

NO. COA14-743

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

ROBIN CRITE,
Plaintiff,

v.

Guilford County
No. 13 CVS 6627

TIMOTHY SHAWN BUSSEY,
Defendant.

Appeal by defendant from order entered 28 April 2014 by
Judge A. Robinson Hassell in Guilford County Superior Court.
Heard in the Court of Appeals 19 November 2014.

*Sharpless & Stavola, P.A., by Eugene E. Lester III, for
defendant-appellant.*

No brief filed for plaintiff-appellee.

DIETZ, Judge.

Defendant Timothy Shawn Bussey appeals from the trial
court's order denying his Rule 12 motion to dismiss based on
insufficient process, insufficient service of process, and lack
of personal jurisdiction. Although this appeal is
interlocutory, Bussey contends that this Court has jurisdiction
to hear it under N.C. Gen. Stat. § 1-277(b) (2013). Section 1-
277(b) permits an immediate appeal from trial court rulings
concerning "the jurisdiction of the court over the person."

For the reasons set forth in *Love v. Moore*, 305 N.C. 575, 291 S.E.2d 141 (1982), we reject Bussey's jurisdictional argument because the trial court's order concerns sufficiency of service and process, not whether Bussey had sufficient contacts with the State. Accordingly, section 1-277(b) does not apply and we must dismiss this appeal for lack of appellate jurisdiction.

Facts and Procedural History

On 19 June 2013, Robin Crite filed a complaint alleging that she was injured when Timothy Shawn Bussey, "a resident of Forsyth County, North Carolina," failed to use a turn signal and made an unsafe movement in his vehicle, resulting in a collision with Crite's car. At the time of the accident, Bussey was driving a vehicle owned by his employer, First Christian Church of Kernersville, North Carolina. An official Division of Motor Vehicles Crash Report, produced the day of the accident, listed the name and address of the owner-employer Church in addition to Bussey's personal contact information.

When Crite attempted personal service on Bussey at the home address listed on the report, the summons was returned undelivered with a notation that Bussey "[n]o longer lives at [the] address provided." Crite directed an alias and pluries

summons to the same address, and when that was returned undelivered as well, she filed an Affidavit of Service of Process by Publication.

Crite published notice of the lawsuit in the Jamestown News, a Guilford County publication, for three consecutive weeks in September 2013. She made no further attempts at service on Bussey, by personal delivery, mail, or otherwise. Bussey filed an affidavit with the trial court stating that he never received service of process by personal delivery or mail, and he never received a copy of notice of service by publication at his residence or workplace.

On 9 December 2013, Bussey moved to dismiss the action for insufficient process, insufficient service of process, and lack of personal jurisdiction. In his answer filed on 16 December 2013, Bussey denied the allegations in the complaint and again asserted the defense of lack of personal jurisdiction, incorporating by reference his earlier motion to dismiss. The trial court denied Bussey's motion to dismiss, and he timely appealed.

Analysis

"Ordinarily, this Court hears appeals only after entry of a final judgment that leaves nothing further to be done in the

trial court.” *Campbell v. Campbell*, ___ N.C. App. ___, ___, 764 S.E.2d 630, 632 (2014). Bussey contends that this appeal falls into an exception to this general rule spelled out in N.C. Gen. Stat. § 1-277(b), which provides that “[a]ny interested party shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant.”

But our Supreme Court has limited the scope of § 1-277(b). In *Love v. Moore*, the Supreme Court held that “G.S. 1-277(b) applies to the state’s authority to bring a defendant before its courts, not to technical questions concerned only with whether that authority was properly invoked from a procedural standpoint.” 305 N.C. at 580, 291 S.E.2d at 145. Thus, the Court held that motions challenging only the sufficiency of service and process, and not challenging the existence of sufficient “minimum contacts” with the State, are not immediately appealable under § 1-277(b). *Id.* at 581, 291 S.E.2d at 146.

Applying *Love*, this Court has held that where a “defendant’s motion, though couched in terms of lack of jurisdiction under Rule 12(b)(2), actually raises a question of sufficiency of service or process, then the order denying such

motion is interlocutory and does not fall within the ambit of G.S. 1-277(b)." *Berger v. Berger*, 67 N.C. App. 591, 595, 313 S.E.2d 825, 829 (1984).

That is precisely the case here. Bussey moved to dismiss under Rules 12(b)(2), 12(b)(4), and 12(b)(5) of the Rules of Civil Procedure, claiming that Crite was not justified in resorting to service by publication and that, even if she were, her method of publication was insufficient to provide him notice of the suit. Importantly, Bussey does not make any claim concerning the sufficiency of his contacts with North Carolina. Thus, his appeal pertains solely to the "process or service used to bring the party before the court" and is not immediately appealable under N.C. Gen. Stat. § 1-277(b). *Love*, 305 N.C. at 580, 291 S.E.2d at 145. Accordingly, this Court lacks appellate jurisdiction to hear this appeal.

DISMISSED.

Judges BRYANT and DILLON concur.