

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Kathleen Seifert, plaintiff

Case No:2:08-CV-0998GEBKJM(PS)

**ORDER FOR
PUBLICATION OF SUMMONS**

v.

Hearing date: Extending order of
December 10, 2008

Time: 10 a.m.

Richard Werner, defendant

Courtroom: 26

Judge: Kimberly J. Mueller, presiding

At the hearing on December 10, 2008, Kenneth Pratt appeared for plaintiff and defendant Richard Werner appeared telephonically in propria persona.

After viewing the documents presented and the court's files, and hearing the arguments of counsel, the court found the defendant had not yet been properly served by plaintiff but had made good faith efforts to timely effect service on defendant.

Good cause appearing, the court on January 22, 2009 directed plaintiff to submit a proposed order for service by publication.

The court has read and considered plaintiff's declaration and proposed order submitted in response to the court's direction. It appears upon affidavit to the satisfaction of the court that defendant Richard Werner cannot be served with reasonable diligence in another manner set forth in Federal Rule of Civil Procedure 4 and California Code of Civil Procedure sections 415.10 through 415.40 incorporated therein. Plaintiff has exhausted all means to serve defendant by these means.

The court also finds that plaintiff has stated facts sufficient to constitute a cause of action against defendant Werner, a necessary party to this action. In such a case California Code of Civil Procedure section 415.50 authorizes service by publication.

THEREFORE, IT IS ORDERED that:

Service of the summons in this action on defendant Werner shall be accomplished by publication in the Cleveland Plain Dealer, a newspaper published in Cleveland, Ohio, and designated as the newspaper most likely to give actual notice to defendant residing in Cleveland Heights, Ohio.

The publication shall be made once a week for 4 weeks.

Since defendant's address is known, plaintiff shall immediately mail defendant a copy of the summons and complaint and this order for publication.

This order does not preclude service on defendant Werner in any manner specified in Federal Rules of Civil Procedure Rule 4 or California Code of Civil Procedure sections 415.10 through 415.40.

SO ORDERED.

DATED: February 5, 2009.



U.S. MAGISTRATE JUDGE