

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1610**

Dennis J. Daulton, trustee for the next of kin of Brady Joel Daulton, deceased,
Appellant,

vs.

TMS Treatment Center, Inc., d/b/a Carlson Drake House,
Respondent.

**Filed June 16, 2025
Reversed and remanded
Worke, Judge**

Hennepin County District Court
File No. 27-CV-22-12180

Jerome M. Reinan, Law Offices of J.M. Reinan, Denver, Colorado (for appellant)

Christopher L. Goodman, Thompson, Coe, Cousins & Irons, LLP, St. Paul, Minnesota (for
respondent)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and
Connolly, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the dismissal of his wrongful-death action, arguing that the district court abused its discretion when it determined that appellant failed to timely serve a required expert-identification affidavit and granted respondent's motion to dismiss. Because we conclude that appellant timely served the affidavit, we reverse and remand.

FACTS

Appellant Dennis J. Daulton, trustee for the next of kin of Brady Joel Daulton, deceased, commenced a wrongful-death action against respondent TMS Treatment Center, Inc., d/b/a Carlson Drake House, in August 2022. Appellant's claim alleged medical malpractice and was subject to the expert-affidavit requirements of Minn. Stat. § 145.682, subds. 2-4 (2024). Appellant was required to serve respondent with an affidavit identifying the expert witnesses he intended to call at trial within 180 days of the commencement of discovery (affidavit period). *Id.*, subd. 2(2).

The affidavit period commenced in October 2022, and the district court dismissed the case in February 2023. At the time the case was dismissed, appellant had not served the expert-identification affidavit, and 62 days of the 180-day affidavit period remained.

Appellant appealed the dismissal and we reversed and remanded to the district court in *Daulton v. TMS Treatment Ctr., Inc.*, 2 N.W.3d 331 (Minn. App. 2024). Our opinion was issued on January 16, 2024. Judgment was entered by the clerk of the appellate courts on February 27, 2024.

As of April 24, 2024, appellant had not served the affidavit, and respondent moved to dismiss. Respondent argued that appellant missed the deadline to serve the affidavit because the affidavit period resumed when the *Daulton* decision was issued in January, and expired 62 days later on March 18, 2024.

Appellant served the affidavit on April 25, 2024. Appellant argued that the service was timely because the affidavit period did not resume until the *Daulton* judgment was entered in February, and the deadline therefore did not expire until April 29, 2024.

The district court determined that the affidavit period resumed when the *Daulton* decision was issued and granted respondent's motion to dismiss. This appeal followed.

DECISION

Appellant argues that the district court abused its discretion by concluding that the affidavit period resumed when the decision remanding his case was issued and by granting respondent's motion to dismiss. We review a district court's dismissal of a claim under Minn. Stat. § 145.682 (2024) for an abuse of discretion. *Maudsley v. Pederson*, 676 N.W.2d 8, 11 (Minn. App. 2004). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). A district court's interpretation of statutes and procedural rules raises questions of law subject to de novo review. *Heilman v. Courtney*, 926 N.W.2d 387, 392 (Minn. 2019).

Under section 145.682, subdivision 2, a plaintiff alleging malpractice must "serve upon defendant within 180 days after commencement of discovery under the Rules of Civil Procedure, rule 26.04(a) an affidavit" identifying the expert witnesses that the plaintiff intends to call at trial. The parties agree that the affidavit period was suspended during pendency of appellant's appeal, but dispute whether the period resumed when the *Daulton* decision was issued or when the *Daulton* judgment was entered.

Appellant argues that the 180-day affidavit period is governed by the Minnesota Rules of Civil Procedure, and that, during the course of his appeal, his case was governed by the Minnesota Rules of Civil Appellate Procedure. According to appellant, the affidavit

period did not resume until the judgment was entered and jurisdiction of the case was transferred back to the district court.

Relying on our decision in *Firkus v. Harms*, the district court concluded that the affidavit period is not tied to a district court's jurisdiction because obtaining the expert witnesses required under section 145.682 is a "process . . . [that] can be done outside of discovery." 914 N.W.2d 414, 420 (Minn. App. 2018). In other words, according to the district court, the affidavit period resumed when the *Daulton* decision was issued because, at that point, appellant had the "ability" to obtain expert witnesses outside of the formal discovery process even though the district court lacked jurisdiction over the case. We disagree.

In *Firkus*, we concluded that Minn. R. Civ. P. 26 governs the date that discovery commences for purposes of section 145.682. *Id.* We reached that conclusion because it "best reflects the legislature's intent" that malpractice plaintiffs have a full 180 days to conduct discovery for their expert-identification affidavit, and it provides parties a bright-line rule to determine when the 180-day affidavit period begins and ends. *Id.*

Because the intent of the legislature and the parties' need for a bright-line rule establishing the affidavit period are just as relevant when a case is remanded as when a case is commenced, we conclude that rule 26 governs the resumption of the 180-day affidavit period. And because civil appeals are governed by appellate rules, *see* Minn. R. Civ. App. P. 101, and a district court does not reacquire jurisdiction until an appellate court's judgment is entered, *see Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 421 N.W.2d 735, 739 (Minn. App. 1988) (noting that Minn. R. Civ. App. P. 136.02

“operates to deprive the *trial court* of jurisdiction”), we conclude that the affidavit period did not resume until February 27, 2024, when the *Daulton* judgment was entered and jurisdiction of appellant’s case was transferred to the district court.

Furthermore, while we acknowledged in *Firkus* that obtaining an expert witness is a “process . . . [that] can be done outside of discovery,” we rejected the argument that such informal discovery functions “as a trigger to the 180-day period,” because “[t]he statute explicitly references discovery conducted *pursuant to the rules of civil procedure*, and it does not contain any references to informal discovery.” *Id.* at 420, 418 n.3 (emphasis added). For the same reasons, we decline to hold that informal discovery triggers, upon filing of an appellate court opinion, the resumption of the 180-day day affidavit period.

Accordingly, we conclude that the 180-day affidavit period resumed on February 27, 2024, upon entry of the *Daulton* judgment, that it expired 62 days later on April 29, 2024, and that appellant’s April 25, 2024 service of the expert-identification affidavit was timely. We reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.