STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0551

Living Word Christian Church,
Appellant,

vs.

Church Mutual Insurance Company,
Respondent.

Filed December 21, 2020
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-19-10884

Timothy D. Johnson, Alexander M. Jadin, Anthony A. Remick, Smith Jadin Johnson, P.L.L.C., Bloomington, Minnesota (for appellant)

Christian A. Preus, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Cleary, Judge.*

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

JOHNSON, Judge

The plaintiff attempted to commence this action by serving the defendant with a summons and a complaint from a different case. The caption of the summons and the

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

complaint named a different plaintiff and a different defendant. The allegations in the complaint described a set of facts that are unrelated to the parties to this action. The defendant moved to dismiss, and the district court granted the motion. We conclude that the summons and complaint are fatally defective such that process is insufficient. Therefore, we affirm.

FACTS

On June 11, 2017, the Living Word Christian Center[1] sustained hail damage to its property. Living Word submitted a claim to its insurer, Church Mutual Insurance Company, which paid Living Word more than $600,000 in insurance benefits. But Church Mutual denied the claim in part. Living Word sought a voluntary resolution of the denied part of the claim, but the parties did not reach an agreement within the policy's two-year limitation period.

On June 11, 2019, Living Word attempted to commence this action against Church Mutual by serving process on the commissioner of commerce, as permitted by statute. *See* Minn. Stat. § 45.028, subd. 2 (2018). Living Word's attorney mailed to both the commissioner and to Church Mutual an envelope that included five documents: (1) a summons captioned *Lindsay Can-Am Limited Partnership v. Liberty Mutual Insurance Company*; (2) a complaint captioned *Lindsay Can-Am Limited Partnership v. Liberty*

[1]The case caption in the district court identified appellant as "Living Word Christian Church." But appellant is identified in its appellate brief as "Living Word Christian Center." The caption of this opinion conforms to the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. But we use appellant's preferred name throughout the body of the opinion.

Mutual Insurance Company, which described a property not owned by Living Word and not insured by Church Mutual; (3) an affidavit of compliance with the substituted-service requirements, also captioned *Lindsay Can-Am Limited Partnership v. Liberty Mutual Insurance Company*; (4) a cover letter addressed to Liberty Mutual Insurance Company concerning an action captioned *Lindsay Can-Am Limited Partnership v. Liberty Mutual Insurance Company*; and (5) a cover letter addressed to "Church Mutual Insurance Company c/o Minnesota Department of Commerce" concerning an action captioned *Living Word Christian Center v. Church Mutual Ins. Co.*

On July 23, 2019, an attorney representing Church Mutual telephoned Living Word's attorney to say that Church Mutual had received documents concerning a case against Liberty Mutual Insurance Company but had not received a summons and complaint concerning a case against Church Mutual. The next day, Living Word's attorney sent an e-mail message to Church Mutual's attorney and attached the same documents that had been erroneously sent by mail. On July 27, 2019, Living Word filed with the district court administrator a summons and complaint bearing the caption of this action.

In September 2019, Church Mutual moved to dismiss. Living Word opposed the motion. After a hearing, the district court granted the motion, reasoning that Living Word did not properly effect service of process and that the two-year limitation period had expired. Living Word appeals.

D E C I S I O N

Living Word argues that the district court erred by granting Church Mutual's motion to dismiss. We note at the outset that both parties describe the central issue in terms of

service of process. The issue is more appropriately described in terms of *process* itself. A motion to dismiss may be based on insufficient process or insufficient service of process. *See* Minn. R. Civ. P. 12.02(c) & (d). But the district court's reasons for dismissing the action are based on the documents themselves, not the manner in which they were served. Thus, we will confine our analysis to paragraph (c) of rule 12.02, which concerns sufficiency of process, and the caselaw that flows from that paragraph of the rule.

If a defendant moves to dismiss for insufficient process pursuant to rule 12.02(c), the first question is whether process is defective. *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 266-67 (Minn. 2016). If process is not defective, the motion must be denied. If process is defective, the next question is whether it is fatally defective. *Id.* at 267-69; *Tharp v. Tharp*, 36 N.W.2d 1, 3 (Minn. 1949). If process is fatally defective, it is void, and a motion to dismiss must be granted. *Tharp*, 36 N.W.2d at 2-4 (interpreting Minn. Stat. § 543.02 (1946)). If process is not fatally defective, it may be cured by an amendment. *DeCook*, 875 N.W.2d at 267-69; *Nelson v. Glenwood Hills Hosps., Inc.*, 62 N.W.2d 73, 78 (Minn. 1953); *Tharp*, 36 N.W.2d at 3. If a plaintiff seeks to amend process, the final question is whether the district court has erred in its ruling on the motion. *DeCook*, 875 N.W.2d at 269. A district court "in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby." Minn. R. Civ. P. 4.07.

This court applies a *de novo* standard of review to a district court's application of the rules of civil procedure concerning sufficiency of process. *DeCook*, 875 N.W.2d at

266. We apply an abuse-of-discretion standard of review to a district court's ruling on a motion to amend process. *Id.* at 269; *Nelson*, 62 N.W.2d at 80.

A.

We begin by asking whether the process served on Church Mutual is defective. *See DeCook*, 875 N.W.2d at 266-67. Because Living Word attempted to serve process pursuant to a statute authorizing substituted service, we refer to that statute:

> Service of process . . . may be made by . . . sending a copy of the process to the commissioner by certified mail, and is not effective unless: (1) the plaintiff . . . sends notice of the service and a copy of the process by certified mail to the defendant . . . ; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

Minn. Stat. § 45.028, subd. 2 (2018). The statute itself does not define the term "process" or specify any particular requirements for process that is served pursuant to the statute. *See* Minn. Stat. § 45.011 (2018) (defining four terms but not "process"). But the supreme court has stated that "a plaintiff serving process under [section 45.028,] subdivision 2 commences litigation by providing the Commissioner of Commerce with a copy of the summons and complaint." *Meeker v. IDS Prop. Cas. Ins. Co.*, 862 N.W.2d 43, 47 (Minn. 2015). Thus, the "process" that is required by section 45.028, subdivision 2, is a summons and a complaint.[2] This meaning is consistent with the rules of civil procedure, which

[2]Living Word contends that a summons is not process. It quotes *Nelson*, in which the supreme court stated that "a summons is not a process and constitutes merely a notice to defendant that an action has been commenced and, if no defense is offered or made, a default judgment will be taken against him who is in default." 62 N.W.2d at 78. The *Nelson* court continued by noting, "Of course, where particular statutes use the phrase 'service of process' it has been deemed necessary to hold that a summons constitutes

require a plaintiff commencing a civil action to serve a summons on a defendant, Minn. R. Civ. P. 3.01(a); require a complaint, Minn. R. Civ. P. 7.01; and require that the complaint "be served with the summons," Minn. R. Civ. P. 3.02. In addition, the supreme court's application of the rules of civil procedure illustrates that "process" generally consists of a summons and a complaint. *See, e.g.*, *DeCook*, 875 N.W.2d at 268; *Walker Emp't Serv., Inc. v. Swanson*, 154 N.W.2d 823, 824 (Minn. 1967); *Nelson*, 62 N.W.2d at 78.

To determine whether the summons and complaint are defective, we refer to the rules of civil procedure, which apply "in the absence of a clear intention to the contrary." *See Meeker*, 862 N.W.2d at 46 (quotation omitted). The required form of a summons is prescribed by rule:

> The summons shall state the name of the court and *the names of the parties*, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the state where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

Minn. R. Civ. P. 4.01 (emphasis added).

Similarly, the required form of a complaint is prescribed by rule:

> Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, the court file number if one has been assigned, and a designation as in Rule 7, and, in the upper right-hand corner, the appropriate case type . . . . *In the complaint,*

process under those statutes." *Id.* at 77. We need not attempt to reconcile *Nelson* with later supreme court opinions. We need only observe that the *Meeker* court stated that "service of process" pursuant to section 45.028, subdivision 2, is achieved if a plaintiff properly serves a summons and a complaint. 862 N.W.2d at 47.

> *the title of the action shall include the names of all the parties*, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties. A party may be identified by initials or pseudonym only where authorized by law or court order.

Minn. R. Civ. P. 10.01 (emphasis added). In addition, a complaint "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. The purpose of the complaint is to "'give fair notice to the adverse party of the *incident* giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based.'" *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (quoting *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963) (emphasis added in *Walsh*)).

In this case, the summons that was served on Church Mutual does not properly "state . . . the names of the parties," as required by rule 4.01. Likewise, the complaint that was served on Church Mutual does not properly "include the names of all the parties," as required by rule 10.01. In addition, the complaint does not "contain a short and plain statement of the claim showing that the pleader is entitled to relief," as required by rule 8.01, because the complaint does not allege any facts that are relevant to the dispute between Living Word and Church Mutual, thereby failing to "give fair notice . . . of the *incident* giving rise to the suit." *See Walsh*, 851 N.W.2d at 602 (quotation omitted). The complaint also does not give Church Mutual notice of Living Word's theory or theories of relief. *See id.* The complaint informed Church Mutual of a claim that Lindsay Can-Am was asserting against Liberty Mutual Insurance Company, but that is an altogether different

matter, and Church Mutual cannot be expected to draw inferences from a pleading in a different lawsuit. Thus, the summons and the complaint are defective.

B.

We continue by asking whether the process served on Church Mutual is fatally defective or whether it can be cured by an amendment. *See DeCook*, 875 N.W.2d at 267-69; *Nelson*, 62 N.W.2d at 78; *Tharp*, 36 N.W.2d at 3. We do so by comparing the defect in this case with the defects in prior cases considered by the supreme court.

In *Tharp*, the summons did not inform the defendant that he must respond by serving an answer and did not provide the mailing address of the plaintiff's attorney for that purpose. 36 N.W.2d at 2-3. Instead, the summons directed "the defendant to appear and defend the action in the district court." *Id*. at 3. The supreme court considered whether "the summons is so defective in substance that it must be set aside as fatal to jurisdiction." *Id.* The supreme court concluded, "the summons is fatally defective" because it did "not give defendant the notice which the statute directs should be given" and was "insufficient to inform defendant . . . of the essential matters which the statute requires to be stated in the summons for the purpose of enabling him to answer and defend." *Id*. The supreme court added, "The defect here is more than merely technical and formal, and therefore a mere irregularity; it goes to the substance." *Id*.

In *Nelson*, the summons and complaint misidentified one of the two defendants. 62 N.W.2d at 74-75. The summons and complaint identified the corporate defendant as Glenwood Hills Hospital, Inc., instead of Homewood Hospital, Inc. *Id.* The misidentification was not discovered until mid-trial. *Id.* at 76. The confusion was due in

part to the fact that the two hospitals had an intertwined history and were staffed in part by the same physicians. *Id.* at 74-76, 78. The district court initially dismissed the misidentified defendant but later granted the plaintiff's motion to amend the complaint by substituting the proper defendant. *Id.* at 76. The supreme court affirmed that ruling, reasoning that the proper corporate defendant and its officers were "fully informed as to the circumstances of the action, . . . even though an amendment is necessary to correct a misnomer." *Id.* at 78.

In *DeCook*, the summons and complaint were signed by an attorney who was licensed in another state but not licensed in Minnesota. 875 N.W.2d at 265. The supreme court determined that the summons and complaint were defective, *id.* at 266-67, but not fatally defective and, thus, not void, *id.* at 267-69. The supreme court reasoned that the rules should be interpreted "'to avoid defeating an action merely because of technical and formal defects which could not reasonably have misled or prejudiced a defendant.'" *Id.* at 268 (quoting *Nelson*, 62 N.W.2d at 77). The supreme court further reasoned that an action should not be dismissed because of a defect in process if the defendant is "'fully informed as to the circumstances of the action, . . . even though an amendment is necessary to correct' the defect." *Id.* at 268 (quoting *Nelson*, 62 N.W.2d at 78).

In this case, Living Word served Church Mutual with a summons and a complaint that bore a caption for a completely different case, which concerned a different property, a different insurance policy, a different plaintiff, and a different defendant. Church Mutual may or may not have been able to determine that Living Word was attempting to commence an action against it based on the fifth document in the envelope, a cover letter that referred

to both Living Word and Church Mutual. But even if that were so, a cover letter is no substitute for a summons and a complaint. Furthermore, Church Mutual could only speculate about the particular facts that might be alleged in such an action, the theories of relief that might be pleaded, and the relief that might be sought. Such speculation is no basis for preparing and serving an answer to the complaint. The defect in this case is more serious than the defect in *DeCook*, in which the summons and complaint fully described the alleged facts and legal theories, even though the documents were signed by an attorney who was not licensed in Minnesota. *DeCook*, 875 N.W.2d at 269. The defect in this case also is more serious than the defect in *Nelson*, in which the summons and complaint fully described the alleged facts and legal theories but misidentified a corporate defendant. *Nelson*, 62 N.W.2d at 74-75. The defect in *Nelson* was not so serious that the defendant could not answer the complaint, prepare for trial, and actually participate in trial. *Id.* at 75-76. Because the summons and complaint in this case did not allege any facts relevant to the dispute between Living Word and Church Mutual, did not state any of Living Word's legal theories, and did not describe the relief sought by Living Word, the summons and complaint did not allow Church Mutual to be "'fully informed as to the circumstances of the action.'" *See DeCook*, 875 N.W.2d at 268 (quoting *Nelson*, 62 N.W.2d at 78).

Thus, the summons and complaint in this case are fatally defective, which means that they are void and that process is insufficient.

C.

Our conclusion that the summons and complaint are fatally defective is a sufficient basis for affirming the district court's grant of Church Mutual's motion to dismiss. But

even if the defect were not fatal, we would ask whether the defect was cured by an amendment or whether the district court erred by denying a motion to amend process. *See* Minn. R. Civ. P. 4.07; *DeCook*, 875 N.W.2d at 269. Living Word, however, never moved to amend the summons and the complaint. Without any amendment, the summons and complaint remain defective. *See Tharp*, 36 N.W.2d at 3-4. Thus, even if the summons and complaint are not fatally defective, we would conclude that process is insufficient because the defect in the summons and the complaint were not cured by amendments.

In sum, the district court did not err by granting Church Mutual's motion to dismiss.

Affirmed.