

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:16-CV-109-D

AMERICAN NATIONAL INSURANCE)
COMPANY,)

Plaintiff,)

v.)

ORDER

EXPRESS FUNERAL FUNDING, LLC)
1303 Lynch Lane)
Clarksville, IN 47129)

DEBORAH MCNAIR BENNETT,)
1007 W. Main Street)
Bennettsville, SC 29512-3705)

PATRICIA OLIVER,)
511 N.E. 6th Place)
Cape Coral, FL 33909)

HELEN FAISON)
1380 Faison Hwy)
Clinton, NC 28328-6108)

MARTHA MCNAIR)
3075 Baxley Ct.)
Atlanta, GA 30349-47014)

BUTLER & SON FUNERAL HOME INC.)
Attn: Timmy R. Butler, President)
10501 Roseboro Hwy)
Roseboro, NC 28382)

Defendants.)

On May 18, 2016, American National Insurance Company (“ANI” or “plaintiff”) filed a complaint seeking interpleader relief regarding the distribution of insurance benefits arising out of the death of decedent Elwell McNair, Jr., and naming as defendants Deborah McNair Bennett,

Patricia Oliver, Helen Faison, and Martha McNair [D.E. 1]. On May 26, 2016, ANI filed an amended complaint, adding Express Funeral Funding, LLC (“EFF”), as a defendant [D.E. 6]. On June 2, 2016, ANI moved for an order granting leave to deposit interpleader funds into the registry of the court [D.E. 10], which the court granted on June 6, 2016 [D.E. 13]. On October 28, 2016, ANI moved for an amended and corrected order granting leave to deposit interpleader funds into the registry of the court [D.E. 21]. On October 31, 2016, the court granted the motion [D.E. 22]. On November 11, 2016, ANI moved for leave to file a second amended complaint for interpleader [D.E. 23]. On November 14, 2016, the court granted the motion [D.E. 25]. On November 15, 2016, ANI filed a second amended complaint, adding Butler & Son Funeral Home, Inc., as a defendant [D.E. 26]. On January 6, 2017, the clerk issued a notice to ANI stating that the docket did not reflect that service had been obtained on EFF. On January 6, 2017, ANI filed an affidavit of service as to EFF [D.E. 35]. After the clerk issued a notice to ANI to proceed after EFF’s failure to answer, ANI moved for entry of default as to EFF [D.E. 37]. As explained below, the motion is denied.

Rule 55 of the Federal Rules of Civil Procedure provides: “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). ANI correctly states that EFF has failed to file an answer or otherwise appear in this action in this court. ANI has not, however, shown by affidavit or otherwise that EFF was properly served. Without being properly served, a defendant has no obligation to file an answer or appear in an action. See Maryland State Firemen’s Ass’n v. Chaves, 166 F.R.D. 353, 354 (D. Md. 1996); Henderson v. Los Angeles Cty., No. 5:13-CV-635-FL, 2013 WL 6255610, at *1 (E.D.N.C. Dec. 4, 2013) (unpublished); see also Fed. R. Civ. P. 12(a)(1)(A).

ANI alleges that EFF is a Indiana limited liability company. See [D.E. 26] at ¶ 3. The affidavit of service filed by ANI states this defendant was served via Federal Express, with delivery addressed to “Express Funeral Funding, LLC at 1503 Lynch Lane, Clarksville, IN 47129.” [D.E. 35] at ¶ 2. Proper service may be effected under Rule 4(h) by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or service is made, or by delivering a copy of the summons and of the complaint, to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. Fed. R. Civ. P. 4(h)(1). Both North Carolina and Indiana law provide for service by Federal Express. See N.C. Gen. Stat. § 1A-1, Rule 4(j)(6); Ind. R. Trial. P. 4.1(A)(1), 4.6. Both states, however, require that the delivery be addressed to certain persons to effect proper service. See N.C. Gen. Stat. § 1A-1, Rule 4(j)(6)(d) (providing that service by certified mail is effective if “addressed to the officer, director, or managing agent” or “an agent authorized by appointment of law to be served and to accept service of process”); Ind. R. Trial. P. 4.6(A) (providing that service on an organization may be made “upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent”); Choice Hotels Int’l v. Amcee Enter., Inc., No. 5:13-CV-200-F, 2014 WL 3778932, at *2 (E.D.N.C. July 31, 2014) (unpublished); NNDYM IN, Inc. v. UV Imports, Inc., No. 3:09-CV-129-RLY-WGH, 2011 WL 1225573, at *3 (S.D. Ind. Mar. 30, 2011) (unpublished).

On this record, ANI failed to properly serve EFF. Without being properly served, EFF has no obligation to appear or answer in this action. Accordingly, the motion for entry of default [D.E. 37] is DENIED. ANI may file a motion to extend the time period to effect service under Federal Rule 4(m) and for the reissuance of summons.

SO ORDERED. This 18 day of July 2017.



JAMES C. DEVER III
Chief United States District Judge