

*This opinion is nonprecedential except as provided by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
A24-0089**

Barbara Schmidt,
Appellant,

vs.

City of Orono,
Respondent,

Minnesota Department of Natural Resources, et al.,
Defendants.

**Filed August 12, 2024
Reversed and remanded
Kirk, Judge***

Hennepin County District Court
File No. 27-CV-21-7769

Bryan J. Huntington, Kyle L. Vick, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis,
Minnesota (for appellant)

Jared D. Shepherd, Leah C.M. Koch, Campbell Knutson, P.A., Eagan, Minnesota (for
respondent)

Considered and decided by Harris, Presiding Judge; Schmidt, Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant argues that the district court erred by dismissing with prejudice her action under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2022), for failure to comply with statutory service and publication requirements. We reverse and remand for entry of judgment of dismissal without prejudice.

FACTS

Appellant Barbara Schmidt resides in respondent City of Orono (the city). Schmidt shares a property line with Bederwood Park (the park). In May 2021, Schmidt noticed “destruction in the wooded areas” of the park that spread to her property. In June, Schmidt attended city council meetings where she learned of a proposal for a mountain bike trail in the park.

On June 18, 2021, Schmidt filed a complaint against the city,¹ alleging that the city violated the MERA. Schmidt sought declaratory and equitable relief to prevent the bike trail from destroying natural resources. In July 2021, the city moved to dismiss, arguing that Schmidt had not pleaded sufficient facts to survive a motion to dismiss. The district court denied the city’s motion to dismiss, determining that Schmidt’s complaint, taken as true, “adequately assert[ed] the actions that constitute pollution, impairment, or destruction” and “sufficiently pled the MERA claim.”

¹ Throughout the proceeding, defendants Minnesota Department of Natural Resources (DNR), Minnehaha Creek Watershed District, and City of Orono Public School District were dismissed from the action.

On October 5, 2023, the city again moved to dismiss. The city alleged that, under the MERA, Schmidt was required “to serve the summons and complaint upon the Attorney General and the Minnesota Pollution Control Agency (MPCA) within seven days and publish notice of her claim within 21 days after commencing the action.” The city claimed that Schmidt failed to meet these statutory requirements, which “deprive[d] the [district] court of jurisdiction over the [MERA] claim.”

Schmidt argued that she complied with all statutory requirements because she followed directives issued due to the pandemic. After the city moved to dismiss, Schmidt then provided proof of service and publication that occurred in October 2023.

The district court granted the city’s motion to dismiss “with prejudice.” The district court noted that Schmidt was required to serve a copy of the complaint on the MPCA and the Attorney General’s office by June 25, 2021, and publish written notice in a local newspaper by July 9, 2021. The district court found that Schmidt failed to comply with service and publication requirements. This appeal followed.

DECISION

Schmidt argues that the district court should not have dismissed her complaint with prejudice. This court reviews the district court’s dismissal with prejudice for an abuse of discretion. *Minn. Humane Soc’y. v. Minn. Federated Hum. Soc’ys.*, 611 N.W.2d 587, 590 (Minn. App. 2000). A district court abuses its discretion if it improperly applies the law. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

Dismissal with prejudice on the merits is appropriate when a complaint fails to state a claim upon which relief can be granted. *Martens v. Minn. Mining & Mfg. Co.*, 616

N.W.2d 732, 748 (Minn. 2000) (holding that when district court granted motion to dismiss for failure to state a claim on the merits, the “complaint should be dismissed with prejudice”). Here, the district court had denied the city’s motion to dismiss for failure to state a claim upon which relief can be granted. The dismissal was not on the merits. Rather, the dismissal was for procedural errors—Schmidt’s failure to comply with service and notice requirements under the MERA. *See* Minn. Stat. § 116B.03, subd. 2 (providing service and notice requirements for plaintiffs). The district court determined that it lacked subject-matter jurisdiction because of Schmidt’s failure to comply with the service and notice requirements.

Schmidt “agrees that the failure to comply with the service requirements required by the statute deprives the district court of subject[-]matter jurisdiction over the MERA claim.” She does not argue that she complied with the statutory requirements and does not challenge the dismissal. Schmidt challenges only the dismissal with prejudice.

This court addressed a challenge to a dismissal with prejudice for lack of service in *Thielen v. Eden Valley Sportsman’s Club*. No. A21-0634, 2022 WL 663166 (Minn. App. Mar. 7, 2022).² *Thielen* involved a dispute over a conditional-use permit. *Id.*, at *1. The district court dismissed the case, concluding that appellants did not properly serve the county. *Id.*, at *2. Appellants argued on appeal that the district court erred by dismissing the county based on insufficient service of process; alternatively, if the county was properly

² “Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c).

dismissed, the dismissal should not have been with prejudice. *Id.* This court concluded that the district court did not err by dismissing the county from the action for lack of personal jurisdiction for ineffective service of process. *Id.*, at *3.

But this court concluded that the district court did err by dismissing with prejudice. *Id.* This court stated: “An order of dismissal on procedural grounds runs counter to the primary objective of the law to dispose of cases on the merits.” *Id.* (quoting *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967)). It further stated: “When a party is dismissed for ineffective service of process, the proper action is for the court to dismiss the party without prejudice.” *Id.* (citing *Lewis v. Contracting Nw., Inc.*, 413 N.W.2d 154, 156 (Minn. App. 1987)); *see also* 1 David F. Herr & Roger S. Haydock, *Minnesota Practice, Civil Rules Annotated* § 12:8 (6th ed. 2021) (“The proper action to be taken by the court, if it finds insufficient service of process, is to dismiss the action without prejudice.”). Accordingly, this court determined that dismissal was appropriate, but it should be without prejudice. *Id.*, at *4.

The district court here seems to have distinguished this matter from *Thielen* because the dismissal here is for lack of subject-matter jurisdiction rather than personal jurisdiction. But the dismissal here was for failing to comply with procedural requirements, like *Thielen*. There is no dispute that the district court’s dismissal was for lack of subject-matter jurisdiction. A dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits. *See* Minn. R. Civ. P. 41.02(c) (specifying that dismissal does not operate as an adjudication on the merits if the district court dismisses for lack of jurisdiction).

Because there has been no adjudication on the merits, the dismissal should have been without prejudice. We reverse and remand for entry of dismissal without prejudice.

Reversed and remanded.