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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2245**

Christopher Becker,
Appellant,

vs.

Duluth Transit Authority,
Respondent.

**Filed June 15, 2010
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69DU-CV-09-2163

Louis A. Stockman, Stockman Law Office, Duluth, Minnesota (for appellant)

Tim A. Strom, Scott A. Witty, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

The district court dismissed appellant's personal-injury lawsuit against respondent based on its conclusion that appellant had failed to perfect service. Because the statute of limitations had expired, the dismissal was with prejudice. Appellant concedes that he

failed to comply with the service requirements of Minn. R. Civ. P. 4.03, but he argues that service was nonetheless effective, relying on the doctrines of actual notice and estoppel. Because neither doctrine applies in this case, we affirm.

FACTS

On May 15, 2009, a private process server, who was hired by appellant Christopher Becker to serve respondent Duluth Transit Authority (DTA) in a personal-injury lawsuit, entered DTA headquarters and told Phil Torgerson, director of operations for ATE Management of Duluth, Inc. (ATE), that he had papers to serve on DTA. ATE is a private management company hired by the city of Duluth to manage DTA. Torgerson told the process server that he was authorized to accept service on behalf of DTA. The process server gave Torgerson an envelope containing service papers, and Torgerson placed the envelope on the desk of Tom Szukis, ATE's safety training director. The record indicates that ATE employees had previously accepted service on behalf of DTA in unrelated actions without objection from DTA.

DTA served its answer on June 3, 2009, asserting insufficiency of service of process and seeking dismissal. DTA also claimed that because the action was barred by the applicable statute of limitations, the dismissal should be with prejudice. DTA filed a motion to dismiss under Minn. R. Civ. P. 12.02(d). After concluding that Becker had failed to comply with the applicable service requirements, the district court dismissed Becker's action with prejudice. This appeal follows.

DECISION

Service of process for municipal or other public corporations is governed by the Minnesota Rules of Civil Procedure, which provide, in relevant part, that service of a summons shall be “[u]pon a municipal or other public corporation by delivering a copy . . . [t]o any member of the board or other governing body of a defendant public board or public body not [otherwise] enumerated.” Minn. R. Civ. P. 4.03(e)(5). The parties agree that DTA is a municipal corporation and that service upon DTA is governed by rule 4.03(e)(5). Thus, service upon DTA must be made by delivering a copy of the summons to a member of the DTA Board.¹

“Service in a matter not authorized by a rule or statute is ineffective.” *O’Sell v. Peterson*, 595 N.W.2d 870, 872 (Minn. App. 1999). To be effective, “[s]ervice of process must accord strictly with statutory requirements.” *Lundgren v. Green*, 592 N.W.2d 888, 890 (Minn. App. 1999) (quotation omitted), *review denied* (Minn. July 28, 1999). “Ineffective service [of process on] a defendant results in a lack of personal jurisdiction.” *Mercer v. Andersen*, 715 N.W.2d 114, 118 (Minn. App. 2006).² “Whether service of process was effective, and personal jurisdiction therefore exists, is a question

¹ The DTA Board consists of nine directors who are appointed to three-year terms by the Mayor of Duluth with the approval of the Duluth City Council. Minn. Stat. §§ 458A.21, .22 (2008).

² Notwithstanding ineffective service, a defendant may submit to the district court’s jurisdiction by affirmatively invoking the district court’s authority. *See Miss. Valley Dev. Corp. v. Colonial Enters.*, 300 Minn. 66, 72, 217 N.W.2d 760, 764 (1974) (“A defendant who has subjected himself to jurisdiction by making a general appearance, taking affirmative steps in the action, and invoking the power of the court on his own behalf, cannot later claim that service was insufficient.”). Becker does not claim that DTA affirmatively invoked the district court’s jurisdiction.

of law that [appellate courts] review de novo.” *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). Here, there is no dispute that Torgerson and Szukis are not members of the DTA Board. Because rule 4.03 required service to be made upon a member of the DTA Board, service of process was ineffective. *See* Minn. R. Civ. P. 4.03(e)(5).

Becker concedes that he did not comply with rule 4.03(e)(5). But he argues that service was nonetheless perfected because DTA had actual notice of the lawsuit. “When actual notice of the action has been received by the intended recipient, the rules governing such service should be liberally construed.” *Larson v. Hendrickson*, 394 N.W.2d 524, 526 (Minn. App. 1986) (quotation omitted). But “[a]ctual notice will not subject defendants to personal jurisdiction absent substantial compliance with [r]ule 4.” *Thiele v. Stich*, 425 N.W.2d 580, 584 (Minn. 1988). Moreover, the actual-notice doctrine has only been applied in cases involving substitute service. *Turek v. A.S.P. of Moorhead, Inc.*, 618 N.W.2d 609, 612 (Minn. App. 2000), *review denied* (Minn. Jan. 26, 2001). The reasoning behind this limited application is sound. The rules that allow substitute service generally define categories of individuals who may accept service. For example, under rule 4.03(a), service of process may be completed upon an individual “by leaving a copy [of the summons] at the individual’s usual place of abode *with some person of suitable age and discretion then residing therein.*” Minn. R. Civ. P. 4.03(a) (emphasis added). A process server must exercise discretion when determining whether substitute service on a particular individual will comply with the particular rule. But when the applicable rule does not authorize substitute service and specifically identifies the individual(s) who

must be served, there is little discretion when determining whom to serve. Accordingly, strict compliance with the rule is required. *See Lundgren*, 592 N.W.2d at 890 (stating general rule that service must strictly accord with statutory requirements).

Substitute service is not authorized under rule 4.03(e)(5). *See* Minn. R. Civ. P. 4.03(e)(5) (requiring service to be made upon “any member of the board or other governing body of a defendant public board or public body not [otherwise] enumerated”); *Obermeyer v. Sch. Bd., Indep. Sch. Dist. No. 282*, 312 Minn. 580, 581-82, 251 N.W.2d 707, 708 (1977) (“Rule 4.03(e) is silent with regard to substitute service.”). Becker recognizes that the actual-notice doctrine has not been extended beyond cases involving substitute service, yet he urges us to extend the doctrine in this case. “[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Moreover, the rationale for limiting the actual-notice doctrine to substitute-service cases, as described above, is sound. We therefore decline to extend the actual-notice doctrine to cases in which service is governed by rule 4.03(e)(5).

Becker also attempts to justify his failure to comply with rule 4.03 under the doctrine of estoppel. “To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed.” *Blaine v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 498 N.W.2d 309, 315 (Minn. App. 1993)

(quotation omitted), *review denied* (Minn. June 22, 1993).³ In *Blaine*, three former employees of the Anoka-Hennepin School District sued the district. *Id.* at 311. One of the plaintiffs served the summons on the district’s interim superintendent and the other two served their summonses on the superintendent. *Id.* On the district’s motion, the district court dismissed the claims for insufficient service of process.⁴ *Id.* The plaintiffs argued that the district was estopped from arguing ineffective service of process “because the superintendents specifically represented that they were authorized to accept service on behalf of the school district.” *Id.* at 315. We rejected this argument, explaining that the plaintiffs’ attorney “could not have reasonably relied on the representations of the non-attorney superintendents that they were authorized to accept service on behalf of the school district.” *Id.* “Whether an individual may accept service is determined by the rules and statutes; therefore, [plaintiffs’] attorney should have examined the law and made the determination whether the superintendent was authorized to accept service.” *Id.*

Becker attempts to distinguish this case from *Blaine*, arguing that *Blaine* involved only one misrepresentation regarding authorization to accept service, whereas DTA has a 19-year history of accepting service through ATE employees. While we recognize that

³ *Blaine* was subsequently abrogated by the Minnesota Supreme Court’s decision in *Manteuffel v. City of North St. Paul*, 533 N.W.2d 622 (Minn. 1995). However, the supreme court’s discussion of *Blaine* focused solely on “the apparent disposition that the exclusive means of appeal was from the order of dismissal” rather than the entry of judgment. 533 N.W.2d at 623. Because *Manteuffel* did not address the underlying service-of-process issue, we cite *Blaine* despite the abrogation.

⁴ The applicable procedural rule required service on “any member of the board or other governing body of a defendant school district.” Minn. R. Civ. P. 4.03(e)(4). For purposes of service of process, the superintendent of a school board is not a member of the school board. *Blaine*, 498 N.W.2d at 314.

the result may appear harsh, our reasoning in *Blaine* is controlling here. Regardless of Torgerson's representation to the process server and the number of times that DTA has accepted service through ATE employees in the past, it was not reasonable for Becker to rely on Torgerson's representation that he could accept service, or DTA's representations or inaction in other cases, as a basis to ignore the specific, unambiguous service requirements of rule 4.03(e)(5). *See id.* (explaining that a plaintiff's attorney may not rely on a non-attorney's representations regarding authorization to accept service). The risk of knowing noncompliance with the specific service requirements of rule 4.03(e)(5) falls on Becker. Accordingly, his estoppel argument fails.

The district court did not err by determining that Becker failed to perfect service under Minn. R. Civ. P. 4.03 and that it therefore lacked jurisdiction. And because there is no dispute that the applicable statute of limitations had expired when the district court reached this conclusion, the district court did not err by dismissing the lawsuit with prejudice.

Affirmed.

Dated:

Judge Michelle A. Larkin