STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1328

John Puetz,
Appellant,

vs.

Vernon Sechriest, II,
Respondent.

Filed April 28, 2025
Affirmed
Halbrooks, Judge[*]

Hennepin County District Court
File No. 27-CV-24-144

Brian K. Lewis, Francis White Law, PLLC, Woodbury, Minnesota (for appellant)

Jennifer S. Bovitz, Bassford Remele, Minneapolis, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

On appeal from the dismissal of his medical-malpractice claim, appellant argues that the district court erred in determining that his summons and complaint were not properly served on respondent within the applicable statute-of-limitations period. He

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

contends that respondent waived service of process under Minn. R. Civ. P. 4.05 by sending an email acknowledging receipt of the summons and complaint and that, even if service of process was ineffective, the statute of limitations was tolled during the pendency of another action appellant commenced in federal court. Because service of process was not effective and the applicable statute of limitations was not tolled by the federal action, we affirm.

FACTS

On January 2, 2020, respondent Dr. Vernon Sechriest, II, performed a total knee replacement on appellant John Puetz. At the time of the surgery, Dr. Sechriest served as the Chief of Orthopedics at the Veterans Administration Medical Center (VA) in Minneapolis. Puetz claims that, as a result of Dr. Sechriest's alleged malpractice, he suffered a tibial facture and plantar fasciitis. According to Puetz, he discovered these injuries approximately ten days after the surgery was performed. After his immediate postoperative recovery, Puetz declined to utilize the VA because he "does not believe their services are medically adequate and/or staffed appropriately."

In November 2022, Puetz brought an action against the United States under the Federal Tort Claims Act, alleging medical negligence by the VA. The federal district court dismissed Puetz's action for lack of subject-matter jurisdiction and, in April 2024, the Eighth Circuit Court of Appeals affirmed. *Puetz v. United States*, No. 23-2710, 2024 WL 1739442, at *1 (8th Cir. Apr. 23, 2024).

On January 2, 2024, in an effort to commence this action, Puetz mailed a summons and complaint to Dr. Sechriest at his current business in California. The complaint asserted

a medical-malpractice claim against Dr. Sechriest in connection with the knee surgery, and sought "[c]ompensatory damages . . . in the amount of $10,000,000."

Puetz's complaint was not accompanied by a waiver-of-service-of-process form for Dr. Sechriest to sign and return as required by Minn. R. Civ. P. 4.05(a). And Dr. Sechriest never signed and returned a form waiving his right to be served with process. But after receiving the complaint, Dr. Sechriest sent an email to Puetz's counsel on January 9, 2024, acknowledging that he received the "letter of summons" and stating that he "appreciate[d] the importance" of responding to the complaint.

Dr. Sechriest moved to dismiss Puetz's complaint under Minn. R. Civ. P. 12.02(d)-(e), because (1) Puetz failed to effectively serve Dr. Sechriest with process and (2) Puetz's failure to effectively serve Dr. Sechriest results in Puetz's claim being barred by the four-year statute of limitations applicable to medical-malpractice claims. The district court granted the motion, determining that Puetz "did not strictly comply with [r]ule 4.05" because the summons and complaint that Puetz sent Dr. Sechriest "did not include a written notice and request that [Dr. Sechriest] waive personal service and stating the date the notice and request were sent." As such, the district court concluded that Puetz failed to effectively serve Dr. Sechriest with process. The district court also determined that, "pursuant to the single act exception to the termination-of-treatment rule," Puetz's claim "accrued on January 2, 2020, or within 'several days' thereafter." As a result, the district court

determined that Puetz's claim is now time-barred under the four-year statute of limitations applicable to medical-malpractice claims.[1] This appeal follows.

DECISION

I.

Puetz challenges the dismissal of his claim for ineffective service of process. Whether service of process was effective and a district court has personal jurisdiction over a defendant are questions of law that we review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

Proper service of process is a fundamental requirement of commencing a lawsuit. *Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956). Unless a plaintiff adequately serves a defendant under rule 4 of the Minnesota Rules of Civil Procedure, a district court cannot exercise personal jurisdiction over the defendant. *Wick v. Wick*, 670 N.W.2d 599, 604 (Minn. App. 2003); *see McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016) ("[S]ervice of process is the means by which a court obtains personal jurisdiction over a defendant . . . .").

Service may be made in person, Minn. R. Civ. P. 4.03, or by publication, Minn. R. Civ. P. 4.04. Alternatively, a plaintiff may request that personal service of a summons be waived. Minn. R. Civ. P. 4.05. Under rule 4.05, the notice and request to waive personal service must:

[1] The district court also granted Dr. Sechriest's separate motion for an order striking Puetz's complaint, concluding that, "in violation of Minnesota law, the [c]omplaint alleges damages in the amount of $10,000,000." That issue is not before us on appeal.

> (1) be in writing and be addressed:
> (A) to the individual defendant; or
> (B) for a defendant subject to service under Rule 4.03(b)-(e) to the agent authorized to receive service;
> (2) be accompanied by a copy of the complaint, two copies of Form 22B[2] or a substantially similar form, and a prepaid means for returning a signed copy of the form;
> (3) inform a defendant, using Form 22B or a substantially similar form, of the consequences of waiving and not waiving service;
> (4) state the date when the request is sent;
> (5) give a defendant 30 days after the request was sent—or 60 days if sent to a defendant outside the United States—to return the waiver; and
> (6) be sent by first-class mail or other reliable means.

Minn. R. Civ. P. 4.05(a). If a plaintiff files a waiver of service signed by the defendant, proof of service is not required, and the matter proceeds as if process had been served on the date the waiver was signed. Minn. R. Civ. P. 4.05(d).[3]

When a waiver is requested by mailing the complaint, it is often known by the common, but erroneous, term "service by mail." *See* Minn. R. Civ. P. 2018 advisory comm. cmt. (stating that, prior to the 2018 amendments, rule 4.05 "created the illusion that valid service could be accomplished by U.S. Mail"). Indeed, caselaw construing rule 4.05 prior to its 2018 amendment referred to the procedure contemplated by the rule as "service by mail." *See, e.g.*, *Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016) (stating that rule 4.05 "covers 'Service by Mail'"); *Kokosh v. $4657.00 U.S. Currency*, 898 N.W.2d

[2] "Form 22B" is part of the appendix to the Minnesota Rules of Civil Procedure and is entitled "Waiver of Service of Summons." Minn. R. Civ. P., Form 22B.

[3] In 2018, rule 4.05 was "completely revamped to replace the somewhat unreliable procedure relying on the 'Acknowledgement of Service' form with a more straightforward procedure . . . relying on a 'Waiver of Service' form." Minn. R. Civ. P. 4.05 2018 advisory comm. cmt.

284, 288 (Minn. App. 2017) (referring to service of process under rule 4.05 as "service by mail"), *rev. denied* (Minn. Aug. 8, 2017). But in *Melillo*, the supreme court considered whether service of process was accomplished after the plaintiff attempted to complete service of process on the defendant by sending the defendant certified mail, which included a delivery receipt. 880 N.W.2d at 863. The supreme court indicated that the plaintiff did not satisfy the requirements of rule 4.05 because, "[m]ost importantly," the defendant "did not receive or return the required acknowledgement of service." *Id.* at 864. The supreme court then distinguished personal service—which is governed by rule 4.03—and waiving service by mail—which is governed by rule 4.05. *Id.* The court concluded that service of process by certified mail is insufficient under either rule, and explained, "[t]o state the obvious: service by mail is not personal service, and personal service is not service by mail." *Id.*

Puetz agrees "that *Melillo* is instructive" and "concedes that, had [Dr. Sechriest] not emailed an acknowledgment . . . , stating specifically that he understood he had [21] days to respond, and acknowledging receipt of the summons, [Puetz] would have no legs to stand on in contesting defective service." But Puetz asserts that *Melillo* is distinguishable from this case because, unlike in *Melillo*, where the "responding party never received, much less acknowledged, service," Dr. Sechriest here "cured any potential defects" by emailing Puetz's attorney, acknowledging receipt of the summons. He contends that because Dr. Sechriest emailed Puetz's attorney acknowledging receipt of the summons substantial compliance with the rules of civil procedure was established. And Puetz argues

that, because "[s]ubstantial compliance with the rules is the minimum" requirement, service of process was effective.

We are not persuaded. Caselaw addressing rule 4.05 consistently states that strict compliance with the rule is required. *See, e.g.*, *Kokosh*, 898 N.W.2d at 288 (stating that service pursuant to rule 4.05 "requires strict compliance and is not effective if the acknowledgment is not signed and returned"); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 650 (Minn. App. 2002) (acknowledging the "general rule that service of process must strictly comply with rule 4 of the rules of civil procedure); *Coons v. St. Paul Cos.*, 486 N.W.2d 771, 776 (Minn. App. 1992) ("Rule 4.05 requires strict compliance to procedure in order to perfect service."). And in the absence of a signed and returned acknowledgment, proof of actual receipt and actual notice of the lawsuit is not sufficient to establish effective service. *See, e.g.*, *Coons*, 486 N.W.2d at 775-76. Although these cases address the version of rule 4.05 in effect before the 2018 amendment, Puetz cites no caselaw indicating that strict compliance with rule 4.05 is no longer required.

Here, it is undisputed that Puetz sent the summons and complaint by first-class mail as required by rule 4.05(a)(6). But it is also undisputed that Puetz failed to include (1) a written notice and request that Dr. Sechriest waive personal service, containing the date when the request was sent, as required by rule 4.05(a)(1), (4); (2) two copies of Form 22B, or a substantially similar form, and a prepaid means for returning a signed copy of the form, as required by rule 4.05(a)(2); (3) a copy of Form 22B, or substantially similar form, informing Dr. Sechriest of the consequences of waiving and not waiving service, as required by rule 4.05(a)(3); and (4) notice to Dr. Sechriest that he had 30 days to return the

waiver after the request was sent, as required by rule 4.05(a)(5). Moreover, it is undisputed that Dr. Sechriest never signed and returned the requisite waiver-of-service form. This undisputed record shows that strict compliance with rule 4.05(a) was not established. In fact, the undisputed record demonstrates that substantial compliance with rule 4.05(a) was not established. Thus, the district court did not err in determining that Puetz failed to effectively serve Dr. Sechriest with process.

II.

Puetz also challenges the district court's decision that his claim is barred by the applicable statute of limitations. A medical-malpractice claim must be commenced within four years from the date the cause of action accrued. Minn. Stat. § 541.076(b) (2024). In Minnesota, actions are commenced through service of the summons and complaint. Minn. R. Civ. P. 3.01. A claim brought outside of the statute of limitations is barred. *See Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. App. 1987) (holding that dismissal on the basis of the statute of limitations is proper if it is clear from the face of the complaint that the statute of limitations has run), *rev. denied* (Minn. June 30, 1987). "[T]he construction and applicability of a statute of limitation or repose is a question of law subject to de novo review." *State Farm. Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

Generally, medical-malpractice actions in Minnesota accrue when "the physician's treatment for a particular condition ceases"; this is known as the termination-of-treatment rule. *Doyle v. Kuch*, 611 N.W.2d 28, 31 (Minn. App. 2000) (quotation omitted)). There is an exception, however, "where there is a single act of allegedly negligent conduct." *Id.*

This exception applies only "when the alleged tort consists of (1) a single act; (2) which is complete at a precise time; (3) which no continued course of treatment can either cure or relieve; and (4) where the plaintiff is actually aware of the facts upon which the claim is based." *Id.* When the single-act exception applies, "the statute of limitations begins to run at the time the plaintiff sustains damage from the act." *Id.*

Here, Puetz's claim relates to alleged malpractice that occurred on January 2, 2020. Puetz acknowledges that, after the alleged malpractice occurred, no continued treatment could cure or relieve it, and he admits that he was aware of his injuries several days after the surgery. Indeed, Puetz's complaint acknowledges that his "cause of action arose on January 2, 2020." Based on these facts, the district court determined that the single-act exception applies and, pursuant to this rule, Puetz's claim "accrued on January 2, 2020, or within 'several days' thereafter." The district court then concluded that, because Puetz "did not serve [Dr. Sechriest] with process by January 2, 2024, or 'several days' thereafter," Puetz's claim is now time-barred.

Puetz does not challenge the district court's determination that the single-act exception applies, or that his cause of action accrued on January 2, 2020, or within several days thereafter. Instead, he contends that the district court erred in determining that his action was time-barred because the "statute of limitations has been tolled through the filing and litigation of the Federal Tort Claims Act lawsuit that was pending before the United States Court of Appeals for the Eighth Circuit."[4]

[4] The district court acknowledged Puetz's argument "that the limitations period applicable to his claim against [Dr. Sechriest] was and remains tolled during the pendency of his

Puetz's argument is unavailing. There is caselaw stating that "[c]ommencement of an action tolls the statute of limitation during the action's pendency so long as the action is prosecuted to final judgment." *Sherek v. Indep. Sch. Dist. No. 699*, 464 N.W.2d 582, 584 (Minn. App. 1990), *rev. denied* (Minn. Feb. 20, 1991); *see DeMars v. Robinson King Floors*, 256 N.W.2d 501, 505 (Minn. 1977) (stating that the commencement of an action arrests the running of the applicable statute of limitations); *see also Holmgren v. Isaackson*, 116 N.W. 205, 206 (Minn. 1908) (stating that the statute-of-limitations period is suspended during the commencement of an action so long as the action is "prosecuted to final judgment"). But "if a claim is dismissed without a determination on the merits, the result is the same as if it had never been filed and the statute of limitations had never been tolled." *DeMars*, 256 N.W.2d at 505.

Here, Puetz filed an action in federal district court under the Federal Tort Claims Act on November 9, 2022. *See Puetz v. United States*, No. 22-CV-02870, 2023 WL 4186574, at *3 (D. Minn. June 26, 2023), *aff'd* (8th Cir. Apr. 23, 2024). But that action was dismissed without prejudice based on lack of subject-matter jurisdiction, and the Eighth Circuit Court of Appeals affirmed. *Puetz*, 2024 WL 1739442, at *2. Dismissal for lack of subject-matter jurisdiction is not a determination on the merits.

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separate federal lawsuit against the United States." But the court concluded that Puetz's claim against Dr. Sechriest is time-barred without addressing this argument. Because Puetz's argument presents a question of law that we review de novo, it makes no difference to our analysis that the district court did not address Puetz's tolling argument. *See Woehrle v. City of Mankato*, 647 N.W.2d 549, 551 n.2 (Minn. App. 2002) (reviewing legal question not addressed by the district court because legal questions are reviewed de novo), *rev. denied* (Minn. Sept. 17, 2002).

State Bd. Of Med. Exam'rs v. Olson, 206 N.W.2d 12, 18 (Minn. 1973) ("If the court lacks jurisdiction over the subject matter, it never reaches the merits of the case.").

Because Puetz's federal court action was dismissed without a determination on the merits, the federal court action was never considered to have been filed, and the statute-of-limitations period was never considered to be tolled. *See DeMars*, 256 N.W.2d at 505 (stating that "if a claim is dismissed without a determination on the merits, the result is the same as if it had never been filed and the *statute of limitations had never been tolled*" (emphasis added)); *see also Holmgren*, 116 N.W. at 206. As such, Puetz's claim is barred by the applicable statute of limitations. We, therefore, conclude that the district court did not err by granting Dr. Sechriest's motion to dismiss.

Affirmed.