

*This opinion is nonprecedential except as provided by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
A22-0135**

Ronald A. Hagle,
Appellant,

vs.

Gossett Properties LLC, et al.,
Respondents,

John Doe, et al.,
Defendants.

**Filed November 21, 2022
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Sherburne County District Court
File No. 71-CV-21-576

Ronald A. Hagle, Forest Lake, Minnesota (*pro se* appellant)

Jevon C. Bindman, Gabriel Ramirez-Hernandez, Maslon, L.L.P., Minneapolis, Minnesota
(for respondents)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Tracy M.
Smith, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal concerns a termination of a contract for deed. The purchaser commenced the action to suspend the termination, to obtain title to the property, and to obtain other relief. The district court dismissed the action by granting a motion to dismiss,

without ruling on the purchaser's motion to suspend the termination or motion for summary judgment. We conclude that the district court did not err by not ruling on the purchaser's motion to suspend the termination because the purchaser did not comply with the procedural requirements for obtaining a hearing on the motion. But we conclude that the district court erred by granting the motion to dismiss the action. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

In February 2007, Ronald A. Hagle and Prism Real Estate, Inc., entered into a contract for deed with respect to a parcel of commercial property in Sherburne County. Hagle agreed to buy the property for \$475,000 by assuming two promissory notes with an outstanding balance of \$250,000, making twelve monthly payments of \$5,000, and paying the balance of the purchase price, with interest, on February 1, 2008. Hagle also agreed to pay the taxes and assessments on the property. Hagle did not record the contract for deed, as required by statute. *See* Minn. Stat. § 507.235, subd. 1 (2020).

In March 2019, Gossett Properties LLC obtained a quit-claim deed to the property and an assignment of the contract for deed. The owners of Gossett Properties later stated in a joint declaration that, before they acquired the property, they were told that Hagle's unrecorded contract for deed did not exist, had been terminated, or had been abandoned by Hagle.

In April 2021, Gossett Properties took steps to terminate the contract for deed on the ground that Hagle was in default for two reasons. First, Gossett Properties asserted that Hagle had not paid the balance of the purchase price by February 1, 2008, and that the

unpaid balance, with interest, was \$514,345. Second, Gossett Properties asserted that Hagle had not paid property taxes between 2008 and 2020, that Gossett Properties had paid the taxes due, and that Hagle was obligated to reimburse Gossett Properties in the amount of \$116,300, including interest. As required by law, the notice of termination informed Hagle that the contract for deed would terminate in 60 days if Hagle did not cure the default. *See* Minn. Stat. § 559.21, subd. 2a (2020).

On April 29, 2021, a process server went to a house at Hagle’s address to serve the notice of termination on him. The process server executed an affidavit of service stating that she served the notice on Hagle “by handing to and leaving with Jane Doe, mother, a person of suitable age and discretion then and there residing at [the address], the usual abode of” Hagle. The process server made a handwritten note on the affidavit of service, which states as follows: “Lady came to window. Said Ron wasn’t home. I asked if she lived there. She said yes, she was Ron’s mother. I said I could leave with her. She said I ain’t taking anything. Leave in front d[oo]r.”

On June 13, 2021, Hagle commenced this action against Gossett Properties and one of its owners, Erika Gossett (collectively, Gossett), by serving a summons and complaint by U.S. mail, as permitted by statute, on the attorney who signed the notice of termination. *See* Minn. Stat. § 559.21, subd. 8. In his complaint, Hagle alleged that he was not in default on the contract for deed because Prism Real Estate and subsequent occupants of the property owed him rent that offset his payment obligations and, thus, fully satisfied the contract for deed. He also alleged that the notice of termination was not properly served

on him. He requested the suspension of the termination of the contract for deed, title to the property, and other relief.

On the same date, Hagle served Gossett with a motion to suspend termination of the contract for deed. In support of the motion, Hagle executed an affidavit stating that the process server spoke with his mother-in-law, Andree McNeill, who lives alone in a “separate living unit” on the upper level of a split-level house while he and his wife live in the lower level of the house. He further stated that McNeill “is not part of my household and I am not part of her household” and that his residence “has separate entrances through the garage or through a backdoor that opens to the stairs down to where I live.” Hagle also served an affidavit executed by McNeill, which is consistent with his own affidavit. In a memorandum of law in support of his motion, Hagle argued that the notice of termination is invalid on the ground that it was not properly served on him in the manner required by the statute governing the termination of a contract for deed. *See* Minn. Stat. § 559.21, subds. 2a, 4(a). Hagle also argued that the termination should be suspended on the ground that he was not in default.

On June 14, 2021, Hagle went to the Sherburne County courthouse to file his summons, complaint, and motion papers and to seek immediate relief from a district court judge. In a subsequently filed affidavit, he stated that a member of the court’s staff told him that “the judge” was not then present at the courthouse, that Hagle did not need to wait for the judge to return, that the staff person would give the motion papers to the judge, and that the staff person would call Hagle if there was any problem with the motion papers.

On June 16, 2021, the district court administrator issued a deficiency notice to Hagle, with a copy to Gossett's attorney of record. The notice states that the court was "unable to provide the requested service" because Hagle "did not schedule a motion before the court as noted in your motion" and "the motion fee has not been paid." The notice also states, "You may contact court administration to schedule a motion hearing and pay the filing fee."

On June 28, 2021, the 60th day after the service or attempted service of the notice of termination, Gossett's attorney executed an affidavit of failure to comply with the notice of termination. Gossett recorded the notice of termination and the affidavit of failure to comply with the county recorder.

In early July 2021, Gossett moved to dismiss Hagle's action pursuant to rule 12.02(e) of the rules of civil procedure. Gossett argued that Hagle's claim for suspension of the termination of the contract for deed should be dismissed on the ground that the contract for deed was effectively terminated when Hagle did not cure his default within 60 days. Gossett also argued that Hagle's claim of improper service of the notice of termination is without merit. Gossett made additional arguments concerning Hagle's other claims, the details of which are not relevant to this appeal. At the hearing on Gossett's motion, the district court left the record open to allow the parties to submit additional evidence and argument. Both Hagle and Gossett submitted additional evidence and memoranda of law. In addition, Hagle filed a motion for summary judgment.

In November 2021, the district court filed a seven-page order in which it granted Gossett's motion to dismiss. The district court first determined that Gossett properly

served the notice of termination on Hagle. The district court then determined that, because Hagle did not cure the default and did not obtain an injunction to suspend the termination of the contract for deed within 60 days, the contract for deed was terminated. Hagle appeals.

DECISION

Hagle makes three arguments for reversal of the district court’s order and judgment. Before discussing Hagle’s arguments, we review the relevant legal principles.

A contract for deed is an agreement that “allows a buyer—the vendee—to purchase property by borrowing the money for the purchase from the seller—the vendor.” *In re Butler*, 552 N.W.2d 226, 229 (Minn. 1996). A contract for deed “is essentially a financing arrangement for a real estate sale in which the vendee has all the incidents of ownership except legal title.” *Id.*

If a party defaults on a contract for deed and the other party has a right to terminate the contract for deed, the non-defaulting party may serve a notice of termination that specifies the conditions on which the defaulting party has defaulted. Minn. Stat. § 559.21, subd. 2a. The notice of termination must inform the defaulting party that the contract for deed will terminate 60 days after service of the notice of termination. *Id.* A notice of termination of a contract for deed served within the state “must be served . . . in the same manner as a summons in the district court.” *Id.*, subd. 4(a). Evidence that a notice of termination has been recorded with the county recorder, along with proof of service of the notice as well as an affidavit of non-compliance, is “prima facie evidence that the contract

referred to in such notice has been terminated.” Minn. Stat. § 559.213 (2020); *see also* Minn. Stat. § 559.214 (2020).

After service of a notice of termination, a district court “has the authority at any time prior to the effective date of termination of the contract and subject to the requirements of rule 65 of the Rules of Civil Procedure . . . to enter an order temporarily restraining or enjoining further proceedings to effectuate the termination of the contract.” Minn. Stat. § 559.211, subd. 1 (2020). A district court also may order other remedies. *Id.*, subd. 2.

I. Service of Notice of Termination

Hagle first argues that the district court erred by granting Gossett’s motion to dismiss.

A.

As an initial matter, we must determine whether we should treat Gossett’s motion as a motion to dismiss or a motion for summary judgment. In general, on a motion to dismiss pursuant to rule 12.02(e), a district court may consider only the facts alleged in the complaint. *Hardin Cnty. Sav. Bank v. Housing & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012). In addition, a district court may consider documents that are attached to or referenced in the complaint. *Id.* at 192; *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490-91 (Minn. 2004); *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000). But if “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Minn. R. Civ. P. 12.02.

Both Hagle and Gossett submitted numerous affidavits and exhibits that include factual materials that are not attached to or referenced in the complaint. The district court did not expressly exclude any of those evidentiary materials. To the contrary, the district court plainly relied on those evidentiary materials. Accordingly, it is appropriate for this court to treat Gossett's motion as a motion for summary judgment. *See* Minn. R. Civ. P. 12.03; *Northern States Power Co.*, 684 N.W.2d at 490-91 (construing grant of motion to dismiss as grant of summary judgment because district court considered affidavit not attached to complaint); *McAllister v. Independent Sch. Dist. No. 306*, 149 N.W.2d 81, 83 (Minn. 1967) (construing grant of motion for summary judgment as such because district court considered three affidavits).

B.

A district court must grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to the district court's legal conclusions on summary judgment and view the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

As stated above, a notice of termination of a contract for deed that is served within the state "must be served . . . in the same manner as a summons in the district court." Minn. Stat. § 559.21, subd. 4(a). Accordingly, to determine whether the notice was properly

served on Hagle, we refer to rule 4 of the rules of civil procedure and the caselaw interpreting that rule.

Under rule 4, a summons generally may be served on a natural person in either of two ways: first, “by delivering a copy to the individual personally” or, second, “by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 4.03(a). “Rule 4.03 mandates strict compliance with its terms.” *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 609 (Minn. 2016). On given facts, the question of whether service of process was proper is a question of law that is subject to a *de novo* standard of review. *Id.* at 606. But “the residency of an individual presents a question of fact.” *Id.* at 606-07.

C.

Hagle argues that the notice of termination was not properly served on him for two reasons, both of which are concerned with the factual question of whether his residence is separate from McNeill’s residence. Because we are treating Gossett’s motion as a motion for summary judgment, the question on appeal is whether there are any genuine issues of material fact concerning Hagle’s usual place of abode.

1.

Hagle’s primary argument is that the process server left the notice of termination inside the front door to McNeill’s residence, not his own residence, and, thus, not his “usual place of abode.” The district court rejected this contention by reasoning that Hagle and McNeill reside at “the same address,” that Hagle’s “pleadings include no statement indicating a legal division of the property into separate residences,” and that Hagle did not

submit any “evidence of a separate address or location where he should have been legally served.”

On appeal, Hagle asserts that he submitted “overwhelming” evidence that McNeill’s residence was separate from his own residence or “usual place of abode.” Hagle is correct that he submitted uncontradicted evidence that, if accepted as true, is capable of proving that his residence is separate from McNeill’s residence. His wife’s affidavit describes the interior of the house by stating that the internal door connecting the separate living spaces “remains locked.” That affidavit is corroborated by McNeill’s affidavit. Hagle also introduced photographs depicting a rear entrance that he states is the entrance to his residence, with small signs above the doorbell and on a mailbox that bear his name and his wife’s name.

The district court reasoned in part that Hagle and McNeill reside “at the same address.” But the district court did not cite any caselaw for the proposition that two separate residences cannot exist at a single mailing address. It is common, of course, for multi-unit apartment or condominium buildings to be identified by the same street name and the same number. Individual units usually are identified by numbers or letters, but we are unaware of any such requirement. Accordingly, that both Hagle and McNeill reside at the same address does not preclude a finding that there are two residences at that address.

The district court also reasoned that Hagle’s complaint did not allege “a legal division of the property into separate residences.” But the record is not limited to Hagle’s complaint because the district court considered facts that are contained in documents other

than the complaint. In any event, Hagle was not required to plead the ineffectiveness of service. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 607 (Minn. 2014).

The district court further reasoned that Hagle did not introduce “evidence of a separate address or location where he should have been legally served.” That statement does not account for the evidence discussed above, which, if true, tends to prove that Hagle lived in a separate residence in the lower level of the house, which was accessible by a rear entrance, not the front entrance where the process server left the notice of termination.

We also question the district court’s interpretation of *Brigham v. Connecticut Mutual Life Insurance Company*, 82 N.W. 668 (Minn. 1900), in which the supreme court considered whether the appellant was properly served with a foreclosure notice at “the house of his usual abode.” *Id.* at 668. The appellant owned “a flat or apartment consisting of five rooms, all of which adjoined a common hall on the second floor of a house” that had been “constructed and intended for a single family residence.”¹ *Id.* The appellant rented out four of the five second-floor rooms to two others. *Id.* He reserved for himself the fifth second-floor room and “another room in the attic, . . . which he could only reach by passing through the kitchen” on the second floor. *Id.* The appellant’s living space was accessible by a front stairway, which provided access to all rooms on the second floor. *Id.* The supreme court affirmed the trial court’s conclusion that the foreclosure notice was properly served on the appellant when it was left with his two tenants. *Id.* at 668-69. But the supreme court’s conclusion appears to rest on the trial court’s resolution of disputed

¹ The *Minnesota Reports* states that the house “was constructed and intended as a family residence.” *Brigham v. Connecticut Mut. Life Ins. Co.*, 79 Minn. 350, 351 (1900).

facts. *See id.* The supreme court acknowledged the possibility that the result would have been different if there had been a contrary finding that the appellant’s “reservation of a single room” made that room “his usual abode, as distinct from the remainder of the flat.” *Id.* at 668. The facts of this case may be meaningfully different from the facts of *Brigham*, depending on the district court’s resolution of disputed facts. According to Hagle’s affidavit, his residence has separate entrances, unlike the house in *Brigham*, where the appellant and his tenants used the same entrance. *See id.* at 668. Also, according to Hagle’s evidence, he and his wife need not pass through McNeill’s living space in order to access their living space and, in fact, may not do so because the interior door separating the two living spaces is locked, unlike the apartment in *Brigham*. *See id.* Accordingly, the district court’s ultimate resolution of this issue is not compelled by *Brigham*.

Gossett argues in support of the district court’s conclusion by pointing out that the process server stated that McNeill said that she could leave the notice of termination in the front door. The process server’s handwritten note, by itself, is not so clear as to who referred to the front door. In any event, the meaning that Gossett ascribes to the note is inconsistent with Hagle’s evidence. Gossett also relies on evidence that the house at Hagle’s address is in a zoning district restricted to single-family residences. That evidence does not foreclose the possibility that Hagle and McNeill actually maintain two residences in violation of the zoning ordinance.

Thus, the district court erred by granting Gossett’s motion because there is a genuine issue of material fact as to whether Hagle’s residence and McNeill’s residence are separate

and, thus, whether Hagle was properly served with the notice of termination by substituted service at his usual place of abode.

2.

Hagle's secondary argument is that McNeill is not a person of "suitable age and discretion" on the grounds that she is too old and of diminished competence, as demonstrated by her apparent statement to the process server that she is Hagle's mother, not his mother-in-law.

A person is of "suitable age and discretion," as that phrase is used in rule 4.03(a), if the person "understand[s] the legal import of the papers" that were served. *Holmen v. Miller*, 206 N.W.2d 916, 919 (Minn. 1973). The caselaw interpreting this part of rule 4.03(a) is primarily concerned with whether a person receiving substituted service is old enough to have the requisite understanding. *See id.* (concluding that 13-year-old child was of suitable age and discretion in absence of contrary evidence). The sworn statement of a process server is *prima facie* evidence that a person receiving substituted service is of suitable age and discretion, and a party contesting that fact "has the burden of proving otherwise." *Id.* at 919-20 (citing *Kueffner v. Gottfried*, 191 N.W. 271 (Minn. 1922)).

The district court rejected Hagle's contention by reasoning that Hagle did not "overcome the facts alleged in the certificate of service," in which the process server described McNeill as a person of suitable age and discretion. The district court is correct inasmuch as Hagle did not introduce evidence to support his argument. None of the affidavits Hagle submitted state that McNeill is too old or of diminished competence. Hagle's wife stated in her affidavit that McNeill "has many pre-existing health conditions,"

without elaborating or explaining the effects of those health conditions. Hagle's wife asserts in a conclusory manner that McNeill is not of suitable age or discretion but bases that statement primarily on the affidavit of the process server. McNeill's affidavit contains a considerable amount of detail about her interactions with the process server, to an extent that is inconsistent with a person who is not competent to accept service of process. Most conspicuously, she states that she told the process server that if she had "legal papers," McNeill "had nothing to do with Ron Hagle's business and no authority to accept service of legal papers for him." Contrary to Hagle's argument, McNeill's affidavit reveals that McNeill *did* "understand the legal import of the papers" that the process server was attempting to serve. *See Holmen*, 206 N.W.2d at 919. In short, Hagle's evidence does not contradict the process server's statement that McNeill was a person of suitable age and discretion.

Thus, the district court did not err by rejecting Hagle's argument that McNeill was not a person of suitable age and discretion.

II. Motion to Suspend Termination

Hagle also argues that the district court erred by not ruling on his motion to suspend the termination of the contract for deed.

As stated above, a district court may "at any time prior to the effective date of termination of the contract and subject to the requirements of rule 65 of the Rules of Civil Procedure . . . enter an order temporarily restraining or enjoining further proceedings to effectuate the termination of the contract." Minn. Stat. § 559.211. This statutory authorization for an injunction "allows for relief if a purchaser has a meritorious defense,

but lacks the resources to cure default and would therefore lose his contract claim unless an injunction issued.” *Bell v. Olson*, 424 N.W.2d 829, 833 (Minn. App. 1988).

A party wishing to bring a non-dispositive motion must, before bringing the motion, obtain a “hearing date and time . . . from the court administrator or a designated motion calendar deputy.” Minn. Gen. R. Prac. 115.02. The moving party must serve and file the required motion papers “at least 21 days before the hearing.” Minn. Gen. R. Prac. 115.04(a). The required motion papers must include a notice of motion and motion, which must state the date and time of the hearing. *See* Minn. Gen. R. Prac. 115.02, 115.04(a). In addition, “No motion shall be heard until the moving party pays any required motion filing fee” Minn. Gen. R. Prac. 115.04(a).

In this case, the record does not reveal any attempt by Hagle to obtain a hearing date from the district court before serving and filing his motion. Instead, Hagle prepared a notice of motion and motion stating that, “on Monday, June 14, 2021, at 9:00 a.m. and thereafter, before the signing judge at the Sherburne County courthouse . . . , Plaintiff will move the Court for an order suspending the termination of the contract for deed.” The record reveals that Hagle went to the courthouse on that date to obtain immediate relief, apparently on an *ex parte* basis, but was not heard.

Two days later, the district court administrator sent Hagle a deficiency notice, which informed him that there was a problem with his motion because he did not schedule a motion hearing and did not pay the motion filing fee. The notice stated that Hagle could “contact court administration to schedule a motion hearing and pay the filing fee.” But Hagle did not take any action to cure the deficiencies. As a result, the motion was not

heard and not considered by the district court within the 60-day cure period, which expired on June 28, 2021, twelve days after the deficiency notice. In its final order in November 2021, the district court noted that Hagle “did not secure a hearing to seek injunctive suspension of the termination.”

On appeal, Hagle contends that the district court erred on the grounds that court staff did not sufficiently communicate with him and did not ensure that his motion was considered by a judge. But Hagle does not acknowledge the procedural rules governing motion practice and his own failure to obtain a hearing date and pay the motion filing fee, even after being alerted to those deficiencies. We conclude that the district court did not violate any of the applicable procedural rules.

Thus, the district court did not err by not ruling on Hagle’s motion to suspend the termination of the contract for deed.

III. Hagle’s Motion for Summary Judgment

Hagle last argues that the district court erred by not granting the summary-judgment motion that he filed after the hearing on Gossett’s motion. In response, Gossett agrees that the district court did not consider Hagle’s summary-judgment motion. Gossett asserts that, if this court reverses the district court’s dismissal of Hagle’s complaint, this court should refrain from considering the summary-judgment motion so that the district court may consider it in the first instance. Gossett’s suggestion is consistent with the caselaw. *See Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 543 (Minn. App. 2010); *Slindee v. Fritch Invs., LLC*, 760 N.W.2d 903, 911 (Minn. App. 2009). Accordingly, we decline to consider the substance of Hagle’s summary-judgment motion.

In sum, for the reasons stated above in part II, the district court did not err by not considering and ruling on Hagle’s motion to suspend the termination of the contract for deed. But for the reasons stated above in part I.C.1., the district court erred by determining, based on the existing factual record, that the notice of termination of the contract for deed was properly served on Hagle by substituted service. Accordingly, we remand the case to the district court. On remand, the district court shall make the findings of fact concerning Hagle’s residence that are necessary to determine whether he was properly served with the notice of termination by substituted service at his “usual place of abode.” If the district court concludes that the notice of termination was not properly served on Hagle, the district court shall consider Hagle’s motion for summary judgment.

Affirmed in part, reversed in part, and remanded.