STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1549

The Gables at the Reserve Homeowners Association,
Respondent,

vs.

Midwest Family Mutual Insurance Company,
Appellant.

Filed August 30, 2021
Reversed
Reilly, Judge

Hennepin County District Court
File No. 27-CV-20-8009

Alexander M. Jadin, Anthony A. Remick, Smith Jadin Johnson, PLLC, Bloomington, Minnesota (for respondent)

Michael J. Tomsche, Kelly P. Magnus, Tomsche, Sonnesyn & Tomsche, P.A., Golden Valley, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Respondent served a summons and complaint on an office services employee of appellant insurance company. Appellant moved to dismiss the complaint because of insufficiency of service of process under Minnesota Rule of Civil Procedure 4.03(c). The district court found that the office services employee was a managing agent of appellant

and denied appellant's motion. Because we conclude that the district court erred when it found that respondent served a managing agent, we reverse.

FACTS

Respondent Gables at the Reserve Homeowners Association (the homeowners association) owns property in Plymouth, Minnesota, and appellant Midwest Family Mutual Insurance Company (the insurance company) insured the property under a businessowners policy. After the homeowners association reported that the property sustained wind and hail damage, the insurance company assigned an adjuster to inspect the claim. The parties disputed the cause, scope and amount of loss.

In June 2019, the homeowners association tried to initiate a lawsuit against the insurance company by sending a professional process server to the insurance company's office in Des Moines, Iowa. The process server told an office services employee of the insurance company that he had a delivery of documents. The employee asked the process server if she needed to get someone authorized to accept the documents. The process server stated that the employee could accept the documents and handed her the summons and complaint. The process server's affidavit of service specified that the office services employee was a "Managing Agent" of the insurance company and listed her title as "Office Services."

The insurance company moved to dismiss the homeowners association's complaint pursuant to Minn. R. Civ. P. 12.02(d) on the ground of insufficient service of process. The district court determined that the homeowners association properly served a managing agent of the insurance company and denied the motion to dismiss. This appeal followed.

DECISION

The insurance company argues that the homeowners association's service of process was insufficient under Minn. R. Civ. P. 4.03(c). A civil lawsuit begins "when the summons is served upon [the] defendant." Minn. R. Civ. P. 3.01(a). When a corporation is the defendant, as it is here, the summons shall be served "by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons." Minn. R. Civ. P. 4.03(c). When the corporation is a nonresident insurance company, the summons may be served by "leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail." Minn. Stat. § 45.028, subd. 2 (2018), *see also* Minn. Stat. § 60A.19, subd. 3 (2018) (stating that before any insurance company may do business in Minnesota, the corporation shall designate the commissioner as an agent authorized to receive summons). Insufficient service of the summons prevents a district court from exercising personal jurisdiction over the defendant. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477-78 (Minn. 2013); *see also Mercer v. Andersen*, 715 N.W.2d 114, 118 (Minn. App. 2006). When service is insufficient, the claim must be dismissed. *Id.*

If a defendant believes that a plaintiff improperly served the summons, the defendant can move the district court to dismiss the claim for insufficient service of process. Minn. R. Civ. P. 12.02(d). Once a party challenges service of process, the plaintiff must first "submit evidence of effective service" and then the defendant "has the burden of

showing that the service was improper."[1] *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016). Whether service of process was sufficient, and personal jurisdiction therefore exists, is a question of law that appellate courts review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). In doing so, we "apply the facts as found by the district court unless those findings are clearly erroneous." *DeCook*, 875 N.W.2d at 270.

The insurance company argues that the homeowners association failed to serve the summons and complaint in compliance with Minn. R. Civ. P. 4.03(c) because its office services employee was not a managing agent.[2] An individual is a managing agent for purpose of service of process if (1) the individual has "the power to exercise independent judgment and discretion to promote the business of the corporation," or (2) the individual's position is of "sufficient rank or character to make it reasonably certain the corporation would be apprised of the service." *Tullis v. Federated Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997) (quotation omitted).

Here, there is no evidence that the employee fit into either of these categories. As an office services employee, she accepted UPS and FedEx deliveries, sent outgoing mail, and performed other administrative duties. She has never held a management position and there is no record evidence that she could make independent judgments on behalf of the

[1] The district court found that "[o]nce service of process is challenged, the plaintiff has the burden of proving its validity." But it is the defendant that has the ultimate burden of showing invalidity of service.

[2] It is undisputed that the office services employee was not an officer of the company or another type of agent authorized or designated to receive service. Respondent did not serve the commissioner as authorized by statute.

insurance company. Even so, the district court found that the insurance company "entrusts her to send and receive deliveries, which *likely* includes handling sensitive or valuable documents." (Emphasis added.) This finding is clearly erroneous. There is no evidence in the record that shows that the employee handled "sensitive or valuable documents" or that she would timely deliver notice of service to the insurance company. To the contrary, in her affidavit, the employee affirmed that she has "never been authorized to accept service of any legal papers for or on behalf of [the insurance company]." And the employee asked the process server if he needed her "to get someone [from] the company that was authorized to accept such papers."

The district court, however, determined that "as an office services representative entrusted with the receipt of deliveries, the character of [her] position made it reasonably certain that [the insurance company] would be apprised of the service." We disagree. The employee's job responsibilities are akin to the administrative assistant in *Duncan* who the supreme court found not to be a managing agent. *Duncan Elec. Co., Inc. v. Trans Data, Inc.*, 325 N.W.2d 811, 812 (Minn. 1982) (concluding that an administrative assistant was not a managing agent); *see also Miller v. A.N. Webber, Inc.*, 484 N.W.2d 420, 422 (Minn. App. 1992) (concluding that a receptionist was not a managing agent), *review denied* (Minn. June 10, 1992); *Winkel v. Eden Rehab. Treatment Facility, Inc.*, 433 N.W.2d 135, 140 (Minn. App. 1988) (concluding that a staff counselor was not a managing agent). The record does not support the finding that the employee's position made it reasonably certain that the insurance company would be apprised of service. Even if the employee forwarded the summons and complaint to an officer or managing agent, it doesn't matter: a

defendant's actual knowledge of a lawsuit does not subject the defendant to personal jurisdiction absent compliance with the service requirements in Minn. R. Civ. P. 4.03. *Thiele v. Stich*, 425 N.W.2d 580, 584 (Minn. 1988).

The record does not support a finding that service was sufficient under any theory. The employee was not an officer, managing agent, or any other person designated by statute to receive service of the summons. *See* Minn. R. Civ. P. 4.03(c). Thus, the district court clearly erred by finding service was proper.

We conclude that because the homeowners association failed to comply with the requirements of Minn. R. Civ. P. 4.03(c), service of process was insufficient and as a matter of law, the district court did not obtain personal jurisdiction over the insurance company. The district court therefore erred by failing to grant the insurance company's motion to dismiss.

Reversed.