APPELLANT PRO SE:

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IN THE COURT OF APPEALS OF INDIANA

JOHN LANE-EL,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A02-0705-CV-396
	)	
MICHAEL SPEARS, in his official capacity as Chief of Police, and the INDIANAPOLIS POLICE DEPARTMENT,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn Moberly, Judge
Cause No. 49D12-0610-PL-44021

December 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

John Lane-El ("Lane-El") appeals the trial court's dismissal without prejudice of his complaint for lack of proper summons. We reverse and remand.

Issue

Lane-El presents one issue for appeal, which we restate as whether the trial court properly dismissed his complaint for lack of personal jurisdiction.

Fact and Procedural History

Lane-El is an incarcerated prisoner. On January 9, 2006, and May 1, 2006, Lane-El requested public records by filing a Public Records Request[1] with the Indianapolis Police Department ("IPD").[2] After Lane-El did not receive a response to the requests, he filed a complaint with the Office of the Public Access Counselor. Karen Davis ("Davis"), the Public Access Counselor, requested a formal response from the IPD by June 21, 2006. On July 5, 2006, Davis, after not receiving a response from IPD, issued a finding that the IPD "violated the Access to Public Records Act in failing to respond to [Lane-El's] request for records." Appellant's App. at 18.

On July 27, 2006, Lane-El, acting *pro se*, filed suit against Chief Michael Spears in his official capacity as the Chief of IPD ("Chief Spears") and the IPD (collectively "the Police") to compel Lane-El's access to the records requested. On October 11, 2006, the trial court issued an order directing the clerk of the court to cause service of the summons upon

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[1] Ind. Code § 5-14-3-3.

[2] The IPD has since merged with the Marion County Sheriff's Department to form the Indianapolis

the Police. Lane-El requested the clerk to serve both Chief Spears and the IPD, and the clerk certified that one of the summons was mailed, without certifying that it was received or providing identifying information of which summons was mailed.

On December 15, 2006, Lane-El filed a motion for default judgment. Counsel for the Police filed its appearance along with a notice of automatic extension of time in response to Lane-El's motion for default judgment on December 20, 2006. The next day, the trial court denied Lane-El's motion for default judgment, because the Police had not been served.

On January 25, 2007, the Police filed their motion to dismiss in response to Lane-El's motion for default judgment citing Lane-El's failure to serve them. On February 12, 2007, the trial court granted Lane-El until March 1, 2007, to serve the Police. On February 19, 2007, Lane-El requested that the clerk cause the summons to be served upon the attorney of the Police by certified mail, return receipt requested. There is no evidence in the record that these summons were ever mailed or received.

On March 5, 2007, the trial court dismissed Lane-El's complaint without prejudice because "no proper summons have been issued." Appellant's App. at 33.

Lane-El now appeals.

Metropolitan Police Department. However, we will continue to refer to them as IPD throughout this opinion.

Discussion and Decision[3]

The existence of personal jurisdiction over a defendant is a question of law and hence reviewed *de novo*. Thomison v. IK Indy, Inc., 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006). "A plaintiff is responsible for presenting evidence of a court's personal jurisdiction over the defendant, but the defendant ultimately bears the burden of proving the lack of personal jurisdiction by a preponderance of the evidence, unless that lack is apparent on the face of the complaint." LePore v. Norwest Bank Ind., N.A., 860 N.E.2d 632, 634 (Ind. Ct. App. 2007).

The Police argue that the trial court never acquired personal jurisdiction because of improper service on either Chief Spears or the IPD. See Ind. Trial Rule 4.6. "If service of process is inadequate, the trial court does not acquire personal jurisdiction over a party." King v. United Leasing, Inc., 765 N.E.2d 1287, 1290 (Ind. Ct. App. 2002).

The Police argue Lane-El was unsuccessful when he attempted to serve both the IPD and Chief Spears under Trial Rule 4.6.[4] In serving a local government organization, Indiana Trial Rule 4.6 requires service to be made on an executive of the organization as well as the

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[3] The Police argue that this Court lacks jurisdiction, asserting that the dismissal without prejudice is not a final judgment as required by Indiana Appellate Rule 5(A). However, regardless of how the trial court labels the order, if the effect of the order would render it a final judgment, this Court has jurisdiction. See McGill v. Ling, 801 N.E.2d 678, 679 (Ind. Ct. App. 2004), trans. denied. Based on Lane-El's attempts to achieve service, it is not clear that refiling will provide any different results than that already achieved, which renders the effect of the trial court's judgment as final. Additionally, this Court has reviewed a case that was dismissed without prejudice without explicitly analyzing whether the judgment was final. Sumbry v. Pera, 795 N.E.2d 470 (Ind. Ct. App. 2003), trans. denied. Considering this record, our preference is to review this case on its merits. See Lindsey v. De Groot Dairy LLC, 867 N.E.2d 602, 605 (Ind. Ct. App. 2007), trans. denied ("Indiana law strongly prefers disposition of cases on their merits.").

[4] The Police also argue that Lane-El failed to properly serve Mayor Bart Peterson under Indiana Trial Rule 4.1. However, our review of the complaint filed by Lane-El indicates Mayor Bart Peterson was never named

attorney for the local governmental organization. In serving an individual acting in their official capacity, Indiana Trial Rule 4.6 also requires service to be made on that individual. As evidence that Lane-El properly served Chief Spears and the IPD, Lane-El provides one receipt from the clerk of the court stating that the summons has been sent, return receipt requested. The clerk did not provide Lane-El with evidence either receipt had been returned. As evidence of service upon the Police's attorney, Lane-El provided a letter mailed to the clerk requesting that service be sent along with his affirmation that the documents were sent.

True, Lane-El never complied precisely with the Indiana Trial Rule 4.6. However, Indiana Trial Rule 4.15(F) acts as a savings clause where merely technical violations would otherwise render service ineffective. According to this rule, "[n]o summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond." T.R. 4.15(F). Therefore, if the actions of the party substantially complied with the trial rules and were reasonably calculated to inform the party that an action had been instigated against them, the service is rendered effective. Lepore, 860 N.E.2d at 636. However, if there is no attempt whatsoever to comply with the rules, the service is not effectuated. Swiggett Lumber Const. Co. v. Quandt, 806 N.E.2d 334, 338 (Ind. Ct. App. 2004); Barrow v. Pennington, 700 N.E.2d 477, 479 (Ind. Ct. App. 1998).

IPD argues that Lane-El made "no attempt whatsoever" to comply with Indiana Trial Rule 4.6 as in Swiggett. Appellee's Brief at 16. In Swiggett, the process server of the

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as a defendant in this suit. Therefore, whether Mayor Bart Peterson was ever properly served is irrelevant.

summons delivered the summons to an unidentified employee of the business of the individual being sued, even though the summons requested service at his place of residence. Swiggett, 806 N.E.2d at 335-36. On these facts, this Court concluded the violation went beyond a mere technical violation and hence the service was inadequate. Id. at 338. However, these facts are functionally different than in this case. In Swiggett, the defendant never answered the complaint, and a default judgment was entered against him. Id. at 336. Lane-El, unlike the plaintiff in Swiggett, did not merely request service of summons once and secure a benefit from its non-receipt. Rather, Lane-El first attempted to serve the Police through the clerk of the court and later attempted to complete service by asking the clerk to serve the Police's attorney, the latter of which Lane-El was doing while the Police's counsel was on record in the case. Although none of these efforts ever technically complied with the rules, Lane-El did put forth a substantial effort to comply with the rules.

Moreover, the purpose of the rules regarding service of process is to "increase the odds that the served party will receive timely notice." In Swiggett, the party was not aware of the pending lawsuit until after a default judgment was entered against him. Id. at 336. Swiggett, 806 N.E.2d at 339. Conversely, the Police were clearly aware of the pending suit, as evidenced by their appearance in court. "The most obvious evidence that the attempts at service were reasonably calculated to inform is that they were successful." Reed Sign Serv., Inc. v. Reid, 755 N.E.2d 690, 696 (Ind. Ct. App. 2001) (after finding there was actual notice, the court noted that although actual notice was not enough to satisfy the requirement, it "is strong evidence that attempts of service were reasonably calculated to inform."), trans.

denied. Here, the appearance of the attorney in these proceedings provides strong evidence that the attempts of Lane-El to serve the Police were successful.

Overall, we find that Lane-El substantially complied with the requirements of service in Indiana Trial Rule 4.6. Lane-El delivered all necessary documents to the clerk of the court for proper summons to be delivered. As an incarcerated prisoner, he was forced to rely on the clerk to ensure the return receipts were delivered. Whether these receipts were ever returned may not be clear from the record, but the summons was apparently effective because counsel for the Police appeared before the trial court.

We find that Lane-El's attempts at service were reasonably calculated to inform the Police that a suit had been instigated against them.

Reversed and remanded.

BAKER, C.J., and VAIDIK, J., concur.