STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1048

Allan Dale Mercil,
Appellant,

vs.

One 2008 Honda Ridgeline Pickup,
VIN #2HJYK165X8H519629,
Respondent.

Filed June 9, 2009
Affirmed
Klaphake, Judge

Polk County District Court
File No. 60-CV-08-194

Jay D. Knudson, 218 South Third Street, Grand Forks, ND 58201 (for appellant)

Gregory A. Widseth, Polk County Attorney, 816 Marin Avenue, Suite 125, Crookston, MN 56716 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

KLAPHAKE, Judge

In this vehicle forfeiture action, appellant Allan Dale Mercil claims that the district court erred by dismissing his demand for judicial determination of the forfeiture of his 2008 Honda Ridgeline pickup, because he failed to properly serve the appropriate agency

that initiated the forfeiture and the prosecuting authority that has jurisdiction over the forfeiture under Minn. Stat. § 169A.63 (2008). Because appellant failed to (1) include an acknowledgment of service by mail when serving the Polk County Attorney, (2) file proof of service on the Polk County Attorney, and (3) serve the East Grand Forks Police Department, the district court did not err in ruling that appellant failed to perfect service of process. We affirm.

D E C I S I O N

This court gives de novo review to the legal question of whether a district court has subject-matter jurisdiction. *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. App. 1999). Whether service of process was properly made is also a legal question subject to de novo review. *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 must apply its plain language. *Garde v. One 1992 Ford Explorer XLT*, 662 N.W.2d 165, 166 (Minn. App. 2003).

Minn. Stat. § 169A.63, subd. 8(d) sets forth the service requirements for a claimant to initiate a challenge to an administrative forfeiture proceeding.

> Within 30 days following service of a notice of seizure and forfeiture under this subdivision, 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 prosecuting authority having jurisdiction over the forfeiture and the appropriate agency that initiated the forfeiture . . .

Minn. Stat. § 169A.63 requires a claimant to comply with the service requirements of subdivision 8 before the district court can hear a challenge to an administrative forfeiture: "[A]n action for the return of a vehicle 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. 8(e).

This court has considered and rejected arguments either identical to or similar to those raised by appellant. In *Garde*, this court construed Minn. Stat. § 169A.63, subd. 8, to place responsibility on the claimant for completing the statutory requirements to perfect service of process and held that failure to comply with these requirements deprives the district court of jurisdiction. 662 N.W.2d at 167 ("[b]ecause [the claimant] failed to comply with the statute, he may not maintain his action for judicial determination of forfeiture" and "[a]ccordingly, the district court did not have jurisdiction over the forfeiture proceeding"). In *Garde*, the claimant argued that the district court had jurisdiction over the matter, even though the claimant never served his demand for judicial review on the City of Richfield, which was the prosecuting authority with jurisdiction over the forfeiture, as required by statute. *Id.*

Here, appellant admits that he failed to properly serve the Polk County Attorney by mail but argues that the county received actual notice of the action as evidenced by the county's motion to dismiss, which he argues should be sufficient. Minn. Stat. § 169A.63, subd. 8(d), further provides that "[p]leadings, filings, and methods of service are governed by the Rules of Civil Procedure." Minn. R. Civ. P. 4.05 states that service by mail is effectuated by "mailing a copy of the . . . complaint (by first class mail, postage

prepaid) to the person to be served, together with two copies of a notice and acknowledgement . . . and a return envelope, postage prepaid, addressed to the sender." Strict, not substantial, compliance is required to perfect service of process by mail, and actual receipt of papers subject to service and notice of the lawsuit is insufficient to show valid service of process by mail. *Coons v. St. Paul Cos.*, 486 N.W.2d 771, 776 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). Appellant failed to properly serve the Polk County Attorney because he did not include an acknowledgment of service by mail form in the service and did not file proof of service, both required by the statute. In addition, he did not even attempt to serve the East Grand Forks Police Department, which is also required under the statute. Under these circumstances, appellant failed to perfect service of process as required by Minn. Stat. § 169A.63, subd. 8, and the district court properly dismissed appellant's action.

Appellant relies on *Blaeser & Johnson, P.A. v. Kjellberg*, 483 N.W.2d 98 (Minn. App. 1992), *review denied* (Minn. June 10, 1992), for the proposition that the county waived the statutory service requirements by moving to dismiss the case, thus showing that the county received actual service. "Waiver is the voluntary relinquishment of a known right, and both intent and knowledge are essential elements." *Id.* at 102. *Blaeser* is readily distinguishable. That case involved a claim of inadequate service of process when the party who attempted service by both certified and regular mail did not receive in return the acknowledgment of service form included in the service by regular mail as required by Minn. R. Civ. P. 4.05. *See Kjellberg*, 483 N.W.2d at 100. There, this court ruled that the defendant waived the right to raise the issue of inadequate service by

numerous actions, including personally acknowledging receipt of the summons and complaint by signing the return receipt card, admitting the validity of the underlying action, admitting the need to file an answer, seeking time extensions for filing an answer, and being informed of the possibility of a default judgment for failure to answer. *Id.* at 102. None of these circumstances applies to Polk County here. The elements of waiver have not been adequately shown. We conclude that the facts here are more similar to the facts in *Coons* where, despite evidence of actual service and knowledge of the lawsuit, service was not perfected.

Affirmed.