FIRST DIVISION
March 16, 2015

No. 1-13-0570

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLIAMS MONTGOMERY & JOHN, LTD.,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellee,	)	Cook County.
	)	
v.	)	No. 10 L 7059
	)	
BRET BROADDUS,	)	Honorable
	)	Ronald F. Bartkowicz,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held*:** We affirm the trial court's denial of defendant's motion to quash service and vacate the default judgment because plaintiff had conducted the required diligent inquiry into defendant's whereabouts before serving him by special order of court.

¶ 2 Defendant Bret Broaddus appeals the denial of his motion to quash service and vacate the default judgment entered in favor of plaintiff Williams Montgomery & John, Ltd. He contends that the denial was improper because "there was no written motion or any affidavits to support" the court's order allowing special service, and because the record reveals that plaintiff "lacked a legitimate basis for special service[.]"

¶ 3 The record shows that on June 17, 2010, plaintiff filed an amended complaint against defendant for unpaid attorney fees and costs, and, on June 21, 2010, plaintiff filed an *ex parte* motion for appointment of a special process server. In support, plaintiff attached the affidavit of Michael C. Bruck, who averred that he is an attorney who had represented defendant in several legal matters. Bruck alleged that he had knowledge that, in the past, defendant had attempted to avoid service of process, in part through the use of a doorman at the building where he lived. The court granted plaintiff's motion, and appointed LaSalle Process Servers (LaSalle) to serve defendant in this matter.

¶ 4 On October 13, 2010, the court entered an order setting a court date for October 20, 2010, at which time plaintiff would "present [a] motion for service by special order." In that motion, plaintiff asserted that LaSalle had twice attempted to serve defendant at his last known address in Chicago, and had attempted to serve him using an alias summons at an alternative address in Delray Beach, Florida. Plaintiff also attempted to arrange service through defendant's current counsel, but all of those attempts had been unsuccessful.

¶ 5 Plaintiff attached an affidavit from Andrew Raphael of LaSalle, who averred that on July 13, 2010, he "ran a skip trace on" defendant, which revealed three potential addresses: 340 East Randolph Road in Chicago, 227 East Ontario Street in Chicago, and 1214 George Bush Boulevard in Delray, Florida. He further asserted that LaSalle process servers attempted service at 340 East Randolph Street on June 27, 2010, and on July 20, 2010, and that on each occasion, the doorman claimed that defendant no longer lived in the building. Raphael called the telephone number for the building at 340 East Randolph Street several times, and, on one of those occasions, the person answering the phone advised him that defendant "was in Florida." A LaSalle process server then attempted to serve defendant at the Florida address revealed by the

skip trace, but "the person answering the door claimed to be renting the property and to not know [defendant]."

¶ 6 Plaintiff also attached affidavits from three process servers regarding those unsuccessful attempts in Chicago and Florida, and an affidavit from attorney Bruck, who averred to his unsuccessful attempt to negotiate with defendant's current counsel, Lawrence Stein, for defendant's acceptance of service, in exchange for plaintiff's waiver of an attorney's lien.

¶ 7 In its motion, plaintiff further maintained that defendant used a post office box at one of the addresses revealed by the skip trace. It attached the "Corporation File Detail Report" of Alliance Capital Real Estate Group (Alliance), which listed defendant as the registered agent and president, and defendant's address as 227 East Ontario Street, Box #118255. Plaintiff also attached a printout from the local federal court website, which listed the same address for defendant as a *pro se* litigant in a separate matter with the "date of last filing" of October 12, 2010. Plaintiff finally alleged that Abraham Brustein was defendant's attorney of record in a pending federal district court case in the Northern District of Illinois.

¶ 8 On October 20, 2010, the court entered an order on "Plaintiff's Motion for Service by Special Order," finding "that diligent inquiry as to the location of defendant Bret Broaddus has been made and that reasonable efforts to make service have been unsuccessful." The court granted plaintiff's motion for special service, and ordered plaintiff to serve defendant "via certified mail, return-receipt requested" to the mailing addresses for attorneys Stein and Brustein, and "via regular mail" to defendant at 340 East Randolph Street and 227 East Ontario Street Box #118255. The court specifically noted that the "service as described herein is consistent with due process."

¶ 9 Plaintiff later filed a proof of service certifying that it had complied with the court order, and had served defendant in the manner described above on October 20, 2010, and that a second copy was mailed to the East Randolph Street address on November 12, 2010.

¶ 10 On December 14, 2010, defendant entered a "special appearance"[1] and motion to quash service of process. In that motion, he alleged that plaintiff did not comply with the requirements for service by special order contained in section 2-203.1 of the Code of Civil Procedure (735 ILCS 5/2-203.1 (2010)), because plaintiff "did not submit the requisite affidavit." He also maintained that he had never been served, that the court never obtained personal jurisdiction over him, and that any service of process must be quashed. In support, he attached his own affidavit in which he averred that he never received a copy of the summons or complaint in this case. He learned about the action when one of his attorneys told him that he had received the complaint. Defendant added that "[t]he simple fact is that I could not have been served for much of the time that this case has been pending because I have been *** out of state [and] out of the Country[.]"

¶ 11 Plaintiff responded, contending that the affidavits attached to its motion provided the court with sufficient information from which the court could conclude that it made a "diligent inquiry into defendant's location, that reasonable efforts to serve him were unsuccessful, and that personal or abode service were impractical." Plaintiff further argued that defendant had been properly served according to the order for special service, and that the court thus had personal jurisdiction over him.

¶ 12 On April 27, 2011, the court entered an order which granted defendant's motion to quash service, but authorized plaintiff to "serve [defendant] via alternative means" at his post office

[1] Challenges to service of process are done solely though a motion to quash. "Special and limited" appearances were abolished by Public Act 91-145 over fifteen years ago. See Keith H. Beyler, *The Death of Special Appearances*, 88 ILL. B.J., 30, 35 (Jan. 2000).

box on East Ontario Street in Chicago. On the same day, the court entered another order, noting that after the hearing on defendant's motion was completed, counsel for defendant represented to plaintiff that the East Ontario Street address did "not exist[.]" The court ordered counsel for defendant to appear at the June 6, 2011, status date to "advise the Court the reason such representation was made[.]"

¶ 13 On June 3, 2011, plaintiff entered the affidavit of Allison Nold, an attorney for plaintiff, who averred that she appeared at the April 27, 2011, court date, and that after the court ordered service to the East Ontario Street location, the judge left the bench, and counsel for defendant informed her that the address "did not exist." Because of those representations, Nold contacted the United States Post Office and confirmed with an employee that box number 118255 is an "active box registered to [defendant]." Nold then tendered an envelope addressed to defendant and containing a copy of the summons and amended complaint, to a private messenger with instructions to serve it on defendant and provide proof of delivery. The messenger went to the East Ontario Street address and found that the post office was "closed for renovations" and had been "moved to" 355 East Ohio Street. The messenger then attempted delivery at the East Ohio Street location, and was informed that the staff was not authorized to provide a delivery receipt for the envelope. The messenger returned to Nold's office, where the envelope was placed in the United States mail. Nold confirmed with the East Ohio Street post office that the box number had been moved from the East Ontario Street location, that the box is "active," and that "mail is delivered to that box."

¶ 14 On June 6, 2011, the court entered an order finding that defendant "was served on April 27, 2011" and requiring him " to answer or otherwise plead by June 27, 2011[.]" The matter was continued to July 7, 2011, at which time the court entered an order finding defendant in default

for failure to appear, answer, or otherwise plead. On July 21, 2011, the court entered judgment in favor of plaintiff in the amount of $129,538.39, which included the balance due for legal services, collectable costs, and interest.

¶ 15 Over the following year and a half, plaintiff issued various citations to discover assets and motions for turnover, attempting to collect on the judgment. On November 14, 2012, defendant filed a motion to quash service and vacate judgment, followed by an amended motion on November 26, 2012. In that motion, defendant contended that the alternative service allowed by the court was improper. He alleged that plaintiff "never made any effort to serve [defendant] in any manner before seeking permission to serve him using alternative means." He further maintained that he never received a copy of the complaint or summons, and requested that the court quash service and vacate the judgment.

¶ 16 Plaintiff responded to defendant's motion, maintaining that its motion for service by special order had been supported by three affidavits from process servers outlining the attempts to serve defendant. These affidavits provided sufficient evidence for the court to allow service by special order, and satisfied the requirements of section 2-203.1.

¶ 17 On January 14, 2013, the court entered an order denying defendant's motion to quash service and vacate the judgment. The court outlined the efforts that plaintiff had gone through to serve defendant prior to the entry of the order, and specifically noted that defendant had listed the post office box as his address when he filed a *pro se* appearance in a federal case. The court concluded that defendant had been properly served, and that plaintiff had provided sufficient evidence to warrant the approval of service by special order. This appeal followed.

¶ 18 Generally, personal jurisdiction by service of process is obtained "(1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual

place of abode" with a family or household member 13 years or older. 735 ILCS 5/2-203 (West 2010). Section 2-203.1 provides for an alternative manner of service by special order of court where such service is impractical. Under such circumstances, it provides that:

> "the plaintiff may move, without notice, that the court enter an order directing a comparable method of service. The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant and the reasons why service is impractical under items (1) and (2) of subsection (a) of Section 2–203, including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful. The court may order service to be made in any manner consistent with due process." 735 ILCS 5/2-203.1 (West 2010).

¶ 19 When we review a decision on a motion to quash service of process, we must determine whether the trial court's findings of fact are against the manifest weight of the evidence. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 17. However, where, as here, it appears that the trial court did not hear testimony or make factual findings, our review of whether the trial court had personal jurisdiction over the defendant is *de novo*. *People ex rel. Waller v. Harrison*, 348 Ill. App. 3d 976, 979 (2004), see also *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 31 (2006) ("We will review the trial judge's ruling *de novo* since it was based entirely on documentary evidence.").

¶ 20 In his initial brief, defendant first argued that the court's order must be reversed because plaintiff failed to comply with section 2-203.1, in that there were "no written motions or other documents in the Record at or about that time to support the entry of" the court's order allowing special service. In plaintiff's response, however, it notes that its motion for special service and the accompanying affidavits were "inexplicably missing from the court record" when defendant filed his initial brief, but that the circuit court subsequently granted plaintiff's motion to supplement the record with those documents. This court also allowed plaintiff leave to file the supplemental record, which includes plaintiff's motion for special service, as well as the accompanying affidavits which outlined the efforts made by plaintiff to secure service on defendant.

¶ 21 Defendant spends a large portion of his reply brief complaining about plaintiff's failure to include those documents in the court record earlier, arguing that he "had no way to even anticipate the arrival of new documents" and that "[t]his is really the first time [he] is able to present an argument based on all the facts." This argument is rather disingenuous because the clerk of the court, not the appellee, prepares the record, and the defendant as appellant is responsible for furnishing a complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Although he later clarifies that he is not raising "an argument before this Court about the existence of a Supplemental Record[,]" his argument on this point is rather opaque. Nonetheless, our review of the record refutes defendant's claimed ignorance. While plaintiff's motion for special service might not have been file-stamped and placed in the court file when it was granted, plaintiff's response to defendant's motion to quash included that motion, as well as many of the supporting affidavits, as exhibits, long before defendant filed his initial brief in this case. In fact, defendant's own initial brief includes an appendix which includes the vast majority of the

documents, albeit as attachments to other motions, that he now claims he had "no way to anticipate[.]"

¶ 22 Defendant contends that the circuit court was not authorized to grant special service to plaintiff where the motion and supporting affidavits had not been file-stamped and included in the record at the time it was granted. We disagree. The record is clear that plaintiff had presented the written motion and attached affidavits to the court, which relied on them in its October 20, 2010, order granting "Plaintiff's Motion for Service by Special Order[.]" We thus reject defendant's claim that the court's order violated section 2-203.1 due to lack of a written motion and affidavits. The record, including the supplemental record, proves otherwise.

¶ 23 Defendant next argues that, regardless of whether the motion and affidavits were before the court, those documents "reveal that Plaintiff lacked a legitimate basis for special service[.]" Defendant appears to primarily object to plaintiff's diligence in serving him before seeking an order for special service. He repeatedly contends without citation to authority that "as matter of law" plaintiff could not have "fulfilled the diligent inquiry requirements" of section 2-203.1, including that the skip trace was nine months old and that only four attempts at service were made before special service was allowed. Defendant, however, has provided no authority showing that a more recent skip trace, or more attempts at service, are required (see *Harrison*, 348 Ill. App. 3d at 982 ("whether a party has been diligent does not depend upon the sheer number of attempts at service)).

¶ 24 In fact, at this juncture, we must note that defendant's arguments are confusing, and his citation of supporting authority in support of those arguments is woefully inadequate. In the entirety of the three briefs he has filed in this appeal, the only citations defendant provides in support of his arguments are the text of section 2-203.1, and three cases—one of which is cited

for the proposition that this court may "take judicial notice of the distance between locations[.]" Defendant otherwise merely repeats the facts, argues that they were not sufficient to comport with section 2-203.1, and attempts to distinguish the case law cited by plaintiff. We remind defendant that, as a reviewing court, we are "entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)). Although defendant fervently argues that "there is literally no way that the Plaintiff could have complied" with section 2-203.1, his indignation is not a substitute for legal authority.

¶ 25 The two cases that defendant does cite in support of his argument, *Mugavero v. Kenzler*, 317 Ill. App. 3d 162 (2000), and *Sutton v. Ekong*, 2013 IL App (1st) 121975, are clearly distinguishable from this case. In *Mugavero*, the court reversed the denial of the defendant's motion to quash service where the plaintiff had made an oral motion for alternative service under section 2-203.1 without any supporting affidavits at all. *Mugavero*, 317 Ill. App. 3d at 164-65. The court further observed that, to the extent that the court could rely on a previously filed affidavit, it showed that plaintiff conducted practically no inquiry to learn the defendant's whereabouts. *Id.* at 165. In this case, by contrast, plaintiff's motion for special service was written and was well-supported with multiple affidavits outlining the various attempts that had been made to serve defendant. Those documents were included in the supplemental record filed by plaintiff after defendant's initial brief. In his subsequent two briefs, defendant makes no further reference to *Mugavero* in light of the supplemental record. We conclude, based on the facts outlined above, that it does not.

¶ 26 Likewise, in *Sutton*, this court found that plaintiff had not complied with the due diligence requirement of section 2-203.1, where he "did not perform the type of search or investigation that an earnest person seeking to locate a defendant to effectuate service on him would make[,]" primarily because "plaintiff failed to discover Ekong's easily obtainable business address or attempt to serve him at that location[.]" *Sutton*, 2013 IL App (1st) 121975, ¶ 22. Here, by contrast, there is no indication from the record that there was an easily obtainable location where defendant could have been located. While defendant criticizes plaintiff's attempts to locate him, he does not argue that he could have been found with a diligent inquiry. See *Harrison*, 348 Ill. App. 3d at 981. To the contrary, defendant contends in his own affidavit that he "could not have been served for much of the time that this case has been pending because [he had] been *** out of state [and] out of the Country[.]" We therefore find this case distinguishable from *Sutton*.

¶ 27 Moreover, although defendant contends that he "[indeed] *** did reside in Florida," we note that there is evidence in the record showing that he had maintained his Chicago residence where plaintiff had attempted to serve him, that he was living there after the default judgment was entered, and that he was continuing to evade the delivery of—at that time—a citation to discover assets. While defendant attempts to cast himself as an innocent victim who was blindsided by this litigation, given the facts of this case, we cannot agree. We admonish defendant that the courts do not favor those who seek to evade service of summons. *In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 370 (2001) (citing *Edward Hines Lumber Co. v. Smith*, 29 Ill. App. 2d 35, 42 (1961)).

¶ 28 We find that plaintiff complied with section 2-203.1 by conducting a diligent inquiry into defendant's whereabouts. Here, the record contains an affidavit from an attorney familiar with

defendant and his propensity to, and methods of, evading service. The attorney further averred in a second affidavit to his attempts to secure service on defendant through negotiations with defendant's counsel. A number of process servers who were engaged to assist plaintiff in locating defendant also detailed the process of identifying defendant's possible addresses through use of a skip trace, and their subsequent unsuccessful attempts to serve defendant at the address in Chicago were consistent with the manner of evasion previously described by the attorney. After those attempts failed, they attempted to serve defendant at the only possible address revealed for defendant in Florida, but that attempt was also unsuccessful. These affidavits, taken together, describe a diligent inquiry made by plaintiff to locate defendant, and are sufficient to comply with section 2-203.1.

¶ 29 Defendant finally makes vague allegations that the type of special service allowed in this case—mailing to a post office box—is not a "comparable" form of service as required by section 2-203.1 ("How a regular mail as opposed to certified mail is a 'comparable' method of service as contemplated by 735 ILCS 5/2-203.1 is at best elusive."). However, he cites no authority to support those claims. An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), and is, therefore, waived. *Vincent v. Doebert*, 183 Ill. App. 3d 1081, 1087 (1989). In light of defendant's failure to adequately present this issue, we conclude that it is waived. *Vincent*, 183 Ill. App. 3d at 1087.

¶ 30 Nonetheless, even if we were to reach the issue, we note that the statute specifically allows the court may "order service to be made in any manner consistent with due process." (Emphasis added.) 735 ILCS 5/2–203.1 (West 2010). Defendant has provided this court with no authority, and we find none, to show that service by regular mail is a *per se* violation of defendant's due process rights. Under the unique facts of this case, and particularly in light of

the fact that defendant listed the post office box as his official address on a court document, we conclude that the method of service allowed by the circuit court was appropriate, and consistent with due process.

¶ 31 We affirm the circuit court's order denying defendant's motion to quash service and to vacate the default judgment.

¶ 32 Affirmed.