

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN BOYT,

Plaintiff-Appellant,

v

STEVEN DRAKOS,

Defendant-Appellee.

UNPUBLISHED

August 6, 2009

No. 282653

Oakland Circuit Court

LC No. 2007-085005-NM

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order dismissing his legal malpractice claim for failing to serve defendant. We affirm.

Plaintiff, who is currently incarcerated, sent a complaint to the circuit court, which filed the complaint and issued a summons on August 10, 2007. The court returned to plaintiff copies of the complaint and summons. Instead of serving them on defendant, plaintiff mailed them back to the circuit court on August 20, 2007, with a request that the court arrange for service on defendant pursuant to MCR 2.002(F). Plaintiff maintains that the circuit court did not respond until he sent another letter on October 2, 2007. However, the court file contains an undated letter from the court to plaintiff informing him that "no action is being taken since no formal request has been made."

On October 20, 2007, the circuit court entered an order directing plaintiff to appear on November 7, 2007 "to show cause why . . . defendant[] ha[s] not been served." On October 30, 2007, plaintiff mailed to the circuit court motions for the issuance of a second summons and for service of process.¹ Plaintiff attached to the motions an affidavit asserting his indigence and requesting that the circuit court order the county or the Department of Corrections to fund service of process by certified or registered mail, as contemplated in MCR 2.002(F). On November 24, 2007, the circuit court dismissed plaintiff's case for failure to serve defendant. On December 4, 2007, the circuit court denied plaintiff's motions for lack of merit.

¹ The record reflects that the circuit court filed the motions on December 4, 2007.

Plaintiff now contends that in light of his indigence, the circuit court should have served process on defendant at the county's expense under MCR 2.002(F). The interpretation and application of a court rule involves a question of law that we review de novo. *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 123-124; 693 NW2d 374 (2005). Clear and unambiguous court rule language must be given its plain meaning and enforced as written. *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 591; 735 NW2d 644 (2007).

Under MCR 2.002(F),

If payment of fees and costs has been waived or suspended for a party and service of process must be made by an official process server or by publication, the court shall order the service fees or costs of publication paid by the county or funding unit in which the action is pending, if the party submits an ex parte affidavit stating facts showing the necessity for that type of service of process. [Emphasis added.]

However, plaintiff's civil malpractice complaint against his attorney did not require either official service of process or publication. Service of process in civil actions may occur through personal delivery "by any legally competent adult who is not a party or an officer of a corporate party" or by registered or certified mail, if the defendant acknowledges receipt. MCR 2.103(A); MCR 2.105(A). Because plaintiff was not obligated to employ an official process server and was not seeking to serve defendant through publication, the plain language of MCR 2.002(F) did not entitle plaintiff to subsidized service of process.

The circuit court thus properly denied plaintiff's motion to order the county to fund service on defendant. And because plaintiff failed to timely serve defendant, the circuit court correctly ordered dismissal of the action. MCR 2.102(E).

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher