

*This opinion is nonprecedential except as provided by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
A24-0811**

Steven Craig Redick,
Respondent,

vs.

John Leslie Cooper,
Appellant.

**Filed February 18, 2025
Reversed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-23-12022

John A. Krueger, Krueger Law Firm, Roseville, Minnesota (for respondent)

Christian D. Vu, David M. Werwie & Associates, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this interlocutory appeal, appellant challenges the district court's denial of his motion to dismiss for insufficient service of process. Respondent attempted to serve appellant by publication to initiate a lawsuit for injuries stemming from an automobile accident. Because respondent failed to strictly comply with the procedural rules for service

by publication, we reverse the district court’s order denying appellant’s motion to dismiss for insufficient service of process.

FACTS

In July 2023, respondent Steven Craig Redick attempted to initiate a lawsuit against appellant John Leslie Cooper, alleging in his complaint that Cooper caused Redick to suffer personal injuries in an automobile accident that occurred in February 2018. Redick investigated where Cooper could be personally served and hired an agent to attempt personal service. Redick’s agent, however, failed to personally serve Cooper. Although the agent later signed an affidavit stating that they made “numerous attempts” to serve Cooper, they identified only one attempt—on July 5, 2023, at 4:14 p.m.

After attempting personal service on Cooper, Redick decided to serve Cooper by publication. On July 6, 2023, Redick’s agent executed two affidavits in support of service by publication: an “Affidavit of Non Service” and an “Affidavit of Not Found.” The Affidavit of Non Service stated:

[O]n July 5, 2023, at 4:14 PM [Redick’s agent] . . . attempted to serve [Cooper at his address of record] . . . and was unable to effect personal service of process for the following reasons: Unsuccessful after numerous attempts.

The Affidavit of Not Found contained related information and stated:

[Redick’s agent] . . . states that she was unable to locate the within-named John Leslie Cooper, whose social security number was used in conducting the search, at his/her address. . . .

Further attempts to locate John Leslie Cooper were made by performing [supplemental] searches.

. . . .

Affiant further believes said party cannot be located within the County of Hennepin or the State of Minnesota for the purpose of effecting personal service of process.

On July 10, 2023, Redick's attorney also executed an affidavit in support of his decision to serve Cooper by publication, titled "Affidavit for Publication of Summons," that stated:

Process of Service, attempted, unsuccessful. Therefore, Publication is needed due to reason(s) stated herein.

Redick next published his summons and complaint in the *Finance & Commerce* newspaper three times: on July 12, 19, and 26. After the third publication, a *Finance & Commerce* employee executed a fourth affidavit, titled "Affidavit of Publication," that verified that Redick had published his summons and complaint on each of the three dates.

On July 26, 2023, the final date of publication, Redick's attorney filed all four affidavits with the district court. Cooper answered and asserted affirmative defenses, including insufficient service of process. He then moved to dismiss, arguing that (1) service of process was insufficient and (2) the applicable statute-of-limitations period had passed. Redick opposed Cooper's motion and filed an "Amended Affidavit for Publication of Summons." After hearing argument from both parties, the district court denied Cooper's motion to dismiss because it determined that Redick substantially complied with Minnesota's rules for service by publication.

Cooper appeals.

DECISION

Cooper argues that we must reverse the district court's denial of his motion to dismiss because Redick did not comply with Minnesota Rule of Civil Procedure 4.04(a) when attempting to serve him by publication. Redick urges us to affirm, arguing that his actions *substantially* complied with rule 4.04(a). Because binding precedent dictates that a plaintiff must *strictly* comply with the prescribed requirements for service by publication under rule 4.04(a) for service to be effective, we reverse.

This court permits “immediate appeals from the denial of a motion to dismiss for insufficient service of process.” *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 543 (Minn. 2018). Service of process is a fundamental requirement for initiating a lawsuit. *See Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) (“[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.”). “Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). If a plaintiff fails to establish the jurisdictional facts required for service by publication, the district court lacks jurisdiction over the matter. *Schuett v. Powers*, 180 N.W.2d 253, 254 (Minn. 1970). “Because service by publication is in derogation of the common law, the prescribed requirements for such service must be strictly complied with.” *Shamrock*, 754 N.W.2d at 382 (quotation omitted).

Minnesota Rule of Civil Procedure 4.04(a) sets forth the requirements for serving an individual by publication. Under this rule, service by publication is permitted only in

five “enumerated cases.” Minn. R. Civ. P. 4.04(a)(1)-(5).¹ As relevant here, service by publication is permitted under section (a)(1) “[w]hen the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent.” Minn. R. Civ. P. 4.04(a)(1). The rule further provides that a “summons may be served by three weeks’ published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff’s attorney have been filed with the court.” Minn. R. Civ. P. 4.04(a). The

¹ Rule 4.04(a) provides that “[s]ervice by publication shall be sufficient to confer jurisdiction” in the following circumstances:

(1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent;

(2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(A) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(B) The defendant is a nonresident individual or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

(3) When the action is for marriage dissolution or separate maintenance and the court has ordered service by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

Minn. R. Civ. P. 4.04(a).

affidavit must set forth specific facts: (1) “the existence of one of the enumerated cases,” (2) “that the affiant believes the defendant is not a resident of the state or cannot be found therein,” and (3) “either that the affiant has mailed a copy of the summons to the defendant at the defendant’s place of residence or that such residence is not known to the affiant.” *Id.* “Once the plaintiff submits evidence of service, a defendant who challenges the sufficiency of service of process has the burden of showing that the service was improper.” *Shamrock*, 754 N.W.2d at 384.

We first examine whether the affidavits Redick filed complied with rule 4.04(a)’s requirements for affidavits in support of service by publication and conclude that they did not.² As for the “enumerated case” requirement, Redick did not set forth a rule 4.04(a) “enumerated case” in any of the affidavits. To address this omission, Redick argues that, because rule 4.04(a)(1) is the only enumerated case that can apply—and because Cooper is “not confused about which section of Rule 4.04 [Redick] is asserting applies”—we must infer that rule 4.04(a)(1) is the enumerated circumstance here. This argument is not persuasive because our caselaw requires strict compliance with rule 4.04(a), *Shamrock*, 754 N.W.2d at 382, and when a plaintiff fails to establish the jurisdictional facts required for service by publication, a district court lacks jurisdiction over the matter, *Schuett*, 180 N.W.2d at 254.

Although this error alone is a sufficient basis for reversal, we also note that none of the affidavits satisfied the third requirement—that there be a statement either that Redick

² We assume, without deciding, that we may consider all four affidavits filed on July 26 to determine whether they collectively met the requirements set forth in rule 4.04(a).

mailed a copy of the summons and complaint to Cooper at Cooper's place of residence or that such residence is not known to Redick. *See* Minn. R. Civ. P. 4.04(a). This omission provides an alternative basis for reversal.

Finally, we observe that Redick did not comply with rule 4.04(a)'s timing requirements. The plain language of rule 4.04(a) provides that "[t]he summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court." Minn. R. Civ. P. 4.04(a). In *Schuett*, the supreme court emphasized the timing requirement, stating that "the rule authorizes publication only *after* the affidavit has been filed." 180 N.W.2d at 254. The record shows that, although Redick's attorney and agent signed the affidavits prior to publication, none of the affidavits were filed until July 26, 2023—the date on which the third and final publication occurred. Because rule 4.04(a) provides that plaintiffs must file an affidavit of publication *prior to* publishing their summons and complaint and Redick filed his affidavit after the first two weeks of published notice had occurred, Redick violated the rule's timing requirements. *See* Minn. R. Civ. P. 4.04(a); *accord* *Schuett*, 180 N.W.2d at 254.

Redick argues that *DeCook v. Olmsted Medical Center, Inc.*, supports his position that it was proper to amend his original affidavits in support of service by publication, which he attempted to do after Cooper filed the motion to dismiss, because he made merely technical errors in filing the affidavits. 875 N.W.2d 263, 268 (Minn. 2016). We are not persuaded. First, *Shamrock* clearly requires that parties strictly comply with rule 4.04(a) when attempting service by publication. 754 N.W.2d at 382. Second, Redick's errors were

not “merely technical.” The “technical error” in *DeCook* was that an attorney licensed outside the state of Minnesota signed the summons and complaint, not compliance with rule 4.04(a). 875 N.W.2d at 268. The affidavits here, however, failed to comply with the express requirements of rule 4.04(a)—in direct violation of the rule.

We conclude that Redick’s affidavits did not comply with rule 4.04(a), and thus, we reverse the district court’s denial of Cooper’s motion to dismiss for insufficient process.

Reversed.