

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Thomas Campbell
Nashville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Thomas Campbell,
Appellant-Defendant,

v.

Christopher Allen Bauer,
Appellee-Plaintiff.

November 18, 2022

Court of Appeals Case No.
22A-SC-349

Appeal from the Johnson Superior
Court

The Honorable Douglas B.
Cummins, Judge

Trial Court Cause No.
41D02-1104-SC-868

Weissmann, Judge.

[1] More than ten years ago, Christopher Bauer received a default judgment against his landlord, Thomas Campbell, for damages arising from Bauer's rental of an apartment in Campbell's farmhouse. Nearly a decade passed before Campbell moved to set aside the judgment, claiming he had never been properly served with the notice of Bauer's claim. The trial court denied Campbell's motion. We reverse because the record fails to demonstrate Campbell received adequate notice of the claims against him.

Facts

[2] Campbell evicted Bauer from his farmhouse apartment in 2010. Bauer then sued Campbell in small claims court for \$6,000, alleging that Bauer paid more than his share of gas bills during his lease and that he had suffered damages from bats in the apartment.

[3] Multiple attempts at serving Campbell with the notice of Bauer's claim failed. First, the Bartholomew County Sheriff's Department left a copy of the notice on the door of Campbell's girlfriend's home, where Campbell no longer resided. Next, the Johnson County Sheriff's Department left a copy on the door of a house Campbell had owned but sold two years earlier when he moved to North Carolina. Because Bauer did not serve Campbell with the notice of claim by the initial hearing in the case, the trial court issued a continuance to allow additional time for Campbell to be served.

[4] At the next hearing, Bauer's mother and cousin testified that they left a copy of the notice of claim at Bauer's previous rental address, where they claimed

Campbell still received mail. Bauer's mother and cousin also testified that they witnessed a bondsman serve Campbell with a copy at a local restaurant. But the bondsman herself was not present at the hearing, and Bauer provided no corroborating documents.

[5] Though the trial court entered a default judgment, the court cautioned Bauer to save his evidence, stating "if [Campbell] thinks something is wrong, he should be in here in a matter of months, certainly within a year" to challenge the judgment. Tr. Vol II, p. 8. The court then clarified that it would not "hold [the default judgment open] for ten years." *Id.*

[6] But ten years and one month later, Campbell moved to set aside the default judgment based on lack of service and to dismiss Bauer's claim based on the expiration of the six-year statute of limitations. At the hearing, Campbell asserted he was in North Carolina buying a house when the bondsman purportedly served him in the restaurant. Campbell also noted that no documents were ever filed with the court showing service of process. And so, he argued, even if the court accepted that he had been given papers in a restaurant back in 2011, the testimony failed to establish that the documents included the time and place of the hearing. In response, the bondsman appeared and testified that she served Campbell in the restaurant with "court paperwork" ten years ago but could not remember the contents. *Id.* at 45. After hearing this evidence, the trial court denied Campbell's motions to set aside the default judgment and to dismiss Bauer's claim.

Discussion and Decision

- [7] On appeal, Campbell contends the 2011 trial court lacked personal jurisdiction over him due to ineffective service of process, thereby rendering the default judgment void.¹ We agree.

Standard of Review

- [8] Courts must possess personal jurisdiction over a defendant to satisfy the basic requirements of due process. Ineffective service of process prevents a trial court from exercising personal jurisdiction. *Grabowski v. Waters*, 901 N.E.2d 560, 563 (Ind. Ct. App. 2009). Accordingly, ineffective service of process renders any judgment void. *Id.* The existence of personal jurisdiction is a question of law that we review de novo, although we review the facts and findings underlying the trial court's decision for clear error. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 965 (Ind. 2006). "The court acquires personal jurisdiction over a party or person who under these rules commences or joins in the action, is served with summons or enters an appearance, or who is subjected to the power of the court under any other law." Ind. Trial Rule 4(A). One party may serve another "by delivering a copy to the defendant personally." Ind. Small Claims Rule 3(A). A return of service must be filed with the court. S.C.R. 3(D).

¹ As a pro se litigant, Campbell does not specifically attack the default judgment as "void" for lack of personal jurisdiction under Indiana Trial Court Rule 60(B), which is the proper procedure to request relief from a judgment. Still, Campbell's brief sufficiently argues that he is entitled to relief due to deficient service of process and we restate his claims as necessary.

[9] Bauer did not file an appellee’s brief. We do not present arguments on Bauer’s behalf and Campbell need only make prima facie showing of error to prevail. *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008). “Prima facie error in this context is defined as, ‘at first sight, on first appearance, or on the face [of] it.’” *Id.* (quoting *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind.2006)).

Service of Process

[10] The trial court violated Indiana Small Claims Rule 10(B) when it entered the default judgment. Before entering a default judgment, a small claims court must satisfy two relevant requirements. First, the court “shall examine the notice of claim and return thereof.” S.C.R. 10(B)(1). Second, the court must satisfy itself, through testimony of those present and the evidence in the record, that the service established a “reasonable probability that the defendant received notice.” *Id.* The testimony of Bauer’s witnesses alone cannot prove Campbell received notice of Bauer’s lawsuit.

[11] The Record here lacks the paperwork Campbell supposedly received. “It is a long-accepted proposition of Indiana law that the very concept of ‘service,’ across various statutory contexts, includes the ability to provide *proof* of that service in court.” *Homer v. Jones-Bey*, 415 F.3d 748, 755 (7th Cir. 2005) (collecting cases). Absent such proof, the record fails to establish that Campbell knew when and where to appear before the court or the nature of Bauer’s claims against him. Indiana Small Claims Rule 3(D) requires the person making service to comply with Indiana Trial Rule 4.15 by filing a return of service with the court. An acceptable return of service conveys the time, place,

and how service was given to the defendant. T.R. 4.15(A). The return of service's absence from the record destroys personal jurisdiction over Campbell. *Legacy Builders Ind., Inc. v. Crocker*, 188 N.E.3d 48, 53 (Ind. Ct. App. 2022) (holding that the trial court did not acquire personal jurisdiction over the defendants because failure to file a summons with the complaint left defendants without notice to appear). Although defects in service may be excused when the service is "reasonably calculated" to give the defendant notice, Bauer waived this argument by failing to appear in this appeal and we will not advance it for him. T.R. 4.15(F).

[12] Moreover, none of Bauer's witnesses testified that Campbell received a notice of claim that specified when and where to appear for the 2011 hearing. A notice of claim can act as summons in small claims matters. S.C.R. 3(A). But if the notice of claim lacks the specific time and place to appear required by Indiana Small Claims Rule 2(B), the defendant cannot be defaulted for failure to appear. *Sanders v. Kerwin*, 413 N.E.2d 668, 671 (Ind. Ct. App. 1980). Neither witness spoke to nor served the man they believed to be Campbell. And a decade later, the bondsman did not remember any details of the documents beyond that they contained "court paperwork." Tr. Vol. II, p. 45. Reviewing the copy of the claim the witnesses alleged Campbell received, the judge asked in 2011, "[w]here do I see from this one that he has been notified to appear?" *Id.* at 4. Ten years later, the question is still unanswered. Accordingly, the 2011 trial court never acquired jurisdiction over Campbell and its entry of default judgment is void.

[13] We reverse the default judgment against Campbell and remand for a determination as to whether Bauer's claim should be dismissed.

May, J., and Crone, J., concur.