

*This opinion is nonprecedential except as provided by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
A24-0251**

Mark Lehnertz,
Appellant,

vs.

RAM Mutual Insurance Company,
Respondent.

**Filed September 23, 2024
Affirmed
Cochran, Judge**

Wabasha County District Court
File No. 79-CV-23-404

Justice Ericson Lindell, Mihajlo Babovic, Greenstein Sellers PLLC, Minneapolis,
Minnesota (for appellant)

John J. Neal, Neal PLLC, St. Cloud, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this insurance-coverage dispute, appellant-insured argues that the district court erred in granting respondent-insurer's motion to dismiss appellant's complaint for insufficiency of service of process. Because appellant failed to strictly comply with the relevant statutory requirements for substitute service, we affirm.

FACTS

The facts of this case are undisputed. Appellant Mark Lehnertz purchased an insurance policy from respondent RAM Mutual Insurance Company (RAM) that provided property-damage coverage for Lehnertz's real property. Lehnertz submitted a claim under the policy after his property suffered hail and wind damage in June 2021. Because RAM and Lehnertz disagreed about the amount of the loss, Lehnertz attempted to commence a civil action against RAM by substitute service of process on the Minnesota Commissioner of Commerce (the commissioner) pursuant to Minnesota Statutes section 45.028 (2022).

In his complaint, Lehnertz set forth two claims: a claim for breach of contract and a claim for declaratory judgment. The breach of contract claim was based on allegations that RAM "failed to appropriately adjust the loss and to approve and pay the amounts due and owing to [Lehnertz] pursuant to the policy." The claim for declaratory judgment sought a declaration of RAM's payment obligations under the policy.

RAM moved to dismiss the complaint under Minnesota Rule of Civil Procedure 12.02(d). RAM argued that substitute service of process was defective under section 45.028 because Lehnertz's complaint (1) failed to allege that RAM engaged in conduct prohibited or made actionable by the statutes enumerated in section 45.028 and (2) was not "brought under" any of the enumerated statutes. In response, Lehnertz filed an amended complaint, adding allegations to his breach-of-contract claim that RAM "refused to timely respond to [Lehnertz's] request for a tolling agreement in violation of Minnesota Statutes section 72A.201 [(2022)]." The district court granted RAM's motion to dismiss, concluding that the statutory requirements for substitute service of process were not met.

This appeal follows.

DECISION

Lehnertz challenges the district court's grant of RAM's motion to dismiss for insufficiency of service of process. Whether service of process is effective presents a question of law, which we review de novo. *Meeker v. IDS Prop. Cas. Ins. Co.*, 862 N.W.2d 43, 45 (Minn. 2015).

Proper service of process is a fundamental requirement of commencing a lawsuit. *Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956). “[S]ervice of process must accord strictly with statutory requirements.” *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. App. 1999), *rev. denied* (Minn. July 28, 1999). This is because “[w]ithout sufficient service of process, a district court has no jurisdiction over a defendant.” *Smith v. Flotterud*, 716 N.W.2d 378, 381 (Minn. App. 2006), *rev. denied* (Minn. Sept. 27, 2006). Statutory requirements for substitute service of process are no exception. *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 609 (Minn. 2016).

Section 45.028 sets forth the substantive and procedural requirements for substitute service on the commissioner for certain “suits, actions, and proceedings.” Specifically, section 45.028, subdivision 1(a) provides:

When *a person*, including any nonresident of this state, *engages in conduct prohibited or made actionable* by chapters 45 to 83, 155A, 309, and 332, and section 326B.802, or any rule or order under those chapters, and the person has not filed a consent to service of process under chapters 45 to 83, 155A, 309, and 332, and section 326B.802, *that conduct is equivalent to an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapters 45 to 83, 155A, 309, and 332,*

and section 326B.802, or any rule or order under those chapters.

Minn. Stat. § 45.028, subd. 1(a) (emphasis added). Subdivision 1(a) imposes two substantive requirements that must be met to perform substitute service on the commissioner: (1) the plaintiff must allege that the defendant “engage[d] in conduct prohibited or made actionable by chapters 45 to 83, 155A, 309, and 332, and section 326B.802” and (2) the plaintiff’s suit must be “based on that conduct and . . . brought under” the enumerated statutes, rules, or orders. Minn. Stat. § 45.028, subd. 1(a).¹

To determine whether Lehnertz satisfied the substitute-service requirements, we must interpret section 45.028, subdivision 1(a). Statutory interpretation presents a question of law, which we review de novo. *Johnson v. Concrete Treatments, Inc.*, 7 N.W.3d 119, 126 (Minn 2024). The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Id.* (citation omitted). To do so, we must first determine whether the statute’s language is ambiguous. *Reetz v. City of Saint Paul*, 956 N.W.2d 238, 245 (Minn. 2021). A statute is ambiguous only when it is susceptible to more than one reasonable interpretation. *Johnson*, 7 N.W.3d at 126. If a statute is susceptible to only one reasonable interpretation, we apply the statute’s plain meaning. *Harkins v. Grant Park*

¹ Lehnertz did not attempt substitute service in reliance on any statute other than Minnesota Statutes section 45.028. For example, Lehnertz did not rely on Minnesota Statutes section 60A.19 (2022), which requires that foreign insurers appoint the commissioner as their attorney, upon whom “all lawful processes in any action or legal proceeding against [the foreign insurers] may be served.” Minn. Stat. § 60A.19, subd. 3. Section 60A.19 provides that service on foreign insurers via the commissioner as authorized by that section must be made in compliance with section 45.028, *subdivision 2*. We note that our analysis in this opinion applies narrowly to substitute service allowed pursuant to section 45.028, *subdivision 1(a)*.

Ass’n, 972 N.W.2d 381, 386 (Minn 2022). When interpreting a statute, we may turn to dictionary definitions, including legal dictionary definitions, for terms not otherwise defined in the statute. *In re Moratzka*, 988 N.W.2d 42, 47 (Minn. 2023).

The parties’ dispute here revolves around what it means for a “noncriminal suit, action, or proceeding” to be “brought under” one of the statutes enumerated in section 45.028, subdivision 1(a). Lehnertz argues that “[t]he term ‘brought under’ should be interpreted to require the plaintiff to contend that conduct that violates [one of the enumerated] statute[s] occurred, rather than requiring the plaintiff to allege a claim that was specifically created by [one of the enumerated] statute[s].” RAM contends that Lehnertz’s interpretation renders the term “brought under” as used in subdivision 1(a) meaningless because subdivision 1(a) requires that the “suit, action, or proceeding” both be “based on that conduct *and* brought under” one of the enumerated statutory provisions. Minn. Stat. § 45.028, subd. 1(a) (emphasis added). RAM instead offers that the term “brought under” as used in subdivision 1(a) requires a prospective plaintiff to “assert a cause of action specified by statute.” RAM’s argument is more persuasive.

Section 45.028 does not define the term “brought under,” but “brought under” is a phrase of common legal parlance. *See* Minn. Stat. §§ 45.011 (providing definitions for chapter 45), .028 (2022); *Pinares v. United Techs. Corp.*, 973 F.3d 1254, 1260 (11th Cir. 2020).² As the federal circuit court stated in *Pinares*, “Simply put, a suit is brought under the law which supplies its cause of action.” 973 F.3d at 1260. And a “cause of action” is

² “Though they do not bind us, we consider federal court opinions for their persuasive value and afford those opinions due deference.” *Laliberte v. Dollar Tree, Inc.*, 987 N.W.2d 590, 594 n.4 (Minn. App. 2023) (quotation omitted).

the set of facts or the legal theory providing the basis for a lawsuit. *Black's Law Dictionary* 275 (12th. Ed. 2024). Relatedly, to “bring an action” means to institute a lawsuit. *Id.* at 238. Also, our supreme court has recognized that a lawsuit is “brought under” the specific law that supplies its cause of action. For example, in considering a statute of limitations question, the supreme court discussed a lawsuit “brought under” Minnesota Statutes section 176.82 (2022), which “*creates a cause of action* for retaliatory discharge and for intentional obstruction of an employee seeking worker’s compensation benefits.” *McDaniel v. United Hardware Distrib. Co.*, 469 N.W.2d 84, 85-86 (Minn. 1991) (emphasis added); *see also White Bear Lake Restoration Ass’n ex rel. State v. Minnesota Dep’t of Nat. Res.*, 946 N.W.2d 373, 376 (Minn. 2020) (stating that appellants “brought claims under Minn. Stat. § 116B.03 (2018), part of the Minnesota Environmental Rights Act”). Consequently, we conclude that it is reasonable to interpret the phrase “brought under” as used in section 45.028, subdivision 1(a), to mean a lawsuit is “brought under” a statute enumerated in section 45.028 when the enumerated statute creates the cause of action for the lawsuit. Such an interpretation is consistent with common legal parlance.

We next consider Lehnertz’s proffered alternative interpretation of section 45.028, subdivision 1(a), and conclude that it is unreasonable because it renders the term “brought under” meaningless. As discussed above, Lehnertz contends that “brought under” should be interpreted to require the plaintiff to contend that conduct that violates one of the enumerated statutes occurred, rather than requiring the plaintiff to allege a claim that was specifically created by one of the enumerated statutes. But the plain language of subdivision 1(a) mandates that substitute service is authorized only for a suit, action, or

proceeding that both is “based on” conduct prohibited or made actionable by an enumerated statute *and* “brought under” an enumerated statute. Minn. Stat. § 45.028, subd. 1(a).³ In other words, it is not sufficient that the lawsuit be based on the defendant’s prohibited or actionable conduct; one of the enumerated statutes must provide the cause of action for the lawsuit. Lehnertz’s interpretation would render the term “brought under” meaningless, because section 45.028 already provides that the lawsuit must be “based on” the statutorily prohibited conduct. We must construe a statute, if possible, “to give effect to all its provisions.” Minn. Stat. § 645.16 (2022). Reading subdivision 1(a) of section 45.028 as a whole, we reject Lehnertz’s interpretation as unreasonable.

In short, the language of section 45.028, subdivision 1(a), limiting substitute service to a suit, action, or proceeding “brought under” one or more enumerated statutes unambiguously requires that the plaintiff’s lawsuit include a claim provided for in one of the enumerated statutes. We now turn to whether Lehnertz’s complaint complied with this requirement.

Lehnertz’s complaint set forth only two claims—one for breach of contract and one for declaratory judgment. A claim for breach of contract arises from the common law. *See Moore v. City of New Brighton*, 932 N.W.2d 317, 324-25 (Minn. App. 2019) (discussing breach-of-contract claims and stating that “contract breaches violate the common law”), *rev. denied* (Minn. Oct. 15, 2019). And Lehnertz’s declaratory-judgment claim was brought pursuant to Minnesota Statutes section 555.02 (2022), but section 555.02 is not

³ Though not relevant here, we note that section 45.028 also provides for substitute service in actions based on and brought under “any rule or order under” one of the enumerated statutes. Minn. Stat. § 45.028, subd. 1(a).

among the statutes listed in section 45.028. Minn. Stat. § 45.028, subd. 1(a) (enumerating chapters 45 to 83, 155A, 309, and 332, and section 326B.802). Therefore, Lehnertz’s complaint was not “brought under” any of the enumerated statutes as required by section 45.028. As such, substitute service of process on the commissioner was improper under section 45.028. The district court therefore did not err by dismissing Lehenrtz’s complaint for defective service of process.

Still, Lehnertz contends that his amended complaint satisfies the “brought under” requirement for substitute service under section 45.028.⁴ In his amended complaint, Lehnertz added a paragraph to his breach-of-contract claim, alleging that RAM violated section 72A.201 by failing to reply to his request for a tolling agreement within ten days. Lehnertz asserts that his amended breach-of-contract claim was therefore brought under section 72A.201, which is among the enumerated statutes in section 45.028, subdivision 1. We are not persuaded.

As the district court noted, section 72A.201 is part of the Unfair Claims Practices Act (UCPA), Minn. Stat. §§ 72A.01-.52 (2022). *See Peterson v. W. Nat’l Mut. Ins. Co.*, 946 N.W.2d 903, 911 n.5 (Minn. 2020). The supreme court has held that the UCPA does

⁴ RAM contends that Lehnertz’s initial complaint was never properly before the district court due to defective service of process, and therefore there was no complaint to amend. “As a general rule a civil action is commenced, and the court thereby acquires jurisdiction, when personal service upon the defendant is actually made as prescribed by statute or rule.” *Doerr*, 76 N.W.2d at 511. Where service of process on any defendant is deficient, the district court lacks jurisdiction over that defendant and should dismiss the action. *Landgren v. Pipestone Cnty. Bd. of Comm’rs*, 633 N.W.2d 875, 879 (Minn. App. 2001).

Here, the district court did not determine whether the amended complaint was proper and instead determined that neither complaint could be served pursuant to section 45.028. Similarly, we assume without deciding that Lehnertz properly amended his complaint.

not create a private cause of action for violations of the act. *Morris v. Am. Fam. Mut. Ins. Co.*, 386 N.W.2d 233, 238 (Minn. 1986). Because section 72A.201 does not supply a private cause of action to Lehnertz, his breach-of-contract claim is not “brought under” section 72A.201. *See Pinares*, 973 F.3d at 1260. Thus, the new allegation in the amended complaint that RAM violated section 72A.201 did not transform the complaint into a cause of action brought under one of the enumerated statutes. Rather, Lehnertz’s amended breach-of-contract claim remained a claim brought under the common law.

In addition, Lehnertz appears to argue on appeal that his complaint was brought under Minnesota Statutes section 65A.08, subdivision 2(a) (2022). Lehnertz did not make this argument before the district court. Generally, we will only consider issues “that were presented to and considered by the district court.” *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022). Lehnertz forfeited this argument, “and we decline to address it for the first time on appeal.” *Id.* Even so, we note that neither the original complaint nor the amended complaint reference section 65A.08 (2022).

For the foregoing reasons, we conclude that the district court properly dismissed Lehnertz’s complaint—amended or not—for insufficiency of service of process.⁵

Affirmed.

⁵ In his brief, Lehnertz also claims that extra-record documents show that RAM consented to service via the commissioner. During this appeal, Lehnertz filed a motion to supplement the record with these purported documents, which we denied after Lehnertz filed his principal brief. On appeal, the scope of our review is constrained to “the complaint and the documents referenced in the complaint.” *Olson v. Lesch*, 943 N.W.2d 648, 652 n.3 (Minn. 2020); *see also* Minn. R. Civ. App. P. 110.01 (“The documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”). Accordingly, we decline to reach Lehnertz’s argument premised entirely on extra-record materials.