



A10-1790

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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Corey Elizabeth Rodewald  
Respondent,

vs.

Shawn Michael Taylor  
Appellant.

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Appellant's Brief and Appendix

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

STATE OF MINNESOTA  
IN COURT OF APPEALS

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In re the Matter of:

Corey Elizabeth Rodewald  
Respondent,

APPELLANT'S  
LETTER BRIEF

vs.

Shawn Michael Taylor  
Appellant.

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LEGAL ISSUE

Is an action for child custody and support properly commenced and jurisdiction over a party obtained where the initial pleading, styled a notice of motion and motion, is served by first-class mail and no acknowledgment of service is returned to the initiating party?

The trial court held that where a Recognition of Parentage form is executed pursuant to Chapter 257, Minnesota Statute Section 518.156 subd. 1(2) allows a party to proceed by motion to initiate a child custody and support action. The court further held that the commencement of an action in this fashion appears to be entirely consistent with section 518.005, the custody statutes, and the rules pertaining to family law practice. Appendix page 4.

Apposite Cases:

*Patterson v. Wu Family Corp.*, 608 N.W.2d 863 (Minn. 2000); *Smith v. Flotterud*, 716 N.W.2d 378 (Minn.App. 2006); *Wick v. Wick*, 670 N.W.2d 599 (Minn.App. 2003); *Uthe v. Baker*, 629 N.W.2d 121 (Minn.App. 2001).

Apposite Statutes:

§518.005 subs. 1-3 Rules governing proceedings; §518.11(a)(c) Service, alternate service, publication; §518.156 subd. 1 & subd. 1(2) Commencement of custody proceeding.

## STATEMENT OF THE CASE

Appellant seeks review of a trial court order entered on August 12, 2010, issued by the Honorable Kevin F. Mark, Judge of District Court, First Judicial District, denying the appellant's motion to vacate a default judgment of the court entered on March 10, 2010, issued by the Honorable Karen J. Asphaug, Judge of District Court, First Judicial District.

## STATEMENT OF FACTS

The appellant and the respondent are the parents of a three-year-old child born November 10, 2006. The parties and their child lived together until late 2009. Immediately after the birth of the child, the appellant executed a Recognition of Parentage form at the hospital. The subsequent disposition of this document is unknown. Thereafter, the appellant executed a second ROP on November 17, 2009 and delivered the document to the child support offices of Goodhue County Social Services. After the parties separated, the respondent attempted to commence a lawsuit regarding the issues of custody, parenting time and child-support through the Office of the Goodhue County Attorney. The Goodhue County Attorney failed to effect personal service on the appellant and canceled the scheduled hearing. Respondent enlisted the services of private counsel in order to commence her lawsuit regarding custody and support. To this end the respondent attempted to serve the appellant with a notice of motion and motion regarding child support and custody by mail in January 2010. From the pleadings and documents on file it appears that the respondent failed to include an acknowledgment of service form (Form 22) as well as a self-addressed stamped return envelope. Regardless of whether these documents were included with the summons and complaint, it is undisputed that the appellant never returned an acknowledgment of service to the respondent. The motion documents also did not include any notice that judgment by default would be taken if the appellant failed to respond to the motion. The appellant communicated with the respondent via telephone and informed her that he would not accept service by mail. The respondent nonetheless proceeded to schedule a hearing and orally moved the district court for judgment by default on February 17, 2010. The district court ordered default judgment on March 10, 2010.

On March 11, 2010 the respondent was personally served a summons and complaint regarding child support, docketed in the Prairie Island Tribal Court. The respondent was personally served within the boundaries of the Prairie Island Reservation.

The appellant moved the District Court to vacate the default judgment, with oral arguments taking place on May 19, 2010. The appellant asserted that the defective service of the initial pleadings resulted in a lack of personal jurisdiction by the district court over the appellant. The respondent countered that a Recognition of Parentage form acted as an initial pleading and that a lawsuit could be properly commenced and jurisdiction obtained pursuant to Minnesota Statutes § 518.156 subd. 1(2) by service of a notice of motion and motion by first-class mail. The district court requested the parties to brief the issue as to whether a custody and child-support action is properly commenced and jurisdiction obtained by executing a Recognition of Parentage form and serving a notice of motion and motion by first-class mail.

On August 12, 2010 the district court of held that the plain language of section 518.156 subd. 1(2) supports the proposition that a custody action may be commenced by motion practice served by first-class mail provided that a Recognition of Parentage form is executed by the parties. This appeal followed, with notice served on October 11, 2010.

#### ARGUMENT

Appellant respectfully asserts that the district court's interpretation of section 518.156 so as to allow service of process by first-class mail in child custody proceedings is in error and not supported by the prior holdings of the appellate courts of Minnesota.

The determination of whether service of process was proper and interpretation of the rules of civil procedure are questions of law, which are reviewed de novo. *Smith v. Flotterud*, 716 N.W.2d 378, 381 (Minn.App. 2006) (citation omitted) (analysis of effective service of process pursuant to Rule 4 of the rules of civil procedure), *review denied*. Similarly, the interpretation of statutes and the existence of personal jurisdiction are both questions of law that appellate courts review de novo. *Uthe v. Baker*, 629

N.W.2d 121, 123 (Minn.App. 2001) (citing *Patterson v. Wu*, 608 N.W.2d 863, 866 (Minn. 2000)) (personal jurisdiction reviewed de novo); *Custody Of Child Of Williams v. Carlson*, 701 N.W.2d 274, 278-79 (2005) (citing *Dorman v. Steffen*, 666 N.W.2d 409, 411 (Minn.App. 2003)) (interpretation of statutes reviewed de novo).

The elements of personal jurisdiction were clearly set forth by the appellate court in *Wick* where the court stated:

First, there must be an adequate connection between the defendant and the state, known as a “basis” for the exercise of personal jurisdiction by the district court. ... [s]econd, the plaintiff must invoke the jurisdiction of the district court using a “process” that is consistent with the requirements of due process and that satisfies those portions of the Minnesota Rules of Civil Procedure that govern the commencement of civil actions and the personal service of process. *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn.App. 2003) (citation omitted).

The appellant does not argue that the district court lacked the basis for the exercise of jurisdiction, instead, he maintains that the respondent did not properly invoke the court’s jurisdiction over him. The process that the respondent employed, service by first-class mail of the initial pleading, is not authorized under Minnesota law, unless accepted by the adverse party, and is therefore ineffective process which results in a lack of jurisdiction by the district court over the appellant. Before the district court may exercise personal jurisdiction over a defendant, the procedural requirement of service of process must be satisfied. *Uthe v. Baker*, 629 N.W.2d 121, 123 (Minn.App 2001) (citing *Omni Capital Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104, 108 S.Ct. 404, 409, 98 L.Ed.2d 415 (1987)). Absent personal service of process, or waiver of service by the defendant, the court ordinarily may not exercise jurisdiction over a defendant. *Nieszner v. St. Paul School Dist. No. 625*, 643 N.W.2d 645, 648 (Minn.App. 2002). See also *Smith v. Flotterud*, 716 N.W.2d 378, 381 (Minn.App 2006), *review denied*. Where service of process is insufficient, the district court must dismiss the action. *Uthe*, 629 N.W.2d at 123.

Here in the instant cause, the respondent failed to fulfill the procedural requirements of service of process under both rule 4 of the rules of civil procedure and Minn.Stat. § 518.11(a)(c) (West

2010). In order to effect service by first-class mail, rule 4 requires that an acknowledgment be received by the sender within the time allowed for service. Minn. R. Civ. Pro. 4.05. *Roehrdanz v. Brill*, 682 N.W.2d 626, 630 (Minn. 2004); *Leek v. American Exp. Property Cas.*, 591 N.W.2d 507, 509 (Minn.App. 1999) (rule 4.05 requires strict compliance to procedure in order to perfect service). The legislative enactment governing service in actions under Chapter 518 requires service upon the respondent personally, or an order of the court for alternate service by publication or first-class mail. Minn.Stat § 518.11(a)(c) (West 2010). In the instant cause, the respondent never attempted personal service on the appellant nor did she petition the court for service by alternate means. Statutory provisions for service of notice must be strictly followed for a court to acquire jurisdiction. *Nieszner v. St. Paul School Dist. No. 625*, 643 N.W.2d 645, 648 (Minn.App. 2002) (citing *Lebens v. Harbeck*, 243 N.W.2d 128, 129 (Minn. 1976)). Actual notice of a lawsuit will not subject a defendant to personal jurisdiction of the court absent substantial compliance with the requirements of personal service of process that are contained in rules of civil procedure. *Nieszner*, 643 N.W.2d at 649 (citing *Tullis v. Federated Mut. Ins. Co.*, 570 N.W.2d 309, 311 (Minn. 1997)). Again, the respondent in the instant cause never made any attempt at personal service or otherwise attempted to effect proper service by alternate means. This failure gives rise to jurisdictional defects in the respondent's cause of action.

The respondent's failure to proceed pursuant to section 518.11(c) and move the court, subsequent to the filing of an initial pleading, for an order to serve process by first-class mail, or by publication, deprives the court of jurisdiction. *Ayala v. Ayala*, 749 N.W.2d 817, 820 (Minn.App. 2008) (judgment is void if the issuing court lacked personal jurisdiction over a party through a failure of service that has not been waived); *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 611 (Minn.App. 2000) (judgment entered without due service of process must be vacated under Rule 60.02). This jurisdictional defect is not cured by the fact that the appellant executed a Recognition of Parentage pursuant to section 257.75.

The respondent has erroneously asserted that an executed Recognition of Parentage allows a party to proceed under section 518.156 subd. 1(2) by motion, thus nullifying the requirement of personal service of the petition pursuant to section 518.11(c) and the applicable rules of civil procedure. Section

518.156 provides the statutory basis for a parent to bring a custody action in a dissolution or separation proceeding, or a proceeding not encompassing a dissolution or separation, such as, an annulment or voided marriage, or a paternity action. This legislative provision requires the parent to file a petition or motion requesting an award of custody. Minn. Stat. § 518.156 subd. 1(2) (West 2010). Chapter 518 also requires that “the initial pleading in all proceedings under sections 518.002 to 518.66 shall be denominated a petition.” The statute further states that “other pleadings shall be denominated as provided in the Rules of Civil Procedure.” Minn. Stat. § 518.005 subd. 3 (West 2010).

This requires a petitioner to properly serve an initial pleading, styled a ‘Petition’, and request an award of custody or, in the appropriate circumstances, file a request for custody subsequent to the initial pleading, styled a ‘Motion’, and give notice pursuant to Rule 303. See §§ 518.005 subd. 3; 518.11(a).

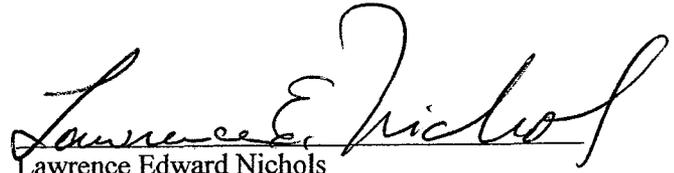
To the extent that section 518.156 subd. 1(2) may, arguably, be seen to conflict with the applicable procedural, pleading, or practice edict under a rule of civil procedure, the rule generally prevails. *Leek v. American Exp. Property Cas.*, 591 N.W.2d 507, 510 (Minn.App 1999) (citing *Wick Bldg. Sys., Inc., v. Employers Ins.*, 546 N.W.2d 306, 308 (Minn.App. 1996) (citing Minn. R. Civ. Pro. 81.01(c)). Rule 81.01(c) specifically provides that all statutes “inconsistent or in conflict with these rules are superseded insofar as they apply to pleading, practice, and procedure in the district court.” Minn. R. Civ. P. 81.01(c) (West 2010). Accordingly, to the extent that section 518.156 subd. 1(2) is inconsistent or in conflict with the Minnesota Rules of Civil Procedure, the rules supersede the statute. *Leek*, 591 N.W.2d at 510. Like any other civil action, an action in district court to award custody or child support must be commenced pursuant to the applicable rule of the Minnesota Rules of Civil Procedure.

#### CONCLUSION

The appellant respectfully requests an order of the appellate court finding that the district court erred in denying the appellant’s motion to vacate judgment. The default judgment was void for lack of jurisdiction because the respondent failed to effectively serve the appellant.

Respectfully submitted,

Date 12/6/2010

A handwritten signature in cursive script that reads "Lawrence E. Nichols". The signature is written in black ink and is positioned above the printed name.

Lawrence Edward Nichols

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