REL: March 4, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2210228

Ex parte Angel Rich

PETITION FOR WRIT OF MANDAMUS

(In re: Raymon Brian Johnson

v.

Angel Rich)

(Covington Circuit Court, DR-18-152.02)

MOORE, Judge.

Angel Rich ("the mother"), the mother of B.J. ("the child"), has filed a petition for a writ of mandamus requesting that this court issue a writ directing the Covington Circuit Court ("the trial court") to set aside all

orders it has entered in this case and to quash service. We deny the petition.

Procedural History

On June 22, 2021, the child's father, Raymon Brian Johnson ("the father"), filed in the trial court a petition to register a Tennessee child-custody order in which the Chancery Court of Knox County, Tennessee ("the Tennessee court"), had awarded the father "primary custody" of the child but had reserved ruling on all issues relating to child support.[1] In the registration petition, the father requested that the trial court register and enforce the Tennessee child- custody order, establish child support, and order that the father be allowed to claim the child as his dependent for income-tax purposes. Also on June 22, 2021, the attorney for the father sent the mother, via certified mail, notice of the filing of the registration petition. On July 1, 2021, the trial court entered an order indicating that notice of the registration petition had been mailed to the

[1]The Tennessee child-custody order at issue modified a previous child-custody judgment that had awarded "primary custody" of the child to the mother.

mother and setting the matter for a hearing to take place on August 9, 2021. On July 29, 2021, the father filed a notice asserting that he had perfected service on the mother at her home address, an apartment in Fort Lauderdale, Florida, by certified mail, "restricted delivery." He attached to the notice a United States Postal Service certified-mail return receipt, but the signature on the receipt was illegible and the spaces for the date of the delivery and for the printed name of the recipient remained blank.

On August 6, 2021, the mother filed a motion to continue the scheduled hearing on the registration petition, alleging that she had not been properly served. In her motion, the mother noted the discrepancies on the certified-mail return receipt and alleged that those discrepancies rendered service ineffective. The mother requested that the trial court reset the matter only after the father had perfected service on her and she had been allowed time to respond to the registration petition.

On August 13, 2021, the father amended the registration petition and reissued notice of the registration petition to the mother. On August 30, 2021, the trial court entered an order rescheduling the hearing on the

registration petition to October 5, 2021. That order also stated that the court would hear any objections to the registration petition during that hearing. On September 28, 2021, the mother filed a motion requesting that the October 5, 2021, hearing be held as a virtual hearing because she and several persons employed by her attorney had tested positive for COVID-19 coronavirus. The trial court denied that motion on September 29, 2021. The October 5, 2021, hearing proceeded as scheduled; the mother did not appear at that hearing, and the mother's attorney appeared solely for the purpose of contesting service of the notice of the registration petition.[2]

On November 18, 2021, the trial court entered an order stating:

> "This matter came before the Court on October 5, 2021, on the [father's] 'Petition to Register Tennessee Custody Order and Petition to Establish Child Support.' The [father] was present with his attorney of record, the Hon. Maci Jessie. The [mother] was not present. However, she was represented at the hearing by her attorney, the Hon. Jared Arnold.

[2]Neither party has provided a transcript of the October 5, 2021, hearing, but the parties agree as to the scope of that hearing, and the trial court summarized the hearing in its November 18, 2021, order, quoted infra.

"The [mother], through counsel, objected to the registration of the Tennessee order on the ground[] that she was not served with the notice of registration required by Ala. Code [1975,] § 30-3B-305(b)(2). The Court proceeded to hear argument on the [mother]'s objection.

"Based on the evidence, the Court is of the opinion that the [mother] has received adequate notice of the registration. This is based on the following facts:

"1. The [mother] was sent notice of the registration by certified mail, return receipt requested. The return receipt appears to have been delivered to the [mother]'s address and some person signed for it. (Doc. 13).

"2. The [mother] failed to present any affirmative evidence, either by testimony or affidavit, in support of her objection.

"3. The [father] sent an amended petition to the [mother] and her attorney on August 13, 2021, via the AlaCourt filing system.

"4. The [mother's] attorney filed two pleadings with the Court, albeit one of them was an objection to the service.

"5. The [mother's] attorney appeared in-person at the proceeding.

"6. The [mother] was present for the proceedings that led to the foreign judgment that is being registered, i.e., this is not a default.

> "7. The [mother] has appeared in this Court in this case in a prior child custody proceeding.
>
> "Upon due consideration, it is hereby ORDERED as follows:
>
> "A. The [mother's] objection to the registration of the Tennessee order is DENIED.
>
> "B. The [father's] 'Petition to Register Tennessee Custody Order' is GRANTED.
>
> "C. Exhibit 'A' to the [father's] petition is registered with this Court and shall be given full faith and credit as if a lawful order from this Court. (Doc. 3).
>
> "D. The [father's] 'Petition to Establish Child Support' is re-set for a hearing on December 9, 2021, at 2:30 p.m."

(Capitalization in original.) The mother filed her mandamus petition with this court on December 9, 2021.

Standard of Review

> "The writ of mandamus is an extraordinary remedy; it will not be issued unless the petitioner shows ' " '(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.' " ' Ex parte Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000) (quoting

> Ex parte Gates, 675 So. 2d 371, 374 (Ala. 1996)); Ex parte Pfizer, Inc., 746 So. 2d 960, 962 (Ala. 1999)."

Ex parte Children's Hosp. of Alabama, 931 So. 2d 1, 5-6 (Ala. 2005).

Discussion

In her mandamus petition, the mother argues that the trial court's November 18, 2021, order registering the Tennessee child-custody order is void for lack of service upon her. The mother maintains that the father did not prove that he had properly served the mother with notice of the registration petition, that the trial court erred in shifting the burden to the mother to prove lack of proper service, that her attorney did not accept service on her behalf, and that she did not waive proper service. Our resolution of the mother's first argument is dispositive.

Section 30-3B-305(b)(2), Ala. Code 1975, provides that, once a court of this state receives a request to register a foreign child-custody determination, along with the appropriate documents to support that request, the registering court shall "[s]erve notice upon the persons named pursuant to subsection (a)(3) [of § 30-3B-305] and provide them with an

opportunity to contest the registration in accordance with this section."

Section 30-3B-108, Ala. Code 1975, provides, in pertinent part:

> "(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.
>
> "(b) Proof of service may be made in the manner prescribed by the law of this state."

Rule 4, Ala. R. Civ. P., provides for service via certified mail. Rule 4(i)(2)(B)(ii) authorizes an attorney for a complaining party to send process to a defendant through certified mail, return receipt requested. See, e.g., Ex parte Jenkins, 318 So. 3d 515, 519 (Ala. Civ. App. 2020). Rule 4(i)(2)(C) sets forth the standard for proving that service has been made by certified mail as follows:

> "Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, 'agent' means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or

> the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default. An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within time to avoid a default. In the case of an entity included in one of the provisions of Rule 4(c), 'defendant,' within the meaning of this subdivision, shall be such a person described in the applicable subdivision of 4(c)."

(Emphasis added.)

In Cain v. Cain, 892 So. 2d 952 (Ala. Civ. App. 2004), this court examined a case in which a former wife had attempted to serve a contempt petition on her former husband by certified mail addressed to his employer. Court records indicated that the petition and a summons, along with a notice that a hearing was scheduled for July 19, 2002, had been mailed on June 21, 2002, and delivered on July 1, 2002. On July 1, 2002, the former husband sent a letter to the judge assigned to the case requesting a continuance of the hearing. On July 16, 2002, an attorney appeared on behalf of the former husband and moved to dismiss the case on the ground that an unauthorized person had accepted service for the former husband. The court reissued the petition and summons to a new address. Thereafter, the court denied the motion to dismiss, indicating

that the former husband had "'obviously received copies of all paperwork'" because he had corresponded to the judge to seek a continuance on July 1, 2002. 892 So. 2d at 954. The court rescheduled the hearing date on the contempt petition to March 20, 2003. The attorney for the former husband appeared to again contest service, but the former husband did not appear. The court determined that the former husband was in default, took testimony from the former wife relating to the contempt petition, and entered a judgment awarding her a monetary recovery.

The former husband appealed to this court, arguing that the judgment finding him in contempt had been entered by a court without personal jurisdiction over him due to improper service. In analyzing the case, this court determined that no finding had ever been made that the former wife had properly served the former husband by certified mail and that, instead, the lower court had determined only that the former husband had acknowledged that he had actually received the petition and summons. This court held, however, that "actual knowledge of an action 'does not confer personal jurisdiction without compliance with Rule 4.'

Gaudin v. Collateral Agency, Inc., 624 So. 2d 631, 632 (Ala. Civ. App. 1993)." 892 So. 2d at 955. This court determined that the return receipt on the certified mail had not been signed by the former husband and that the former wife had the burden of proving that the person who signed for the mail was authorized to receive certified mail for the former husband, which the former wife had not attempted to establish through any evidence. This court, therefore, determined that the judgment was void for lack of personal jurisdiction over the former husband.

At the time this court issued Cain on May 28, 2004, Rule 4.2(b)(1)(B) provided: "Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery of process as evidenced by the return receipt." However, effective August 1, 2004, the Supreme Court of Alabama amended Rule 4 to include "new 4(i)(2)(C)" to provide "that no action shall be dismissed for improper service if the defendant actually received the summons and complaint in time to avoid a default." Committee Comments to Amendment to Rule 4, Ala. R. Civ. P., Effective August 1, 2004. Because Cain was decided before the 2004

amendment, this court did not have an occasion to construe the operative language contained in the current version of Rule 4(i)(2)(C).

This court has not located any opinions from the appellate courts of this state in which there was evidence "prov[ing] the addressee did actually receive the summons and complaint in time to avoid a default" such that an "agent's authority [for receiving certified mail on Behalf of the addressee] shall be conclusively established." Rule 4(i)(2)(C). Therefore, we have looked to federal cases on this issue for guidance. See, e.g., Alabama Dep't of Mental Health & Mental Retardation v. Alabama State Pers. Dep't, 863 So. 3d 1118, 1119 (Ala. Civ. App. 2003) (noting that decisions of the federal district courts, while not binding, are persuasive authority in Alabama appellate courts).

In Floyd v. Pem Real Estate Group., Civil Action No. 17-00451-CG-N, Aug. 17, 2018 (S.D. Ala. 2018) (not reported in Federal Supplement), the United States District Court for the Southern District of Alabama applied Rule 4(i)(2)(C) to determine that several defendants employed by an apartment complex had been properly served with a complaint and summons. In Floyd, a pro se plaintiff served the

apartment-complex employees via certified mail that was addressed to one of the employees of the complex. The return receipts were signed by the manager of the apartment complex and an unknown person with the initials "J.B.," neither of whom checked the box on the return receipt indicating their authorization to accept mail as the agent of all the defendants.

The apartment-complex employees moved to dismiss the complaint on the grounds of insufficient service of process and failure to state a claim upon which relief could be granted. They argued that the manager of the apartment complex and "J.B." were not authorized to accept service on their behalf; however, they "made no argument that they were in danger of default judgment." The court noted that, "[o]rdinarily, '[a] defendant's actual notice is not sufficient to cure defectively executed service.' Albra v. Advan, Inc., 490 F.3d 826, 829 (11th Cir. 2007) (per curiam)," but determined that, under the specific language of Rule 4(i)(2)(C), if the court determines that the defendant had actual notice of the complaint within time to avoid a default, then an agent's authority to accept service on behalf of the defendant is conclusively established. Because the

apartment-complex employees had appeared and had been able to file a motion to dismiss before the time for default accrued, the district court determined that they had been properly served via certified mail.

Similarly, in Target Media Partners v. Specialty Marketing Corp., No. 1:14-cv-00865-HGD, July 18, 2014 (N.D. Ala. 2014) (not reported in Federal Supplement), the United States District Court for the Northern District of Alabama applied Rule 4(i)(2)(C) in determining whether service was proper. In Target, there was "undisputed evidence ... that [the defendant had] directed that deliveries, in the event no one was present at its office, be made to a business across the hall" and that "[t]he individual who was served with the summons and complaint told the process server that she routinely accepted items for [the defendant] and did not object to receiving service." The district court found "that by directing deliveries be made to a business across the hall, defendant gave that business the 'apparent or ostensible' authority to accept the summons and complaint on its behalf." Additionally, the district court noted that "it is apparent from defendant's appearance by way of the motion to quash and the statement therein that the attorneys for [the defendant] 'have

become aware of the pendency of this civil action' ... that [the defendant] did actually receive the summons and complaint in time to avoid a default." Considering the foregoing, the district court concluded that the evidence was sufficient to prove proper service.

We find the reasoning in Floyd and Target to be sound and conclude that our supreme court would agree with the manner in which the plain language of the rule was applied by the federal district courts in those cases. See, e.g., Nieto v. State, 842 So. 2d 748, 749 (Ala. Crim. App. 2002) ("[W]ords used in court rules must be given their plain meaning.").

In this case, like in Floyd, the incomplete return receipt raises a question as to whether the father strictly complied with the service requirements for certified mail. However, the trial court determined that "the [mother] has received adequate notice of the registration." The trial court specifically found that "someone" at the mother's address had received the certified mail and the mother had had actual knowledge of the registration petition because she had been able to retain an attorney and file a motion contesting service within eight days after the father's attorney notified the trial court that the mother had been served by

certified mail. We conclude that the trial court determined from that evidence that the mother had actually received the summons and complaint.

Section 30-3B-305(d) provides that a party has 30 days from the date of service of the notice of a registration petition to request a hearing to contest the registration. In this case, the trial court scheduled the hearing to provide the mother with an opportunity to argue any objection she had to the registration within 30 days of the date the mother received service of the notice. That hearing was rescheduled, but at no point in the underlying proceedings was the mother in danger of default.

In summary, we conclude that the trial court had before it sufficient evidence to determine that the mother had actually received the notice of the filing of the registration petition in time to avoid a default. Accordingly, the illegible signature on the return receipt for the certified mail is conclusively deemed to be that of someone "specifically authorized by the [mother] to receive the [mother's] mail and to deliver that mail to the [mother]." Rule 4(i)(2)(C). Thus, we conclude that the trial court's determination that the mother had been properly served with notice of the

registration petition was correct. The mother has not proven a clear legal right to have the orders of the trial court vacated and service quashed; therefore, we deny the petition for a writ of mandamus.

PETITION DENIED.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.