STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0949

Emily L. Cramble,
Respondent,

vs.

Angela Udell, et al.,
Appellants.

Filed April 14, 2014
Reversed
Ross, Judge

Anoka County District Court
File No. 02-CV-13-2516

Emily L. Cramble, Columbia Heights, Minnesota (pro se respondent)

Elizabeth F. Sauer, Central Minnesota Legal Services, Minneapolis, Minnesota (for appellants)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

ROSS, Judge

Emily Cramble personally delivered her eviction complaint to her sister-in-law and her sister-in-law's fiancé after Cramble's estranged husband allowed them to move into the house that he and Cramble own. At the initial hearing on the complaint, the

district court realized the flawed service and sought to remedy it by ordering the bailiff to serve the complaint on the spot. It then scheduled the eviction trial to occur two days later. After trial, it issued a writ of recovery to Cramble. Because the district court never obtained personal jurisdiction over the tenants, we reverse.

FACTS

Emily Cramble and her husband, Jay Udell, bought the Columbia Heights house that is the subject of this possession dispute in spring 2009. Their marriage deteriorated and Cramble moved out in 2012. The home faced foreclosure. Jay Udell at first remained in the house, but the next year he allowed his sister, Angela Udell, and her fiancé, Christopher Stockman, to move in as tenants. Once Cramble found out on May 1 that her in-laws had moved in, she told them they needed to vacate. The next day she filed an eviction complaint in the district court alleging that Stockman and Udell had "failed to vacate the property after [they were] given written notice to do so." Cramble personally handed the summons to Stockman and Udell.

The initial eviction hearing occurred on May 13, twelve days after Cramble ordered the couple out and eleven days after Cramble attempted to serve them her eviction complaint and summons to appear. Stockman challenged the service. Cramble acknowledged that her attempted service was ineffectual because she delivered the summons herself. The district court declared that the bailiff could serve the papers on the tenants, at which point the bailiff served Stockman the papers in the courtroom and Angela Udell in the hallway outside the courtroom. The district court then set the trial to occur two days later.

Cramble and Stockman appeared for trial pro se. Cramble testified that she bought the house with her husband in 2009, moved out in 2012, and left it to her husband to save from foreclosure. She said that when she visited she instead found Stockman, Udell, and their children staying in the house, and that she had not consented to anyone other than Jay Udell occupying it. She added, "When I found this out . . . I took it upon myself to decide that I was going to move back" in.

Jay Udell testified that he still lived in the house, though he sometimes stayed elsewhere, and was working to refinance the mortgage. He said Cramble had had nothing to do with the house, financially or otherwise, since she left. He explained that the tenants were not paying rent but were contributing to the utilities. Stockman testified that Jay Udell had given him and Angela Udell permission to move in.

The district court held that Stockman and Angela Udell had waived any challenge to the deficiency of service, and it concluded that without Cramble's consent as co-owner, Stockman and Udell had no valid lease. It issued Cramble a writ of recovery.

Stockman and Udell appeal on jurisdictional grounds.

D E C I S I O N

Stockman and Udell argue that the district court lacked personal jurisdiction to decide this eviction action because Cramble wrongly served process and the district court's efforts did not right the wrong. A challenge to service of process poses a jurisdictional question, which we review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). We apply the facts the district court found unless they are clearly erroneous. *Id.*

The district court undisputedly lacked personal jurisdiction over the tenants originally. The district court acquires personal jurisdiction over civil defendants only if the summons is properly served. *Id*. The summons in an eviction action "may be served by any person not named a party to the action." Minn. Stat. § 504B.331(a) (2012). Cramble, a party to the action, attempted to serve Stockman and Udell by handing the pleading to them herself. Stockman expressly challenged the district court's jurisdiction based on Cramble's failure to satisfy this requirement, and the district court rightly recognized that Stockman was correct. The district court at that point had no personal jurisdiction over Stockman and Udell.

But the district court did not dismiss the action. Instead, it committed three service-related errors. First, it appears to have acted as partial advocate rather than as neutral judge by completing the service on Cramble's behalf. Second, even if it acted appropriately by completing the service, it scheduled the trial to occur within too short a timeframe after service for it to have obtained personal jurisdiction over the defendant tenants. And third, it erroneously found that the tenants had waived their challenge to the court's exercise of personal jurisdiction over them.

The court's first error was to essentially step into Cramble's shoes and direct the bailiff to effect the service that Cramble had botched. Rather than dismiss the case for lack of personal jurisdiction as soon as Stockman objected that he had not been properly served and Cramble admitted, "I didn't follow proper procedure," the district court declared, "Well, we can serve him right now. We've got a bailiff right here." Discussion off the record followed, after which the district court announced, "So let's give these

folks a court date," and it set the trial for two days later. The record does not state that the off-the-record discussion involved a waiver. Then the district court confirmed that the bailiff had served the complaint on Stockman, and it directed service on Angela Udell also, asking the bailiff, "So do we have both? Did you serve Angela, too?" The bailiff responded, "I will. . . . I just have to walk out in the hall." The bailiff then apparently served Angela Udell.

The problem here is that the district court overlooked the admonition that judges must remain impartial participants in the cases before them, not advocates advancing the interests of either party. *See* Minn. Code Jud. Conduct Canon 2 ("A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently."). Directing the bailiff to serve process repositioned the parties and affected the litigation. It directly benefitted Cramble, who had failed to establish the court's personal jurisdiction over Stockman and Udell, and it prejudiced Stockman and Udell, who otherwise stood outside the court's authority. The case was subject to the district court's dismissal for lack of jurisdiction, *see Uthe v. Baker*, 629 N.W.2d 121, 123 (Minn. App. 2001), but the court instead essentially overruled the objection to Cramble's service deficiency and to the court's consequent lack of jurisdiction by attempting to remedy the deficiency.

The bailiff acted as the arm of the district court when, at the court's direction, he served Stockman in the courtroom and Udell in the hallway. The legislature fairly paraphrased the historically evolved role of bailiffs when, in crafting the municipal courts in the Twin Cities metropolitan area fifty years ago, it directed, "A bailiff shall . . . perform . . . duties as may be directed by the judges of the court." 1963 Minn. Laws ch.

877, § 23, at 1671–72 (codified at Minn. Stat. § 488A.06, subd. 1 (2012)). So the error in the court's decision to involve itself in the litigation in favor of Cramble also taints the bailiff's act in carrying out the court's will.

The district court's second error was to schedule the proceeding within too short a timeframe for it to have obtained personal jurisdiction over Stockman and Udell. The summons in an eviction action "must be served at least seven days before the date of the court appearance." Minn. Stat. § 504B.331(a). The district court does not acquire personal jurisdiction until the service period is satisfied. *Color-Ad Packaging, Inc. v. Kapak Indus., Inc.*, 285 Minn. 525, 525–26, 172 N.W.2d 568, 569 (1969), *overruled on other grounds by Twp. Bd. of Lake Valley Twp. v. Lewis*, 305 Minn. 488, 492, 234 N.W.2d 815, 818 (1975); *Jasperson v. Jacobson*, 224 Minn. 76, 85, 27 N.W.2d 788, 794 (1947). So even if we assume that the district court acted appropriately by ordering the bailiff to execute Cramble's service rather than dismissing the unserved action for lack of personal jurisdiction, still the district court erred by hearing the matter within two days of that purported courtroom service.

The district court's third error was to declare that Stockman and Udell waived the right to challenge the service of process based on the insufficient time it allowed between the service and the hearing. A district court lacks jurisdiction over tenants in an eviction case unless they received proper service of process or waived the requirements of proper service, and this bar demands strict compliance. *Koski v. Johnson*, 837 N.W.2d 739, 742, 744 (Minn. App. 2013), *review denied* (Minn. Dec. 17, 2013). We see nothing in the transcript to indicate an express or implied waiver. To the contrary, we know that

Stockman did in fact timely object to Cramble's improper service. After the district court ordered immediate service by the bailiff, the record does not indicate that the district court gave Stockman or Udell the opportunity to object to service further. After rejecting the clerk's suggestion that the case be scheduled a week later and some off-the-record discussion occurred, the district court asked the clerk, "Is that it for these folks?" The clerk replied, "That's it," and the district court declared, "All right. See you Wednesday." Although Stockman initially said, "See you then," he then told the judge, "I was going to ask if we could possibly have this removed until next week?" The district court replied, "Look. [Cramble] already left. . . . It's too late. It's already set." That concluded the hearing.

It is true that Stockman and Udell did not expressly challenge the court's setting trial for only two days out on jurisdictional grounds. But it is also true that, although parties may implicitly waive an objection to personal jurisdiction based on faulty service of process by participating in the proceedings, they do so only if they fail to raise the challenge before submitting to the court. *Shamrock*, 754 N.W.2d at 381. In this setting, four facts prevent us from affirming the district court's preprinted, form-checked finding of "Waiver of timeline for service by Defendants": first, the court ordered the hearing two days after purported service in the very context of Stockman's having just made a personal jurisdiction challenge based on the lack of proper service; second, the district court ordered the hearing to occur only two days later without inviting any on-the-record objection either to its immediate courtroom service on the parties or to its timing for the scheduled hearing; third, we do not see in the record any express waiver; and fourth,

Stockman asked the court to conduct the hearing a week later and not in two days. Given this record (and Cramble's failure on appeal to offer any response), we conclude that the district court's finding of waiver lacks legal and factual support.

We hold that Stockman and Udell never received service of process according to the strict statutory requirements. The district court therefore never acquired personal jurisdiction to decide this eviction action against them. Because we resolve the case on jurisdictional grounds we do not reach the merits of Stockman and Udell's additional arguments challenging the district court's eviction decision on the merits.

Reversed.