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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-789

Kathy Sommer,
Appellant,

vs.

South Washington County School District No. 833,
Respondent.

Filed February 23, 2010
Affirmed
Connolly, Judge

Washington County District Court
File No. 82-CV-08-638

Richard A. Williams, Jr., Williams & Iversen, P.A., Roseville, Minnesota (for appellant)

Margaret A. Skelton, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

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

CONNOLLY, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent school district, arguing that the district court erred in concluding that service

of process was insufficient and that it lacked subject-matter jurisdiction over all of appellant's claims other than the whistleblower claim, which was barred by the statute of limitations. Because appellant's service of process on the superintendent was insufficient, and because appellant's exclusive judicial remedy for her non-whistleblower claims was through writ of certiorari, we affirm.

FACTS

Appellant Kathy Sommer was employed as a probationary school nurse for respondent South Washington County School District No. 833 (school district) from December 8, 2003, to June 2, 2006. On April 21, 2006, the school board notified Sommer that it had decided not to renew her contract for the following year. By statute, Sommer was entitled to written evaluations during her tenure as a probationary nurse and, if requested, a written explanation of the school board's decision. Minn. Stat. § 122A.40, subd. 5(a) (2008). She alleges that she never received any such evaluations prior to her termination. She sued the school district, alleging, among other things, breach of contract, denial of due process, and a whistleblower claim pursuant to Minn. Stat. § 181.932 (2008).

On December 19, 2007, a process server employed by Sommer's attorney went to the office of the school district to serve the summons and complaint on a school board member. Finding the intended board member unavailable, the process server instead

served the superintendent, who allegedly represented that he was authorized to accept process.[1] The superintendent was the only person served.

In its answer, the school district raised several affirmative defenses, including insufficient service of process. Sommer never attempted to remedy the allegedly deficient service. The school district subsequently moved for summary judgment, arguing that the statute of limitations had run. Following a hearing, the district court issued an order granting the school district's motion. The district court concluded that proper service had not been achieved. It further concluded that Sommer's whistleblower claim was barred by the two-year limitations period, and that it lacked subject-matter jurisdiction over her other claims arising out of the school board's nonrenewal of her employment. This appeal follows.

D E C I S I O N

Summary judgment is appropriate if there is no genuine issue of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. Appellate review consists of asking whether there are any genuine issues of material fact and whether the district court erred in its application of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review a grant of summary judgment de novo. *Martin v. Spirit Mountain Recreation Area Auth.*, 566 N.W.2d 719, 721 (Minn. 1997).

[1] The superintendent testified in his deposition that he did not have such a conversation with the process server.

I. The district court did not err in concluding that service of process on the superintendent was insufficient.

"If service of process is invalid, the district court lacks jurisdiction to consider the case, and it is properly dismissed." *Leek v. Am. Express Prop. Cas.*, 591 N.W.2d 507, 509 (Minn. App. 1999), *review denied* (Minn. July 7, 1999). Whether service is proper presents a question of law, which we review de novo. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001).

A civil action is commenced against a defendant when a summons is served upon that defendant. Minn. R. Civ. P. 3.01(a). When the defendant is a public school district, the plaintiff must serve "any member of the board or other governing body." Minn. R. Civ. P. 4.03(e)(4). In *Blaine v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, this court held that "the superintendent of a school board is not a member of the board for service of process purposes pursuant to rule 4.03(e)(4)." 498 N.W.2d 309, 314 (Minn. App. 1993), *review denied* (Minn. June 22, 1993). Thus, under *Blaine*, the superintendent whom Sommer served in this case was not a member of the school board on whom process could be served.

Sommer urges this court to overrule *Blaine*, arguing that it was wrongly decided and is inconsistent with supreme court precedent. Specifically, Sommer points to *Obermeyer v. Sch. Bd., Indep. Sch. Dist. No. 282*, 312 Minn. 580, 251 N.W.2d 707 (1977). The *Obermeyer* court held that substituted service upon the wife of the chairman of the school board does not meet the requirements of Minnesota Rule of Civil Procedure 4.03(e). 312 Minn. at 582, 251 N.W.2d at 708. Sommer relies on the court's statement,

in describing the facts, that "[a]t no time was the petition, order, or writ served personally upon the chairman, any member of the school board, or the superintendent of schools." *Id.* at 581, 251 N.W.2d at 708. The supreme court's reference to superintendents in *Obermeyer* was dicta: the court did not hold that a superintendent is a member of the school board or other governing body for purposes of service pursuant to rule 4.03(e)(4), but instead held that substituted service upon the spouse of the school board's chairperson was ineffective.

Blaine is longstanding precedent of this court, and has been binding on the district courts for 16 years. "This court, as an error correcting court, is without authority to change the law." *Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). Rule 4.03 was last amended in 1988 (effective on January 1, 1989), which predates this court's opinion in *Blaine* in 1993. As the supreme court has recognized, "following precedent promotes stability, order, and predictability in the law." *Fleeger v. Wyeth*, 771 N.W.2d 524, 529 (Minn. 2009). Moreover, the rationale behind *Blaine* is sound. The superintendent of a school district is an ex officio, nonvoting member of a school board, as opposed to a member with voting power who was duly elected by the citizens. Minn. Stat. §§ 123B.09, subd. 1 (providing for elected, voting members), .143, subd. 1 (superintendent is an ex officio, nonvoting member) (2008). We therefore decline to overrule *Blaine*.

Sommer also argues that she nonetheless substantially complied with the requirements of rule 4.03 because "service was made in the offices of the school district"

and the superintendent "came out of his office and accepted service indicating he had authority to do so." This argument is precluded by *Blaine*, which held that "service of the superintendent and interim superintendent was insufficient." 498 N.W.2d at 314. The court specifically held that the school board's actual notice of the lawsuit did not render the attempted service adequate to commence suit. *Id.* at 314-15. It also specifically held that the superintendents' express representation "that they were authorized to accept service on behalf of the school district" did not estop the school board from asserting an insufficient-service defense, because estoppel is not "freely applied" against the government. *Id.* at 315 (noting that the plaintiffs' attorney could not have reasonably relied on the superintendents' representation that they were authorized to accept service, since whether an individual may accept service is a question of law).

Because Sommer's attempted service on the superintendent is insufficient to commence suit under our precedent, the district court did not err in concluding that it lacked jurisdiction to hear Sommer's claims due to insufficient service of process.

II. The district court did not err in concluding that it lacked subject-matter jurisdiction over Sommer's claims.

The existence of subject-matter jurisdiction is a question of law, which we review de novo. *Tischer v. Hous. & Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005). The supreme court's "longstanding rule and repeated holding has been that the proper and only method of appealing school board decisions on teacher related matters is by writ of certiorari." *Dokmo v. Ind. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 673 (Minn. 1990). "[W]hen a public employee's claim of breach of an

employment contract is inevitably centered on the executive body's decision to discharge her, it will be viewed as a wrongful employment termination claim for jurisdictional purposes and certiorari is the exclusive remedy for judicial review of that claim." *Tischer*, 693 N.W.2d at 432. A district court does not have subject-matter jurisdiction over claims on different theories of relief "that may be included under the umbrella of a wrongful employment termination claim." *Id.*

Sommer brought claims for breach of contract and denial of due process, and sought a declaratory judgment that the school district violated her procedural rights. These claims all relate to the school district's decision not to renew her employment. Thus, the district court properly concluded that it lacked subject-matter jurisdiction. Sommer contends that *Dokmo* was wrongly decided because the holding "is incompatible both with the historical and statutory remedy of certiorari and with the constitutional obligation of the judicial system." However, "we are bound to follow Minnesota Supreme Court precedent." *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 439-40 (Minn. App. 2005).

Sommer also alleged in her complaint that she was terminated in violation of the Whistleblower Act. The legislature may create exceptions to the general rule that certiorari is the exclusive remedy for claims falling under the wrongful-termination umbrella, which it has done with the Whistleblower Act. *Tischer*, 693 N.W.2d at 429; *see also* Minn. Stat. § 181.935(a) (2008) (authorizing "a civil action" for employees with whistleblower claims). Accordingly, certiorari was not the exclusive remedy for Sommer's whistleblower claim. However, the statute of limitations for whistleblower

claims is two years from the date of discharge. *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 920 (Minn. App. 1995), *review granted* (Minn. Dec. 20, 1995), *order granting review vacated* (Minn. Mar. 4, 1997); *see also* Minn. Stat. § 541.07(1) (2008) (providing that actions alleging intentional torts must be brought within two years). The cause of action on Sommer's whistleblower claim accrued on June 2, 2006. Because service of process was defective and the statute of limitations on her whistleblower claim ran on June 2, 2008, the district court did not err in granting summary judgment to the school district.

Affirmed.