

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0136**

James Briks,
Appellant,

Jerome Briks,
Appellant,

vs.

Smith, Strege, Fredericksen,
Butts & Clark, Ltd. d/b/a Smith & Strege Ltd., et al.,
Respondents.

**Filed July 22, 2019
Affirmed
Worke, Judge**

Wilkin County District Court
File No. 84-CV-17-31

James Briks, Breckenridge, Minnesota (pro se appellant)

Jerome Briks, Breckenridge, Minnesota (pro se appellant)

Richard J. Thomas, Chad J. Hintz, Burke & Thomas, PLLP, Arden Hills, Minnesota (for respondents)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants challenge the district court's grant of summary judgment in favor of respondents on appellants' legal-malpractice claim. We affirm.

FACTS

Appellants James and Jerome Briks are brothers. Appellants and their siblings each owned a 1/7 interest in real property referred to as the Wolverton Property, and a 1/7 interest in real property referred to as the Home Farm Property.

In 1992, respondents attorney Richard E.T. Smith and law firm Smith, Strege, Fredericksen, Butts & Clark Ltd. drafted the Donald Briks Revocable Lifetime Trust (the trust) for appellants' brother, Donald, who conveyed most of his farmland to the trust. In 1993, Donald sought to acquire a loan. The lender required mortgages on real property, including the trust property. Appellants agreed to transfer their interests in the Wolverton Property to the trust to assist Donald in acquiring the loan. Respondents prepared quitclaim deeds for that purpose in October 1993.

Appellants had been farming real estate owned by the trust pursuant to a crop lease. As part of the financing for Donald's loan, respondents drafted a cash lease to replace the crop lease. In connection with the cash lease, the lender required a list of the trust's real estate. Respondents prepared the list, which referenced 24 parcels of land, including the Home Farm Property. The list was referred to as Exhibit A and was attached to the cash lease.

The parties do not dispute that “some person” who was not affiliated with respondents also attached copies of Exhibit A to the 1993 quitclaim deeds for the Wolverton Property. The Wolverton Property quitclaim deeds were recorded with Exhibit A. Because Exhibit A referenced the Home Farm Property, appellants’ 1/7 interests in the Home Farm Property were recorded as a conveyance to the trust. Thus, while appellants intended to transfer only their 1/7 interests in the Wolverton Property, their 1/7 interests in the Home Farm Property were also inadvertently recorded as a conveyance to the trust.

On September 9, 2010, Donald died and the trust became irrevocable. Appellants informed respondents that an appraisal improperly identified their interests in the Home Farm Property. In 2011, respondents prepared quitclaim deeds on behalf of the trustees to transfer appellants’ interests in the Home Farm Property to appellants. Appellants also submitted claims to the trustees for return of their interests in the Wolverton Property based on their oral agreement with Donald that their interests would be reconveyed to them. In 2012, respondents prepared quitclaim deeds on behalf of the trustees to transfer appellants’ interests in the Wolverton Property to appellants.

A trust beneficiary challenged the 2011 and 2012 transfers. The district court concluded that Donald and appellants’ oral agreement to reconvey the interests to appellants was unenforceable, and once the trust became irrevocable upon Donald’s death, the trustees lacked power to transfer the real estate without fair market consideration. *See In re Donald Briks Revocable Lifetime Trust Agreement*, No. A14-0318, 2014 WL 7011200, at *2 (Minn. App. Dec. 15, 2014), *review denied* (Minn. Feb. 25, 2015). The

district court determined that the trustees were liable for the value of the real estate transferred. *Id.* But because the district court found that the trustees did not willfully mismanage the trust, and there was no allegation of fraud, this court determined that the district court erred in its remedy and remanded. *Id.* at *5. On remand, the parties reached a settlement; appellants purchased the real estate at \$3,000 per acre, reduced by a payment of \$270,000 on behalf of respondents' malpractice carrier to the trust for erroneous advice resulting in the transfers.

On September 9, 2016, appellants emailed the sheriff a copy of the summons and complaint in the present legal-malpractice lawsuit. The sheriff personally served respondents on September 12, 2016. Appellants raised three claims. In count 1, appellants claimed that respondents should have advised them that their interests in the Wolverton Property could not be reconveyed when the trust became irrevocable upon Donald's death. Counts 2 and 3 related to the 2011 and 2012 quitclaim deeds. Appellants claimed that respondents were responsible for the quitclaim deeds that created a cloud on the title of the Wolverton and Home Farm Properties, which led to the trust litigation and settlement.

Respondents moved for summary judgment, which the district court granted. The district court found that count 1 had not been timely commenced. Regarding counts 2 and 3, the district court stated that respondents' actions in 2011 and 2012 did not cause appellants' damages; rather, it was appellants' failure to enter into an enforceable contract with Donald prior to his death. Thus, the district court concluded that if respondents' actions caused appellants' damages, it was their actions taken in 1993 that did so, not their actions in 2011 and 2012. This appeal followed.

DECISION

Appellants challenge the district court's grant of summary judgment, arguing that the district court misapplied rules on service of process. This court reviews summary-judgment decisions de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). This court "determine[s] whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* This court views the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A genuine issue of material fact exists if a rational fact-finder, in considering the record as a whole, could find for the non-moving party. *Coursolle v. EMC Ins. Grp., Inc.*, 794 N.W.2d 652, 657 (Minn. App. 2011), *review denied* (Minn. Apr. 19, 2011).

Appellants argue that the district court should have granted them "an opportunity to perfect service." They also claim that because the district court ruled that appellants failed to timely serve respondents, it erroneously ruled on counts 2 and 3. Appellants seem to misunderstand the district court's order. The district court did not rule that "service of the complaint and summons was not perfected"; rather, the district court ruled that count 1 was time-barred because it was not timely commenced. The district court correctly interpreted the relevant rule and caselaw.

The rules of civil procedure are interpreted de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). Under Minn. R. Civ. P. 3.01(c), a civil action is commenced "when the summons is delivered to the sheriff in the county where the

defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.” In *Cox v. Mid-Minnesota Mut. Ins. Co.*, the supreme court determined that “delivered,” in the “context of Rule 3.01(c) . . . requires personal delivery.” 909 N.W.2d 540, 544 (Minn. 2018). In *Cox*, an attempt was made to commence the action by faxing the summons and complaint to the sheriffs. *Id.* at 542. The supreme court held that a fax is not personal delivery because it is a transmission of a copy of a printing. *Id.* at 544. Because the actual document is not brought to a person, “[t]here is no physical transfer or hand-off[,]” as required under the “well-established special meaning” of the word “delivered.” *Id.*

Here, appellants’ attorney emailed the summons and complaint to the sheriff on September 9, 2016. An email, like a fax, is a method of transmission, whereby there is no physical transfer or hand-off. The district court correctly determined that rule 3.01(c) does not authorize email delivery to the sheriff. But the district court did not rule that service was “not perfected.” Instead, the district court followed the analysis in *Cox* that “an action commences under Rule 3.01(a) when the summons is served upon th[e] defendant.” *See id.* at 547 (quotation omitted). The supreme court stated: “Under Rule 4.02, the sheriff may make service of a summons. It follows that commencement under Rule 3.01(a) may occur regardless of how the sheriff came to possess the summons Therefore, an action not properly commenced under Rule 3.01(c) can be saved by Rule 3.01(a).” *Id.*

Here, the sheriff personally served respondents on September 12, 2016. The district court determined that this was outside the statute of limitations for the malpractice claim

in count 1 because the deadline to bring the claim was six years from the date the trust became irrevocable, September 9, 2016. *See Frederick v. Wallerich*, 907 N.W.2d 167, 172 (Minn. 2018) (“The statute of limitations for a legal-malpractice claim is 6 years.”). Appellants do not challenge that determination.

Counts 2 and 3 were not outside the statute of limitations because they relate to malpractice that allegedly occurred in 2011 and 2012. Appellants provide no support for their argument that because count 1 was time-barred the district court was precluded from ruling on the summary-judgment motion regarding counts 2 and 3. The district court determined that the action commenced when the sheriff served respondents and appropriately ruled on counts 2 and 3. Appellants do not challenge the district court’s ruling on counts 2 and 3, only that the district court should not have rendered such ruling; thus, our analysis ends here.

Affirmed.