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Eighth Circuit endorses secondhand personal service under Minn. R. Civ. P. 4.03(a)

The Eighth Circuit Court of Appeals was recently asked in a personal injury case to predict whether the Minnesota Supreme Court would approve of personal secondhand service of process under Minn. R. Civ. P. 4.03(a). In a split-decision, former Minnesota Supreme Court Justice David Stras predicted that his former colleagues will do just that. *Michaud v. Davidson*, 920 F.3d 1219 (8th Cir. 2019).

Rule 4.03(a) provides that an individual can be personally served with process “by delivering a copy to the individual personally or by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion then residing therein.” Just days before the statute of limitations was set to expire, the plaintiff had a sheriff deputy attempt to serve the defendant at her parents’ house where the defendant was believed to be living. Because the defendant was not home, the sheriff deputy informed the defendant’s father that the deputy had a summons and complaint for the defendant and asked the defendant’s father to give it to her. The defendant’s father took the papers and gave them to the defendant a short time later. After expiration of the statute of limitations, defendant removed the case to federal court and moved to dismiss the case on grounds that she was never served under Rule 4.03(a) because her parent’s house was not her “usual place of abode” at the time she was purportedly served (she had apparently moved into her own place several months before) and secondhand service is not recognized in Minnesota.

The district court agreed and dismissed the case, but the Eighth Circuit reversed. Even though her parents’ home was not her “usual place of abode” at the time, Judge Stras held that the defendant was personally served by her father and that it is likely that the Minnesota Supreme Court would determine that personal service (even if secondhand) is sufficient to satisfy Rule 4.03(a). He reasoned, “All that must happen is that an adult with the requisite knowledge and intent personally place the summons in the defendant’s hands, which is what [the defendant’s] father did in this case.” (Citing *Melillo v. Heitland*, 880 N.W.2d 862 (Minn. 2016), which was decided while Judge Stras was a member of the Minnesota Supreme Court).

Despite Judge Stras’s prediction, it remains unclear whether secondhand personal service will be fully recognized in Minnesota. As the dissent points out, the Minnesota Supreme Court has expressly rejected secondhand service for substitute service of process and also long recognized that Minnesota service of process rules demand strict compliance. Based on these factors, the dissent predicts that the Minnesota Supreme Court will come down the other way on the issue.

We will just have to wait and see. In the meantime, plaintiffs may not want to rely on secondhand service in Minnesota just yet.