2015 IL App (2d) 130669-U
No. 2-13-0669
Order filed March 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Marriage of WENDY LAMPITT, Petitioner-Appellee, and ARTHUR LAMPITT, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 07-D-2607 Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not establish personal jurisdiction over the respondent for purposes of postdecree petition where substitute service was not to the respondent's usual place of abode. Accordingly, the trial court's judgment was void for lack of personal jurisdiction.

¶ 2 Respondent, Arthur Lampitt, Jr., appeals the judgment of the circuit court of Du Page County, denying his motion to quash summons. Respondent argues that petitioner, Wendy Lampitt, never properly served him with summons so the trial court never achieved personal jurisdiction over him. Specifically, respondent challenges the trial court's determination that the marital residence at which petitioner purported to effect substitute service was not, at the time of

the attempted service, his usual place of abode, thereby rendering the attempt ineffectual. We vacate the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On June 20, 1992, the parties were married in Waterloo, Illinois. On November 20, 2007, petitioner filed her petition for dissolution of marriage.[1] Petitioner alleged that, in August 2005, respondent vacated the marital residence. On November 21, 2007, petitioner requested service by publication, because respondent had left the state so he could not be personally served. On December 19, 2007, a certificate of publication was filed.

¶ 5 On January 16, 2008, the trial court determined that personal jurisdiction over respondent had been established by publication. Respondent was not present in court and was defaulted. The trial court entered judgment dissolving the marriage, but reserved all issues of property division, maintenance, and all "other rights and obligations."

¶ 6 On May 13, 2008, petitioner filed a petition for determination of postdecree issues. The next week, on May 23, 2008, the court received one of many letters from respondent's parents, representing that the petition for determination of postdecree issues was sent in error to them and claiming not to know where respondent lived.

¶ 7 On June 4, 2008, petitioner filed a petition to sell the marital residence and establish a child-support trust. At a hearing on the same day, petitioner related that the marital residence

[1]We note that, initially, on October 25, 2005, respondent filed a petition for dissolution of marriage in Cook County, and, on November 20, 2007, respondent voluntarily dismissed the petition. That same day, petitioner filed her petition for dissolution of marriage in Du Page County.

would be going into foreclosure; she could not make the payments alone, and respondent was not contributing to the payments. The trial court asked petitioner what address she used to give respondent notice. Petitioner informed the court that she had experienced difficulty ascertaining respondent's correct address because respondent had provided her with eight different addresses. Petitioner stated that she served respondent by substitute service by having their 13-year-old daughter accept service at the marital residence. Petitioner further explained that respondent listed the marital residence as his business address. The trial court granted the petition, authorizing petitioner to sell the marital residence and ordering the net proceeds to be held in escrow pending further order of the court.

¶ 8 On July 14, 2008, petitioner filed a motion for default and entry of judgment *instanter*, seeking the release of the escrowed proceeds from the sale of the marital residence. On July 21, 2008, the trial court granted the motion and defaulted respondent. The July 21, 2008, default judgment was mailed to respondent by certified mail with return receipt requested at the marital residence, at an address in Fargo, North Dakota, and at an address in Reno, Nevada. On the August 4, 2008, prove up date, respondent failed to appear, as petitioner "never received anything back from those addresses." The trial court defaulted respondent and entered judgment on the postdecree issues. Pursuant to that judgment, the court ordered that respondent pay child support, established visitation, and divided the marital property, with petitioner receiving all the proceeds of the sale of the marital residence.

¶ 9 On October 21, 2008, respondent filed a motion to quash service of summons. The motion to quash languished in protracted motion practice until on June 4, 2013, the trial court conducted an evidentiary hearing. The testimony at the hearing established that, in April 2005,

respondent left the marital residence.[2] After leaving, respondent obtained a lease at an unknown Chicago residence, extending through April 2006. During this time, respondent would still frequently spend weekends at the marital residence; his physical contact with the family ceased in November 2007.

¶ 10 Respondent argued that petitioner was aware that he was not residing at the marital residence notwithstanding the June 2, 2008, substitute service. Respondent also presented documentary evidence, including: (1) his e-mails with petitioner; (2) an October 2008 letter sent to him in Reno, Nevada from the Illinois Department of Children and Family Services (DCFS); (3) a Nevada driver's license issued in February 2008; and (4) a shipping document showing that, in April 2008, his belongings were to be shipped out of the marital residence.

¶ 11 Petitioner testified that respondent's North Dakota and Nevada addresses were nonresidential, namely, for parking lots, UPS Stores, and a strip mall. Petitioner testified that, due to the difficulty she was facing in locating where respondent actually lived, she made arrangements to have the parties' 13-year-old daughter served at the marital residence. Petitioner testified that the daughter agreed to accept service.

¶ 12 The trial court held that substitute service on the daughter was proper. The trial court ruled that that (1) there was no evidence or photographs that would suggest where respondent was residing on the date of substitute service; (2) that it was unclear where respondent was residing; and (3) that respondent's out-of-state addresses were invalid as residences because they

[2]The petition for dissolution of marriage alleged that respondent vacated the marital residence in August, 2005, however, both parties testified at the June 4, 2013, evidentiary hearing that respondent vacated the marital residence in April, 2005.

belonged to a parking lot, UPS store, and a strip mall.

¶ 13 The trial court noted that it could not determine where respondent was living at the time substitute service was attempted. The court reasoned that, for effective substitute service at a party's abode, there is a presumption that any eligible person living there will provide notice to the party of the service of summons. The court concluded that, because respondent's 13-year-old daughter accepted service at the marital residence, substitute service was proper because respondent was still in contact with his children there and title to the marital residence was still in respondent's name. Respondent timely appeals.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues that the court did not reestablish personal jurisdiction over him on the postdecree petition, so that the August 4, 2008, default judgment is void.[3] Respondent contends that service under section 2-203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-203 (West 2008)) was improper, because the marital residence was not his usual place of abode.

¶ 16 This case presents both factual issues and legal issues pertaining to service and personal jurisdiction. Accordingly, we review a decision on a motion to quash service of process to 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), and the ultimate legal determination as to whether there was personal jurisdiction over respondent,

[3]Respondent's brief, however, concedes that the original judgment dissolving the parties' marriage was not void.

based on those findings, is a question of law reviewed *de novo*. *White v. Ratcliffe*, 285 Ill. App. 3d 758, 764 (1996).

¶ 17 The dispositive issue in this case is whether the trial court established personal jurisdiction over respondent for purposes of the postdecree petition. Absent the appearance of defendant or waiver of process, the service of summons as directed by statute is necessary to exercise personal jurisdiction over a defendant. *State Farm Mutual Automobile Insurance Co. v. Grater*, 351 Ill. App. 3d 1038, 1040 (2004). Where personal jurisdiction is based on substitute service, strict compliance with every requirement of the statute must be shown. *C.T.A.S.S. & U. Federal Credit Union v. Johnson,* 383 Ill. App. 3d 909, 912 (2008); see also *West Suburban Bank v. Advantage Financial Partners, LLC,* 2014 IL App (2d) 131146, ¶ 20 ("strict compliance with the statutes governing the service of process is required before a court will acquire personal jurisdiction over the person served"). It is petitioner's burden to demonstrate strict compliance with every requirement of the statute. *Algonquin v. Lowe*, 2011 IL App (2d) 100603, ¶ 25 (quoting *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 32 (2006)).

¶ 18 Section 2-203 of the Code states, relevantly:

> "[S]ervice of summons upon an individual defendant shall be made ***(2) by leaving a copy [of the summons] 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).

¶ 19 "The underlying rationale of substitute service is whether the chosen dwelling is reasonably likely to provide the defendant with actual notice of the proceedings." *United Bank of Loves Park v. Dohm*, 115 Ill. App. 3d 286, 289 (1983). "Such statutes presuppose that such a relation of confidence exists between the person with whom the copy is left and defendant that notice will reach defendant; they assume that such person will deliver the process or copy to defendant or in some way give him notice thereof." (Internal quotation marks omitted.) *Central Mortgage Co. v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 20 (quoting *Anchor Finance Corp. v. Miller*, 8 Ill. App. 2d 326, 330 (1956)). A defendant's "usual place of abode" is a question of fact. *Dohm*, 115 Ill. App. 3d at 289. There is no concrete definition of "usual place of abode," and each case must turn on its particular facts. *Id.* There is a rebuttable presumption that the house where a man's wife and children reside is his "usual place of abode." *Id.* In determining whether the presumption has been overcome, courts consider: (1) the state of the marriage at the time of service; (2) the frequency of the husband's contacts with the house in which the family has been residing; (3) the defendant's intent or lack of intent to abandon this residence permanently or to move his family elsewhere; (4) whether the defendant has removed his personal belongings from this residence; (5) the defendant's address for voter registration, driver's license, mail delivery, and other purposes; and (6) whether the wife and children continue to live at the residence. *Id.*

¶ 20 We conclude that the trial court's factual determination that the marital residence was respondent's "usual place of abode" was against the manifest weight of the evidence, thus rendering the substitute service insufficient. Considering the factors set out in *Dohm*, we note that, at the time of substitute service, the parties were divorced. Respondent abandoned the marital residence in 2005, but still had limited telephone contact with the children until April

2008, when, according to respondent, petitioner apparently took away their phones. Respondent's last physical contact with the family was in November 2007. The parties exchanged e-mails in April 2008 regarding what respondent wanted done with his belongings, which was supported by a shipping document purporting to have respondent's belongings removed to storage. Respondent had a Nevada driver's license issued in February 2008. Finally, respondent received the October 2008 letter from the DCFS at his Reno, Nevada, address. These factors strongly point to the conclusion that the marital residence was not respondent's usual place of abode.

¶ 21 Moreover, at the evidentiary hearing, petitioner testified that she knew respondent was not living at the marital residence at the time of substitute service. Petitioner testified that she attempted to have respondent served in Fargo, North Dakota, but admitted that she did not have any documentation of the attempt. Petitioner also testified that she never attempted to serve respondent in Reno, Nevada, because she did not know his address, and she could not recall if she hired a private investigator in Nevada. Petitioner testified that, because service had been ineffective at a variety of addresses, her last resort was to have her daughter served at the marital residence. Petitioner also concedes on appeal that she did not attempt the remaining alternative forms of service under section 2-203.1 of the Code (735 ILCS 5/2-203.1 (West 2008)). Notwithstanding the fact that respondent was still a joint owner of the marital residence and had listed the marital residence as his business address,[4] we determine that the trial court's holding

[4]Respondent's business, however, was listed on the Illinois Secretary of State website as "not in good standing" due to his failure to pay the necessary taxes. While respondent suggests to the world that he can be contacted at the marital address by listing it as his business address,

that the marital residence was respondent's "usual place of abode" at the time of substitute service was against the manifest weight of the evidence because the opposite result is clearly evident. Although respondent's actual residence was not apparent at the time of substitute service, it was abundantly apparent that the marital residence was not his usual place of abode. Respondent had abandoned the marital residence for a substantial amount of time, moved out of state, and had little and limited contact with his children. Thus, substitute service at the marital residence was not reasonably likely to provide respondent with actual notice of the proceedings.

¶ 22 Because the evidence clearly demonstrates that respondent did not reside at or have any substantial contact with anyone in the marital residence, the trial court's factual determination that the marital residence was respondent's usual place of abode is against the manifest weight of the evidence rending the substitute service ineffective and improper. As there was no alternative form of service attempted by petitioner, and because respondent was never properly served, we hold the trial court never established personal jurisdiction over respondent for purposes of petitioner's petition for determination of postdecree issues, and we agree with respondent that the August 4, 2008, order is void.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, the August 4, 2008, judgment of the circuit court of Du Page County is vacated as void for lack of personal jurisdiction.

¶ 25 Vacated.

---

there is no support in the record that, on June 2, 2008, respondent's abode was the marital residence.