STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0634

Lisa Thielen, et al.,
Appellants,

vs.

Eden Valley Sportsman's Club,
Respondent,

Meeker County Zoning Administration,
Respondent.

Filed March 7, 2022
Affirmed in part and reversed in part
Smith, Tracy M., Judge

Meeker County District Court
File No. 47-CV-20-530

John E. Mack, Joel A. Novak, New London Law, P.A., New London, Minnesota (for appellants)

Gary R. Leistico, Aaron P. White, Jayne E. Esch, Rinke Noonan, Ltd., St. Cloud, Minnesota (for respondent Eden Valley Sportsman's Club)

Scott T. Anderson, Marcus B. Jardine, Rupp, Anderson, Squires & Waldspurger, Minneapolis, Minnesota (for respondent Meeker County)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Respondent Meeker County[1] granted respondent Eden Valley Sportsman's Club a conditional-use permit (CUP) to construct a shooting range. Appellant-neighbors sued the county and the club in district court, seeking declaratory and injunctive relief to invalidate and revoke the CUP and to stop the completion of the shooting range. The district court granted respondents' dispositive motions and dismissed appellants' claims.

Appellants argue that the district court erred by (1) determining that appellants failed to effectively serve the county with process initiating the action; (2) dismissing claims against the county with prejudice, rather than without prejudice, if in fact service was insufficient; and (3) dismissing appellants' claims against the club on the merits. We conclude that the district court properly dismissed appellants' claims against the county for insufficient service of process but erred by dismissing those claims with prejudice. We further conclude that the district court properly dismissed the claims against the club for failure to state a claim. We therefore affirm in part and reverse in part.

FACTS

This is the second action arising out of a dispute over the county's issuance of the CUP to the club. In the first action, some of the appellants in the present matter attempted

[1] The case caption in the district court identifies the county respondent as "Meeker County Zoning Administration." But, as Meeker County explains in its appellate brief, no such entity exists. 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 Meeker County's preferred name throughout the body of this opinion.

to appeal to the district court the county's decision to issue the CUP, as permitted by county ordinances. But, because those parties failed to properly serve the county, the district court dismissed the action, and this court affirmed that decision on appeal. *Kirkpatrick v. Meeker Cnty. Bd. of Comm'rs*, No. A19-0607, 2020 WL 132536, at *1 (Minn. App. Jan. 13, 2020). In affirming, we rejected the argument that "actual notice" to the county sufficed and held that personal service on the appropriate official was required by the rules of civil procedure to constitute service on the county. *Id.*, at *1-3; *see also* Minn. R. Civ. P. 4.03(e)(1).

Following our ruling, appellants initiated this second action. They personally served a summons and complaint on a representative of the club, and they personally served the land-use director of the planning and zoning department of the county.[2] The complaint alleges that the club is in violation of the terms of the CUP and seeks a declaration that the CUP is null and void, injunctive relief prohibiting the club from completing further work on the shooting range, and revocation of the CUP.

Both the county and the club moved for dismissal of the complaint or for summary judgment. The district court granted those motions and dismissed the case. It concluded that appellants did not properly serve the county and dismissed the county from the action. The district court then determined that summary judgment was appropriate because the complaint failed to assert a proper cause of action. The district court further decided that issues regarding the issuance and request for revocation of the CUP were fully litigated in

[2] Appellants also served the owner of the property on which the club was going to operate its shooting range, but the property owner was eventually dismissed from this action by stipulation of the parties.

the first action and that any claims based on those issues were barred by collateral estoppel, and it dismissed claims based on those issues with prejudice.[3]

This appeal follows.

DECISION

I. The district court properly dismissed the county from this action based on insufficient service of process but abused its discretion by dismissing claims against the county with prejudice.

Appellants argue that the district court erred by dismissing the county from the action based on insufficient service of process. They alternatively argue that, if the county was properly dismissed, the district court erred by dismissing claims against the county with prejudice.

A. Appellants did not properly serve the county.

"Whether service of process is effective presents a question of law that we review de novo." *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 606 (Minn. 2016). Ineffective service of a defendant results in a lack of personal jurisdiction. *Tullis v. Federated Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997).

Appellants argue that they sufficiently served the county because they personally served an administrator in the county's zoning administration and the county thus had "actual notice" of the service of process. But, as explained in our decision in the first action arising out of this dispute, under the rules of civil procedure, service on a county must be accomplished by personal service in accordance with Minn. R. Civ. P. 4.03(e)(1). *See*

[3] The district court wrote that "these causes of action shall be dismissed with prejudice." That ruling appears to apply to claims against both the county and the club.

Kirkpatrick, 2020 WL 132536, at *3 (citing *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540 (Minn. 2018)). That rule provides that a defendant county is served by delivery "[t]o the chair of the county board or to the county auditor." Minn. R. Civ. P. 4.03(e)(1). "Actual notice" on the part of the county does not suffice; strict compliance with the procedural rules is required. *See Jaeger*, 884 N.W.2d at 609 ("Rule 4.03 mandates strict compliance with its terms."). Service on the county administrator did not comply with the rule.

Appellants cite *Buysse v. Baumann-Furrie & Co.*, 448 N.W.2d 865 (Minn. 1989), to support their argument that actual notice suffices. They quote this statement in *Buysse*:

> Although the general rule for substitution of defendants is that service is required unless the substitution or amendment is done merely to correct a technicality, . . . we have held that if service of a summons and complaint results in an intended defendant being fully informed of the pendency and nature of the action, the court has acquired jurisdiction over that defendant even despite a misnomer.

Buysse, 448 N.W.2d at 871 (citation omitted). But *Buysse* is inapposite. That case involved a garnishment action, which is a proceeding ancillary to a main action, and dealt with the substitution of a defendant company for an affiliated company that was served pursuant to statute. *See id.* at 867, 870. *Buysse* did not address the initial service of a defendant under Minn. R. Civ. P. 4.03. Moreover, in its later decision in *Jaeger*, the supreme court did address service under rule 4.03, and it emphasized that "service must accord strictly with statutory requirements," rejecting the argument that "actual notice" sufficed. *Jaeger*, 884 N.W.2d at 609 (quotation omitted).

Appellants also argue that they properly served the county because they served a member of a governing body of a public body, which they allege is permitted by Minn. R.

Civ. P. 4.03(e)(5). But rule 4.03(e)(5) refers to defendant public bodies "not hereinabove enumerated." Counties are enumerated in the rule; rule 4.03(e)(1) provides that service of a defendant county must be made on the chair of the county board or the county auditor. That provision controls.

Appellants also complain that the county was "lying in the weeds" prior to bringing its motion and assert that the county should be "estopped from raising the issue of improper service of the summons and complaint." They cite *United States v. Calvert*, 523 F.2d 895, 912 (8th Cir. 1975), to support this proposition. But *Calvert*, a federal criminal case, provides no support for appellants' argument. That case involved a trial court's discretion to exclude rebuttal testimony when it determines that the prosecution has acted unfairly. *Calvert*, 523 F.2d at 912. The case says nothing about a party's prerogative to move to dismiss a civil action for insufficient service of process. And, in any event, appellants do not provide a cogent argument that the county was "lying in the weeds," and the facts suggest the opposite—the county asserted that there was insufficient process in its answer to the complaint.

In sum, the district court correctly concluded that the county had not been properly served with process. It therefore did not err by dismissing the county from the action for lack of personal jurisdiction.

B. The district court abused its discretion in dismissing appellants' claims against the county with prejudice.

Appellants argue that, if dismissal of the county was proper for lack of personal jurisdiction due to ineffective service of process, the district court should not have

addressed the merits of any of the claims against the county and erred by dismissing claims against it with prejudice. The district court dismissed with prejudice appellants' claims against the county that are based "[o]n the issue of the issuance of the CUP and request for revocation." It did so based on collateral estoppel, determining that "the identical issue was previously and fully litigated in 2018 when the Kirkpatricks appealed the County's decision to issue the CUP."

We review a district court's dismissal of a claim with prejudice for an abuse of discretion. *Minn. Humane Soc'y v. Minn. Federated Humane Soc'ys*, 611 N.W.2d 587, 590 (Minn. App. 2000). A district court abuses its discretion if it improperly applies the law. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

"An order of dismissal on procedural grounds runs counter to the primary objective of the law to dispose of cases on the merits." *Firoved v. Gen. Motors Corp.*, 152 N.W.2d 364, 368 (Minn. 1967). When a party is dismissed for ineffective service of process, the proper action is for the court to dismiss the party without prejudice. *Lewis v. Contracting Nw., Inc.*, 413 N.W.2d 154, 156 (Minn. App. 1987); *see also* 1 David F. Herr & Roger S. Haydock, *Minnesota Practice, Civil Rules Annotated* § 12:8 (6th ed. 2021) ("The proper action to be taken by the court, if it finds insufficient service of process, is to dismiss the action without prejudice.").

The county argues that the district court properly considered the merits of the appellants' claims against it following the county's dismissal from the case for insufficient service of process. It cites *Mercer v. Andersen*, 715 N.W.2d 114 (Minn. App. 2006), arguing that it stands for the proposition that an "ineffectively served defendant" "can

invoke the district court's consideration of a non-jurisdictional issue to dismiss the case with prejudice."

In *Mercer*, the district court dismissed the plaintiff's complaint with prejudice on the ground that the statute of limitations had expired, despite the plaintiff's concession that the defendant was insufficiently served with process. *Mercer*, 715 N.W.2d at 117-18. In affirming the district court's decision, this court took great care to note that statutes of limitations are unique, observing that they "are both procedural and substantive" and "an issue separate from subject matter jurisdiction and personal jurisdiction." *Id.* at 119. *Mercer* was specific to a district court's consideration of the statute of limitations and does not stand for the proposition that a court may properly consider the substantive merits of any claim against a party after determining that it lacks personal jurisdiction over the party due to insufficient service of process.

We conclude that the district court erred by considering the merits of appellants' claims against the county and dismissing them with prejudice when the county was properly dismissed for lack of personal jurisdiction.

II. The district court properly dismissed appellants' claims against the club.

Appellants argue that the district court erred by dismissing their claims against the club. They contend that their complaint alleges violations of the terms and conditions of the CUP by the club and that they would be entitled to an injunction against the club if they were able to prove those violations in court.

As an initial matter, we note that the club moved for both a judgment on the pleadings under Minn. R. Civ. P. 12.03 and summary judgment under Minn. R. Civ. P.

56.01. The district court stated that it was applying the summary-judgment standard because it considered matters outside of the pleadings, including the previous action and the CUP. But the district court's grant of summary judgment was based in part on its determination that the complaint fails to state a proper cause of action against the club. That determination does not require consideration of materials beyond the complaint. We thus begin with the question whether the complaint states a claim against the club. We review that question de novo. *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017).

Though appellants argue that they may sue the club directly for allegedly violating the CUP, they do not identify a statutory or common-law cause of action against the club. As the district court properly recognized, the means for seeking enforcement of a CUP is to petition a district court for mandamus against the county or other public entity responsible for enforcing the CUP. Minnesota Statutes section 394.37, subdivision 4 (2020), provides: "Any taxpayer of the county may institute mandamus proceedings in district court to compel specific performance by the proper official or officials of any duty required [by zoning statutes]."[4] Appellants did not bring a mandamus action against the county. And they provide no legal authority to support the proposition that a party may bring an action against a permittee to enforce the terms of a CUP.

Appellants argue, though, that their complaint states a claim because it seeks injunctive relief against the club. The argument is unavailing. "Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist *before* injunctive relief

[4] The district court cited not to this statute but to the general mandamus statute authorizing actions to compel the performance of an official duty, Minn. Stat. § 586.01 (2020).

may be granted." *Smith v. Spitzenberger*, 363 N.W.2d 470, 472 (Minn. App. 1985) (quoting *Ryan v. Hennepin County*, 29 N.W.2d 385, 387 (Minn. 1947)). Appellants' reliance on *Magraw v. Donovan*, 163 F. Supp. 184 (D. Minn. 1958), and *County of Freeborn v. Bryson*, 243 N.W.2d 316 (Minn. 1976), is misplaced. In *Magraw*, the plaintiffs sought injunctive relief as a remedy for their claim under the federal Civil Rights Act, 42 U.S.C. § 1983. *Magraw*, 163 F. Supp. at 185. In *Bryson*, a landowner sought injunctive relief against a county based on its claim under the Minnesota Environmental Rights Act, Minn. Stat. §§ 116B.01-.13 (1974). *Bryson*, 243 N.W.2d at 316-17. In both cases, the parties sought injunctive relief in connection with their statutory claims. Here, appellants have not asserted a statutory claim against the club.

Because appellants' complaint fails to state a claim against the club, the district court did not err by dismissing appellants' claims against the club.

Affirmed in part and reversed in part.