

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1386**

Housing and Redevelopment Authority of St. Cloud,
Respondent,

vs.

Morris Royston,
Appellant.

**Filed May 1, 2023
Affirmed
Gaïtas, Judge**

Benton County District Court
File No. 05-CV-22-1478

Isak P. Hawkinson, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondent)

Elizabeth Frazier, Walter Burk, Minnesota Assistance Council for Veterans, St. Paul,
Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Wheelock, Judge; and
Halbrooks, Judge.*

SYLLABUS

When a landlord who has initiated an eviction action against a residential tenant cannot find the tenant in the county, Minnesota Statutes section 504B.331(d) (2022) allows service of the summons by posting it in a conspicuous place on the property for not less than one week before the first hearing in the action. But service by posting under section 504B.331(d) is effective only if the following have also occurred not less than one week

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

before the first hearing in the action: (1) there have been two attempts at personal service on two different days, including one attempt between the hours of 6:00 p.m. and 10:00 p.m. and (2) the landlord or landlord's attorney has signed and filed an affidavit with the court stating that the tenant cannot be found or is believed to be out-of-state and that the summons has been mailed to the tenant's last known address or that such an address is unknown to the landlord.

OPINION

GAÏTAS, Judge

In this case, we are asked to interpret Minnesota Statutes section 504B.331(d), which sets forth the requirements for service of a summons in an eviction action by posting when the tenant cannot be found in the county. Appellant Morris Royston leased an apartment from respondent Housing and Redevelopment Authority of St. Cloud (HRA). HRA initiated an eviction action against Royston and, following a trial, obtained a judgment for recovery of premises. Royston appeals, arguing that the district court lacked personal jurisdiction over him because HRA did not follow the procedures outlined by section 504B.331(d) for service of the summons by posting. He interprets the statute to allow posting of a summons only after a landlord has made two attempts at personal service, mailed the summons, and filed an affidavit with the court certifying that the tenant cannot be found in the county and that the summons was mailed. Relying on this interpretation, Royston contends that HRA posted the summons in his case too early—after the second attempt at personal service, but before the summons was mailed and the affidavit was filed with the court.

HRA offers another interpretation of section 504B.331(d). According to HRA, the statute does not address when the summons can be physically posted, but instead, identifies the requirements for effective service by posting. HRA argues that, under the statute, service by posting happens when the summons is posted at least seven days before the first hearing and the other statutory requirements for service have also occurred at least seven days before the first hearing.

We determine that the plain language of section 504B.331(d) supports HRA's interpretation of the statute and that HRA properly served Royston with the summons by posting it at least seven days before the initial hearing, and by following the other statutory requirements at least seven days before the hearing. Because the district court had personal jurisdiction over Royston, we affirm the judgment for recovery of the premises.

FACTS

The salient facts are undisputed. Royston began leasing an apartment from HRA in September 2021. Less than a year later, HRA notified Royston in writing that it was terminating his lease due to a material breach—damaging property at the apartment complex and breaking into another tenant's car.

When Royston did not vacate the apartment, HRA filed an eviction action alleging that Royston had breached a material lease term and failed to vacate the apartment after proper termination of the lease. The district court scheduled an initial hearing in the action for September 6, 2022, and issued a summons.

On August 24 at 6:49 p.m. and August 25 at 10:48 a.m., a sheriff's deputy made unsuccessful attempts to personally serve Royston with the summons at the apartment.

Immediately following the second service attempt on August 25—twelve days before the initial hearing—the deputy posted the summons in a conspicuous place at the apartment. On August 30—seven days before the initial hearing—HRA signed and filed an affidavit stating that Royston could not be found and that a copy of the summons had been mailed to him. HRA also mailed the summons to Royston on August 30.

Royston appeared at the initial eviction hearing. He moved to dismiss the eviction complaint on the ground that HRA had failed to strictly comply with the service requirements of section 504B.331(d) because the summons was posted before it was mailed and before HRA had filed its affidavit with the court. The district court denied the motion to dismiss. At trial, Royston renewed his motion to dismiss, and the district court again denied it. The district court found in favor of HRA and entered judgment for recovery of the premises.

Royston appeals.

ISSUE

Did HRA comply with the service requirements of Minnesota Statutes section 504B.331(d) and effectively serve Royston with the eviction summons by posting?

ANALYSIS

Service of process is required for a court to obtain personal jurisdiction over a defendant. *Uthe v. Baker*, 629 N.W.2d 121, 123 (Minn. App. 2001). If a plaintiff does not obtain a waiver or effectuate effective service of process, the district court must dismiss the action. *Shamrock Dev., Inc. v. Smith*, 737 N.W.2d 372, 377 (Minn. App. 2007), *rev'd on other grounds*, 754 N.W.2d 377 (Minn. 2008); *see also In re Disciplinary Action*

Against Coleman, 793 N.W.2d 296, 302 (Minn. 2011) (indicating that “improper service” causes a “lack of personal jurisdiction”). We review de novo a district court’s denial of a motion to dismiss for lack of personal jurisdiction due to improper service. *Koski v. Johnson*, 837 N.W.2d 739, 742 (Minn. App. 2013), *rev. denied* (Minn. Dec. 17, 2013). But we defer to the district court’s factual determinations in this context unless they are clearly erroneous. *Id.*

Section 504B.331 (2022) governs service of a summons in an eviction case. It provides that a summons must be served at least seven days before the first hearing in the action “in the manner provided for service of a summons in a civil action.” Minn. Stat. § 504B.331(a). The statute allows for service “by any person not named a party to the action.” *Id.*

Section 504B.331 also contemplates service on a tenant “who cannot be found in the county.” When a sheriff is unable to serve the tenant, there is “prima facie proof” that the tenant cannot be found in the county. Minn. Stat. § 504B.331(c). Under these circumstances, the statute provides two options for serving the summons. The summons may be left with a person of suitable age and discretion at the tenant’s last usual place of abode or, if the tenant has no place of abode, at the premises described in the complaint. Minn. Stat. § 504B.331(b). Or the summons can be served by posting in a conspicuous place on the property. Minn. Stat. § 504B.331(d). It is this latter service method that is at issue here.

Section 504B.331(d) details the procedure that must be followed for service by posting. It provides:

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

....

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

Minn. Stat. § 504B.331(d).

In *Koski*, we determined that “section 504B.331 requires strict compliance.” 837 N.W.2d at 744. If a landlord fails to strictly comply with the statute, service of the summons is deemed insufficient, depriving the district court of personal jurisdiction over the tenant. *Id.* at 745.

The precise issue here is whether HRA strictly complied with the requirements of 504B.331(d) by following this sequence of events: having the sheriff make two attempts at personal service 13 and 12 days before the initial hearing; posting the summons in a conspicuous place immediately after the second attempt, 12 days before the initial hearing; mailing the summons to Royston 7 days before the initial hearing; and, 7 days before the

initial hearing, filing an affidavit with the court stating that Royston cannot be found and that the summons was mailed to him at his last known address.

Royston contends that HRA failed to strictly comply with section 504B.331(d) because the summons was posted *before* it was mailed and *before* HRA filed the affidavit with the court. HRA counters that it strictly complied with the statute because it completed all of the statutory requirements—posting, mailing, and filing—at least seven days before the initial hearing.

To resolve the issue, we must interpret section 504B.331(d). “The interpretation of a statute is a question of law that [appellate courts] review de novo.” *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016); *see also Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2022); *see State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004) (applying Minn. Stat. § 645.16 (2002)). “When interpreting a statute, [appellate courts] must look first to the plain language of the statute.” *Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 496 (Minn. 2009). “When a statute’s language is plain, the sole function of the courts is to enforce the statute according to its terms.” *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). In other words, if a statute is unambiguous, the appellate court applies its plain meaning and does not “explore [the statute’s] spirit or purpose.” *Cocchiarella*, 884 N.W.2d at 624 (citing *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013)).

“To determine the plain meaning of a statute, the words and phrases in the statute are construed according to rules of grammar and according to their common and approved usage.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019) (quotation omitted). “The statutory language in dispute is not examined in isolation; rather, all provisions in the statute must be read and interpreted as a whole.” *Id.*

Royston and HRA both argue that the plain language of section 504B.331(d) is clear. But the parties reach different conclusions about what that plain language means.

Royston contends that the plain language of the statute “establishes conditions precedent,” and indeed, a specific *sequence* of events that must happen before the act of posting a summons can occur. To support this interpretation, Royston relies on the grammar used in section 504B.331(d).

Royston first focuses on the word “if” as used in the phrase “service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week *if*” in section 504B.331(d). He argues that the legislature’s use of the word “if” creates a conditional sentence. And he contends that each of the requirements that follow the word “if” must be completed before the primary action—posting the summons—is allowed. Thus, according to Royston, a summons may only be posted *if* the following conditions have been satisfied: (1) service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; (2) the landlord has signed and filed with the court an affidavit stating that the tenant cannot be found, or is believed to be absent

from the state; and (3) a copy of the summons has been mailed to the tenant at the tenant's last known address.

Next, Royston turns to the verb tenses used in section 504B.331(d). He argues that the verb tenses in the statute show that the legislature intended to prescribe a particular sequence for the requirements that must be followed before a summons can be posted. Specifically, he references the legislature's use of the present perfect tense in listing the requirements that follow the word "if"—service of the summons may be made by posting if "a copy of the summons *has been mailed*," the landlord "*has signed and filed*" an affidavit, and personal service "*has been attempted*" on two separate days. Minn. Stat. § 504B.331(d) (emphasis added). According to Royston, the use of the present perfect tense means that the requirements following the word "if" must be completed in sequence and before a summons can be posted.

HRA does not necessarily disagree with Royston's grammatical points. But HRA responds that Royston erroneously views section 504B.331(d) as governing when the physical act of posting a summons may occur. According to HRA, the statute is not concerned with the physical act of posting a summons, but rather, when posting a summons constitutes effective service.

We agree with HRA. Section 504B.331(d) is unambiguous; it is only subject to one reasonable interpretation. The provision addresses when and how service may be made by posting, and not when and how a summons may be physically posted.

The plain language of the statute supports this interpretation for three reasons. First, the subject matter of the statute as a whole persuades us that section 504B.331(d) governs

service of the summons and not the physical act of posting a summons. When discerning the meaning of a statute’s plain language, appellate courts may consider the statute’s subject matter as a whole. *See Pakhnyuk*, 926 N.W.2d at 920 (statutory provisions are not read in isolation); *see, e.g., City of East Bethel v. Anoka Cnty. Hous. & Redevelopment Auth.*, 798 N.W.2d 375, 380 (Minn. App. 2011) (reviewing a statute’s content to discern meaning of plain language). Section 504B.331, which is entitled “Summons; how served,” is singularly focused on effective service of a summons in an eviction case. The statute contemplates several situations where personal service may not be possible and provides options for effective service under those circumstances. Section 504B.331(d) addresses one such circumstance—where the tenant cannot be found and no one else is present to accept service. This provision allows service by posting and identifies steps that a landlord must take when utilizing this service method. Considered in the context of the statute as a whole—which dictates the requirements for effective service of a summons—we conclude that the steps identified by section 504B.331(d) are requirements for perfecting service, not preconditions to the physical act of posting.

Second, we determine that the sentence structure of section 504B.331(d) is significant. *See State v. Khalil*, 956 N.W.2d 627, 634 (Minn. 2021) (considering the text, structure, and punctuation of a statute to determine its plain meaning). Section 504B.331(d) begins with the following phrase: “Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting” Minn. Stat. § 504B.331(d). This introductory language indicates that the focus of the provision is *service* of the summons. Stated otherwise, “service” is the subject of the

sentence. Applying basic grammatical rules, the words that follow relate to that subject—service. The words “by posting” refer back to “service.” And the requirements delineated in section 504B.331(d)(1) and (2) thus also refer back to “service.”

Third, Royston’s interpretation of the statute would require us to rearrange or add language to section 504B.331(d). Royston asks us to interpret the statute to mean that “the summons may be posted if” the requirements of section 504B.331(d)(1) and (2) are satisfied. But in interpreting a statute, we cannot rearrange or add language. We must discern the meaning of the language as written. *See Wallace v. Comm’r of Tax’n*, 184 N.W.2d 588, 594 (Minn. 1971) (determining that courts cannot supply language that the legislature did not use); *see also Meyer v. Nwokedi*, 777 N.W.2d 218, 225 (Minn. 2010) (relying on this aspect of *Wallace*); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 93 (2012) (asserting that under the “omitted-case canon” of statutory construction, courts may not add language to what the text states or reasonably implies).

For these reasons, we determine that section 504B.331(d) sets forth the requirements for effective service by posting. The statute does not dictate requirements that must be satisfied before a summons is physically posted.

We also reject Royston’s argument that section 504B.331(d) prescribes a particular sequence of events that must be followed before a summons can be posted. Royston contends that the statute requires two attempts at personal service *before* the landlord mails the summons to the tenant. And he argues that the statute requires mailing the summons to the tenant *before* it is physically posted. But section 504B.331(d) contains no language

imposing these temporal requirements. Rather, the statute simply lists the requirements that must be satisfied before posting will constitute effective service: there must be two unsuccessful attempts at personal service, and the landlord or landlord’s attorney must certify to the district court that the tenant could not be found and that the summons was mailed.¹

However, the legislature’s use of the present perfect verb tense in setting forth these requirements for effective service is significant. “[D]ifferent tenses of words in a statute can lead to different meanings; a legislature’s ‘use of a verb tense is significant in construing statutes.’” *State v. Schmid*, 859 N.W.2d 816, 820 (Minn. 2015) (citing *United States v. Wilson*, 503 U.S. 329, 333 (1992)). And “different tenses exist to express differences in the time or duration of an action.” *Id.* We interpret the use of the present perfect tense in section 504B.331(d) to mean that posting will only constitute effective service if the other service requirements have also been satisfied at least seven days before the first hearing—personal service “has been attempted” on two separate days, “a copy of the summons has been mailed,” and the landlord or counsel “has signed and filed” an affidavit.

To further support his argument that section 504B.331(d) requires a specific sequence of events before a summons may be posted, Royston directs us to rule 606 of the Minnesota General Rules of Practice for the District Courts. Rule 606, entitled “Filing of

¹ Section 504B.331(d) does contain one temporal requirement, however. To certify in the affidavit filed in the district court that the summons was mailed to the tenant, the summons must be mailed before the affidavit is filed.

Affidavits,” only applies to housing-court proceedings in Hennepin and Ramsey counties; it does not apply to the proceedings here, which were held in another county. Minn. R. Gen. Prac. 601. But Royston argues that the plain language of rule 606, which is based on section 504B.331,² indicates that a summons can be posted only after two unsuccessful attempts at personal service and after the summons has been mailed.³ Royston urges us to interpret section 504B.331(d) consistent with the plain language of rule 606.

² See Minn. R. Gen. Prac. 605 (“All summons shall be served in the manner required by Minnesota Statutes, Chapter 504B . . .”).

³ Rule 606 provides:

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff’s lawyer shall:

(1) file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state, and

(2) file an affidavit stating that a copy of the summons and complaint has been mailed to the defendant at the defendant’s last known address or that such an address is unknown to the plaintiff.

Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. A separate affidavit shall be filed stating that the summons has been posted and the date and location of the posting.

We are not persuaded for several reasons. First, as noted, rule 606 does not apply to the proceedings in Royston's case. Second, we are not convinced that the rule prescribes procedures that must be followed before a summons is physically posted. And third, even assuming a court rule could inform our determination of legislative intent, we do not go beyond the plain language of an unambiguous statute to discern the legislature's intent. *See Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 176 (Minn. 2021).

Finally, Royston argues that our *Koski* decision requires reversal here. In *Koski*, we determined that the district court did not have personal jurisdiction over the tenant because the landlord had failed to strictly comply with section 504B.331(d). 837 N.W.2d at 745. There, the landlord failed to mail a copy of the eviction summons to the tenant. *Id.* at 743. And the landlord failed to file the required affidavit with the district court. *Id.*

Here, HRA satisfied each of the requirements of section 504B.331(d) and completed each requirement at least seven days before the first hearing. There were two unsuccessful attempts at personal service, including one between 6:00 p.m. and 10:00 p.m. HRA mailed the summons to Royston's last known address. An affidavit was filed in the district court certifying that Royston could not be found in the county and that the summons had been mailed. And, following the second unsuccessful attempt at personal service, the summons was posted in a conspicuous place. Because HRA strictly complied with section 504B.331(d), service of the summons by posting was effective. *See Koski*, 837 N.W.2d at 742.

DECISION

The plain language of section 504B.331(d) provides that posting a summons at least seven days before the first hearing in an eviction action constitutes effective service so long as the following have also occurred not less than one week before the first hearing: (1) there have been two attempts at personal service on two different days, including one between the hours of 6:00 p.m. and 10:00 p.m. and (2) the landlord or landlord's attorney has signed and filed an affidavit with the court stating that the tenant cannot be found or is believed to be out-of-state and that the summons has been mailed to the tenant's last known address or that such an address is unknown to the plaintiff. Because HRA strictly complied with these requirements, the district court properly exercised personal jurisdiction over Royston.

Affirmed.