STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0445

Hom Van Lo, et al., claimants,
Respondents,

vs.

$4,756.00 in U. S. Currency, et al.,
Appellant.

Filed December 17, 2012
Affirmed
Hudson, Judge

Nobles County District Court
File No. 53-CV-10-1036

Dennis J. Rutgers, Rushford, Minnesota (for respondents)

Kathleen A. Kusz, Nobles County Attorney, Travis J. Smith, Assistant County Attorney, Worthington, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Harten, Judge.*

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

HUDSON, Judge

Appellant challenges the district court's decision that it had subject-matter jurisdiction over respondents' action for judicial determination of their administrative-

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

forfeiture action. Because the district court did not err by concluding that it had jurisdiction over the matter when respondents filed the requisite proof of service with the district court administrator and when appellant received and returned a signed acknowledgment of service, we affirm.

FACTS

The state served respondents Hom Van Lo, Orathay Thai Van Lo, and Thongsay Chantharath with notices of seizure and intent to forfeit certain property on August 24, 2010 and September 8, 2010.[1] On October 22, 2010, respondents filed a demand for judicial determination of forfeiture with the district court pursuant to Minn. Stat. § 609.5314 (2010).[2] The same day, they also served the demand on the Nobles County attorney and the Buffalo Ridge Task Force by mail and facsimile. The district court filing included an affidavit of service by mail and facsimile on the Nobles County attorney and the Buffalo Ridge Task Force. Respondents did not include an acknowledgement-of-service form with the facsimile, but they did include an acknowledgment-of-service form with the copy mailed to the county attorney's office. The Nobles County attorney signed the acknowledgment-of-service form on October 28,

[1] Respondents were listed as residing at the same address. Because the district court dismissed the proceeding as to the August 24, 2010 notices, appellant challenges only the district court's determination that it had jurisdiction over the proceeding as to the September 8, 2010 notice. Hom Van Lo is listed as the person notified in the September 8 notice, and the property seized is listed as certain watches, coins, and other jewelry.

[2] Minn. Stat. § 609.5314 was amended in 2011 and 2012. *See* 2011 Minn. Laws ch. 76, art. 1, § 67, at 286; 2012 Minn. Laws ch. 128, §§ 18, 19, at 28–30. Because these changes had not become effective when this forfeiture action was initiated, we review the decision under the 2010 version of the statute.

2010 and returned the form to respondents. But respondents did not file a copy of the signed acknowledgement-of-service form with the Nobles County court administrator.

In July 2011, the county moved to dismiss the action, alleging that the district court lacked jurisdiction to determine the matter because the demand was not properly filed and served on the prosecuting authority within 60 days after the claimants received the notice, as required by Minn. Stat. § 609.5314, subd. 3. The claimants contested the motion, arguing that they had substantially complied with the statute by serving the county both by mail and facsimile; that the county attorney had acknowledged receiving the demand; and that the county should be estopped from denying proper service because in other cases it had failed to challenge that method of service.

The district court rejected the estoppel argument and granted the motion to dismiss as to the notices served on August 24, 2010, but denied the motion as to the notice served on September 8, 2010. The district court found, as to the August 24, 2010 notices, that because the state did not receive the mailed copy of the complaint until October 25, 2010, which was after the 60-day time limitation for effecting service under Minn. Stat. § 609.5314, subd. 3, the claimants had not complied with the strict statutory time requirements as to those notices. But the district court found as to the September 8, 2010 notice that the claimants had complied with the statutory time requirement because they had filed a demand for judicial determination on October 22, 2010, which was before the 60-day time limitation as to that notice. The court stated that:

> While claimants never filed the signed Acknowledgment of Service, it is uncontested it was signed and delivered. Minn. Stat. § 609.5314, subd. 3 requires that a Claimant must file proof of

> service of a copy of the complaint on the county attorney for that county with the District Court. Given the facts of this case, the Court is satisfied that the sworn affidavit is sufficient to meet this statutory requirement.

This appeal follows. We consider the matter pursuant to Minn. R. Civ. App. P. 142.03 in the absence of briefing by respondents.

D E C I S I O N

Whether a district court has subject-matter jurisdiction to address a matter presents a question of law, subject to de novo review. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. App. 1999). This court also addresses de novo the legal issue of whether service of process was properly made. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001). If a statute is unambiguous, this court applies its plain language. *Garde v. One 1992 Ford Explorer XLT*, 662 N.W.2d 165, 166 (Minn. App. 2003).

The relevant forfeiture statute sets forth service requirements for a claimant to initiate a challenge to an administrative-forfeiture proceeding:

> Within 60 days following service of a notice of seizure and forfeiture under this section, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the county attorney for that county.

Minn. Stat. § 609.5314, subd. 3(a). The statute further provides, "an action for the return of property seized under this section may not be maintained by or on behalf of any person

who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision." *Id.*, subd. 3(b).

Jurisdiction to hear a judicial determination of forfeiture attaches when an owner of the affected property files a complaint that meets statutory requirements. *Strange*, 597 N.W.2d at 358. If a claimant in a forfeiture action fails to serve and file a demand for judicial determination as required by statute, no forfeiture action is commenced, and the district court lacks subject-matter jurisdiction to address the matter. *Garde*, 662 N.W.2d at 167.

The district court concluded that, as to the notice served on September 8, 2010, the claimants had met the statutory requirement because it was uncontested that the acknowledgment-of-service form had been signed and returned, and filing the affidavit of service met the requirement of filing proof of service with the district court administrator. The district court concluded that it therefore had subject-matter jurisdiction to address respondents' contest of the administrative forfeiture.

Appellant argues that, because strict compliance with the statutory requirements of service is required, the district court erred by concluding that the sworn affidavit of service was sufficient to meet the requirement that proof of service must be filed with the court administrator. We disagree. Forfeiture proceedings under Minn. Stat. § 609.5314 are governed by the Minnesota Rules of Civil Procedure. Minn. Stat. § 609.5314, subd. 3(a). Rule 4.06 of the Minnesota Rules of Civil Procedure provides that:

> Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, *by the affidavit of any other person making it*, by the written

> admission or acknowledgement of the party served, or if served by publication, by the affidavit of the printer or the printer's designee.

Minn. R. Civ. P. 4.06 (emphasis added). Therefore, under rule 4.06, the filing of either a signed acknowledgment-of-service form or an affidavit of service satisfies the statutory requirement of filing proof of service under Minn. Stat. § 609.5314, subd. 3(a).

In this case, service was made by mail, which requires mailing a copy of the summons and complaint, along with two copies of a notice and acknowledgment of service, to the person to be served. Minn. R. Civ. P. 4.05. The affidavit of service, which was signed and dated by the person mailing the summons and complaint, provided proper proof of service by mail. *See Outcault Adver. Co. v. Farmers & Merchs. State Bank*, 151 Minn. 500, 501, 187 N.W. 514, 514 (1922) (stating that proof of mailing "is prima facie evidence of the receipt of the letter by the party to whom addressed"). Therefore, its filing with the district court administrator satisfied the statutory requirement for filing proof of service.

Appellant also argues that the district court erred by concluding that it had jurisdiction because respondents' failure to file the acknowledgment-of-service form with the district court administrator shows that service was not properly effected. Appellant is correct that perfection of service by mail requires return of a signed acknowledgment-of-service form, and substantial compliance or actual notice of the lawsuit is insufficient to show valid service of process. *Coons v. St. Paul Cos.*, 486 N.W.2d 771, 776 (Minn. App. 1992), *review denied* (Minn. July 16, 1992); *see also Turek*, 618 N.W.2d at 611 (holding that service by mail is ineffectual if signed acknowledgment of service is not received by

sender within 20-day period required by rule 4.05). But "[i]t is the fact of service, and not details of the proof of service, that gives the court jurisdiction over the defendant." 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 4:25 (5th ed. 2009). The parties agree that, in this case, the county attorney received, signed, and returned the acknowledgment-of-service form within the required time frame. Because service was properly effected and the requirements of Minn. Stat. § 609.5314, subd. 3(a), were met, the district court did not err by assuming jurisdiction over the determination of forfeiture.

Appellant also notes respondents' argument in district court that they satisfied the statutory service requirement by faxing demands for judicial determination of forfeiture to the county attorney's office and filing an affidavit of service by facsimile. Appellant points out that rule 4 contains no provision for service by facsimile, and that Minn. R. Civ. P. 5.02, which does authorize service by facsimile, applies only to service of documents after an action is initiated. *Kmart Corp. v. County of Clay*, 711 N.W.2d 485, 490 (Minn. 2006). But the district court correctly cited *Kmart* for the proposition that service could not properly be effected by facsimile and concluded that respondents' demand as to the August 24, 2010 notice was untimely when it was faxed, but not received by mail, within the statutory deadline. Therefore, this issue is irrelevant to the challenged portion of the district court's order, and we do not address it.

Affirmed.