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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A13-1076

A13-1329

In re the Matter of:
Michelle Diane Alton Redmond Vlahos,
n/k/a Michelle Alton Bonomo, petitioner,
Respondent,

vs.

Dean Speros Vlahos,
Respondent Below,

Redstone American Grill, Inc., et al.,
third party respondents,
Appellants (A13-1076),

Idlewild Properties, LLC, et al.,
Appellants (A13-1329).

Filed February 18, 2014

Reversed

Kirk, Judge

Hennepin County District Court
File No. 27-FA-08-3975

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Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In these consolidated appeals, the appellant entities and one individual argue that the district court erred by denying their motions to dismiss for lack of personal jurisdiction and for failure to state a claim. Because we conclude that the district court lacked personal jurisdiction, we reverse.

FACTS

Respondent Michelle Diane Alton Redmond Vlahos, n/k/a Michelle Alton Bonomo, and respondent below Dean Speros Vlahos divorced in 2009. In April 2010, the district court entered a final judgment and decree that disposed of all other issues related to their divorce. The divorce decree provided that Bonomo and Vlahos's interest in several entities, including appellants and third-party respondents Redstone American Grill, Inc., and appellants Idlewild Properties, LLC, and Midtown Partners, LLC, were to be equally divided between the two of them.

In February 2012, Bonomo moved to join the following entities and one individual as third-party respondents: Redstone American Grill, Inc., and Redstone Investors, Inc. (collectively, Redstone); Idlewild Properties, LLC, and Idlewild II, LLC (collectively, Idlewild); Midtown Partners, LLC; Edgebrook, Inc.; and Craig Oberlander. Bonomo alleged that the entities failed to transfer half of Vlahos's interest to her as required by the judgment and decree and requested that the district court join them and Oberlander to the

action so that she could obtain complete relief pursuant to Minn. R. Civ. P. 19.01. Bonomo did not serve any of the potential third-party respondents with a summons or complaint. Redstone filed an objection to Bonomo's motion, and Idlewild and Midtown filed a separate joint objection to the motion. Edgebrook and Oberlander did not respond to the motion.

In May 2012, the district court granted Bonomo's motion for joinder. The district court rejected Idlewild and Midtown's argument that Bonomo could have commenced an action against them in the district court because it found that Bonomo was not asserting any legal claims against them. For the same reason, the district court rejected Idlewild and Midtown's argument that Bonomo failed to comply with the procedural rules when she failed to serve them with a summons and complaint. As a result, the district court joined the entities and Oberlander as third-party respondents "for the sole purpose of providing petitioner with all tax returns, financial statements, or other relevant financial and/or information necessary to value and effectuate her court-awarded interests" in the entities.

The entities provided some discovery to Bonomo after the district court joined them and Oberlander as third-party respondents. However, the entities and Oberlander did not respond to Bonomo's supplemental discovery requests in November 2012 and February 2013. In February 2013, Redstone moved to be dismissed from the action, arguing that: (1) they complied with the order for joinder; (2) they never received service of process; (3) Bonomo never served them with a complaint; and (4) Bonomo has not alleged a claim for relief. Idlewild, Midtown, Edgebrook, and Oberlander also jointly

moved to be dismissed, arguing that the same arguments advanced by Redstone applied to them. Bonomo opposed the motions.

Following a hearing, the district court denied the motions. The district court found that the entities and Oberlander had not satisfied their obligations under the May 2012 order and remained “indivisibly intertwined” in the divorce proceeding. The district court also rejected Idlewild and Midtown’s argument that they should be dismissed for lack of personal jurisdiction and that Bonomo failed to state a claim against them, finding that it had previously considered and rejected the arguments in its May 2012 order. Although the district court noted that none of the other third-party respondents had previously raised the arguments, it rejected the arguments on their behalf for the same reasons.

This consolidated appeal follows.

D E C I S I O N

The entities and Oberlander argue that the district court erred by denying their motions to dismiss for lack of personal jurisdiction. The issue of whether personal jurisdiction exists is a question of law, which this court reviews de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004).

As an initial matter, Bonomo argues that Redstone, Oberlander, and Edgebrook waived objection to personal jurisdiction because they did not raise the objection in opposing Bonomo’s motion for joinder. In its order denying the motions to dismiss, the district court noted that only Midtown and Idlewild had previously raised this argument.

The district court did not find that the other parties had waived the argument; instead, it simply noted that it had previously rejected the argument.

A party may waive objection to insufficient service of process by failing to raise the argument in a responsive pleading or a motion, or by its conduct. Minn. R. Civ. P. 12.08; *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 868 (Minn. 2000). Simply participating in a case through discovery and responding to an opposing party's motions does not constitute waiver. *Patterson*, 608 N.W.2d at 868. "Rather, it is the failure to provide the court an opportunity to rule on the defense before affirmatively invoking the court's jurisdiction on the merits of the claim that is determinative." *Id.*

Here, Redstone, Oberlander, and Edgebrook did not submit an answer because Bonomo never served them with a summons and complaint. They did submit objections to Bonomo's motion for joinder, and they provided Bonomo with some discovery after the district court granted the motion. But Redstone, Oberlander, and Edgebrook never took "affirmative steps in the action" or "invok[ed] the power of the court on [their] own behalf." *Miss. Valley Dev. Corp. v. Colonial Enters., Inc.*, 300 Minn. 66, 72, 217 N.W.2d 760, 764 (1974). We conclude that Redstone, Oberlander, and Edgebrook did not waive objection to personal jurisdiction.

The entities and Oberlander argue that the district court lacks personal jurisdiction over them because Bonomo never served them with a summons and complaint.¹ In

¹ Redstone also argues that Bonomo violated Minn. R. Civ. P. 7.01 by not serving any pleadings. Because the district court did not address this argument, we do not address it here. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to and considered by the district court).

response, Bonomo contends that the district court correctly concluded that service of a summons was not necessary to invoke its jurisdiction because Bonomo was not seeking to commence a civil action against them.

To properly invoke the district court's personal jurisdiction, a plaintiff must commence an action in accordance with the Minnesota Rules of Civil Procedure. *Wick v. Wick*, 670 N.W.2d 599, 603–04 (Minn. App. 2003). To commence an action, the plaintiff must serve each defendant with a summons. Minn. R. Civ. P. 3.01. The summons must include specific information, including the time within which the defendant is required to serve an answer and a statement that notifies the defendant that if he or she fails to respond then judgment will be rendered against him or her. Minn. R. Civ. P. 4.01. A complaint must accompany the summons unless service is made by publication. Minn. R. Civ. P. 3.02. The failure to properly serve a defendant with a summons and complaint results in a lack of personal jurisdiction. *Wick*, 670 N.W.2d at 603–04.

The parties do not dispute that Bonomo did not serve any of the entities or Oberlander with a summons and complaint. Bonomo also did not serve them with any other documents that would have given them notice of a cause of action that she intended to assert against them. *See id.* at 604 (concluding that the requirements for invoking personal jurisdiction were not satisfied because third-party respondent was not served with any documents that could have provided her with the notice of the specific cause of action asserted against her). And because Bonomo did not assert a claim against them, the entities and Oberlander had no way out of the divorce proceeding. Bonomo's failure to comply with the Minnesota Rules of Civil Procedure by not serving the entities and

Oberlander with a summons and complaint results in a lack of personal jurisdiction. Therefore, we conclude that the district court erred by denying their motion to be dismissed from the divorce proceeding for lack of personal jurisdiction. Finally, we note that Bonomo could have effectively obtained the financial information she sought from the entities and Oberlander by serving them with third-party subpoenas under Minn. R. Civ. P. 45, yet she chose not to do so.

Because of this conclusion, we do not address the entities and Oberlander's argument that the district court erred by denying their motions to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e).

Reversed.