STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1162

Raymond Semler,
Appellant,

vs.

Susan Johnson, et al.,
Respondents.

Filed June 30, 2025
Affirmed
Harris, Judge

Carlton County District Court
File No. 09-CV-23-1749

Raymond Semler, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Brian M. Card, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges the district court's dismissal of his demand for removal of a matter from conciliation court to district court and its denial of his motion to amend his statement of claim. Appellant argues that the district court erred because he performed all requirements to perfect removal within the statutory timeframe and should have been

allowed to amend his statement of claim upon removal. Because we conclude that the district court correctly determined that appellant did not perform all requirements to perfect removal, and because removal is required before a party may amend their statement of claim, we affirm.

FACTS

In March 2023, appellant Raymond Semler sued respondents Susan Johnson and Sara Kulas, two employees of the Minnesota Sex Offender Program (MSOP). Semler, who is committed to MSOP, alleged that respondents improperly determined that a compact disc (CD) he ordered was contraband because it shipped from an unapproved vendor. Semler claimed that he "was forced to send [the CD] out, or the facility would have destroyed [it]," and he requested damages of $100. On May 17, 2023, the conciliation court determined that it lacked jurisdiction and dismissed Semler's case.[1] On May 18, 2023, the district court administrator mailed notice of the order and judgment to Semler.

Semler submitted a demand to remove the case to district court. In addition to his demand to remove the case to district court, Semler provided proof of service on the Carlton County Court Administrator; an affidavit of service on MSOP's Due Process and Compliance Specialist; and an affidavit of an inability to pay the filing fee. Because the

[1]The conciliation court determined it lacked jurisdiction under Minnesota Statutes section 3.7381(a) (2024), which states, "The commissioners of human services . . . or corrections, as appropriate, shall determine, adjust, and settle, at any time claims and demands of $7,000 or less arising from negligent loss, damage, or destruction of property of a patient . . . or an inmate."

district court administrator mailed Semler notice of entry of the conciliation court judgment on May 18, 2023, he had until June 12[2], 2023, to perfect removal.

Semler mailed the demand for removal, affidavit of service, and an affidavit of inability to pay court filing fee to district court. Semler mailed the documents to the district court on June 7, 2023.[3] The date the district court administrator received the documents is not known, but the documents were docketed into the district court record on June 26, 2023.

In January 2024, respondents filed a motion to dismiss, arguing that Semler did not perform all requirements to perfect removal within the 21-day statutory timeframe. Semler opposed respondents' motion to dismiss and filed a motion to amend his statement of claim to add an additional claim and two additional defendants.

Following a motion hearing, the district court issued an order granting respondents' motion to dismiss and denying Semler's motion to amend because Semler did not perform all requirements to perfect removal.

Semler appeals.

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[2] The district court found that Semler had until June 14 to perfect removal. In Semler's memorandum of law in opposition to defendant's motion to dismiss, he states the "order from the court stated he had until June 12, 2023 to file a demand for removal to District Court." Under either deadline, Semler's demand for removal was untimely because it was docketed on June 26, 2023.

[3] Semler included a mail log in the addendum to his principal brief, but we do not consider it because it is not part of the appellate record. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."); Minn. R. Civ. App. P. 110.01.

DECISION

I. The district court did not abuse its discretion by dismissing Semler's demand for removal.

Semler argues that the district court abused its discretion by dismissing his case based on his failure to perform the statutory requirements to perfect removal. A conciliation court judgment becomes final 21 days after notice of entry of the conciliation court judgment is sent to the parties unless, as relevant here, "removal to [the] district court has been perfected." Minn. R. Gen. Prac. 515(b). To perfect removal, the aggrieved party must: "(1) [s]erve a demand for removal of the cause to district court by first class mail upon every opposing counsel or self-represented litigant"; (2) file the demand for removal and proof of service; (3) file an affidavit that the removal is made in good faith; and (4) pay the filing fee or request a fee waiver. Minn. R. Gen. Prac. 521(b)(1)-(4). All of these requirements must be performed "within 21 days after the date the court administrator transmitted to that party notice of the judgment order."[4] Minn. R. Gen. Prac. 521(b); Minn. R. Civ. P. 6.01(e). If removal is perfected, the district court "shall issue an order vacating the order for judgment in conciliation court as to the parties to the removal, and the pertinent portions of the conciliation court file of the cause shall be filed in district court." Minn. R. Gen. Prac. 521(d).

[4] Typically, a party has 21 days to perform the requirements to perfect removal. The parties agree that because the district court administrator sent the notice of conciliation court judgment to Semler by mail, he had an additional three days, 24 days total, to perfect removal. Minn. R. Civ. P. 6.01(e).

Here, the district court dismissed Semler's demand for removal because he did not perform at least two of the four requirements to perfect removal within the 24-day timeframe. In general, this court reviews a district court's decision on a motion to dismiss de novo. *Herbert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). However, "a [district] court's dismissal of an action for procedural irregularities will be reversed on appeal only if it is shown that the [district] court abused its discretion." *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990) (reviewing dismissal for failure to comply with statutory requirements); *Juetten v. LCA-Vision, Inc.*, 777 N.W.2d 772, 775 (Minn. App. 2010), *rev. denied* (Minn. Apr. 28, 2010). "A district court abuses its discretion if its findings are unsupported by the evidence or its decision is based on an erroneous view of the law." *Kern v. Janson*, 800 N.W.2d 126, 132 (Minn. 2011). We defer to the district court's factual findings unless they are clearly erroneous. *Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

Semler argues that the district court abused its discretion because he performed all of the requirements to perfect removal. As a threshold matter, the district court concluded in part that Semler's demand for removal was untimely because the documents were filed on June 26, after the June 12 deadline. Semler argues that when applying the prison mailbox rule he timely filed his demand because he mailed it on June 7, well within the deadline, but the district court administration failed to file it on time. Under the prison mailbox rule, a document is filed "at the time petitioner delivered it to the prison authorities for forwarding to the court clerk." *Houston v. Lack*, 487 U.S. 266, 276 (1988). Minnesota courts have declined to follow the prison mailbox rule in the tax and postconviction

contexts, concluding that documents are filed when they are received by the district court. *Langer v. Comm'r of Revenue*, 773 N.W.2d 77, 81 (Minn. 2009); *Chang v. State*, 778 N.W.2d 388, 389 (Minn. App. 2010). Even if we agreed with Semler that the prison mailbox rule applies here and thus his demand for removal was timely, the record demonstrates that Semler never performed two other requirements to perfect removal. Therefore, we need not decide Semler's timeliness argument because even assuming without deciding that Semler's demand for removal was timely, Semler did not perform all four requirements to perfect removal as discussed below.

A. The district court did not clearly err in determing that Semler did not serve the demand for removal on every opposing party as required to perfect removal under rule 521.

"[A]n aggrieved party seeking to remove a case from conciliation court to district court must serve a demand for removal on every opposing party's counsel and on every opposing self-represented party." *Dave Knutson Siding, LLC v. Fetter*, ___N.W.3d___, 2025 WL 1021492, at *4 (Minn. App. Apr. 7, 2025); *see also Roehrdanz*, 682 N.W.2d at 628 (holding "a party appealing a conciliation court judgment may effectively serve a demand for removal by mail without receiving an acknowledgment of service"); Minn. R. Gen. Prac. 521(b)(1). "Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo." *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016) (quoting *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008)). We "apply the facts as found by the district court unless those factual findings are clearly erroneous." *Shamrock*, 754 N.W.2d at 382.

Here, respondents Johnson and Kulas are opposing parties to Semler. He was therefore required to serve them both individually by first class mail or personal service. Minn. R. Gen. Prac. 521(b)(1). Alternatively, if Semler intended to sue respondents in their official capacities, he was required to serve the attorney general, a deputy attorney general, or an assistant attorney general. Minn. R. Civ. P. 4.03(d). The parties disagree whether Semler sued the defendants in their individual or personal capacities. Either way, the record reflects, as the district court found, that Semler did not properly serve every opposing party because he only served the demand on MSOP's Due Process and Compliance Specialist. His affidavit of service does not mention Kulas, Johnson, or the attorney general, and the record does not suggest that the compliance specialist was authorized to accept service on their behalf.

Semler does not argue that he properly served every opposing party, or that he otherwise was not required to. In fact, Semler concedes that the compliance specialist was not a party. Therefore, the district court did not err in determining that Semler did not serve the demand for removal on every opposing party as required to perfect removal under rule 521. *See Uthe v. Baker*, 629 N.W.2d 121, 123 (Minn. App. 2001).

B. The district court did not err in determing that Semler did not file an affidavit of good faith.

To perfect removal, an aggrieved party must "[f]ile with the court administrator an affidavit by the aggrieved party or that party's lawyer stating that the removal is made in good faith and not for purposes of delay." Minn. R. Gen. Prac. 521(b)(3). The district court found that Semler "never filed an affidavit stating that the removal is made in good

faith and not for purposes of delay," and that he "offered no explanation for this failure." Semler appears to argue that he complied with this requirement because his affidavit of service includes language stating, "I make this Affidavit in good faith." Alternatively, he argues that he "filed [an affidavit of good faith] at the time other necessary documents were mailed," but, "like the IFP document[,] [it] never made it to court administration in the initial filing." We are unpersuaded, as the record does not contain a separate "Affidavit of Good Faith," or a statement from Semler stating that the removal is "made in good faith and not for the purposes of delay." *See Fryhling v. France*, No. A08-0239, 2009 WL 366329, at *1 (Minn. App. Feb. 17, 2009) (stating that "deeming service-of-process and filing requirements to be satisfied based solely on the word of a party stating that the requirements were fulfilled, when the district court record is to the contrary, would compromise the presumptive integrity of court records").[5] Therefore, the district court's finding that Semler did not file an affidavit of good faith is supported by the record, and the district court did not abuse its discretion by determining that this failure prevented Semler's removal from being perfected under rule 521.

II. The district court did not abuse its discretion by denying Semler's motion to amend his statement of claim.

Semler argues that the district court abused its discretion by denying his motion to amend his statement of claim to add a new claim and two additional defendants. We review a district court's amendment decision for an abuse of discretion. *Kelbro Co. v. Vinny's on*

[5] We cite this nonprecedential opinion as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

the River, LLC, 893 N.W.2d 390, 396 (Minn. App. 2017). "Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *rev. denied* (Minn. Oct. 21, 2003).

Under the conciliation court rules, "[a]ny party may amend its statement of claim or counterclaim if, within 30 days after removal is perfected, the party seeking the amendment serves on the opposing party and files with the court a formal complaint conforming to the Minnesota Rules of Civil Procedure." Minn. R. Gen. Prac. 522. The district court denied Semler's motion to amend because "the original claim is being dismissed as improperly removed from conciliation court, [so] there is nothing for the new claim to be amended to." Under the plain language of rule 522, removal must be perfected before a party may amend its statement of claim. *Id.* Because the district court correctly concluded that Semler did not perform all of the requirements to perfect removal, the district court did not abuse its discretion by denying Semler's motion to amend.[6]

Affirmed.

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[6] Semler raises additional arguments directly challenging the conciliation court's order. Semler argues that the conciliation court erred because (1) Minnesota Statutes section 3.7381 did not apply to Semler's claim because the property was not lost, stolen, or damaged; (2) the compliance officer was not authorized to represent respondents in the conciliation court proceedings; and (3) the conciliation court was biased by sua sponte dismissing Semler's claim prior to the hearing. These arguments are outside the scope of this appeal because to appeal a conciliation court order, the aggrieved party must perfect removal, which did not occur here. *See McConnell v. Beseres*, 358 N.W.2d 113, 114 (Minn. App. 1984) (stating that a conciliation court order is not directly appealable to the court of appeals).