IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TAX LIEN SERVICES LLC,
Plaintiff/Appellee,

v.

MARCUS ESPARZA,
Defendant/Appellant.

No. 1 CA-CV 21-0093
FILED 12-23-2021

Appeal from the Superior Court in Maricopa County
No. CV2019-090131
The Honorable Steven P. Lynch, Judge (Retired)

AFFIRMED

COUNSEL

The Hendrix Law Office, Gilbert
By Heather M. Hendrix
Counsel for Plaintiff/Appellee

Barry Becker, PC, Phoenix
By Barry C. Becker
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge David B. Gass joined.

M O R S E, Judge:

¶1 Marcus Esparza appeals the superior court's denial of his motion to set aside an entry of default and default judgment pursuant to Arizona Rule of Civil Procedure 60(b)(4). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In February 2019, Tax Lien Services, LLC ("TLS") filed a foreclosure action against property (the "Property") owned by Marcus Esparza ("Marcus") and Jose Esparza ("Jose"). A process server unsuccessfully attempted to serve a copy of the summons and complaint on Marcus at the Property. Later, TLS filed a motion for alternative service, seeking leave to serve Marcus by certified and regular mail and posting upon the Property. In its motion, TLS stated that "[a]ttempted service at [Marcus]'s last known address . . . (also the property at issue in this action) failed," "[f]urther investigation confirmed the subject property is owned by [Marcus]," and "[t]here is no additional mailing address [for Marcus] listed with the County Assessor's Office or County Treasurer's Office." The motion also included a certified declaration from a process server stating that an online search of two different databases, a "skip trace," revealed the Property as the only address for Marcus. The superior court denied the motion.

¶3 TLS subsequently filed an affidavit of publication, which it later supplemented, attesting that, after the court denied the motion for alternative service, Motor Vehicle Division ("MVD") "records . . . were obtained" but "[n]o matching record was found for . . . Marcus Esparza." The affidavit and supplement also included additional certified declarations from the process server. In those declarations, the process server attested that he attempted to obtain, but could not find, any MVD record for Marcus. He also described unsuccessful service attempts on Marcus at two other addresses found through a "skip-trace" search ran on Jose. At one of the locations, the process server was told that Marcus did

not live at the address. At the other address, an occupant told the process server he believed Jose was deceased.

¶4 In June 2019, the superior court found that "good and proper service ha[d] been completed," entered a default judgment against Marcus and Jose, and quieted title to the Property in favor of TLS. In September 2020, Marcus filed a Rule 60 motion to set aside the entry of default and default judgment. The superior court held oral argument and denied the motion. Marcus timely appealed and we have jurisdiction under A.R.S. § 12–2101(A)(2). *See Sullivan & Brugnatelli Advert. Co. v. Century Cap. Corp.*, 153 Ariz. 78, 80 (App. 1986) (noting "[a]n order setting aside, or refusing to set aside a default judgment, is appealable as a special order made after a judgment").

DISCUSSION

¶5 Marcus argues the superior court erred in denying his motion to set aside the entry of default and default judgment under Rule 60(b)(4) because the judgment was void due to lack of service.

A. Standard of Review.

¶6 "The scope of an appeal from a denial of a Rule 60 motion is restricted to the questions raised by the motion to set aside . . . ." *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311 (1983). Proper service of process is "a legal question of personal jurisdiction which we review de novo" but we defer to the superior court's factual findings unless they are clearly erroneous. *Ruffino v. Lokosky*, 245 Ariz. 165, 168, ¶ 9 (App. 2018) (italics omitted). Where parties dispute evidence related to service, we view "the facts in the strongest light possible in favor of supporting the trial court's decision." *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, 219, ¶ 10 (App. 2000) (quoting *Daou v. Harris*, 139 Ariz. 353, 360 (1984)).

¶7 "[A] judgment is void if it was entered without jurisdiction because of a lack of proper service." *Ruffino*, 245 Ariz. at 168, ¶ 10; *see also Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 321 (App. 1980) ("Proper service of process is essential for the court to have jurisdiction over the defendant."). There is no time limit to move for relief from a void judgment under Rule 60(b)(4). *Martin v. Martin*, 182 Ariz. 11, 14 (App. 1994). And when a judgment is void, a court must vacate it "even if the party seeking relief delayed unreasonably." *Id.* (quoting *Brooks v. Consol. Freightways Corp. of Del.*, 173 Ariz. 66, 71 (App. 1992)); *see also Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 243 Ariz. 404, 407, ¶ 16 (2018) (noting "that

a party may seek relief . . . from a void judgment beyond the six-month time limit that generally applies" for seeking relief from a judgment).

B. Service by Publication.

¶8 Marcus argues on appeal that service by publication was impermissible because TLS did not attempt to serve him at his current address even though it was available through the Arizona Department of Transportation ("ADOT") and an online search engine.

¶9 Service by publication is appropriate "when a plaintiff has exercised due diligence to personally serve a resident defendant at a last known address within the state and has complied with the publication procedures" in the Arizona Rules of Civil Procedure. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 73-74, ¶ 15 (App. 2004). Arizona Rule of Civil Procedure 4.1(*l*)(1) authorizes service by publication only if "the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address," or "the person to be served has intentionally avoided service of process," and "publication is the best means practicable" to provide notice of the action. Marcus argues that TLS did not make reasonably diligent efforts to find his current address, claiming that "[h]is current address was easily located from the records of motor vehicles or an online search engine." He does not argue that another means of service would have been more practicable.

¶10 A party resorting to service by publication must file an affidavit "stating the manner and dates of the publication and mailing, and the circumstances warranting service by publication." Ariz. R. Civ. P. 4.1(*l*)(4)(A). "An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication." Ariz. R. Civ. P. 4.1(*l*)(4)(C). When the serving party has been unable to find an individual's address, it must demonstrate that it made reasonably diligent efforts to ascertain the address. Ariz. R. Civ. P. 4.1 (*l*)(1), (4)(A); *see also Omega II Inv. Co. v. McLeod*, 153 Ariz. 341, 342 (App. 1987) ("It is well settled that a finding of due diligence prior to service by publication is a jurisdictional prerequisite."); *Llamas v. Superior Court*, 13 Ariz. App. 100, 101 (1970) ("It is not enough to state that residence is unknown without setting forth the efforts made to locate [the] party."); *Barlage v. Valentine*, 210 Ariz. 270, 273, ¶ 8 (App. 2005) (finding an affidavit asserting "in conclusory fashion" that a diligent effort to locate the defendant had been made was insufficient).

¶11 Reasonably diligent efforts can include searching public records to attempt to locate and serve an individual. *See Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 261 (App. 1990); *Brennan v. W. Savs. & Loan Assoc.*, 22 Ariz. App. 293, 296-97 (1974); *Omega II Invest. Co.*, 153 Ariz. at 342. It can also include attempting to contact the party by electronic means, *see Ruffino*, 245 Ariz. at 169, ¶ 14, and making reasonable inquires of individuals with connections to the party to be served, *see Preston v. Denkins*, 94 Ariz. 214, 223 (1963); *Lown v. Miranda*, 34 Ariz. 32, 37 (1928).

¶12 Here, TLS asserted that a process server attempted to serve Marcus at the Property, a residence he owned, and was told that he did not live there. The process server also unsuccessfully attempted to serve Marcus at two additional locations. At one location, the process server was told that Marcus did not live at the address. At the other, an occupant told the process server he believed Jose was deceased. Further, TLS determined that no additional potential addresses for Marcus were available through the County Assessor's Office or County Treasurer's Office.

¶13 The other efforts TLS claims to have undertaken to serve Marcus are contested. The process server attested he searched for but could not locate an MVD record for Marcus and TLS presented a record of that MVD search. Marcus claims that "[h]is current address was easily located from the records of motor vehicles" and presents a photocopy of his driver's license. The process server also attested that a search of two different online databases uncovered no additional addresses, date of birth, or social security number for Marcus. However, Marcus responds that "[i]f TLS . . . utilized a search engine, it would have located [his] current address."

¶14 In entering default judgment, the superior court necessarily found that TLS had undertaken reasonably diligent efforts to locate and serve Marcus.[1] In Marcus's motion to set aside, he disputed TLS's claims of

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[1] TLS asserts that the superior court could have found service proper because Marcus was intentionally evading service or was personally served. However, in its affidavit of publication and motion for entry of default and default judgment, TLS did not allege that Marcus was intentionally evading service and admitted that it had not personally served Marcus. *See Preston*, 94 Ariz. at 223 ("The jurisdiction of the court to enter any judgment must rest on the affidavit in support of service by publication."); Ariz. R. Civ. P. 4.1(*l*)(4)(A) (affidavit must state "the circumstances warranting service by publication"). Therefore, service by publication on the grounds of reasonably diligent efforts was the only basis on which the default judgment could have been entered.

reasonably diligent efforts and attached a photocopy of his driver's license and documentation of a search run on an online search engine. In denying the motion to set aside, the superior court implicitly found that the facts alleged by Marcus were insufficient to overcome its prior finding. *See Gen. Elec. Cap. Corp. v. Osterkamp*, 172 Ariz. 191, 193 (App. 1992) (noting that "[i]mplied in every judgment, in addition to the express findings made by the court, are any additional findings necessary to sustain the judgment, if reasonably supported by the evidence and not in conflict with the express findings"). On review, we must view the facts in favor of the superior court's ruling, *Hilgeman*, 196 Ariz. at 219, ¶ 10, and defer to its findings if they are supported by the record, *Ruffino*, 245 Ariz. at 168, ¶ 9; *see also Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 254, ¶ 10 (2003) ("We defer to the [trial] judge with respect to any factual findings explicitly or implicitly made, affirming them so long as they are supported by reasonable evidence.").

¶15 The record supports the superior court's implied reasonably diligent efforts finding. This is not the situation we encountered in *Ruffino*, 245 Ariz. at 168-70, ¶¶ 6, 12-15. There, we found a lack of reasonably diligent efforts because the plaintiff had "many conventional ways to contact" the defendant and had "narrowed [defendant]'s location to one likely address," but "did not make any effort to communicate" with the defendant to confirm the address or leave documentation at the address regarding the suit. *Id.*

¶16 In this case, TLS provided evidence of attempts to serve Marcus at three addresses, discussions with people at those addresses, government-records searches, and two "skip-trace" searches. Although Marcus challenges those efforts, he does not demonstrate that they did not occur. While Marcus provided a photocopy of his driver's license, he did not provide evidence that contradicts the process server's declaration that MVD records were searched, during the relevant time period or otherwise. Marcus did not provide documentation of an MVD search revealing his current address, or a statement from an ADOT or MVD representative noting that a search of MVD records would have provided TLS that accurate address. Similarly, his evidence that a particular search run on a particular search engine revealed his address does not unavoidably contradict the process server's declaration that searches run on two different databases, which both require credentials and registration to access, did not uncover Marcus's address. Nor does the evidence of one search result dictate that TLS did not make reasonably diligent efforts to find and serve Marcus. *See Ruffino*, 245 Ariz. at 170, ¶ 18 (noting a party does not have to "search out every channel possible to communicate with

the other party" before service by publication is proper); *see also Blair v. Burgener*, 226 Ariz. 213, 216, ¶ 7 (App. 2010) ("Even where a judgment is challenged on voidness grounds, '[t]he movant generally bears the burden of demonstrating his entitlement to have a default judgment set aside.'") (quoting *Miller v. Nat'l Franchise Servs., Inc.*, 167 Ariz. 403, 406 (App. 1991)). Viewing the facts in the light most favorable to upholding the superior court's ruling and deferring to the court's implied factual determinations, the superior court did not err in denying Marcus's motion.

CONCLUSION

¶17 For the foregoing reasons, we affirm the superior court's denial of Marcus's Rule 60 motion.

AMY M. WOOD • Clerk of the Court
FILED: AA