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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-935**

In re the Marriage of:
Elizabeth Mary Shults, petitioner,
Appellant,

vs.

Fount LeRon Shults,
Respondent,

Ramsey County, intervenor,
Respondent.

**Filed January 30, 2012
Reversed and remanded
Peterson, Judge**

Ramsey County District Court
File No. 62-FA-10-2324

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Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a district court order dismissing appellant-wife's petition to dissolve the parties' marriage, wife argues that the district court (a) erred in ruling that wife did not accomplish service of her petition on August 31, 2010, under Minnesota Law and the Hague Service Convention; (b) misunderstood Norwegian law when it ruled that respondent-husband's application for a Norwegian divorce license precluded wife's Minnesota dissolution proceeding and, in any event, the Minnesota dissolution proceeding preceded the Norwegian proceeding and the Minnesota proceeding should have been given precedence; and (c) should have allowed wife to proceed in Minnesota on a forum non conveniens basis. We reverse and remand.

FACTS

The parties were married in 1984, and they have three children. Only the youngest child was a minor when the dissolution proceeding began. During the marriage, husband earned two doctorate degrees, and wife stayed home to care for the children. In 2006, the family relocated from Minnesota to Norway.

In 2009, wife and the minor child returned to Minnesota. Soon after, the parties decided to divorce. Under Norwegian law, before a dissolution may be granted, the parties must file for and be granted a legal separation and live apart for at least one year. The parties submitted a joint application for legal separation in Norway, and, on August 31, 2009, they were granted a separation license. In July 2010, husband applied for a divorce license in Norway. No hearing was held regarding the issuance of the divorce

license.¹ Dissolution of the marriage was the sole purpose of the divorce-license proceeding under Norwegian law, and no adjudication of child custody, property, or spousal maintenance was contemplated.

On August 27, 2010, wife filed a summons and a petition for dissolution of marriage in Ramsey County District Court. An affidavit of personal service, filed on September 29, 2010, states that the affiant served the summons and petition on husband on August 31, 2010, by placing copies of the documents in husband's mailbox in Norway according to Norwegian law. Husband claims that the documents were placed in the wrong mailbox. A second affidavit of personal service, filed on October 18, 2010, states that, on October 8, 2010, the affiant served wife's summons and petition for dissolution on husband by handing the documents to him personally in Norway, which is considered due and proper service under the laws of Norway.

On September 30, 2010, the parties were granted a divorce license in Norway. In an October 4, 2010 letter, husband notified the Minnesota District Court that the parties were granted a divorce license in Norway on September 30, 2010.

A district court referee determined that Minn. Stat. § 518.11(a) (2010) required that wife's summons and petition be served upon husband personally and that placing the summons and petition in husband's mailbox was not personal service. The referee concluded that the district court lacked jurisdiction over the Minnesota dissolution

¹ The parties dispute whether wife was served with husband's application for the divorce license. In a January 21, 2011 letter to the district court referee, husband's counsel asserts that the Norwegian court notified wife of the divorce proceeding with a document dated September 2, 2010. In our review of the file, we have not found any document from the Norwegian court that notifies wife of the divorce-license proceeding.

proceeding because the Minnesota proceeding was commenced by personal service of the summons and petition on husband on October 8, 2010, which was after the proceeding in Norway was commenced and concluded. The district court confirmed the referee's order, and wife moved for reconsideration.

Upon the motion for reconsideration, the referee found that “[t]he Minnesota divorce proceeding commenced October 8, 2010, when the Summons and Petition for Dissolution of Marriage were personally served upon Husband.” The referee further found that when the Minnesota proceeding commenced, there was a pending proceeding in Norway, the divorce had already been granted, and the Norwegian court has jurisdictional primacy. In an attached memorandum, the referee explained:

Minnesota law, not the Hague Convention, controls commencement of a dissolution proceeding. Personal service—that is, service in hand delivered to the person of the Respondent (not substitute service, not abode service, not service by mail or service by publication)—is necessary wherever in the world that person may be found, unless that person is in a war zone, failed state, or in some other manner beyond personal service. In such case, upon proper application the Court approves service by alternate means.

The referee recommended that the motion to reconsider be denied, and the district court adopted the recommendation.

D E C I S I O N

This court reviews legal issues concerning jurisdiction de novo. *McLain v. McLain*, 569 N.W.2d 219, 222 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). The Minnesota marital-dissolution statute provides:

(a) Unless a [dissolution] proceeding is brought by both parties, copies of the summons and petition [for dissolution of marriage] shall be served on the respondent personally.

(b) When service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same. When service is made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same.

Minn. Stat. § 518.11 (2010).

Under section 518.11(a), wife was required to serve the summons and petition on husband personally. And under section 518.11(b), because husband was served outside the United States, wife was permitted to prove service by the affidavit of the person who made the service if the affidavit was taken before and certified by one of several specifically identified officials. But section 518.11 does not specify how personal service is to be effected.

The Minnesota Rules of Civil Procedure specify how personal service is to be made when the person served is outside the United States. The rules state:

Unless otherwise provided by law, service upon an individual other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents[.]

Minn. R. Civ. P. 4.04(c).

There is no dispute that personal service of wife's dissolution petition upon husband was required and that husband was served outside the United States. The United States Supreme Court has considered when service is compatible with the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, November 15, 1965, 20 U.S.T. 361 (Hague Service Convention). *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 108 S. Ct. 2104 (1988). In *Schlunk*, the Supreme Court explained:

The Hague Service Convention is a multilateral treaty that was formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. The Convention revised parts of the Hague Conventions on Civil Procedure of 1905 and 1954. The revision was intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad.

Id. at 698, 108 S. Ct. at 2107.

The Supreme Court explained further that “[b]y virtue of the Supremacy Clause, U.S. Const., Art. VI, the [Hague Service] Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies.” *Id.* at 699, 108 S. Ct. at 2108. Finally, the Supreme Court explained that “[i]f the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of

documents abroad, then the Hague Service Convention applies.” *Id.* at 700, 105 S. Ct at 2108. Thus, because husband was in Norway when wife attempted service, the applicable method of service under Minn. Stat. § 518.11 and Minn. R. Civ. P. 4.04(c) required the transmittal of documents abroad, and the district court erred in determining that the Hague Convention does not control the manner of service. *See Hammond v. Hammond*, 708 S.E.2d 74, 79 (N.C. 2011) (stating that Hague Service Convention “procedures must be followed in all cases where there is occasion to transmit judicial or extrajudicial document for service abroad”) (quotation omitted).

Because we hold that the district court erred in determining that the Hague Convention does not control the manner of service, we reverse and remand for a determination whether wife’s attempted service on August 31, 2010, complied with the Hague Service Convention and, if it did, whether the district court has jurisdiction. We decline to address wife’s additional arguments regarding the nature and effect of the proceedings in Norway and whether Minnesota is a convenient forum for the dissolution action because those issues have not been addressed by the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that “reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it” (quotation omitted)).

Reversed and remanded.