

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0772**

Matthew Simonson,
Appellant,

vs.

Third Judicial District,
Respondent.

**Filed December 23, 2013
Affirmed
Chutich, Judge**

Mower County District Court
File No. 50-CV-12-1764

Matthew Simonson, Austin, Minnesota (pro se appellant)

Lori Swanson, Attorney General, John S. Garry, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Matthew Simonson challenges the dismissal of his Minnesota Human
Rights Act claim against the Third Judicial District. Because Simonson did not properly

serve the attorney general's office before the statute of limitations ran on his claim, we affirm.

FACTS

The events underlying this appeal began in 2009 when appellant Matthew Simonson filed a replevin action against the City of Austin in Mower County District Court, seeking return of two cars removed from his property. A motion hearing was held on March 31, 2010. Simonson alleges that he is hearing-impaired and that he did not understand the proceedings because he was not given a functioning assisted-listening device.

In May 2010, the district court granted summary judgment on the replevin case in favor of the City of Austin. Simonson appealed to this court, but the appeal was dismissed for procedural defects.

Simonson then filed a charge with the Minnesota Department of Human Rights (department), alleging that the Third Judicial District violated the Minnesota Human Rights Act at the March 31, 2010 hearing. In particular, Simonson claimed that the sound system in the courtroom did not allow him to hear what was happening during the hearing.

After reviewing the transcript of the March 31 hearing, the department dismissed the charge. The department found that the transcript showed that the district court took precautions at the hearing to make sure that Simonson could fully participate. At the beginning of the hearing, the district court asked Simonson if he could hear what the district court was saying and instructed Simonson to raise his hand at any time if he could

not hear. Simonson never raised his arm or stated during the hearing that he could not hear. Accordingly, the department determined that there was no probable cause for Simonson's allegations that the Third Judicial District violated his rights under the human rights act.

Upon appeal, the commissioner of human rights affirmed the department's determination of no probable cause for the human rights act charge. By order dated May 3, 2012, the commissioner properly notified Simonson that he had 45 days to file a human rights act claim in state district court against the Third Judicial District.

On June 15, 2012, Simonson filed the instant action under the human rights act against the Third Judicial District, asking for another hearing on his replevin claim. Simonson did not serve his complaint or a summons on the Minnesota Attorney General's Office at that time.

The state filed a motion to dismiss under Minnesota Rule of Civil Procedure 12.02(d) and (e), and, after appointment of counsel for Simonson, the district court held a hearing on the motion. The district court granted the state's motion to dismiss, and this appeal followed.

DECISION

I. Service of Process and Statute of Limitations

Simonson generally asserts that the district court improperly dismissed his human rights act claim against the Third Judicial District, but he does not cite any Minnesota case law to support his argument. Because Simonson did not complete proper service of

process before the statute of limitations ran on his claim, we affirm the district court's dismissal of the case.

A defendant can move the district court to dismiss a claim for insufficient service of process. Minn. R. Civ. P. 12.02(d). "The determination of whether a summons and complaint is properly served is a jurisdictional question of law." *Amdahl v. Stonewall Ins. Co.*, 484 N.W.2d 811, 814 (Minn. App. 1992), *review denied*, (Minn. July 16, 1992). A claim must be dismissed if proper service of process has not been completed. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 477–78 (Minn. 2013). In addition, the district court must dismiss a case where the statute of limitations has run. *See Johnson v. Winthrop Labs. Div. of Sterling Drug, Inc.*, 291 Minn. 145, 151, 190 N.W.2d 77, 81 (1971) ("Courts have no power to extend or modify statutory limitations periods.").

Simonson filed his complaint against the Third Judicial District on June 15, 2012, but he did not properly serve a summons and complaint on the attorney general's office within the required 45-day time period. *See* Minn. Stat. § 363A.33, subd. 1 (2012). Because the Third Judicial District is a state entity and is represented by the attorney general, Simonson was required to serve the attorney general's office in one of two ways: personally "by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general," *see* Minn. R. Civ. P. 4.03(d), or by following the requirements for service of a summons and complaint by mail, *see* Minn. R. Civ. P. 4.05 (requiring acknowledgment of service by mail). The record shows that Simonson did not follow the service requirements of either rule.

Because Simonson never properly served the attorney general’s office with his human rights act complaint before the statute of limitations ran on June 22, 2012, the district court properly dismissed the claim for lack of jurisdiction. *See Ochs v. Streater, Inc.*, 568 N.W.2d 858, 859–60 (Minn. App. 1997) (holding that a plaintiff must initiate a lawsuit by proper service of process under Minn. R. Civ. P. 3.01 within the 45-day time period to meet the human rights act statute of limitations). We acknowledge that it may be difficult for pro se litigants like Simonson to discern and to apply these procedural rules, but “this court has repeatedly emphasized that pro se 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).

II. Failure to State a Claim

Although the claim was properly dismissed for procedural reasons, Simonson’s complaint also fails to state a claim that could succeed on the merits. *See* Minn. R. Civ. P. 12.02(e). The key question under rule 12.02(e) is whether the complaint alleges a legally sufficient claim for relief, which is a question of law. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

Here, the human rights act requires Simonson to establish that the Third Judicial District denied him “access to, admission to, full utilization of or benefit from” the services of the state district court “because of” his hearing impairment. Minn. Stat. § 363A.12, subd. 1 (2012). In considering whether Simonson’s claim was legally sufficient, the public documents, including the transcript of the March 31, 2010 hearing, were appropriately considered by the district court because they are public records that

are referenced in the complaint and are central to Simonson's claim. *See, e.g., Brown v. State*, 617 N.W.2d 421, 424 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000), *cert. denied*, 532 U.S. 995 (2001).

In his complaint, Simonson states he was unable to hear the opposing attorney during the March 31, 2010 hearing. The transcript from that day reflects, however, that Simonson did not once state or show, in any manner, that he was having a hard time hearing the district court or opposing counsel. In fact, the transcript demonstrates that Simonson responded to questions from the district court and to the merits of the argument of the City of Austin. Because the complaint does not allege any further facts that suggest that the Third Judicial District denied him "access to," "admission to," or "full utilization" of the services provided by the district court "because of" a hearing disability, *see* Minn. Stat. § 363A.12, subd. 1, the district court properly dismissed the claim under rule 12.02(e).

Affirmed.