STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1001

MCHS Red Wing,
Respondent,

vs.

Brittney N. Converse,
Appellant.

Filed May 3, 2021
Reversed
Hooten, Judge

Goodhue County District Court
File No. 25-CV-19-1249

Gregory E. Hanson, Lukas F. Belflower, D.S. Erickson & Associates, PLLC, Edina, Minnesota (for respondent)

Carl Christensen, Christopher J. Wilcox, Christensen Law Office PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Slieter, Judge; and Klaphake, Judge.*

SYLLABUS

A civil action is commenced, for the purposes of Minn. R. Civ. P. 5.04(a), when a plaintiff ineffectively serves a defendant and the defendant effectively serves an answer on the plaintiff that does not raise the affirmative defense of insufficient service of process.

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

OPINION

HOOTEN, Judge

In this appeal from a grant of summary judgment, appellant asserts that the district court erred, first, by denying her motion to dismiss based on respondent's failure to file the action within one year and respondent's failure to prosecute and, second, by granting summary judgment in favor of respondent. We conclude that a civil action is commenced, for the purposes of Minn. R. Civ. P. 5.04(a), when a plaintiff ineffectively serves a defendant and the defendant effectively serves an answer on the plaintiff that does not raise the affirmative defense of insufficient service of process. Accordingly, because respondent failed to file the action within one year of the date on which it was served with appellant's answer, the district court erred in its denial of appellant's motion to dismiss with prejudice under rule 5.04(a). We therefore reverse.

FACTS

This case arises out of the provision of health care goods and services by respondent MCHS Red Wing to appellant Brittney N. Converse and her minor children. Respondent sued appellant for breach of contract and unjust enrichment, alleging that it had provided health care goods and services to appellant pursuant to a contract between the parties and that appellant had failed to pay for those goods and services. Respondent attempted to serve appellant by mailing a copy of its summons and complaint to her on March 23, 2018. The summons and complaint were accompanied by an acknowledgement-of-service form pursuant to the then-current version of Minn. R. Civ. P. 4.05. Appellant did not complete and return this acknowledgment-of-service form. Instead, appellant served an answer on

respondent on May 2, 2018, which did not raise the affirmative defense of insufficient service of process. On June 2, 2018, appellant submitted discovery requests to respondent, and the parties proceeded to engage in discovery and negotiation for nearly a year.

On May 30, 2019, appellant filed a motion to dismiss respondent's complaint under rule 5.04(a) on the ground of respondent's failure to file the action with the district court within one year of commencement. Appellant also moved to dismiss respondent's complaint on the ground of respondent's failure to prosecute. Respondent personally served appellant with its complaint on June 5, 2019, and filed the action with the district court on June 18, 2019. On July 10, 2019, the district court denied appellant's motion to dismiss. Respondent subsequently moved for summary judgment, and the district court awarded summary judgment in favor of respondent on both of its claims. This appeal follows.

ISSUE

Did the district court err in denying appellant's motion to dismiss?

ANALYSIS

We interpret the Minnesota Rules of Civil Procedure de novo. *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016). "When interpreting court rules, we look first to the plain language." *Id.* (quotation omitted). "If the language of a rule is plain and unambiguous, we follow the rule's plain language." *Id.* "A rule is ambiguous only if the language of the rule is subject to more than one reasonable interpretation." *Id.*

If a rule is ambiguous, we must determine which reasonable interpretation of the rule was intended. *See id.* In doing so, "[w]e interpret the words of a court rule in the

sense in which they were understood and intended at the time the rule was promulgated." *Id.* (quotations omitted). Our examination is guided by Minnesota caselaw interpreting the rules of civil procedure. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014). We may also look to the history surrounding the promulgation of the rule, including the report of a Minnesota Supreme Court task force, to ascertain the intent behind the rule. *See Gams*, 884 N.W.2d at 618 n.6. "We do not read [the rules] in isolation but read them in light of one another, interpreting them according to their purpose." *Mingen v. Mingen*, 679 N.W.2d 724, 727 (Minn. 2004).

Minn. R. Civ. P. 5.04(a) provides: "Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period." Minn. R. Civ. P. 3.01 provides plaintiffs with several means of commencing a civil action against a defendant: the plaintiff may serve a summons on the defendant, request a waiver of service, or deliver for service the summons to the sheriff in the county where the defendant resides. But rule 5.04(a) does not incorporate rule 3.01 by reference or otherwise indicate that an action is commenced, for purposes of rule 5.04(a), only by the events enumerated in rule 3.01. It would be reasonable to conclude that a civil action is commenced only by those events, but it would also be reasonable to conclude that a civil action is commenced, for the purposes of rule 5.04(a), by some other event or events. Rule 5.04(a) is therefore ambiguous, and we must determine whether there is any event not listed in rule 3.01 by which an action is commenced for purposes of rule 5.04(a).

Minn. R. Civ. P. 12 and Minnesota precedent lead us to conclude that there is some other event by which an action is commenced for purposes of rule 5.04(a). If a plaintiff ineffectively serves a defendant and the defendant effectively serves an answer on the plaintiff and does not raise insufficient service of process as an affirmative defense, either in the answer or in a separate motion made before answering, the defendant waives that defense. Minn. R. Civ. P. 12.02, .08. By waiving the defense of insufficient service of process in this way or by taking some action implicitly recognizing the jurisdiction of the court, an improperly-served defendant submits to the personal jurisdiction of the district court. *See Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 869 (Minn. 2000); *Larson v. New Richland Care Ctr.*, 520 N.W.2d 480, 482–83 (Minn. App. 1994). In such cases, litigation proceeds in spite of the insufficiency of service of process. The only logical conclusion that can be drawn from the fact that such cases proceed is that they were commenced at some point in time, even though none of the events by which an action is commenced under rule 3.01 occurred and none of these precedents specify by what other event the actions were commenced.

Said another way, our precedents demonstrate that rule 3.01 does not provide an exhaustive list of events by which an action is commenced. But these cases also do not resolve by what other event the actions involved were commenced. We are left, then, with the task of determining by what event such an action is commenced for purposes of rule 5.04(a). To do so, we turn to the history surrounding the Minnesota Supreme Court's adoption of rule 5.04(a).

The Minnesota Supreme Court adopted amendments to Minn. R. Civ. P. 5.04 on February 4, 2013, and the rule became effective as amended on July 1, 2013. *Order Adopting Amendments to the Rules of Civil Procedure and General Rules of Practice Relating to the Civil Justice Reform Task Force*, No. ADM10-8051 (Minn. Feb. 4, 2013) ("*Order Amending Rule 5*"); *Gams*, 884 N.W.2d at 614. The supreme court adopted this amendment to rule 5.04 at the recommendation of the Minnesota Supreme Court Civil Justice Reform Task Force. *See Order Amending Rule 5*; *Gams*, 884 N.W.2d at 614; *Recommendations of the Minnesota Supreme Court Civil Justice Reform Task Force*, No. ADM10-8051 (Minn. Dec. 23, 2011) ("*Task Force Recommendations*"). The supreme court originally established this task force "to review the Civil Justice Forum Report and civil justice reform initiatives undertaken in other jurisdictions and recommend to the court changes that will facilitate more effective and efficient case processing." *Task Force Recommendations* at 4. Chief among the task force's objectives was to propose rule changes that would address "excessive cost and delay that affect both administrative efficiency and the accessibility of our civil justice system." *Id.*

The adoption of rule 5.04(a) "altered a long-standing Minnesota practice that permitted a party to commence an action simply by service of the summons upon the defendant." *Gams*, 884 N.W.2d at 614. Under this former practice, colloquially referred to as hip-pocket service, "[f]iling the case with the district court was not required." *Id.* "Rule 5.04(a) amended this practice by requiring that all non-family cases be filed with the district court, or a stipulation obtained extending the time for filing, within 1 year from the commencement of the action." *Id.*

The report of the task force makes clear that the intent behind rule 5.04(a) was to preserve the benefits of hip-pocket service while also addressing the issues it posed. *Task Force Recommendations* at 21–22. The task force noted that the primary benefit of hip-pocket service is that it "allows litigation to be resolved without taking up court resources," if the parties informally resolve the case between the point in time at which the defendant is put on notice of the action and the point in time at which the case would otherwise be filed. *Id.* at 21. On the other hand, the task force acknowledged that hip-pocket service poses a number of issues. *Id.* For example, "many task force members believe[d] that cases can only be effectively managed when a judge is assigned to the case, and that managing cases in a way that is effective for courts and parties makes a difference in reducing cost and delay." *Id.* Such judicial case management is, of course, only possible after an action is filed with the district court. The task force also recognized that "[t]here are cases in which plaintiffs use the authority of the court to summon someone and then do nothing, while some defendants, particularly poor consumers, do not have the resources to bring a motion to dismiss." *Id.* at 21–22. And "[w]hen cases eventually come into court many years after service, everything is harder to accomplish." *Id.* at 22.

Rule 5.04(a) was thus adopted to facilitate informal dispute resolution before a case is filed while also facilitating effective case management, penalizing plaintiffs who serve defendants and then take no further action, and achieving prompt resolution of disputes. But if hip-pocket service is attempted but never effectively completed and neither party has taken any further action, the plaintiff has no indication that the defendant is on notice of the action, and informal dispute resolution cannot begin. At the same time, the defendant

may in fact have received the summons and complaint and thereby been put on notice, giving rise to all the same issues as effective hip-pocket service. Minn. R. Civ. P. 12 and Minnesota precedents require the conclusion that such a case will be commenced if some additional event occurs. *See Patterson*, 608 N.W.2d at 869; *Larson*, 520 N.W.2d at 482–83. The question remains, though, what additional event must occur before such an action is commenced for purposes of rule 5.04(a).

The answer that best serves the purposes of rule 5.04(a) is that such an action is commenced, for purposes of rule 5.04(a), when it is clear that the defendant is on notice of the action. And the fact of such notice is, in turn, conclusively established when the defendant effectively serves an answer on the plaintiff. Accordingly, we now hold that a civil action is commenced, for purposes of rule 5.04(a), when the plaintiff ineffectively serves the defendant and the defendant effectively serves an answer on the plaintiff which does not raise the affirmative defense of insufficient service of process.[1]

This interpretation of rule 5.04(a) best advances the purposes of the rule. Service of an answer—like the events by which an action is commenced under rule 3.01—objectively and irrefutably establishes that the defendant is on notice of the action. Treating an action as having commenced with service of an answer therefore permits the parties to engage in informal dispute resolution for up to one year after the defendant has been put on notice. But in many cases, attempts at informal dispute resolution can only proceed for

[1] We do not now consider those cases in which the plaintiff ineffectively serves the defendant and the defendant effectively serves an answer on the plaintiff that raises the defense of insufficient service of process.

so long until judicial case management becomes necessary. Requiring the plaintiff to file the action within one year of service of an answer establishes an end-date for any informal dispute resolution in which the parties might engage, supplying both an incentive to negotiate in good faith and a fixed date on which judicial case management may begin. And perhaps most importantly, treating an action as having commenced with service of an answer helps to prevent the exact misuse of legal process that rule 5.04(a) was adopted, in part, to avoid: service of a defendant that, objectively and irrefutably, puts the defendant on notice, followed by a failure by the plaintiff to take further action.[2]

Here, respondent attempted to serve appellant by mailing a copy of its summons and complaint to her on March 23, 2018.[3] The summons and complaint were accompanied by an acknowledgement-of-service form pursuant to the then-current version of Minn. R. Civ. P. 4.05. Appellant did not complete and return this acknowledgment-of-service form. Instead, appellant served an answer on respondent on May 2, 2018, which did not raise the

[2] The conclusion that an action is commenced by service of an answer that does not raise the affirmative defense of insufficient service of process is also consistent with Eighth Circuit precedent dealing with statutes of limitations. *See, e.g.*, *MW Ag, Inc. v. New Hampshire Ins. Co.*, 107 F.3d 644, 647 (8th Cir. 1997) (applying Minnesota law to hold that "where service of process is not effected upon the defendant, but where a defendant waives that defect, an action is commenced for statute of limitations purposes on the date upon which the action resulting in the waiver took place").

[3] Under the version of rules 3.01 and 4.05 in effect at this time, service by mail was permitted and was deemed to be effective if the defendant returned an acknowledgement of service form within the time the defendant was required to serve an answer. These rules were amended effective July 1, 2018, and service of an individual defendant by mail is no longer generally permitted. *Order Promulgating Amendments to the Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018); Minn. R. Civ. P. 4.05.

affirmative defense of insufficient service of process. In light of our interpretation of rule 5.04(a), we conclude that the action was commenced at that time. Respondent did not file the action with the district court until June 18, 2019, more than one year later. Accordingly, respondent's action is deemed dismissed with prejudice under rule 5.04(a), and the district court erred in denying appellant's motion to dismiss.[4]

DECISION

For the foregoing reasons, we conclude that a civil action is commenced, for the purposes of Minn. R. Civ. P. 5.04(a), when a plaintiff ineffectively serves a defendant and the defendant effectively serves an answer on the plaintiff that does not raise the defense of insufficient service of process.[5] The plaintiff must file the action with the district court within one year of service of such an answer or the action will be deemed dismissed with prejudice under rule 5.04(a). Here, respondent failed to file the action with the district court within one year of being served with appellant's answer, and this matter is properly deemed dismissed with prejudice. We therefore reverse the district court's denial of appellant's motion to dismiss.

Reversed.

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[4] Because we conclude that the district court erred in denying appellant's motion to dismiss under rule 5.04(a), we need not consider appellant's arguments that the district court abused its discretion in denying her motion to dismiss for failure to prosecute or that it subsequently erred in granting summary judgment in favor of respondent.

[5] This opinion is limited solely to an interpretation of Minn. R. Civ. P. 5.04(a). We do not now decide when an opinion is commenced other than for the purposes of rule 5.04(a).