STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0724

Lavonia M. Bell,
Appellant,

Jhonathan J. Robinson,
Appellant,

vs.

681 Properties LLP, et al.,
Respondents,
Minnesota Department of Human Rights,
Respondent.

Filed May 9, 2022
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CV-20-2865

Lavonia M. Bell, Jhonathan J. Robinson, Brooklyn Park, Minnesota (pro se appellants)

Christopher T. Kalla, Douglass E. Turner, Hanbery & Turner, P.A., Minneapolis, Minnesota (for respondents 681 Properties LLP, et al.)

Keith Ellison, Attorney General, Corinne Wright, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Rights)

Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal, self-represented appellants Lavonia Bell and Jhonathan Robinson challenge a district court order (1) denying their motion for default judgment against respondents 681 Properties, LLP (681 Properties), Steven Scott Management, LLC (SSM), Hanbery & Turner, LLC (Hanbery), and the Minnesota Department of Human Rights (MDHR) and (2) granting all respondents' motions to dismiss with prejudice. We affirm.

FACTS

Appellants leased an apartment owned by 681 Properties and managed by SSM. Following many contentious disputes, 681 Properties and SSM evicted appellants. Bell then filed a complaint with MDHR against SSM, alleging that SSM violated their lease agreement when it racially discriminated against appellants sometime before February 19, 2018. MDHR investigated the claim and determined that no probable cause existed to support appellants' racial-discrimination claim. MDHR issued its final no-probable-cause decision on December 30, 2019, and notified Bell in a right-to-sue letter that, under Minnesota Statutes section 363A.33, subdivision 1(2) (2018), she could bring a private civil action against SSM within 45 days.

On February 14, 2020, appellants filed a complaint and summons in district court alleging multiple claims, including violations of the Minnesota Human Rights Act (MHRA), retaliation, defamation, harassment, failure to investigate discrimination claims, and emotional distress. Appellants named 681 Properties, SSM, Hanbery, and MDHR as the defendants. They did not serve the complaint on any respondent at that time.

On March 3 and March 11, 2020, appellants attempted to serve 681 Properties, SSM, and Hanbery by mailing a copy of the summons and complaint to attorney Christopher Kalla. Kalla had represented 681 Properties and SSM in the eviction action. Neither 681 Properties nor SSM had authorized Kalla to accept service of process on their behalf, nor had Hanbery waived personal service. On March 18, the district court issued an order requiring that mediation "must occur before the [district court] will schedule a hearing on a dispositive motion."

On May 11, appellants mailed MDHR and again mailed Kalla their summons and complaint. On May 18, MDHR filed a letter requesting that the district court waive its mediation requirement and giving notice of its intent to file a motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim. MDHR's letter also claimed that appellants' service was ineffective under Minn. R. Civ. P. 4.03(d) but waived personal service. On May 19, 681 Properties, SSM, and Hanbery filed a letter with the district court requesting waiver of its mediation requirement and stating their intent to file a motion to dismiss under rule 12.02(d) and 12.02(e).

Appellants then moved for entry of default judgment, arguing that all respondents failed to answer their complaint within 21 days of service. Following a telephone conference, 681 Properties, SSM, Hanbery, and MDHR moved to dismiss under rule 12.

On October 16, 2020, appellants filed and *attempted* to serve an amended complaint on 681 Properties, SSM, and MDHR, and properly served the amended complaint on Hanbery. All respondents answered by moving to dismiss based on the same grounds as their previous motions. MDHR again waived the issue of ineffective service, but 681

Properties and SSM did not. Hanbery later conceded that service of the amended complaint was effective. On November 13, 2020, appellants again moved for entry of default judgment against all respondents for failure to respond within 21 days.

The district court held a combined hearing on appellants' motions for default judgment and all of respondents' motions to dismiss. The district court denied appellants' motions for entry of default judgment against all respondents and granted all respondents' motions to dismiss with prejudice under rule 12. This appeal follows.

DECISION

As an initial matter, we note that appellants' brief lacks legal citation and argument to support their appeal. Courts have a duty to reasonably accommodate self-represented litigants so long as the adverse party is not prejudiced. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). But we have repeatedly stated that "[self-represented] litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Although appellants' brief is inadequate, we will nevertheless address their claims.

I. The district court did not err by denying appellants' motions for default judgment.

Appellants generally argue that they are entitled to default judgment against all respondents because all respondents failed to serve an answer within 21 days after appellants purportedly served the amended complaint. We are not persuaded.

A party avoids an entry of default judgment against it if it "plead[s] or otherwise defend[s]" the case within 21 days after the petitioner seeking affirmative relief serves its summons and complaint on that party. Minn. R. Civ. P. 55.01; Minn. R. Civ. P. 12.01.

"The decision to grant or deny a motion for a default judgment lies within the discretion of the district court, and this court will not reverse absent an abuse of that discretion." *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005), *rev. dismissed* (Minn. Sept. 28, 2005).

A. The district court did not abuse its discretion by denying appellants' motions for default judgment against 681 Properties and SSM.

Appellants appear to argue that they properly served 681 Properties and SSM because they served a copy of the summons and complaint to Kalla on three occasions: (1) on March 3 and 11, 2020, by mail; (2) on May 11, 2020, again by mail; and (3) on October 16, 2020, by delivering the documents to Kalla. We disagree.

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, a district court cannot exercise personal jurisdiction over the defendant. *Wick v. Wick*, 670 N.W.2d 599, 603 (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. . . ."). And without personal jurisdiction, a district court cannot enter default judgment. *Laymon v. Minn. Premier Props., LLC*, 903 N.W.2d 6, 19 (Minn. App. 2017), *aff'd*, 913 N.W.2d 449 (Minn. 2018).

Undisputedly, 681 Properties is a partnership, and SSM is a corporation. Under rules 4.03(b) and (c), a plaintiff may personally serve a summons and complaint upon a partnership or corporation by delivering a copy to a member or officer, the managing agent, or any other person authorized by the partnership or corporation or by statute to receive service of summons. Alternatively, a plaintiff may send the summons and complaint to a defendant by mail and request that the defendant waive personal service. Minn. R. Civ. P. 4.05. This procedure, if successful, results in waiver of the service requirement, not "service by mail." *Id.*; Minn. R. Civ. P. 4.05 2018 advisory comm. cmt. District courts strictly enforce the waiver requirement of rule 4.05. *See Hughes v. Lund*, 603 N.W.2d 674, 677 (Minn. App. 1999).

We review a district court's findings of facts relevant to service of process for clear error and review its application of the rules of civil procedure de novo. *See Melillo v. Heitland*, 880 N.W.2d 862, 864 (Minn. 2016).

On March 3, March 11, and May 11, appellants mailed a copy of the summons and complaint to Kalla. But service on a party's attorney is ineffective unless the party has appointed the party's attorney as the party's agent for service of process. *Allstate Ins. Co. v. Allen*, 590 N.W.2d 820, 822-23 (Minn. App. 1999). Neither 681 Properties nor SSM authorized Kalla to accept service on their behalf. Nor did they waive service. Finally, although appellants properly delivered the necessary documents to Kalla on October 16, service was still ineffective. 681 Properties and SSM had still not authorized Kalla as their agent for service of process. *Id.* The district court therefore lacked personal jurisdiction over 681 Properties and SSM and did not err by denying entry of default judgment.

B. The district court did not abuse its discretion by denying appellants' motion for default judgment against Hanbery.

Appellants assert that "No motions were filed in this case. [All respondents] failed to plead and defend this case." We disagree.

A party "otherwise defend[s]" a case when they challenge service, move to dismiss, and have, at a minimum, made a rule 12 or other defense motion. *Black*, 700 NW.2d at 526. The district court first noted that appellants' service on Hanbery had not been effective until October 16, 2020, when appellants properly delivered the summons and complaint to Hanbery. But it found that Hanbery had otherwise defended the case well before that date by: (1) filing its May 19, 2020 letter seeking permission to file a motion to dismiss; (2) participating in the parties' July 1 telephone conference; and (3) filing a rule 12 motion to dismiss on July 10.

The record supports those findings. First, for the reasons explained in section I.A. above, appellants' first attempts to serve Hanbery by mail were likewise ineffective. Hanbery conceded that appellants effectively served it on October 16, 2020. But by that point, Hanbery had defended the case many times. Because Hanbery timely defended appellants' complaint, the district court did not abuse its discretion by denying appellants' motion for default judgment against Hanbery.

C. The district court did not abuse its discretion by denying appellants' motion for default judgment against MDHR.

Appellants assert that they properly served MDHR. Because MDHR waived service, we do not analyze whether appellants effectively served MDHR. Instead, the

relevant question is whether MDHR had "otherwise defended" the case within the time allowed by the rules. *See* Minn. R. Civ. P. 55.01.

The district court found that MDHR filed a letter on May 18, 2020, requesting waiver of its mediation requirement and stating its intent to move to dismiss appellants' claims against it. It also found that MDHR participated in the telephone conference on July 1, 2020, and filed a rule 12 motion the next day, all of which occurred before October 16, 2020. Although MDHR had waived service of the original May 11, 2020 complaint, appellants' amended complaint superseded their original complaint by the time the motion for default judgment was brought. Because the record supports the district court's findings, we conclude that the district court did not abuse its discretion by denying appellants' motion for entry of default judgment against MDHR.

II. The district court did not err by dismissing appellants' claims with prejudice.

Appellants challenge the district court's order granting respondents' motions to dismiss. We review a district court's decision on a motion to dismiss de novo and limit our review to whether the complaint sets forth legally sufficient claims for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008).

A. The district court did not err by granting 681 Properties and SSM's motion to dismiss for lack of personal jurisdiction and failure to state a claim.

Appellants argue that they properly served 681 Properties and SSM and therefore the district court had personal jurisdiction over them. They do not address 681 Properties and SSM's argument that appellants' claims were statutorily time-barred under the MHRA.

First, for the reasons set forth above, we conclude that the district court did not err by granting 681 Properties and SSM's motion to dismiss for lack of personal jurisdiction because appellants did not properly serve them.

Second, under the MHRA, appellants were required to bring a claim against 681 Properties within one year of when the alleged act occurred, which would have been by February 19, 2019. Minn. Stat. § 363A.28, subd. 3(a) (2018). Appellants failed to meet that deadline. And because Bell first filed a claim against SSM *with MDHR*, she had to bring a civil suit against SSM within 45 days of receiving notice of MDHR's decision to dismiss the charge. Minn. Stat. § 363A.33, subd. 1. Bell also failed to meet that deadline.[1] Appellants' claims under the MHRA against 681 Properties and SSM were therefore statutorily time-barred. The district court did not err by dismissing appellants' claims against 681 Properties and SSM with prejudice.

B. The district court did not err by granting Hanbery's motion to dismiss for failure to state a claim due to absolute privilege.

Appellants allege that Hanbery committed defamation by making false assault and theft allegations during the 2018 eviction action, but Hanbery counters that those statements were protected by absolute privilege.[2] We agree with Hanbery.

A complaint must "contain a short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. The district court may dismiss a complaint that "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P.

[1] Because Robinson was not a party to Bell's MDHR complaint against SSM, he had one year to bring a claim against SSM, which he also failed to do.
[2] Appellants do not now, nor did they below, address absolute privilege.

12.02(e). Dismissal under rule 12.02(e) is only proper "if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Finn v. All. Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted).

Defamatory statements may be protected by absolute privilege in a defamation lawsuit if an attorney made the statements at a judicial proceeding and those statements were relevant to the subject matter of the litigation. *Mahoney & Hagberg v. Newgard*, 729 N.W2d 302, 306 (Minn. 2007). Hanbery represented 681 Properties and SSM in the 2018 eviction action against appellants. In so doing, Hanbery made the allegedly defamatory statements at issue. Because the eviction action was based, in part, on 681 Properties and SSM's claims that appellants assaulted staff and stole from management, Hanbery's statements about appellants' alleged assault and theft were relevant to the eviction action. Because Hanbery's statements were protected by absolute privilege, we conclude that the district court did not err by dismissing appellants' defamation claim with prejudice.

C. The district court did not err by granting MDHR's motion to dismiss for lack of subject-matter jurisdiction.

Appellants only generally assert that the district court should not have dismissed their claims, but MDHR asserts that the district court lacked subject-matter jurisdiction. MDHR's argument has merit.

"The existence of subject-matter jurisdiction and a determination of the meaning of statutes addressing subject-matter jurisdiction present legal questions, which we review de novo." *Christianson v. Henke*, 812 N.W.2d 190, 192 (Minn. App. 2012), *aff'd*, 831

N.W.2d 532 (Minn. 2013). "Subject-matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). Although a party may waive the issue of personal jurisdiction, as MDHR did here, a party cannot waive or confer subject-matter jurisdiction. *In re Rosckes v. County of Carver*, 783 N.W.2d 220, 223 (Minn. App. 2010).

Under Minn. Stat. § 363A.33, subd. 1, appellants could have directly sued 681 Properties, SSM, and Hanbery for alleged MHRA violations without first filing a charge with MDHR. But after they filed their charge with MDHR and MDHR made its final administrative decision on that charge, only this court could review that decision. *County of Hennepin v. Civil Rts. Comm'n*, 355 N.W.2d 458 (Minn. App. 1984).

Because the district court did not have the authority to review MDHR's final decision, the district court did not have subject-matter jurisdiction. Thus, the district court did not err by dismissing appellants' claims. We therefore need not address the merits of MDHR's motion to dismiss for failure to state a claim.

Affirmed.