

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1520**

Katelyn Mae Tobias,
Appellant,

vs.

Eythan Christopher Revier,
Respondent.

**Filed May 3, 2021
Affirmed
Frisch, Judge**

Morrison County District Court
File No. 49-CV-20-814

Michael A. Bryant, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Briana C. Gornick, Law Office of Paul W. Godfrey, Eagan, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the district court's dismissal of her negligence action for failure to commence the action within the statute of limitations. We affirm.

FACTS

On August 31, 2013, appellant Katelyn Tobias was a passenger in a vehicle driven by respondent Eythan Revier when the vehicle rolled over in a ditch off the highway. Nearly six years later, on August 29, 2019, Tobias mailed a summons and complaint to the sheriff for service on Revier. The next day, August 30, the sheriff's office received the summons and complaint. Also on August 30, Tobias emailed the summons and complaint to a private process server for service on Revier. On August 31, 2019, the six-year statute of limitations for Tobias to bring a negligence action expired. *See* Minn. Stat. § 541.05, subd. 1(5) (2020).

Between September 4 and 11, 2019, the sheriff made multiple, unsuccessful attempts to serve the summons and complaint on Revier. On September 9, the private process server accomplished service on Revier.

On July 8, 2020, Revier filed his answer to the summons and complaint in district court, wherein he alleged that Tobias failed to timely commence the action within the limitations period. On July 13, Revier filed a motion for summary judgment. Tobias opposed the motion for summary judgment, arguing that pursuant to Minn. R. Civ. P. 3.01(c), she commenced the action within the limitations period when the sheriff received the summons and complaint in the mail.

On October 20, 2020, the district court granted summary judgment in favor of Revier. The district court concluded that the action was not commenced within the limitations period because the act of mailing the summons and complaint to the sheriff and

the sheriff's receipt of the mailing did not constitute a "delivery" under Rule 3.01(c), as the rule existed at the time Tobias attempted to commence this action. Tobias appeals.

DECISION

Tobias argues the district court erred by concluding that mail delivery of the summons and complaint to the sheriff did not commence the action under Rule 3.01(c). Revier urges us to affirm the district court's order because the language of the governing rule and applicable caselaw establish that personal delivery to the sheriff was required to commence an action under Rule 3.01(c).

"We review an appeal from summary judgment de novo, asking whether there are any genuine issues of material fact and whether either party is entitled to judgment as a matter of law." *Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 542 (Minn. App. 2010). "We view all facts in the light most favorable to the party against whom summary judgment was granted." *Id.*

The procedure to commence a civil action is governed by Rule 3 of the Minnesota Rules of Civil Procedure. A party may commence an action in multiple ways, including the manner attempted by Tobias: delivery of the summons to the sheriff for service. *See* Minn. R. Civ. P. 3.01(c). On August 30, 2019, the date the sheriff received Tobias's summons and complaint by mail, Minn. R. Civ. P. 3.01(c) read as follows: "A civil action is commenced against each defendant . . . when the summons is delivered to the sheriff in the county where the defendant resides for service."

Effective September 1, 2020, Minn. R. Civ. P. 3.01(c) was amended to read as follows: "A civil action is commenced against each defendant . . . when the summons is

delivered for service to the sheriff in the county where the defendant resides personally, by U.S. Mail (postage prepaid), by commercial courier with proof of delivery, or by electronic means consented to by the sheriff's office either in writing or electronically.” *Order Promulgating Amendments to the Rule of Civil Procedure*, No. ADM04-8001 (Minn. June 29, 2020). This amendment was not in effect in 2019 when service was attempted and effected in this matter.

Before 2018, the word “delivery” as used in Minn. R. Civ. P. 3.01(c) was not expressly defined under Minnesota law. That changed in 2018, when the Minnesota Supreme Court held that “the word ‘delivery’ in Rule 3.01(c) has a well-established special meaning: *personal delivery*.” *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 546 (Minn. 2018). The supreme court explained that to commence a civil action by delivery of a summons and complaint to the sheriff, “we have a well-established and long-accepted practice of *requiring personal delivery* of the summons and complaint to the sheriff.” *Id.* at 545 (emphasis added). Accordingly, the supreme court concluded in *Cox* that the facsimile transmission of a summons and complaint to the sheriff was not a “delivery” as contemplated by Rule 3.01(c). *Id.* at 545-46. The holding in *Cox* is consistent with *Singelman*, where we held that Rule 3.01(c) required personal delivery of a summons and complaint to the sheriff and that mail delivery of the summons and complaint to the sheriff did not commence the action under the rule. 777 N.W.2d at 544.¹

¹ Tobias argues that we held in *Singelman* “that the lawsuit was commenced not when the documents were placed in the mail to the sheriff, but when the sheriff received them.” But we concluded our decision in that case by explaining that “*Singelman* mailed the summons and complaint to the sheriff *rather than personally delivering them*” as required by Minn.

In light of this well-established and binding authority, the district court concluded that Tobias failed to comply with the delivery requirement of Rule 3.01(c) because the sheriff's receipt of the summons and complaint by mail did not constitute a "delivery" under Minnesota law. The district court also concluded that the action commenced nine days after the statute of limitations expired when the process server accomplished personal service on Revier. Tobias argues that these conclusions by the district court were erroneous.

Tobias argues that the mailing of the summons and complaint satisfies the delivery requirement under Rule 3.01(c). She claims that the postal service "delivered" the summons and complaint to the sheriff and that the 2020 rule amendment adding mail delivery to the sheriff as a method of commencing a civil action was intended to clarify the already acceptable methods of delivery.² But these arguments belie the express holding in *Cox*, namely that the word delivery as used in Rule 3.01(c) has a "*special meaning: personal delivery.*" *Cox*, 909 N.W.2d at 546 (emphasis added). Mail delivery is not personal delivery. *See Singelman*, 777 N.W.2d at 543; *see also Melillo v. Heitland*, 880

R. Civ. P. 3.01(c). *Singelman*, 777 N.W.2d at 544 (emphasis added). We therefore did not hold that the lawsuit was commenced when the sheriff received the documents.

² The Advisory Committee Comments provide in relevant part, "Rule 3.01 is amended to clarify the forms of delivery to sheriffs that may be used to commence an action." Minn. R. Civ. P. 3.01 2020 advisory comm. note. We note that advisory committee comments are not binding on the court. *Vandenheuvel v. Wagner*, 690 N.W.2d 753, 756-57 (Minn. 2005). Further, we note that the amended rule itself distinguishes "personal" delivery from delivery via U.S. Mail and other methods. *See* Minn. R. Civ. P. 3.01(c) (stating "when the summons is delivered for service . . . *personally, by U.S. Mail* (postage prepaid), by commercial courier . . . *or by electronic means consented to by the sheriff's office*" (emphasis added)).

N.W.2d 862, 864 (Minn. 2016) (“To state the obvious: service by mail is not personal service, and personal service is not service by mail.”); *Larsen v. Mayo Med. Ctr.*, 218 F.3d 863, 868 (8th Cir. 2000) (affirming dismissal of action as barred by statute of limitations because plaintiff served corporation by mail as opposed to personal service as required by Fed. R. Civ. P. 4(h)).³

Tobias also argues that *Cox* is limited to its facts, namely that a facsimile transmission to the sheriff is not a delivery within the meaning of the rule. But nothing in *Cox* suggests that its holding was limited to the precise *thing* sent to the sheriff (the facsimile); it also concerned the *manner* of its transmission. The supreme court examined the “history of the delivery-to-the-sheriff rule, the surrounding rules, and federal cases,” all of which resulted in the general legal principle announced in *Cox* that “Rule 3.01(c) requires personal delivery of the summons” to the sheriff to commence the action. *Cox*, 909 N.W.2d at 546. And Tobias cites no authority for the proposition that mail delivery satisfies the “special meaning” of the word “delivery” in Rule 3.01(c).⁴

Accordingly, here, the sheriff’s receipt of the mailed summons and complaint did not commence the action under the rules in effect at that time. Together, *Cox* and

³ Although not binding, “we consider federal cases instructive where our rule is similar to a Federal Rule of Civil Procedure.” *Cox*, 909 N.W.2d at 544 (quotation omitted).

⁴ We also note that other rules of civil procedure distinguish “personal delivery” from delivery by mail. For example, Minn. R. Civ. P. 4.03 does not recognize U.S. Mail as a form of “personal” service. In the context of service effected outside the United States, Minn. R. Civ. P. 4.04(c)(i) and (ii) distinguish between personal delivery and court-dispatched mail. Similarly, Minn. R. Civ. P. 5.02(a), which governs service of various pleadings and other documents, distinguishes between “deliver[y]” and “mailing.”

Singelman make clear that the sheriff's receipt of a mailed summons and complaint does not satisfy the special meaning of the word "delivery" as used in the rule and therefore did not commence the action. The action instead commenced when the private process server accomplished personal service on Revier, several days after the expiration of the six-year statute of limitations. The district court followed established and binding Minnesota law in its dismissal of the action as time-barred, and we therefore affirm the summary judgment.

Affirmed.