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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0955**

Timothy Gieseke, et al.,
Appellants,

vs.

Nicollet County Drainage Authority for County Ditch No. 86A,
Respondent.

**Filed March 9, 2020
Affirmed
Connolly, Judge**

Nicollet County District Court
File No. 52-CV-18-781

Steven J. Vatndal, Law Office of Steven J. Vatndal, Mankato, Minnesota (for appellants)

Michelle M. Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for
respondent)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants challenge the district court's grant of summary judgment, arguing that
they properly served their drainage appeal on the county auditor. Because the district court

correctly ruled that appellants personally served the auditor without an agreement for alternative service, we affirm.

FACTS

The 12 appellants own land in Nicollet County, Minnesota. In April 2018, a group of landowners submitted a drainage-improvement petition to respondent Nicollet County Drainage Authority.¹ This petition aimed to improve County Ditch 86A's pumping system. In July 2018, respondent issued an order approving the petition. While the project to improve County Ditch 86A at first faced no opposition, this later changed. In October 2018, the project engineer recommended a design change. After considering the engineer's proposal, respondent issued an order adopting it in November 2018.

Appellants Timothy, Gary, and Vernon Gieseke went to the Nicollet County Property and Public Services Office on December 10, 2018, to deliver a notice of appeal from respondent's November 2018 order. Appellants brought their notice of appeal under Minn. Stat. § 103E.091 (2018), which requires service on the county auditor. Minn. Stat. § 103E.091, subd. 2(a). Timothy Gieseke personally presented the notice of appeal to an administrative-support employee. The employee retrieved her supervisor, J.K., who functions as the Nicollet County Auditor and handles drainage matters.

In diverging affidavits, J.K. and Timothy Gieseke described what occurred next. In her two affidavits, J.K. stated that Timothy Gieseke asked her to sign a document acknowledging she had received the notice of appeal. J.K. signed a document captioned

¹ The Nicollet County Board of Commissioners acted as the drainage authority here. See Minn. Stat. § 103E.005, subd. 9 (2018).

“Admission of Service.” This document stated: “[J.K.], Nicollet County Auditor, hereby accepts service of a Notice of Appeal from Timothy Gieseke, et al. this 10[th] day of December, 2018.” In her second affidavit, J.K. asserted that Timothy Gieseke never asked her if she would accept personal service and that her signature on the Admission of Service merely reflected that she received appellants’ notice of appeal.

Timothy Gieseke presented a different version of events in his affidavit. He asserted that he asked J.K. whether payment should accompany the notice of appeal. J.K. then responded “no” and informed him that he should file payment with the district court. Based on J.K.’s response, Timothy Gieseke believed he had completed all necessary steps to begin the drainage appeal, beyond filing it in district court.

After appellants filed their notice of appeal in district court, respondent moved to dismiss for insufficient service of process under Minn. R. Civ. P. 12.02(d) or for summary judgment under Minn. R. Civ. P. 56.01. Because the district court considered affidavits, it applied the summary-judgment standard. The district court granted respondent’s motion and dismissed the drainage appeal for improper service of process. This appeal follows.

D E C I S I O N

To begin, we observe that the material facts here are uncontested. Appellants agree that the Minnesota Rules of Civil Procedure apply to service of a notice of appeal in a drainage action. They also agree that one appellant, a party to the action, personally served J.K. But appellants fault the district court’s conclusion that J.K. did not agree to an alternative form of service.

This appeal is from summary judgment, which we review de novo while viewing the evidence in the light most favorable to the nonmoving party. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). We also review de novo whether service of process was effective. *Roehrdanz v. Brill*, 682 N.W.2d 626, 629 (Minn. 2004). The construction and application of the rules of civil procedure are reviewed de novo. *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016).

Normally, a civil case begins when the defendant receives service of the summons. Minn. R. Civ. P. 3.01(a); *see also Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 697 (Minn. 2012) (“A summons is a writ or process commencing the plaintiff’s action and requiring the defendant to appear and answer.” (quotation omitted)). As noted above, appellants served their notice of appeal on J.K. *See* Minn. Stat. § 103E.091, subd. 2(a) (requiring service on the auditor in drainage appeals). But it is how they performed service that underlies this appeal.

The rules of civil procedure define who may serve process: “Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and *not a party to the action*, may make service of a summons or other process.” Minn. R. Civ. P. 4.02 (emphasis added). Rule 4.02 aims to “eliminate bias, acrimony[,] and possible oppression which is inherent in litigation.” *Landgren v. Pipestone Cty. Bd. of Comm’rs*, 633 N.W.2d 875, 878 (Minn. App. 2001) (quotation omitted). Unless authorized by another rule of civil procedure, no exception to the nonparty rule exists. *Lewis v. Contracting Nw., Inc.*, 413 N.W.2d 154, 157 (Minn. App. 1987).

Appellants argue that J.K.’s signature on the Admission of Service represents an agreement to forgo traditional service of process. They contend that this signature satisfies their burden of proving effective service and that respondent has not refuted this point. When the defendant challenges service of process, the plaintiff must meet the “low hurdle” of submitting evidence showing effective service. *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016). If the plaintiff does so, then the burden of showing ineffective service shifts to the defendant. *Id.*; *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 384 (Minn. 2008).

In *DeCook*, the plaintiffs’ attorneys exchanged several emails with a hospital compliance officer about an impending medical malpractice suit against the defendant hospital and several of its physicians and nurses. 875 N.W.2d at 265. In one email, the compliance officer informed the attorney that she was “authorized to accept service for the 3 physicians . . . and for the 2 named nurses.” *Id.* As a result, the attorney tried to serve the defendants by emailing a copy of the summons and complaint to the compliance officer. *Id.* The defendants then moved to dismiss for insufficient service of process, which the district court partially granted. *Id.* at 265-66.

On appeal, the supreme court determined that the plaintiffs had submitted enough evidence to show proper service. *Id.* at 271. In doing so, the court pointed to (1) emails from the compliance officer stating she could accept service for the defendants, (2) affidavits showing that the compliance officer could accept service for the defendants, (3) the context of the compliance officer’s emails showing her connection to the defendants, and (4) the compliance officer’s signature on an unequivocal acknowledgment

of service. *Id.* The supreme court held that the defendants had agreed to accept service through the compliance officer. *Id.* at 271-72.

Appellants ask us to apply *DeCook*'s holding to their conduct. But this case differs from *DeCook* in two important ways. First, a party performed the service. In *DeCook*, the plaintiffs' attorneys served the hospital's compliance officer through email. *Id.* at 265. Second, the parties here had no prior communications before the three appellants brought the notice of appeal to the county office. In contrast, the plaintiffs' attorneys in *DeCook* had communicated with the hospital's compliance officer about an alternative method of service. *Id.*

Here, when viewing the evidence in the light most favorable to appellants, the record supports the district court's ruling. In his affidavit, Timothy Gieseke discusses no prior communications with J.K. about waiving formal service. Instead, this affidavit establishes that J.K. accepted the notice of appeal and that she told Timothy Gieseke to file his notice of appeal and corresponding payment in district court. Nothing in Timothy Gieseke's affidavit conflicts with J.K.'s averment that her signature on the Admission of Service simply reflected her receipt of appellants' notice of appeal. J.K.'s affidavits support the district court's ruling. And the record contains no other evidence showing an agreement to alternative service.

We need not, and do not, answer whether a party can waive rule 4.02's nonparty protection under *DeCook*. The evidence here viewed in the light most favorable to appellants show that J.K. did not do so. Her signature on the Admission of Service did not reveal an intention to waive traditional service of process or the protection of rule 4.02.

Thus, appellants have not shown effective service; they have shown that a party personally served J.K.

In sum, the district court correctly granted summary judgment and dismissed appellants' drainage appeal because Timothy Gieseke personally served the notice of appeal on J.K. "Unless service is valid, the court lacks jurisdiction to hear the case." *Lewis*, 413 N.W.2d at 157. And while we recognize the harsh result, our caselaw supports this decision. *See id.* ("While the results are harsh, there is no exception to the nonparty rule without authorization by the Minnesota Rules of Civil Procedure.").²

Affirmed.

² Because we conclude that appellants did not properly serve J.K., we do not address respondent's other arguments.