

No. 1-11-1765

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ASTORIA FEDERAL SAVINGS AND LOAN,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
ELZBIETA FEDUCIK,	)	08 CH 20699
	)	
Defendant-Appellant,	)	
	)	
(ZDZISLAW FEDUCIK, <i>et al.</i>	)	Honorable
	)	Mathias W. Delort,
Defendants.)	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Justices J. Gordon and Howse concurred in the judgment.

ORDER

¶ 1           HELD: The trial court properly denied Elzbieta Feducik's motion to quash service where affidavit of service was in compliance with section 2-203 (735 ILCS 5/2-203 (West 2008)).

¶ 2           Defendant Ezbieta Feducik appeals the trial court's denial of her motion to quash service.

On appeal, she argues that the trial court erred in denying her motion to quash service because

the record fails to establish that the process server was an employee of a private detective agency

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able to serve process.

¶ 3 In June 2008, plaintiff Astoria Federal Savings and Loan filed a complaint to foreclose mortgage against defendants Elzbieta Feducik and Zdzislaw Feducik. The affidavit of special process server Dennis Velickovich stated that process was served on June 11, 2008, at 5:45 p.m. at 59 East Glade Road, Palatine, Illinois, 60067, by leaving a copy of the process with a white male, approximate age 51 to 55. The affidavit further stated that the process was left with defendant Zdzislaw Feducik for both himself and his wife Elzbieta and that a copy was mailed to Elzbieta at her usual place of abode on June 14.

¶ 4 The affidavit also included the following language:

"DENNIS VELICKOVICH, Being first duly sworn on oath desposes and says that he/she was appointed by the Court to serve process in the above mentioned cause and/or is a special appointed process server, a licensed private investigator, and/or an employee/agent of ProVest, LLC, Department of Professional Regulation number 117-001336."

¶ 5 In September 2008, plaintiff filed a motion for order of default and a motion for judgment for foreclosure and sale. The trial court granted both motions. In March 2009, plaintiff filed a motion for order approving report of sale and distribution and possession. In May 2009, the trial court approved the report of sale and distribution, confirming sale and order of possession.

¶ 6 In March 2011, Elzbieta filed a motion to quash service. In her motion, Elzbieta argued that the summons was void on its face for failing to name Elzbieta on the first page of the

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summons and that Dennis Velickovich was not a proper person authorized to serve process pursuant to section 2-202 of the Code of Civil Procedure (735 ILCS 5/2-202 (West 2008)) because Velickovich did not attest to being an employee of ProVest, LLC (ProVest), in his affidavit. Elzbieta contended that it was "simply unclear" what Velickovich's relationship was to ProVest and whether he was an employee. Elzbieta requested that the affidavit be stricken because of this ambiguity.

¶ 7 In May 2011, plaintiff filed a response to the motion to quash service. Plaintiff maintained that summons was proper because it contained Elzbieta's name and address on the final page. Plaintiff also responded that the affidavit of service contained all the information required by section 2-203 (735 ILCS 5/2-203 (West 2008)) and was valid. Plaintiff asserted that the affidavit was not required to indicate the employment capacity of the individual making service and that Elzbieta failed to provide any evidence to impeach the affidavit of the process server. In her reply, Elzbieta argued that the summons was required to direct and name a party on its face and that the process server did not comply with the specific requirements of section 2-202, which states that a person authorized to serve process must be an employee of a private detective agency. Elzbieta contended that the affidavit was ambiguous as to Velickovich's employment status with ProVest. She asked for the service to be quashed because Velickovich did not claim to be an employee of ProVest, or in the alternative, for limited discovery to determine Velickovich's employment status. In May 2011, the trial court entered an order denying Elzbieta's motion to quash service.

¶ 8 This appeal followed.

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¶ 9 "When a defendant has not been served with process as required by law, the court has no jurisdiction over that defendant and a default judgment entered against him or her is void."

*Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 32 (2006).

"When a trial court determines jurisdiction solely based on documentary evidence, as it did in this case, our review is *de novo*." *Morgan, Lewis and Bockius LLP v. City of East Chicago*, 401 Ill. App. 3d 947, 952 (2010).

¶ 10 First, Elzbieta asserts that the record does not contain a document showing that Dennis Velickovich or ProVest, was appointed to serve process under section 2-202. However, plaintiff points out that Elzbieta never raised this specific argument in the trial court. While Elzbieta maintains that she did present this issue in the trial court, the record indicates otherwise. Elzbieta challenged Velickovich's status as an employee of ProVest, not whether ProVest or Velickovich were properly appointed to serve process. These are two distinct challenges. Issues raised for the first time on appeal are forfeited. *Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 559 (2010) (citing *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 306 (2000)). Since Elzbieta failed to argue in the trial court that the record does not include a document regarding the appointment of ProVest or Velickovich, we find that issue forfeited on appeal.

¶ 11 Next, Elzbieta argues that Velickovich's affidavit is ambiguous because it failed to establish that Velickovich was an employee of ProVest. Elzbieta refers to the language in the affidavit stating that Velickovich was an "employee/agent of ProVest" and contends that an agent cannot make service under the law. However, Elzbieta fails to cite any authority for this proposition. Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an

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"[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Moreover, it is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990).

¶ 12 Section 2-202 allows the trial court to appoint a private detective agency as a special process server and any employee of that private detective agency may serve process. 735 ILCS 5/2-202(a-5) (West 2008). Elzbieta concedes that section 2-202 did not require Velickovich to state in what capacity he served the summons. However, she contends that since plaintiff added the additional capacity language and that language created an ambiguity, plaintiff should not be allowed to argue that plaintiff complied with section 2-202. Again, Elzbieta has failed to cite any authority to support her contention that Velickovich's affidavit was ambiguous as to his position with ProVest, and that such an ambiguity causes the court to strike an affidavit of service.

¶ 13 Elzbieta cites the decision in *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008), to support her argument that Velkovich had no authority to serve her. We find *Johnson* to be distinguishable. In that case, the service of process was defective because the special process server served the summons and complaint on the defendant before the trial court had appointed a special process server. *Johnson*, 383 Ill. App. 3d at 910. Significantly, *Johnson* did not consider whether an agent, rather than an employee, was authorized to serve process.

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¶ 14 Moreover, the affidavit of service of service was in compliance with section 2-203.

Section 2-203(a)(2) allows service to be made

"by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode." 735 ILCS 5/2-203(a)(2) (West 2008).

¶ 15 Section 2-203(b) sets forth what information is required in an affidavit of service.

"The officer, in his or her certificate or in a record filed and maintained in the Sheriff's office, or other person making service, in his or her affidavit or in a record filed and maintained in his or her employer's office, shall (1) identify as to sex, race, and approximate age the defendant or other person with whom the summons was left and (2) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant or other person."

735 ILCS 5/2-203(b) (West 2008).

¶ 16 In the instant case, Velickovich's affidavit stated all of the information required under the statute. The affidavit stated that service was made on a white male, age 51 to 55, on June 11,

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2008, at 5:45 p.m., at 59 East Glade Road, Palatine, Illinois, 60067. The affidavit also provided that substitute service was performed by leaving a copy of the process at Elzbieta's usual place of abode with her spouse, Zdizslaw Feducik, and that a mailed copy of the process was sent to defendant at her usual place of abode.

¶ 17 "In Illinois, the affidavit of service is *prima facie* evidence that process was properly served." *Paul v. Ware*, 258 Ill. App. 3d 614, 617 (1994) (citing *In re Jafree*, 93 Ill. 2d 450, 455 (1982)). The affidavit of service should not be set aside unless it has been impeached by "clear and convincing evidence." *Paul*, 258 Ill. App. 3d at 617. Elzbieta has failed to provide any evidence to impeach the validity of the affidavit of service and she does not contest that service was in compliance with section 2-203.

¶ 18 Since the affidavit of service complied with section 2-203, we find that service of process was proper. Elzbieta has failed to cite any authority to support her contention that Velickovich could not have properly served her as an agent of ProVest, but only as an employee. Nothing in section 2-202 or 2-203 prohibits service by an agent nor is this information required to be included in the affidavit of service. Accordingly, we affirm the trial court's denial of her motion to quash service.

¶ 19 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 20 Affirmed.