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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0951**

Richard Edward Olaf,
Appellant,

vs.

Theresa Kathryn Krisak,
Respondent.

**Filed July 8, 2008
Affirmed as modified
Toussaint, Chief Judge**

St. Louis County District Court
File No. 69DU-CV-06-1634

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Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Richard Edward Olaf challenges the district court's order dismissing with prejudice his complaint seeking to change the name of his minor son, arguing that the district court's findings of fact are clearly erroneous and that the district court abused

its discretion in dismissing his complaint. Because we conclude that the district court did not have subject-matter jurisdiction over appellant's complaint, we affirm the district court's dismissal of appellant's complaint but modify the order to indicate that the dismissal is without prejudice.

FACTS

Appellant and respondent Theresa Kathryn Krisak are the unmarried parents of a minor son. At the time of the child's birth, appellant and respondent resided together in Wisconsin. The child was born in Duluth, Minnesota, and a Minnesota birth record was issued for him. The parties' relationship ended less than two months after the child's birth. Respondent and the child moved to a different residence in Wisconsin, and appellant continued to reside in Wisconsin. Respondent subsequently obtained an amended birth record for the child, issued by the Minnesota Department of Health and recorded with the office of the Minnesota State Registrar, based on medical and church records establishing that the child was known by a name different from that listed on his original birth record. Appellant filed unsuccessful administrative applications to the Minnesota Department of Health and State Registrar attempting to change the name of his son back to that listed on the child's original birth record.

Appellant then filed a complaint against respondent in district court, seeking an order to compel the state registrar to change the name on the child's birth record. Appellant's complaint did not identify any statute, rule, or caselaw authorizing such an order. Appellant's complaint was not framed as an appeal from an administrative determination, no statute authorized such an appeal, and there is no evidence in the record

that the state registrar or the commissioner of health was made a party to the proceeding. The district court held a trial and concluded, without identifying applicable law or authority, that changing the child's name was not in his best interests. The court dismissed appellant's complaint with prejudice.

D E C I S I O N

Neither appellant nor the district court identified any authority that would permit the district court to direct the state registrar to change the name on the child's birth record, and no party raised the issue of the district court's jurisdiction over the subject matter of appellant's complaint. A reviewing court will determine jurisdictional facts on its own motion even though neither party has raised the issue. *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975). The existence of subject-matter jurisdiction is a question of law, which this court determines de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2000).

"Subject-matter jurisdiction is defined as not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide." *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) (quotation omitted). "While the grant of subject-matter jurisdiction to the district courts is broad, the district court has only that jurisdiction conferred by the Minnesota Constitution or by law." *Carlson v. Chermak*, 639 N.W.2d 886, 889 (Minn. App. 2002) (citing Minn. Const. art. VI, § 3; Minn. Stat. § 484.01, subd. 1 (2000)). "[S]tatutory requirements limiting a court's jurisdiction are threshold requirements that must be complied with before a court can exercise jurisdiction." *State v. Rojas*, 569 N.W.2d 418,

420 (Minn. App. 1997).

The Minnesota Vital Statistics Act authorizes a person to petition the district court for an order directing the state registrar to register a delayed or replacement birth record in two situations: (1) for a delayed record of birth when a person's application to the registrar for a delayed record of birth has been rejected; and (2) for a replacement birth record when a previous birth record is shown to be "incomplete, inaccurate, or false." Minn. Stat. § 144.217, subd. 2, .218, subd. 4 (2006).

Appellant did not allege that he is entitled to relief under either of these provisions and did not prove any facts entitling him to relief under these provisions. Because appellant did not claim that a delayed record of birth had been denied or that the child's birth record was incomplete, inaccurate, or false, the district court had no statutorily-conferred jurisdiction to hear the action.

Apart from the vital statistics act, Minn. Stat. § 259.10, subd. 1 (2006), provides that a district court may change a child's name upon petition by a parent: "A person who shall have resided in this state for six months may apply to the district court in the county where the person resides to change . . . the names of minor children . . . in the manner herein specified."¹ The six-month-residency requirement of section 259.10, subdivision 1, is analogous to the 180-day-residency requirement in the marital dissolution statute. *Compare* Minn. Stat. § 259.10, subd. 1 (six-month residency requirement for name

¹ If the district court finds that the petitioner has met the requirements of section 259.10, the district court must grant the application unless "in the case of the change of a minor child's name, the court finds that such name change is not in the best interests of the child." Minn. Stat. § 259.11(a)(3) (2006).

change), *with* Minn. Stat. § 518.07 (2006) (“No dissolution shall be granted unless . . . one of the parties has resided in this state . . . [or] has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding.”).

The residency requirement in section 518.07 limits the district court’s subject-matter jurisdiction to dissolution proceedings in which one party has resided or been domiciled in Minnesota for 180 days. *Jones v. Jones*, 402 N.W.2d 146, 148 (Minn. App. 1987) (applying 1984 version of section 518.07). The six-month-residency requirement in section 259.10, subdivision 1, similarly limits the district court’s subject-matter jurisdiction over name-change petitions to cases in which the petitioner has resided in Minnesota for six months preceding the filing of the petition. In his complaint, appellant admitted that he was a resident of Wisconsin and therefore did not meet the Minnesota six-month-residency requirement.

Because no applicable section of the vital statistics act authorized the district court to entertain a petition for issuance or replacement of the child’s birth record, and because appellant did not satisfy the six-month-residency requirement to seek a name change under section 259.10, subdivision 1, we conclude that the district court lacked subject-matter jurisdiction over appellant’s complaint and dismissal was the proper remedy. *See Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) (holding judgment on merits void if rendered without subject-matter jurisdiction). A dismissal for lack of subject-matter jurisdiction does not constitute an adjudication on the merits and should therefore be made without prejudice. *See Hauser v. Mealey*, 263 N.W.2d 803, 808 (Minn. 1978)

(“judgment rendered by a court which lacks jurisdiction to hear a case does not have the effect of res judicata”); *see also* 1 David F. Herr & Roger S. Haydock, Minnesota Practice § 12.5, 305 (4th ed. 2002) (“A dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits, and the dismissal is therefore made without prejudice”). Accordingly, we modify the dismissal to one without prejudice.

Affirmed as modified.