STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0842

Portfolio Recovery Associates, LLC,
Respondent,

vs.

Bradley C. Johnson,
Appellant,

Karol M. Johnson,
Defendant.

Filed January 13, 2020
Affirmed
Randall, Judge[*]

Carver County District Court
File No. 10-CV-18-688

Anita Sunde, Rodenburg Law Firm, Fargo, North Dakota (for respondent)

Bradley C. Johnson, Chanhassen, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Slieter, Judge; and Randall, Judge.

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

U N P U B L I S H E D O P I N I O N

RANDALL, Judge

Pro se appellants Bradley and Karol Johnson challenge the district court's order granting summary judgment on their credit card debt, arguing that the district court (1) erred by denying their motion to dismiss for improper service of process; (2) abused its discretion by denying their petition for change of venue; (3) erred by granting respondent Portfolio Recovery Associates, LLC (PRA) summary judgment on the merits; (4) erred by dismissing the Johnsons' cross-motion for fraud; and (5) violated their due-process rights. We affirm.

FACTS

PRA holds the right to collect on $26,940.60 of credit card debt Brad and Karol Johnson incurred. PRA personally served a complaint on both Johnsons on February 2, 2018, and again on December 27, 2018. The Johnsons deny the debt and submitted a counterclaim for "fraud upon the Court," in reference to allegedly never validly being served. The Johnsons then filed a motion to dismiss for improper service of process and a petition for change of venue. PRA filed a motion for summary judgment on the merits and a motion to dismiss the Johnsons' counterclaim.

The district court denied the Johnsons' motion to dismiss for improper service and petition for change of venue, and granted PRA's motion for summary judgment, awarding PRA judgment in the amount of $27,365.60 (the $26,940.60 owed plus costs and disbursements of $425.00). The district court also granted PRA's motion for summary

judgment on the Johnsons' counterclaim that plaintiff's actions regarding service of the summons and complaint constitute fraud upon the court. This appeal follows.

D E C I S I O N

I.

"Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo. But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

An action commences in Minnesota when the plaintiff serves the summons and complaint upon the defendant. Minn. R. Civ. P. 3.01(a), 3.02. A plaintiff may serve process "upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein." Minn. R. Civ. P. 4.03. "[W]hen service of process is challenged, the plaintiff must submit evidence of effective service." *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016). Once plaintiff provides such evidence, the burden shifts to the defendant to show that the service was improper. *Drews v. Federal Nat. Mortg. Ass'n*, 850 N.W.2d 738, 743 (Minn. App. 2014).

The Johnsons argue that the February service was invalid because PRA served their autistic son who was under full guardianship, and as such, an improper recipient of service. PRA provided affidavits from its process server certifying personal service upon both Mr. and Mrs. Johnson. The Johnsons' allegation of improper service raises a factual dispute because they claim PRA served their autistic son whereas PRA states that it served a man

and a woman. We defer to the district court's findings of fact unless they are clearly erroneous. *Shamrock*, 754 N.W. 2d at 382. Here, the district court dismissed the Johnsons' motion to dismiss for improper service of process and found that their affidavit failed to provide clear and convincing evidence that the February 2018 service was improper. This finding is supported by the record.

The Johnsons next argue that the December 2018 service was improper because an attorney no longer employed by the law firm representing PRA signed the summons and complaint. The Johnsons do not dispute being personally served in December 2018. The district court rejected this argument because "[p]laintiff is represented by the firm, not the individual attorney, and whether the attorney signing the [s]ummons and [c]omplaint remains employed by the firm has no bearing on the validity of Plaintiff's claims." The Johnsons fail to provide any authority to support their proposition that service is ineffective if the attorney who signed the summons and complaint leaves the firm representing the party. In fact, the rules require only that the summons "be subscribed by the plaintiff or by the plaintiff's attorney." Minn. R. Civ. P. 4.01. The rules do not require an attorney to remain with the law firm from the time of service to the conclusion of the lawsuit. This theory of statutory interpretation cannot be accurate. It creates an absurd result. *See State v. Selseth*, 933 N.W.2d 541, 544 (Minn. App. 2019) ("[C]ourts should construe a statute to avoid absurd results and unjust consequences.") (quotation omitted).

The district court did not err. The Johnsons fail to meet their burden to show that the December service was improper. *See Drews*, 850 N.W.2d at 743.

The Johnsons, again incorrectly assuming that PRA did not properly serve them, argue that the complaint is invalid and that it should be dismissed with prejudice because it contained legal and factual errors. The district court correctly determined that PRA properly served the Johnsons, nullifying the Johnsons' arguments of invalidity and prejudice. We conclude that the district court properly denied the Johnsons' motion to dismiss for improper service of process.

II.

We review a district court's decision on a petition for change of venue for an abuse of discretion. *VanHercke v. Eastvold*, 405 N.W.2d 902, 904 (Minn. App. 1987). Moreover, we will not reverse a district court's decision of whether to recuse itself absent a clear abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

Minn. Stat. § 542.11 (2018) allows a change of venue in two relevant instances: (1) when an impartial trial cannot be held in the county; and (2) when a different venue promotes the convenience of witnesses and the ends of justice. A party seeking a change of venue has the burden of establishing the necessity of such a change. *VanHercke*, 405 N.W.2d at 904.

The Johnsons argue that the courts in Carver County are untrustworthy and biased. The Johnsons allege that the presiding judge is prejudiced and unfair because (1) he signed the guardianship order for their mentally incapacitated son but then allowed for him to be served; and (2) at trial he could not answer whether a person under full guardianship could

properly be served. The district court found no basis in the Johnsons' assertions and properly denied their petition for change of venue.

The Johnsons failed to meet their burden to show the impossibility of an impartial trial in Carver County. The record shows that PRA properly served the Johnsons and not their incapacitated son; and a district court judge's inability to immediately answer a specific legal question without first being briefed on that question does not imply an inability to be fair. All of the Johnsons' allegations of bias were vague and conclusory. There is no reason for recusal.

The Johnsons also appear to suggest that changing the venue would promote the ends of justice because a past unfavorable outcome of an unrelated case litigated in Carver County "proves" that Carver County judges are dishonest and unfair. The Johnsons fail to demonstrate why this prior, unrelated case is relevant to changing the venue in this case. In sum, the district court properly denied the Johnsons' petition for change of venue because they failed to establish the statutory conditions.

III.

We review a district court's summary-judgment decision de novo and determine whether the district court properly applied the law and whether genuine issues of material fact preclude summary judgment. *See Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). A district court shall grant summary judgment if "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Initially, the moving party possesses the burden to show no genuine issue of material fact exists.

Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). A material fact is one that will affect the result or outcome of the case. *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976). We view the evidence in the light most favorable to the party against whom the court granted summary judgment. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W. 2d 72, 76-77 (Minn. 2002). If the moving party satisfies its burden to show the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to show the existence of a genuine issue of material fact. *Bixler v. J.C. Penney Co., Inc.*, 376 N.W.2d 209, 215 (Minn. 1985). If the nonmoving party fails to present specific facts indicating the existence of a genuine issue of material fact, summary judgment is proper. *Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).

The Johnsons argue that the district court erred in granting PRA's motion for summary judgment because the case was not properly before the court. The district court granted PRA's motion for summary judgment because PRA provided affidavits showing that the Johnsons owed the debt and they failed to present any specific facts showing that there was a genuine issue for trial. In fact, the Johnsons submitted no evidence disputing PRA's claim that they incurred and owed the credit card debt. *See Meagher v. Kavli*, 88 N.W.2d 871, 879 (Minn. 1958) (finding an account statement established if submitted into evidence without objection). The Johnsons made only procedural arguments. They never reached the merits of the underlying case. PRA demonstrated, without contradiction, that they were entitled to summary judgment as a matter of law and that there were no material facts in dispute. The district court properly granted summary judgment in favor of PRA on the underlying credit card debt.

IV.

We review a district court's decision to grant a motion for summary judgment de novo. *Riverview*, 790 N.W.2d at 170. Claims of fraud or mistake must be stated with particularity. Minn. R. Civ. P. 9.02. Pleading with particularity requires pleading the facts underlying each element of the fraud claim. *Hardin Cty. Sav. Bank v. Hous. & Redev. Auth. of City of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012).

The Johnsons make non-specific arguments in support of their fraud allegation, stating only "[c]osts and punitive award for [f]raud upon the Court." The Johnsons did not allege any facts that would support their fraud claim. The district court properly granted PRA's motion for summary judgment on the Johnsons' fraud counterclaim.

V.

Whether a district court violated a party's procedural due-process rights is a question of law, which this court considers de novo. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004). "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976). The Minnesota Constitution provides due-process protection equivalent to that guaranteed under the Constitution of the United States. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

The Johnsons argue that the district court violated their procedural due-process rights by prematurely granting PRA's motion for summary judgment and allowing the case to proceed without proper service of process. The Johnsons identify the validity of service

and the appropriateness of any Carver County judge presiding over the case as unresolved material facts. These "material facts" do not concern the merits. Instead, they pertain to the Johnsons' motion for dismissal for insufficient service of process and petition for change of venue, which we have already addressed.

The Johnsons also argue that the district court violated their procedural due-process rights because it decided issues of fact in its ruling on PRA's motion for summary judgment. The district court did not decide any material fact. It merely catalogued the uncontroverted record that PRA built. None of the Johnsons' claims have merit. The district court did not violate their procedural-due-process rights.

Affirmed.