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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0206**

In re the Marriage of:

Tristan Joseph Trainer, petitioner,
Respondent,

vs.

Ashley Dominique Nichole Goodlander,
Appellant.

**Filed September 16, 2019
Reversed and remanded
Jesson, Judge**

Blue Earth County District Court
File No. 07-FA-17-1927

Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for respondent)

Ashley Goodlander, Lake Crystal, Minnesota (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

JESSON, Judge

Appellant Ashley Dominique Nichole Goodlander challenges the district court's denial of her motion to reopen dissolution proceedings, contending that the district court's decision to allow service by publication was improper. Because we conclude that the district court erroneously permitted service by publication resulting in ineffective service of process, and therefore a lack of personal jurisdiction, we reverse and remand.

DECISION

Appellant Ashley Dominique Nichole Goodlander and respondent Tristan Joseph Trainer separated in October 2016. Goodlander moved to Florida with the parties' child in February 2017, and Trainer filed for divorce about three months later. Along with his petition for dissolution of the marriage, Trainer submitted an application for service by alternate means, which the district court granted. Trainer published notice in the Waseca County News once a week for three weeks. Goodlander never responded to the summons, and in a default judgment, the district court dissolved the marriage and granted sole legal and physical custody of the parties' child to Trainer. Goodlander later filed a motion to reopen the dissolution proceedings, arguing in part that it was improper for the district court to permit service by publication, which the district court denied.

District courts have discretion to determine whether to reopen a dissolution judgment. *Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002). But we review de novo “[w]hether service of process was effective, and personal jurisdiction therefore exists.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

In marital-dissolution proceedings, Minnesota Statutes section 518.11 (2018) governs service of process and requests for service by alternate means, including service by publication.¹ Generally, unless a proceeding is brought by both parties, personal service of the summons and petition is required. Minn. Stat. § 518.11(a). If the petitioner cannot achieve personal service, the district court may allow service by alternate means.² *Id.* (c). But before the district court may order service by alternate means, the petitioner must submit an application including statutorily required information, including: the respondent's last-known location, petitioner's most recent contacts with the respondent, the names and locations of immediate family members and others likely to know the respondent's location, the location of respondent's last-known employment, and a description of any efforts made to locate those with information about respondent's whereabouts. *Id.*

Here, Trainer's attorney submitted an affidavit to the district court seeking service by publication. That affidavit stated that Trainer informed his attorney that Goodlander's last-known location was at her parents' home in Waseca, but that Trainer did not know the address. According to Trainer, Goodlander's current location was unknown. The affidavit

¹ Because custody of the child was at issue in the dissolution proceeding, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) applies. Minn. Stat. §§ 518D.101-.317 (2018). The notice provision in the UCCJEA provides that when a person is outside a state, notice "may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made." Minn. Stat. § 518D.108(a) (2018). Therefore, we focus our analysis on requirements under relevant Minnesota law.

² Trainer does not contest that service by alternate means includes service by publication, arguing that "[s]ervice by [a]lternate means may be done by ordering the party to serve the documents by mail or through a publication."

also described Trainer's contact with Goodlander, explaining that his last contact with Goodlander occurred on February 8, 2017 when he messaged her and she responded but did not provide her address or phone number. Trainer allegedly attempted to message Goodlander through Facebook and PlayStation and noted that his last attempt to contact Goodlander was around February 21, 2017. And according to the affidavit, Trainer would not learn Goodlander's location, and there was "a reasonable possibility that mail will not be forwarded."

We conclude that the submitted affidavit did not comply with the statutory requirements.³ The affidavit did not include *any* names or contact information for immediate family members or others likely to know Goodlander's location.⁴ And because the affidavit did not list any of these individuals, it also did not include a description of Trainer's attempts to contact them. Additionally, the affidavit did not disclose Goodlander's last-known employment. Because the statute is clear that "[t]he application for alternate service *must* include" the listed information—and Trainer's submitted affidavit did not—the submitted affidavit did not meet the statutory requirements.

³ We note that Trainer's attorney, rather than Trainer himself, submitted the affidavit seeking service by alternate means, raising questions about whether the affidavit is supported by personal knowledge. *See State ex rel. Sime v. Pennebaker*, 9 N.W.2d 257, 259 (Minn. 1943) (holding that attorney's affidavit attesting to facts known by client was hearsay and did not have evidentiary value absent client's affidavit). But because this issue was not raised, we do not address it.

⁴ Trainer contacted police in February 2017 to seek assistance locating Goodlander, providing police with the name of Goodlander's father. Police contacted Goodlander's father, who told them that she moved to Florida. This information indicates that at minimum, Trainer could have submitted the name of Goodlander's father in his affidavit to the district court. And we note that the record does not indicate that Trainer himself attempted to contact Goodlander's father.

Minn. Stat. § 518.11(c); see Minn. Stat. § 645.44, subd. 15a (2018) (stating that “[m]ust” is mandatory”).

In addition to the requirements for requesting service by alternate means, the statute also provides criteria that the district court “shall” consider, including “the length of time the respondent’s location has been unknown, the likelihood that the respondent’s location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent.” Minn. Stat. § 518.11(c). After considering these factors, the district court may order service by publication, “but only if it might reasonably succeed in notifying the respondent of the proceeding.” *Id.*

In granting Trainer’s request for service by alternate means, the district court checked a box on a form indicating that publication in the Waseca County News “might reasonably succeed in notifying [Goodlander] of this proceeding.” But the district court did not check the boxes indicating that personal service could not be made on Goodlander or that Goodlander was not likely to receive notice mailed to her last-known address. Nor did the district court order Trainer to attempt service by mailing the summons and petition to Goodlander’s last-known address. Nothing in the record suggests that the district court considered any of the statutorily required factors. This absence of statutorily required considerations by the district court—apparently driven by an inadequate affidavit—leads us to conclude that the grant of service by publication was erroneous.⁵

⁵ When denying Goodlander’s motion to reopen, the district court reiterated that Minnesota law permits service by publication and that Trainer’s application for service by alternate means “included the required information.” But as noted above, Trainer’s application did not include all of the required information. Additionally, the district court appeared to rely

Because the district court erroneously granted service by publication, we conclude that service of process was ineffective and personal jurisdiction was therefore lacking. *See Shamrock*, 754 N.W.2d at 382. Accordingly, it was an abuse of discretion for the district court to deny Goodlander’s motion to reopen the dissolution proceeding, and we reverse and remand for reopening of the dissolution proceeding.⁶

Reversed and remanded.

on rule 4.04(a)(3) of the Minnesota Rules of Civil Procedure, which provides for service by publication in a marriage-dissolution proceeding when “the court has ordered service by published notice.” But we note that before ordering service by publication, the district court must follow the requirements outlined in Minnesota Statutes section 518.11.

⁶ Because we reverse and remand based on ineffective service of process, we do not address the balance of Goodlander’s arguments.