

*This opinion is nonprecedential except as provided by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
A23-1725**

Carl Green dba Signature Capital,
Appellant,

vs.

Regus Group,
Respondent,

Does 1 through 10 Inclusive,
Defendants.

**Filed August 12, 2024
Affirmed
Ede, Judge**

Hennepin County District Court
File No. 27-CV-19-16454

Carl Green, Minneapolis, Minnesota (pro se appellant)

Eric J. Van Schyndle, Ellen E. Anderson, Quarles & Brady LLP, Minneapolis, Minnesota
(for respondent)

Considered and decided by Schmidt, Presiding Judge; Cochran, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellant challenges the district court's order dismissing his complaint for failure to prosecute, maintaining that the court abused its discretion by declining to grant his motion for default judgment against respondent. We affirm because we conclude that the

district court did not abuse its discretion by dismissing this matter for failure to prosecute after determining that appellant's motion for default judgment was not properly e-filed and was thus not before the court.

FACTS

In September 2019, appellant Carl Green, doing business as Signature Capital, e-filed a complaint against an entity described as "Regus Group." In the complaint, Green alleged wrongful eviction arising from a commercial lease and asserted tort claims. More specifically, Green alleged that, in or before 2004, he entered an agreement with Regus Group to lease an office space and that Regus Group evicted him in 2019. Green signed the complaint and represented himself throughout the district court proceedings.

Green later filed a document signed by a non-party, which provides as follows: "[Non-party], being first duly sworn states that on the 28th day of March, 2019, she served the summons and complaint, by personally serving . . . Regus Manager, at 601 Carlson Parkway #1050, Minnetonka, MN, 55305." The document is not notarized.

In March 2020, respondent Regus Management Group LLC (RMG)¹ filed a motion requesting that the district court (1) dismiss the action for insufficient service of process and (2) stay the proceeding and compel arbitration. In a memorandum accompanying the motion, RMG maintained that, while Regus Group did not exist, Green had signed a lease agreement with RMG. RMG explained that, in 2019, it received "a copy of what was

¹ Although RMG calls itself "Regus" in its brief, we use the acronym "RMG" in this opinion to distinguish between the respondent and the entity described in the complaint as "Regus Group."

thought to be a draft complaint, sent via the United States Postal Service.” Along with the complaint, RMG received an affidavit by Green, which stated that Green had served the summons and complaint on Regus Group. RMG argued that Green failed to personally serve the summons and complaint. In addition, RMG asserted that serving an entity that does not exist violates the Minnesota Rules of Civil Procedure. As a result, RMG moved the district court to dismiss the action. Alternatively, RMG contended that the lease agreement includes an arbitration clause and that Minnesota Statutes section 572B.07 (2022) required the district court to order the parties to arbitrate the dispute.

Green responded to RMG’s motion by mailing several documents to the district court, including a motion for default judgment and a memorandum that both opposed RMG’s motion and supported Green’s default-judgment motion. In the memorandum, Green requested that the district court enter default judgment because Regus Group had failed to answer Green’s complaint. Although Green had used the district court’s e-filing system to file the summons and complaint, he did not later move the district court to be excused from electronically filing and serving subsequent submissions.

In May 2020, the district court filed a deficiency notice, informing Green that the motion, memorandum, and other documents he mailed would be returned because Green had failed to file the documents electronically, as required by Minnesota General Rule Practice 14.01. The notice informed Green that the district court would “proceed to process” the matter when Green remedied any deficiencies. But Green did not do so.

Despite Green's failure to e-file his motion, memorandum, and other documents, RMG electronically filed a memorandum in opposition to Green's motion, contending that the record was devoid of any documents in which an affiant testified that they had served RMG or its registered agent. And RMG reiterated that the lease agreement included an arbitration clause that compelled arbitration of the dispute.

The district court held a hearing in May 2020. At the hearing, Green maintained that RMG did not have standing because it was never sued and was thus not a party. Green also argued that he had sued Regus Group, which was in default. Consistent with the May 2020 deficiency notice, the district court informed Green that some of the documents he had submitted were not electronically filed into the Minnesota Court Information System. Noting that Green is "a mandatory e-filer," the district court told Green that it would "not be able to consider" any material he had "submitted that ha[d] not been e-filed" as required. Green responded that he was not a mandatory e-filer, asserting that he had never registered as an e-filer and that his employees had e-filed the documents for him. But the district court replied that its records reflected that Green was an e-filer, that the summons and complaint were e-filed, and that Green's name was the only one that appeared on those documents.

The district court later filed an order addressing the parties' cross-motions. First, the district court explained that Green had "attempted to file a motion in paper form, but his filing was rejected on May 8, 2020, with a notice of deficiency[.]" The district court found that "Green did not thereafter correct the deficiency" and that he had "filed no documents either in opposition to [RMG]'s motion or in support of a motion of his own." The district court therefore determined that "no motion by Green [was] pending before" it.

Second, as to RMG's motion to compel arbitration, the district court found that the arbitration clause was "broad enough to encompass the allegations in Green's complaint." Citing Minnesota Statutes section 572B.07(a), the district court determined that, because Green had failed to offer evidence that the arbitration clause was unenforceable, the statute required arbitration of the dispute. The district court also granted RMG's motion to stay the proceedings pending arbitration based on section 572B.07(f).

Finally, as for RMG's alternative motion to dismiss for insufficient service of process, the district court found that the record before it did "not establish that Green ha[d] properly served" RMG. The district court reasoned that Green's affidavit contained "no title or caption, refer[red] to service on an entity that [RMG] assert[ed] [was] non-existent, and lack[ed] either notarization or the required 'under penalty of perjury' language to qualify as a declaration in lieu of an affidavit under Minn. Stat. § 358.116 [(2022)]." The district court also noted that an affidavit signed by Green was "improper service under Minn. R. Civ. P. 4.02." Nevertheless, because the district court was staying the proceedings and Green could remedy insufficient service of process by perfecting proper service, the district court granted RMG's motion to dismiss in part by requiring Green to remedy the defect if litigation later recommenced.

Almost three years later, the district court contacted the parties to ask about the status of the case. Green did not respond, and RMG's counsel informed the district court that arbitration had never begun. Based on the length of time since the district court had stayed the proceedings and the lack of progress, the district court ordered Green to "show

cause why the stay should not be lifted and the case dismissed for failure to prosecute.” The district court ordered Green to file a responsive memorandum by July 21, 2023.

Green later filed a document stating that he had “already submitted a memorandum of law and brought motions” in the case. Green also wrote that he was “waiting for an appealable order for reasons already determined.”

The district court ordered dismissal of the action under Minnesota Rule of Civil Procedure 41.02(a). In its amended order for dismissal, the district court found that Green had “not shown adequate cause for further maintaining the stay” and that Green had “seemingly acquiesced in the dismissal of this case.” Citing rule 41.02(a), the district court lifted the stay and dismissed the matter for failure to prosecute.

This appeal follows.

DECISION

Green challenges the district court’s dismissal order, contending that the district court abused its discretion by declining to grant his motion for default judgment. We are not persuaded.

Appellate courts review a district court’s dismissal of an action for failure to prosecute under Minnesota Rule of Civil Procedure 41.02 for an abuse of discretion. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 395 (Minn. 2003) (citing *Bonhiver v. Fugelso, Porter, Simich & Whiteman, Inc.*, 355 N.W.2d 138, 144 (Minn. 1984)). The abuse-of-discretion standard likewise applies to the district court’s “[e]nforcement of local rules[,]” which we have said “is left to the discretion of the district court.” *Hopkins by LaFontaine v. Empire Fire and Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991);

see also Pfeiffer ex rel. Pfeiffer v. Allina Health Sys., 851 N.W.2d 626, 636 n.7 (Minn. App. 2014) (citing *Hopkins* and noting that “[e]nforcement of . . . [Minnesota General Rule of Practice] 115[] is left to the discretion of the district court”), *rev. denied* (Minn. Oct. 14, 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is inconsistent with the facts in the record.” *Matter of Otto Bremer Tr.*, 2 N.W.3d 308, 319 (Minn. 2024) (quotation omitted).

“[I]n any county where electronic filing and service is authorized, a self-represented litigant may elect to use the E-Filing System to electronically file and serve.” Minn. R. Gen. Prac. 14.01(b)(5)(i). “Once a self-represented litigant has elected or been ordered to use the E-Filing System for filing and service and has become a Registered User, that individual must thereafter electronically file and serve all documents in that case.” *Id.* A “‘Registered User’ means a person registered with the Designated Provider and authorized to file and serve documents electronically through the E-Filing System.” Minn. R. Gen. Prac. 14.01(a)(8). “A self-represented litigant who has elected to use the E-Filing System may be excused from the requirement to electronically file and serve only upon motion to the [district] court and for good cause shown.” Minn. R. Gen. Prac. 14.01(b)(5)(ii).

Green has argued that he was not an e-filer, that he never registered as an e-filer, and that one of his employees e-filed the summons and complaint. The district court, however, determined that Green was subject to mandatory e-filing because he had electronically filed those documents. Based on Green’s failure to electronically file his motion for default judgment and related material even after receiving a notice of deficiency, the district court ruled that no motion by Green was pending before it.

We conclude that the district court did not abuse its discretion in enforcing Minnesota General Rule of Practice 14.01. *See Pfeiffer*, 851 N.W.2d at 636 n.7. The record establishes that Green—who represented himself throughout the district court proceedings—electronically filed the summons and complaint. Indeed, only Green’s name appears on both those documents. And no facts in the record contradict the district court’s determination that Green was a registered user of the e-filing system and therefore a “mandatory e-filer.” *See* Minn. R. Gen. Prac. 14.01(a)(8). Thus, the district court did not abuse its discretion in determining that, as a self-represented litigant and registered user who elected to use the district court’s e-filing system, Green needed to “electronically file and serve all documents in [this] case[,]” including his motion for default judgment and related documents. Minn. R. Gen. Prac. 14.01(b)(5)(i).

Green nevertheless maintains that he moved the district court to be excused from e-filing. The record defeats this claim. There is no evidence that Green ever moved the district court to be excused from the electronic filing and service requirements under Minnesota General Rule of Practice 14.01(b)(5)(ii). During the May 2020 hearing, Green merely expressed his belief that he was not a mandatory e-filer. At no point during that hearing—or in any written submission, for that matter—did Green move to be excused from the requirement that he electronically file and serve documents. *See* Minn. R. Gen. Prac. 14.01(b)(5)(ii). We also note that the district court’s notice of deficiency allowed Green to remedy this issue by simply e-filing his motion, but Green chose not to do so. Thus, because Green was subject to mandatory e-filing and he did not file his motion for

default judgment and related documents electronically, the district court did not abuse its discretion by determining that the motion was not properly before it.

And even if Green had properly e-filed the motion for default judgment and related material, the district court could not have lawfully entered default judgment in Green's favor because it lacked personal jurisdiction over RMG based on insufficient service of process. The Minnesota Rules of Civil Procedure require "[s]ervice of summons within the state . . . [u]pon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons[.]" Minn. R. Civ. P. 4.03(c). Moreover, "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, and "[s]ervice of summons . . . shall be proved . . . by the affidavit of any other person making it," Minn. R. Civ. P. 4.06, which includes "document[s] that ha[ve] been signed, sworn, and notarized[.]" as well as "document[s] that ha[ve] been signed under penalty of perjury" under Minnesota Statutes section 358.116 (2022), if the affiant signs below a declaration under penalty of perjury that everything the affiant states in the document is true and correct, Minn. R. Gen. Prac. 15. "[S]ervice of process is the means by which a court obtains personal jurisdiction over a defendant." *McCullough and Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016).

Here, in violation of Minnesota Rule of Civil Procedure 4.02, it was Green—a self-represented party to this action—who executed an affidavit asserting that he had served the summons and complaint. And, in violation of Minnesota General Rule of Practice 15, the

document that Green filed alleging that a non-party completed service lacks notarization and declaration under penalty of perjury that everything the affiant states in the document is true and correct. The Minnesota Supreme Court has held that “proof of service may be defective or even lacking, but if the fact of service is established[,] jurisdiction cannot be questioned.” *Goodman v. Ancient Ord. of United Workmen*, 300 N.W. 624, 625 (Minn. 1941). But in this case, the fact of service has not been established. Indeed, Green conceded at the May 2020 hearing that he did not know “if the party who did the service properly complied with the rules.” We therefore conclude that the district court could not have lawfully entered default judgment for Green because insufficient service of process left the district court without personal jurisdiction over RMG. *See McCullough*, 883 N.W.2d at 590; *see also Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000) (“A judgment entered without due service of process must be vacated under Minn. R. Civ. P. 60.02.” (quotation omitted)), *rev. denied* (Minn. Jan. 26, 2001); *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 19 (Minn. App. 2017) (concluding that “default judgment may not be entered against a defendant over whom the court has no personal jurisdiction”), *aff’d*, 913 N.W.2d 449 (Minn. 2018).

In sum, we discern no abuse of discretion in the district court’s enforcement of the Minnesota General Rules of Practice by determining that Green’s motion for default judgment and related documents were not properly before it. And we conclude that the

district court did not abuse its discretion in applying Minnesota Rule of Civil Procedure 41.02 to dismiss this action for failure to prosecute.²

Affirmed.

² RMG contends that, because the district court lacked personal jurisdiction over it, we “should affirm the district court’s decision to grant [RMG]’s motion to dismiss for lack of service, reverse the district court’s September 2023 Order [granting RMG’s motion to compel arbitration] as wanting of personal jurisdiction, and remand the case . . . with instructions to dismiss this case without prejudice.” RMG, however, did not file a notice of related appeal. “After an appeal has been filed, respondent may obtain review of a judgment or order entered in the same underlying action that may adversely affect respondent by filing a notice of related appeal in accordance with Rule 103.02, subdivision 2, and Rule 104.01, subdivision 4.” Minn. R. Civ. App. P. 106. “The notice of related appeal shall specify the judgment or order to be reviewed.” Minn. R. Civ. App. P. 103.02, subd. 2. “If a party fails to file a notice of [related appeal] pursuant to Minn. R. Civ. App. P. 106, the issue is not preserved for appeal and a reviewing court cannot address it.” *City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996), *rev. denied* (Minn. Aug. 6, 1996). Because RMG neglected to file a notice of related appeal, whether the district court erred by granting RMG’s motion to compel arbitration rather than dismiss the matter is not preserved for our review, and we decline to address it. *See id.*