NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-250

MONA LEE MARADEO APPELLANT V. WAYNE FARWELL and WILLIAM A. STIDHAM AND PEGGY STIDHAM, APPELLEES	**Opinion Delivered** September 17, 2008 APPEAL FROM THE CARROLL COUNTY CIRCUIT COURT, [NO. CV 2006-116] HONORABLE ALAN D. EPLEY, JUDGE REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

In this one-brief case, Mona Lee Maradeo appeals from an order of the Carroll County Circuit Court quieting title in the appellees, Wayne Farwell and William A. and Peggy Stidham. She argues that the trial court committed clear error by (1) failing to require compliance with the provisions of Arkansas Code Annotated sections 18-60-602 and 18-60-603(d) (Repl. 2003), which require the court clerk to send notice to the owner of the property; (2) failing to recognize her as a party to the action under the provisions of Arkansas Code Annotated section 26-38-204; (3) failing to require the appellees to comply with the provisions of Rule 4 of the Arkansas Rules of Civil Procedure; and (4) ruling that her answer was not timely filed. We reverse and remand for further proceedings consistent with this opinion.

Evelyn McCoy was the title holder of 160 acres of property in Carroll County for

which taxes were not paid in the years 1996-2000. On September 24, 2001, appellees acquired the property in a tax sale. On November 14, 2006, appellees petitioned to confirm title, designating appellant as one of the named defendants. On December 20, 2006, an affidavit of publication was filed. On January 17, 2007, appellees sent to appellant's residence in Illinois a copy of the petition by restricted-delivery certified mail. That copy was returned by the post office, marked "refused.[1]" On February 3, 2007, appellees then sent by regular first-class mail another copy of the petition, which appellant timely answered on February 27, 2007.

Meanwhile, the trial court entered a decree quieting title in the property, on February 16, 2007. Appellees moved to dismiss appellant's answer on March 8, 2007. They asserted that the order confirming title had been entered and that appellant's answer was not timely. After a hearing at which the trial court determined that the motion to dismiss was actually a motion to strike appellant's answer, the trial court found in favor of the appellees. It found that it had entered its order on February 16, 2007, and the appellant had not petitioned to set aside the decree within ninety days as required by Arkansas Rule of Civil Procedure 60. Appellant now appeals that order.

Although appellant states her argument in four points, we believe that it boils down to a single question: Did the trial court err when it struck appellant's answer in light of

[1] Appellant submitted to the trial court an affidavit from the Lansing, Illinois postmaster that stated that the post office erred in returning the certified restricted-delivery mailing.

the notice requirements imposed by Arkansas Rule of Civil Procedure 4 and the United States Supreme Court's decision in *Jones v. Flowers*, 547 U.S. 220 (2006)? We hold that the trial court did err and reverse and remand for further proceedings consistent with this opinion.

Due process requires that notice be "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." *Flowers*, 547 U.S. at 226. While Rule 4(e) authorizes service of out-of-state defendants by mail, it expressly requires that the service comport with due process in that the service be "reasonably calculated to give actual notice." However, we agree with appellant that this requirement was not met in this case. When service by mail is attempted in accordance with the provisions of Rule 4(d)(8)(A)(I), and the summons and complaint is refused, the material must then be sent by regular first class mail, postage prepaid, along with a notice that stated: "despite such refusal the case will proceed and that judgment by default may be rendered against him unless he appears to defend the suit." Ark. R. Civ. P. 4(d)(8)(A)(ii). It was only upon receipt of the first-class mail that appellant was properly served, at which time, as a non-resident defendant, she had thirty days to answer. *See* Ark. R. Civ. P. 12(a). Accordingly, the trial court's entry of the decree was premature.

We finally note that service by publication was not sufficient in this case because the "diligent inquiry" as to the whereabouts of appellant that was required by Arkansas

Civil Procedure Rule 4(f) did, in fact, yield a good address for appellant. Where essential statutory provisions governing service by publication are not strictly complied with as to non-resident defendants, all proceedings as to them are void. *Jackson v. Jackson*, 81 Ark. App. 249, 100 S.W.3d 92 (2003).

Reversed and remanded.

HUNT, J., agrees;

GRIFFEN, J., concurs without opinion.