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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-559

Filed: 7 January 2020

Surry County, Nos. 17 CVM 583, 18 CVD 1147

KRISTEN MARTIN, Plaintiff,

v.

HILLARY IRWIN and ERINVIENE HOLDINGS, LLC, Defendants.

Appeal by plaintiff from order entered 30 October 2018 by Judge Marion Boone in Surry County District Court. Heard in the Court of Appeals 4 December 2019.

Wake Forest University School of Law Appellate Advocacy Clinic, by John J. Korzen, for plaintiff-appellant.

James N. Freeman, Jr., for defendant-appellees.

ARROWOOD, Judge.

Kristen Martin (“plaintiff”) appeals from the Surry County District Court’s order dismissing her claims against Hillary Irwin and her business, Erinviene Holdings, LLC, (“defendants”) with prejudice. Our review of the record reveals a fatal flaw in personal jurisdiction over defendants, therefore we affirm. We deny plaintiff’s

Motion to Take Judicial Notice of Three Documents on Secretary of State's Website, as these documents do not affect our conclusion.

I. Background

This case involves plaintiff's attempt to recover her horse from defendants through an action in small claims court. Plaintiff filed suit in Surry County District Court, which referred the case to its Small Claims Court division on 22 December 2017. In the first summons, defendants' addresses were listed as the same address on Chatham Lodge Lane in Surry County, North Carolina. The sheriff attempted to serve defendants at this address, but noted on his return of service that he was unable to effectuate service because defendants had moved to Florida. Plaintiff procured issuance of an amended Alias and Pluries Summons for defendants at an address in Alachua, Florida on 16 January 2019, but the local sheriff was also unable to locate defendants in the jurisdiction and effectuate service upon them. The summons was returned unserved on 8 February 2018.

On 30 January 2018, plaintiff filed an affidavit alleging service of process upon defendants. The affidavit averred that plaintiff had served defendants by certified mail, return receipt requested, addressed to an attorney, Leonard Ireland, at the address of his office in Gainesville, Florida, and signed by an individual at that address on 16 January 2018. On 30 January 2018, the small claims court magistrate held a hearing on the matter. Neither defendant appeared at the hearing. The

magistrate entered judgment for plaintiff, and later issued a writ of possession for the horse on 19 February 2018.

On 26 July 2018, defendant Hillary Irwin filed a motion for relief from the magistrate's judgment in small claims court pursuant to N.C.R. Civ. P. 60(b)(4) (2019). Defendant's motion argued that the judgment was void because the small claims court lacked personal jurisdiction over defendants. The magistrate entered an order denying defendant Hillary Irwin's motion on 14 August 2018, which she appealed to the district court.

On 18 October 2018, the Surry County District Court, Judge Marion Boone presiding, held a hearing on the appeal, which it stated was a trial of the case *de novo*. Plaintiff and defendant Hillary Irwin both submitted evidence at the hearing. On 30 October 2019, the district court entered an order dismissing plaintiff's action with prejudice. In its order, the district court concluded as a matter of law that the small claims court "had no personal jurisdiction over both defendants[.]" and the court's judgment and orders against defendants were therefore "void as a matter of law."

II. Discussion

The district court concluded as a matter of law "that the original court had no personal jurisdiction over both defendants." If supported, this determination alone would sustain the district court's order dismissing plaintiff's small claims court suit against defendants with prejudice. Because we agree that plaintiff has failed to show

personal jurisdiction over the defendants, we need not address plaintiff's other arguments on appeal.

Plaintiff correctly notes an issue with the procedural posture of this case: a small claims court is without authority to hear Rule 60(b)(4) motions. *See* N.C. Gen. Stat. § 7A-228(a) (2017) (expressly authorizing district courts to hear all Rule 60(b) motions for relief from small claims court orders or judgments, while authorizing small claims courts to hear only Rule 60(b)(1) motions). Despite this procedural defect, we elect to review personal jurisdiction of the small claims court *nostra sponte*. *See Ponder v. Ponder*, 247 N.C. App. 301, 305, 786 S.E.2d 44, 47 (2016) (“An appellate court has the power to inquire into jurisdiction in a case before it at any time, even *sua sponte*.”) (internal quotation marks and citation omitted).

A judgment or order is void if the rendering court lacked personal jurisdiction over the movant. *Chen v. Zou*, 244 N.C. App. 14, 16, 780 S.E.2d 571, 572-73 (2015) (citations omitted). Personal jurisdiction over a defendant requires proper service of process in compliance with N.C.R. Civ. P. 4 (2019). *Harris v. Maready*, 311 N.C. 536, 542, 319 S.E.2d 912, 916 (1984) (“Unless notice is given to the defendant of proceedings against him and he is thereby given the opportunity to appear and be heard or he appears voluntarily, the court has no jurisdiction to proceed to judgment even though it may have subject matter jurisdiction. . . . [I]f the service is insufficient and unauthorized by law the court does not acquire jurisdiction.”) (internal citations

omitted); *Fender v. Deaton*, 130 N.C. App. 657, 659, 503 S.E.2d 707, 708 (1998) (“[I]t is well established that a court may only obtain personal jurisdiction over a defendant by the issuance of summons and service of process by one of the statutorily specified methods. Thus, absent valid service of process, a court does not acquire personal jurisdiction over the defendant and the action must be dismissed.”) (internal citations omitted).

Service of process on a natural person may be effected “[b]y mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.” N.C.R. Civ. P. 4(j)(1)(c) (2019). Service on a limited liability corporation may be effected by certified mail in the same manner, “addressed to the officer, director, agent or member of the governing body to be served[,]” and delivered to the office of such a person or to “an agent authorized by appointment or by law to be served or to accept service of process[.]” N.C.R. Civ. P. 4(j)(8)(a)-(c) (2019). When a defendant served by certified mail fails to timely appear in the action, the plaintiff may obtain a judgment in his favor by “fil[ing] an affidavit with the court showing proof of such service[.]” N.C.R. Civ. P. 4(j2)(2) (2019).

Plaintiff argues that defendants waived any objection to personal jurisdiction by failing to raise the issue at or before the original trial in small claims court. We disagree. A defendant does not waive challenges to personal jurisdiction such as

inadequate service of process if she does not respond in any way or make a general appearance before the court, even if she received actual notice of the proceedings. *In re A.B.D.*, 173 N.C. App. 77, 83-84, 88, 617 S.E.2d 707, 711-12, 714 (2005) (citations omitted) (trial court abused its discretion in denying Rule 60(b)(4) motion where defendant was improperly served and did not respond or make any general appearance, despite actual notice of the proceedings). In the instant case, defendants did not consent to jurisdiction, respond in any fashion, or make a general appearance in the original proceedings before the small claims court. A Rule 60(b)(4) motion for relief from a void judgment may be made at “any time.” *Allred v. Tucci*, 85 N.C. App. 138, 141, 354 S.E.2d 291, 294 (1987) (citation omitted). Thus, defendants did not waive any challenge to personal jurisdiction by failing to appear and contest the matter at the trial before the small claims court.

Plaintiff's affidavit of service shows on its face that defendants were not properly served with process in compliance with Rule 4. Attached to the affidavit is a certified mail return receipt showing that process was addressed to an attorney named Leonard Ireland, not defendants. No evidence in the record indicates that this attorney was authorized to accept service of process on defendants' behalf. Thus, the district court correctly concluded that the small claims court lacked personal jurisdiction to hear plaintiff's action against defendants. Accordingly, the district

court properly dismissed the action with prejudice and vacated the judgment and orders of the small claims court.

III. Conclusion

For the foregoing reasons, we affirm the district court's order dismissing plaintiff's claim with prejudice and vacating the judgment and orders of the small claims court.

AFFIRMED.

Judges STROUD and BROOK concur.

Report per Rule 30(e).