundberg sent, by certified mail, an affidavit of service to the Browns. This time, M.B., a third party, signed as the person who served the Browns. However, the Browns claimed that, again, the mailing included only a copy of the affidavit of service and not a demand for removal. The same day, Lundberg filed a demand for removal in the district court. But Lundberg did not file in conciliation court, and the conciliation-court matter was not vacated.

On June 26, 2018, the Browns moved to dismiss Lundberg's complaint, asserting that Lundberg failed to serve the demand for removal, and that the conciliation-court

judgment was still enforceable because it had not been vacated. On July 16, 2018, the district court filed a scheduling order setting a hearing date for dispositive motions for October 8, 2018.

On July 11, 2018, Lundberg moved for summary judgment. On October 2, 2018, Lundberg filed an affidavit in support of her responsive motion, claiming that on June 11, 2018, she served a copy of the demand for removal. On October 5, 2018, M.B. filed an affidavit claiming that on June 11, 2018, she served a copy of a demand for removal on the Browns by first class mail.

As scheduled, the district court held a motion hearing on October 8, 2018. On November 7, 2018, the district court filed an order granting the Browns' motion to dismiss. The district court found that the June 11, 2018 mailing did not contain the demand for removal. The district court found that, although Lundberg and M.B. filed affidavits alleging that the mailing contained the demand for removal, they were untimely. The district court determined that "[t]here is no genuine issue of material fact as to which documents were served. The evidence in the record shows only the affidavits of service were actually served on the [Browns], and, as such, the appeal was not perfected pursuant to [rule] 521." This appeal followed.

D E C I S I O N

A person may remove a conciliation-court matter to district court following a trial and entry of an order for judgment. Minn. R. Gen. Prac. 521(a). In order to remove a case to district court, the person must, within twenty days after notice of judgment (1) serve on the opposing counsel or self-represented party by first-class mail or personal service a

demand for removal to district court, and (2) file the original demand for removal with proof of service with the court administrator. Minn. R. Gen. Prac. 521(b)(1)-(2); *see also Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004) (service of process meets removal requirement “by either personal service or service by first-class mail”). “When all removal documents have been filed properly and all requisite fees paid . . . removal is perfected, and the court shall issue an order vacating the order for judgment in conciliation court” Minn. R. Gen. Prac. 521(d).

A court does not have personal jurisdiction over a party who has not been properly served. *See Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). Whether service of process was effective is a question of law reviewed de novo. *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 866 (Minn. 2000). Whether a district court has subject-matter jurisdiction is also a legal question subject to de novo review. *Humphrey v. \$1109 in U.S. Currency*, 539 N.W.2d 1, 2 (Minn. App. 1995), *review denied* (Minn. Dec. 20, 1995).

Here, the district court found that removal was not perfected because the Browns were served only the affidavits of service and not the demand for removal. *See* Minn. R. Gen. Prac. 521(b)(1) (stating that one of the requirements for perfecting removal is service of the demand for removal). The district court relied on the Browns’ affidavits and the attachments of the mailings they received. The Browns asserted that the “complete contents” in the envelopes they received held only the affidavit of service. Based on this evidence, the Browns were not properly served, removal was not perfected, and the district court did not have jurisdiction.

Lundberg argues, however, that she filed affidavits showing that the June 11, 2018 mailings included the demand for removal. The district court acknowledged that Lundberg provided such affidavits, but determined that, because the affidavits were not timely filed, it would not consider them.

A party filing a dispositive motion must serve and file with the court administrator documents, including notice of motion and motion, proposed order, affidavits and exhibits, and memorandum of law at least 28 days prior to the hearing. Minn. R. Gen. Prac. 115.03(a). The responding party must serve and file with the court administrator memorandum of law and supplementary affidavits and exhibits “at least 9 days prior to the hearing.” Minn. R. Gen. Prac. 115.03(b). Enforcement of rule 115 is left to the discretion of the district court. *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991).

On June 26, 2018, the Browns moved to dismiss Lundberg’s complaint for lack of subject-matter jurisdiction, pursuant to Minn. R. Civ. P. 12.02(a). On July 11, 2018, Lundberg moved for summary judgment. A rule-12 motion to dismiss and a motion for summary judgment are dispositive motions. Minn. R. Gen. Prac. 115.01(a)(1). The district court filed a scheduling order setting a dispositive-motion hearing for October 8, 2018. As the moving party, the Browns had 28 days prior to October 8 to serve and file their documents. As the responding party, Lundberg had 9 days prior to October 8 to serve and file her documents. Lundberg’s affidavit was filed on October 2, 2018, and M.B.’s was filed on October 5, 2018. These filings, six and three days prior to the hearing, were not timely. It was within the district court’s discretion to enforce the timing requirements of

rule 115. Thus, the district court properly exercised its discretion in declining to consider the untimely affidavits. As such, the record supports the district court's determination that the Browns were not properly served with the demand for removal and that it therefore lacked jurisdiction over the matter.

Affirmed.