STATE OF MICHIGAN

COURT OF APPEALS

SARAH WILKINS,

Plaintiff-Appellant,

v

LANSING COMMUNITY COLLEGE, and HAUGHTON ELEVATOR COMPANY succeeded by SCHINDLER ELEVATOR COMPANY,

Defendants-Appellees.

UNPUBLISHED
June 12, 2007

No. 267676
Ingham Circuit Court
LC No. 04-001504-NP

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing her complaint. Plaintiff also appeals the orders denying her motion to amend and granting Schindler Elevator Company's motion to quash service. We reverse.

Plaintiff claims she was injured in 2001 when an elevator door closed on her arm. She filed a complaint three days before expiration of the limitations period. In the complaint, she named the defendant as "Haughton Elevator Company and/or its' [sic] successor(s)." Plaintiff subsequently amended her complaint to add Lansing Community College (LCC) as a defendant.[1] Plaintiff attempted to serve process on Haughton by mailing the original and amended summonses and complaints to Haughton's resident agent. The agent returned the documents indicating that the named defendant was not registered to do business in Michigan.

Days before the amended summons expired, plaintiff obtained a second summons. Documents relevant to the second summons were delivered by certified mail to Haughton's resident agent. Included among the documents were copies of the original summons and complaint, on which the name "Schindler Elevator Co." had been added in handwriting. Haughton's resident agent forwarded the documents received from plaintiff to Schindler. Although Schindler received the documents, it did not file an answer. Notably, Schindler

[1] LCC has been dismissed from the case and is not a party to this appeal.

Holding Company acquired Haughton in 1979, initially forming the Schindler-Haughton Elevator Corporation, which later became the Schindler Elevator Corporation.

Plaintiff procured a default against Haughton Elevator Company and/or its successors. Subsequently, Schindler filed a motion to quash service and a motion for summary disposition. Plaintiff moved to strike Schindler's motion, based on the entry of a default judgment against Haughton and its successors. Plaintiff also sought leave to amend her complaint to add Schindler as a named defendant. Following a hearing, the trial court denied plaintiff's motion to amend as untimely and granted Schindler's motion to quash, resulting in dismissal of the case.

Because the trial court's orders were based on the interpretation and application of court rules, we review the orders de novo. *Peters v Gunnell, Inc*, 253 Mich App 211, 225; 655 NW2d 582 (2002).

Plaintiff contends the trial court's granting of Schindler's motion to quash service of the second summons was improper. MCR 2.105(J)(3) governs defects in service of process. According to the rule, "an action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." The record indicates the existence of two alleged defects in plaintiff's attempt to serve the second summons: first, that plaintiff served Schindler under the wrong name, and second, that plaintiff served the wrong summons. The first defect did not warrant dismissal because Schindler received actual notice of plaintiff's complaint within the requisite time period. Although the summons was addressed to Haughton and its successors, Schindler acknowledged that it had acquired Haughton Elevator, that it had conducted business as Schindler-Haughton Elevator Corporation, and that it had subsequently changed its name to Schindler Elevator Corporation. When a plaintiff properly serves a defendant under an incorrect name, the action cannot be dismissed for incorrect service of process. MCR 2.105(J)(3); *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669, 674; 413 NW2d 474 (1987). See also, *Miller v Chapman Contracting*, 477 Mich 102, 106-107; 730 NW2d 462 (2007).

The more significant issue arises from the second alleged defect. Service of a valid summons is a necessary part of service of process. *Holliday v Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991). There is a factual dispute between the parties regarding whether the second summons was included in the documents served. If, as Schindler contends, plaintiff failed to serve the second summons, Schindler was never placed on notice of the time requirements to respond to plaintiff's complaint. However, if the second summons was included with the documents that were served, service of process was valid. The record contains conflicting evidence regarding this dispute. The proof of service certified by plaintiff's counsel indicates that the second summons was included in the documents, but the transmittal letter from the resident agent to Schindler does not reference a second summons among the documents transmitted. The trial court apparently assumed that plaintiff had failed to serve the second summons, but the grounds for this assumption are unclear.

We find that there is a factual dispute concerning service of the second summons, which requires remand. See *In re Gordon's Estate*, 222 Mich App 148, 158; 564 NW2d 947 (1997); see also *Hayden v Gokenbach*, 179 Mich App 594, 596; 446 NW2d 332 (1989), mod on other grounds, 453 Mich 856 (1990) (ordering that critical factual issues regarding service of process

be addressed on remand). On remand, the trial court must make a specific finding of fact concerning whether plaintiff properly served the second summons.

In reference to the motion to amend, we note that the lower court record fails to identify the reasons for the trial court's denial of plaintiff's motion to amend. When a trial court denies leave to amend, the court must specify the reasons for the ruling. *Franchino v Franchino*, 263 Mich App 172, 189-190; 687 NW2d 620 (2004). Valid reasons for denial include undue delay, bad faith, or a dilatory motive by the moving party, ineffective previous amendments, undue prejudice to the opposing party, or an attempt to add a claim that is insufficient on its face. *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 659-660; 213 NW2d 134 (1973); *PT Today, Inc v Comm'r of Financial & Ins Services*, 270 Mich App 110, 143-144; 715 NW2d 398 (2006).

The only reason indicated in the lower court record for denying the motion to amend is the trial court's statement during the hearing on the motion to quash that plaintiff's motion was untimely. Standing alone, this constitutes an insufficient basis for denial of a motion to amend. *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 321, 324; 503 NW2d 758 (1993). On remand, the trial court must determine whether there was bad faith, prejudice, or other grounds for denying the motion to amend, and must specifically identify the reasons in its order. We reverse the denial of the motion to amend and remand for further proceedings on the motion. See *Stanke, supra* at 324.

Finally, we reject plaintiff's argument that the trial court improperly considered Schindler's motions following entry of a default. This Court has determined that the proper method for a defaulted defendant to challenge service of process is a motion to quash. *Hayden, supra* at 597. Therefore, Schindler's filing of a motion to quash rather than a motion to set aside the default was procedurally correct.

Reversed, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter