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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-327**

Cynthia Ann Burke,
Respondent,

vs.

\$2285 U. S. Currency, et al.,
Appellants.

**Filed October 27, 2009
Reversed and remanded
Harten, Judge***

Anoka County District Court
File No. 02-CV-08-3595

Joseph Kaminsky, 260 Brookdale Corporate Center, 6300 Shingle Creek Parkway,
Brooklyn Center, MN 55430 (for respondent)

Robert M.A. Johnson, Anoka County Attorney, Thomas G. Haluska, Assistant County
Attorney, Anoka County Government Center, 2100 Third Avenue, Anoka, MN 55303
(for appellants)

Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and
Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

The county that seized appellants, various amounts of U.S. currency, challenges the district court order denying the county's motion to dismiss for lack of jurisdiction on the ground that the county waived its right to challenge jurisdiction when it filed an informational statement. Because we conclude that the right to a jurisdictional defense was not waived, we reverse and remand for proceedings consistent with this opinion.

FACTS

In January 2007, appellants, various amounts of U.S. currency, were seized from the house of respondent Cynthia Burke by employees of Anoka County (Anoka), and a notice of seizure and intent to forfeit property was personally served on her adult son, who lived with her. Respondent's son did not contest the forfeiture. In December 2007, respondent pleaded guilty to a charge of fifth-degree controlled substance crime.

On 1 April 2008, respondent sent Anoka a letter, dated 17 December 2007, asking that respondent's personal property be returned. On 30 April 2008, Anoka served respondent with a notice of seizure and intent to forfeit property under Minn. Stat. § 609.5314 (2006). The notice informed her that "IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SECTION 609.5314, SUBDIVISION 3, YOU LOSE THE RIGHT TO A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY."

On 7 May 2008, respondent attempted service via certified mail on Anoka of a summons and a demand for judicial determination, but she did not include the two copies of the notice and acknowledgement or a return envelope, as required by Minn. R. Civ. P. 4.05. On 9 May 2008, respondent filed in district court a demand for judicial determination.

In June 2008, Anoka filed the informational statement required by Minn. R. Gen. Pract. 111.02. In the statement, Anoka asserted that it had not been properly served with a demand for judicial determination. In July 2008, Anoka moved the district court to dismiss the demand for judicial determination for lack of jurisdiction because of improper service.

Following oral argument, the district court denied Anoka's motion to dismiss on the ground that Anoka waived its right to challenge jurisdiction by filing the informational statement.¹ Anoka challenges the denial of its motion to dismiss.

D E C I S I O N

“Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law that we review de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

¹ The district court also rejected respondent's argument that the notice of seizure and intent to forfeit property was not timely served on her because it was first served on her son, finding that respondent did not give legal authority for any particular time limit on service of a notice of seizure. Respondent raises this issue in her brief, but, because she did not file a notice of review, the issue is not before us and we do not address it. *See* Minn. R. Civ. App. P. 106 (providing that a respondent may obtain review of an adverse determination by filing a notice of review).

Service must comply strictly with statutory requirements. *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. App. 1999). In an action for the return of seized property, the demand for judicial determination is governed by the rules of civil procedure. Minn. Stat. § 609.5314, subd. 3 (2008). Service by mail requires strict compliance with Minn. R. Civ. P. 4.05 and is ineffective if an acknowledgement of service is not signed and returned by the defendant, regardless of the defendant's actual notice of the lawsuit. *Coons v. St. Paul Cos.*, 486 N.W.2d 771, 776 (Minn. App. 1992), *review denied* (Minn. July 16, 1992); *see also Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649 (Minn. App. 2002) (unless plaintiff substantially complies with requirements of personal service in the rules of civil procedure, defendant is not subject to personal jurisdiction regardless of actual notice).

Service by mail requires the inclusion of two copies of the notice and acknowledgement and a return envelope. Minn. R. Civ. P. 4.05. Respondent's service of her demand for judicial determination on Anoka did not include two copies of the notice and acknowledgement or a return envelope. On that basis, Anoka moved to dismiss. The district court denied the motion, concluding that Anoka had waived any jurisdictional defense when it filed an informational statement, thereby invoking the district court's jurisdiction.

It is true that "[a] party may waive a jurisdictional defense, including insufficient service of process, by submitting itself to the court's jurisdiction and affirmatively invoking the court's power." *Shamrock*, 754 N.W.2d at 381. But filing an informational statement with a court is neither a submission to the court's jurisdiction nor an invocation

of the court's power. "[S]imple participation in the litigation . . . does not, standing alone, amount to a waiver of a jurisdictional defense." *Id.* A jurisdictional defense is waived only when a party invokes a court's jurisdiction on the merits of a determinative claim before giving the court an opportunity to address the jurisdictional defense. *Id.* Unless other circumstances demonstrate acceptance of jurisdiction, a jurisdictional defense is not waived even when rulings on the merits and on the defense are sought simultaneously. *Id.*

Anoka asserted its jurisdictional defense when it filed the informational statement; it did not seek the district court's exercise of jurisdiction over the merits before asserting the jurisdictional defense. Thus, Anoka did not waive its right to assert the defense. *See id.* at 381-82 (finding no waiver when a party simultaneously argued a motion to strike an affidavit and sought a ruling on defense based on insufficient service of process); *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 613 (Minn. App. 2000) (finding no waiver when party "took no affirmative steps to invoke the power of the court prior to its motion to vacate the default judgment"), *review denied* (Minn. Jan. 26, 2001); *Galbreath v. Coleman*, 596 N.W.2d 689, 691-92 (Minn. App. 1999) (finding no waiver in paternity action when a party simultaneously asked the court to order blood tests and challenged jurisdiction even though jurisdiction challenge was not heard until after blood tests results were received); *see also Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 869 (Minn. 2000) (finding waiver when party moved for partial summary judgment on the merits before moving to dismiss on jurisdictional grounds); *Igo v. Chernin*, 540 N.W.2d 913,

914 (Minn. App. 1995) (finding waiver when party took opposing party's deposition before challenging jurisdiction).

Respondent did not comply with the requirements imposed by Minn. R. Civ. P. 4.05 when she served her demand for judicial determination on Anoka, and Anoka did not waive its right to the jurisdictional defense of improper service. We reverse the denial of Anoka's motion to dismiss and remand for proceedings consistent with this opinion.

Reversed and remanded.