Rel: August 30, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1180642

Ex parte Trinity Property Consultants, LLC

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: Brittony Mays

v.

Trinity Property Consultants, LLC)

(Shelby Circuit Court, CV-18-99; Court of Civil Appeals, 2170867)

SELLERS, Justice.

Trinity Property Consultants, LLC ("Trinity Property"), petitioned this Court for a writ of certiorari to review the judgment of the Court of Civil Appeals holding that Trinity Property failed to meet its burden of demonstrating that Brittony Mays had been properly served in an eviction and unlawful-detainer action filed by Trinity Property pursuant to the Alabama Uniform Residential Landlord and Tenant Act, § 35-9A-101 et seq., Ala. Code 1975. See Mays v. Trinity Property Consultants, LLC, [Ms. 2170867, March 8, 2019] ___ So. 3d ___ (Ala. Civ. App. 2019). This Court issued the writ; we now reverse the judgment of the Court of Civil Appeals and remand the cause to that court.

Facts and Procedural History

The following facts are relevant to our review: On February 5, 2018, the Shelby District Court entered a default judgment against Mays in the eviction and unlawful-detainer action filed by Trinity Property. Mays moved the district court, pursuant to Rule 60(b)(4), Ala. R. Civ. P., to set aside the default judgment on the basis that she had not been served with the complaint in the action; that motion was denied. See Rule 60(dc), Ala. R. Civ. P. Mays appealed the

denial of the Rule 60(b)(4) motion to the Shelby Circuit Court; that court dismissed her appeal as untimely filed. Mays moved the circuit court, pursuant to Rule 59(e), Ala. R. Civ. P., to reinstate the appeal and to stay the execution of the default judgment. Trinity Property responded and filed the affidavit of Dale C. Stave, a process server, who averred, in relevant part:

> "1. I am a process server in Shelby County, Alabama.
>
> "2. I have been serving Unlawful Detainer actions for over 20 years.
>
> "3. On the 25th day of January, 2018, I served a copy of the Unlawful Detainer Summons and Complaint to [Mays] at the address listed on the Summons.
>
> "4. In accordance with Ala. Code [1975,] § 35-9A-461(c), I knocked on the door[;] after I did not receive a response, I posted a copy of the Summons and Complaint on the door, then placed a stamped copy in the first class mail to the same address on the 25th of January, 2018."

In other words, the process server, fully aware of the statutory requirements governing his actions, attempted to personally serve Mays by knocking on the door of her residence, and, after receiving no response, he posted a copy of the summons and complaint on the door and, on the same day,

mailed the summons and complaint by first-class mail to the same address--a method hereinafter referred to as "posting and mailing." The circuit court denied Mays's Rule 59(e) motion. Mays then filed an appeal with the Alabama Court of Civil Appeals. In her appeal, Mays again argued that she was entitled to relief from the default judgment because, she claimed, the judgment was void because she had not been served with the complaint in the action. Mays specifically argued that service by posting and mailing was improper because, she claimed, Trinity Property failed to make a reasonable effort to serve her personally. In other words, it was Mays's position that merely knocking on the door, without more, was not a "reasonable effort" at personal service. See § 35-9A-461(c), Ala. Code 1975.

The Court of Civil Appeals reversed the judgment of the circuit court and remanded the case, concluding that Mays was entitled to Rule 60(b)(4) relief from the default judgment.[1] The Court of Civil Appeals specifically concluded that Trinity

[1]The Court of Civil Appeals initially affirmed the judgment of the circuit court in an opinion dated January 11, 2019; on rehearing, on March 8, 2019, it withdrew that opinion and substituted another opinion reversing the judgment and remanding the case.

Property failed to meet its burden of showing valid service pursuant to § 35-9A-461(c) and § 6-6-332(b), Ala. Code 1975, because the process server's affidavit did not include enough information to support the propriety of service by posting and mailing. The Court of Civil Appeals cited Eight Associates v. Hynes, 102 A.D.2d 746, 747, 476 N.Y.S.2d 881, 883 (N.Y. App. Div. 1984)(holding: "Under the facts present herein, one attempt to serve process during 'normal working hours' did not satisfy the 'reasonable application' standard set forth in [Real Property Actions and Proceedings Law] 735. In so doing we do not rule that such service during 'normal working hours' would be insufficient under all circumstances."). The Court of Civil Appeals then stated:

> "In the present case, Stave [the process server] averred in his affidavit that, on January 25, 2018, which was a weekday, he 'knocked on the door [and] did not receive a response.' As Mays points out, however, there is no evidence concerning the time that Stave knocked on the door of the residence[, i.e., whether it was during normal working hours, which may be deemed unreasonable under the circumstances] nor is there any other evidence concerning the circumstances of Stave's attempt at service, such as the number of times he knocked or how long he waited for a response. 'When the service of process on the defendant is contested as being improper or invalid, the burden of proof is on the plaintiff to prove that service of process was performed correctly and legally.' Ex parte

> Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880, 884 (Ala. 1983). In this case, after Mays contested the validity of service, Trinity Property had the burden of showing that service was proper. Although Trinity Property filed an affidavit in support of its method of service, we conclude that that affidavit did not include enough information to support the availability of service by posting and mailing as a valid service option. Therefore, Trinity Property failed to meet its burden of showing valid service pursuant to § 35-9A-461(c) and § 6-6-332(b)."

___ So. 3d at ___.

Trinity Property filed an application for rehearing, arguing that the Court of Civil Appeals' decision was in conflict with Greene v. Lindsey, 456 U.S. 444 (1982). The Court of Civil Appeals overruled the application for rehearing, concluding that its interpretation of the phrase "reasonable effort," as that phrase is used in §§ 35-9A-461(c) and 6-6-332(b), was in complete harmony with Greene. See Mays v. Trinity Prop. Consultants, LLC, [Ms. 2170867, May 3, 2019] ___ So. 3d ___ (Ala. Civ. App. 2019)(opinion on second application for rehearing). This Court issued the writ of certiorari to determine whether the Court of Civil Appeals correctly construed the phrase "reasonable effort" as that phrase is used in § 35-9A-461(c) and § 6-6-332(b).

Standard of Review

"Because the issue presented by this appeal concerns only questions of law involving statutory construction, our review is de novo. Whitehurst v. Baker, 959 So. 2d 69 (Ala. 2006). See also Taylor v. Cox, 710 So. 2d 406 (Ala. 1998)." Alabama Dep't of Transp. v. Williams, 984 So. 2d 1092, 1094 (Ala. 2007).

Discussion

Section 35-9A-461(c) addresses actions by residential landlords "for eviction, rent, monetary damages, or other relief relating to a tenancy" and provides:

> "Service of process shall be made in accordance with the Alabama Rules of Civil Procedure. However, if a sheriff, constable, or process server is unable to serve the defendant personally, service may be had by delivering the notice to any person who is sui juris residing on the premises, or if after reasonable effort no person is found residing on the premises, by posting a copy of the notice on the door of the premises, and on the same day of posting or by the close of the next business day, the sheriff, the constable, the person filing the complaint, or anyone on behalf of the person, shall mail notice of the filing of the unlawful detainer action by enclosing, directing, stamping, and mailing by first class a copy of the notice to the defendant at the mailing address of the premises and if there is no mailing address for the premises to the last known address, if any, of the defendant and making an entry of this action on the return filed in the case. Service of the notice by posting shall be complete as of the date of mailing the notice."

(Emphasis added.) Section § 6-6-332(b), entitled "Process - Form of notice; service and return thereof," contains substantially the same language.

In Greene, the United States Supreme Court examined a Kentucky statute that provided that, in a forcible entry or detainer action, a process server was required to make a visit to the tenant's home and attempt to serve the summons personally on the tenant or some member of the tenant's family who was over the age of 16. If no one was home at the time of the attempted service, the statute authorized the process server to post a copy of the summons in a conspicuous place on the premises.[2] The issue before the Supreme Court was whether

---

[2]Greene quotes the statute, Ky. Rev. Stat. § 454.030 (1975):

> "'If the officer directed to serve notice on the defendant in forcible entry or detainer proceedings cannot find the defendant on the premises mentioned in the writ, he may explain and leave a copy of the notice with any member of the defendant's family thereon over sixteen (16) years of age, and if no such person is found he may serve the notice by posting a copy thereof in a conspicuous place on the premises. The notice shall state the time and place of meeting of the court.'"

456 U.S. at 446. The statute had no requirement that personal service be reasonable.

the Kentucky statute, "as applied to tenants in a public housing project, fail[ed] to afford those tenants the notice of proceedings initiated against them required by the Due Process Clause of the Fourteenth Amendment." 45 U.S. at 445. The Supreme Court began its analysis by stating that, because it is reasonable to assume that a property owner has a continuing interest in maintaining possession of his or her property, posting on the property alone would be a constitutionally and, indeed, a "singularly" acceptable means of service. 456 U.S. at 452-53. The Supreme Court noted, however, that it was undisputed that the process servers in Greene knew that children were frequently removing notices from the apartment doors. The Supreme Court held that, under those circumstances, mere posting after a single attempt at service did not satisfy the minimum standards of due process set forth in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)(noting that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections"). In Greene, the circumstances surrounding posting to effectuate personal service led the Supreme Court to conclude that posting alone failed to provide actual notice to the tenants in a significant number of instances. The Supreme Court explained that "the reasonableness of the notice provided must be tested with reference to the existence of 'feasible and customary' alternatives and supplements to the form of notice chosen." 456 U.S. at 454. In this respect, the Supreme Court reasoned that service by mail would be an alternate, efficient, and inexpensive means of communication and, responding to the dissent, noted: "[W]e have no hesitation in concluding that posted service accompanied by mail service, is constitutionally preferable to posted service alone." 456 U.S. at 455 n.9.

In 1990, the Alabama Legislature, apparently heeding the analysis in Greene, amended § 35-9-82,[3] Ala. Code 1975, this State's former statute governing service of process in unlawful-detainer actions. Alabama's former statute resembled

[3]Following the Greene decision, the United States District Court for the Middle District of Alabama struck down, as unconstitutional, § 35-9-82, Ala. Code 1975. See Thornton v. Butler, 728 F. Supp. 679 (M.D. Ala. 1990).

the Kentucky statute in that it allowed for service of process in unlawful-detainer actions by merely leaving notice of the action at the tenant's residence. Our present statutes concerning service of process in unlawful-detainer actions, § 35-9A-461(c) and § 6-6-332(b), now provide for a twofold service of process--posting and mailing--following a failure of "reasonable effort" to secure personal service.

Unlike the circumstances in Greene, in which the process servers were aware that there had been repeated problems with children removing notices from the doors of the apartments in the complex where the tenants being served resided, there is no evidence in this case to suggest that such extraordinary circumstances existed that might require the process server to take additional measures or to make additional attempts at personal service. Rather, Mays claims only that she was home on the date when the process server attempted service but that she did not hear the knock. The record is not clear if Mays ever received the posted notice. Under the circumstances presented here, we conclude that Trinity Property used reasonable effort and acted within the statutory requirements in attempting personal service.

As indicated, the Court of Civil Appeals' decision invalidated the service on the basis that the process server's affidavit failed to include any information regarding his knocking on the door, such as the time of day he knocked on the door, which was a weekday, nor did the affidavit include any information concerning the circumstances of his attempt at service, such as the number of times he knocked or how long he waited for a response. The legislature, however, did not define any specific factors to be considered when determining whether an effort at personal service would be reasonable. Rather, the legislature used the flexible phrase "reasonable effort" so that each case could be evaluated based on the circumstances presented. It is well settled that

> "[t]he fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect. Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687 (Ala. 1991)."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992).

Because legislative intent is determined primarily from the text of the statute, we note that the phrase "reasonable effort" is not ambiguous. "Reasonable" is defined, in part, as "fair, proper, or moderate under the circumstances; sensible." Black's Law Dictionary 1518 (11th ed. 2019). Here, in the absence of any extraordinary facts, the process server's single attempt at personal service by knocking on the door to determine if anyone was home was suitable under the circumstances. A proper reading of § 35-9A-461(c) makes clear that Trinity Property's attempt at personal service, coupled with the safeguards of subsequently posting and mailing notice, was reasonably calculated under the circumstances to apprise Mays of the eviction and unlawful-detainer action against her and satisfied the constitutional requirements of due process.

Conclusion

Because under the facts of this case the process server's effort at obtaining personal service was reasonable, the alternative method of service by posting and mailing satisfied

the requirements of due process. We therefore reverse the judgment of the Court of Civil Appeals and remand the cause to that court for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bolin, Wise, and Mendheim, JJ., concur.

Bryan and Mitchell, JJ., concur in the result.

Parker, C.J., and Shaw and Stewart, JJ., dissent.

SHAW, Justice (dissenting).

The main opinion holds--I can read it no other way--that knocking on one's door during a weekday always constitutes a "reasonable effort" at delivering a notice of an eviction action for purposes of Ala. Code 1975, § 35-9A-461(c), unless the opposing party proves otherwise.[4] I respectfully dissent.

Section § 35-9A-461(c), which was enacted in 2006 and which applies to service of process of an eviction action, states that if the defendant cannot be personally served, then "service may be had by delivering the notice to any person who is sui juris residing on the premises." If, "after reasonable effort no person is found residing on the premises," then service may be had by posting a copy of the notice on the door of the premises and mailing a copy to the defendant. "Reasonable" is defined as: "Fair, proper, or moderate under the circumstances ...." Black's Law Dictionary 1518 (11th ed. 2019).[5]

---

[4]The main opinion states: "Here, in the absence of any extraordinary facts, the process server's single attempt at personal service by knocking on the door to determine if anyone was home was suitable under the circumstances." ___ So. 3d at ___.

[5]This definition has remained unchanged since the eighth edition published in 2004.

I do not have enough information on the "circumstances" of the attempted personal service in this case to determine whether the process server's "effort" was "reasonable." The process server's affidavit "did not include any information regarding his knocking on the door, such as the time he knocked on the door of the residence." Mays v. Trinity Prop. Consultants, LLC, [Ms. 2170867, March 8, 2019] ___ So. 3d ___, ___ (Ala. Civ. App. 2019). The day that service was attempted was a weekday. If the attempt was made during normal working hours--when, on a weekday, most residents are normally at work--then I do not believe that single attempt demonstrates a "reasonable effort" sufficient to shift the burden to the opposing party to demonstrate "extraordinary facts" or other circumstances. If the attempt was not during normal working hours, i.e., at a time when most residents are not normally at work, then I would conclude that the single attempt was a "reasonable effort." However, because we do not have information about these particular circumstances, I am unable to conclude that the effort to personally serve Brittony Mays was reasonable.

Stewart, J., concurs.