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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-20-371

CAMERON WISEMAN,

Plaintiff

v.

ORDER ON MOTION TO DISMISS

LORI DEPETER, WILLIAM
ONORATO, CHARLES RAYBINE
AND GEICO GENERAL INSURANCE
COMPANY

Defendants

The matter before the court is defendant Geico General Insurance Company's ("Geico") motion to dismiss plaintiff Cameron Wiseman's ("Wiseman") claims against it. For the following reasons, the motion will be denied.

Factual Background

This case arises out of an automobile accident that occurred on December 4, 2011. (Compl. ¶ 7.) Wiseman was a passenger in a vehicle being operated by defendant Charles Raybine. (*Id.*) As a result of defendant Raybine's allegedly improper driving, the vehicle crashed into a tree and rolled over, causing plaintiff serious injuries. (*Id.* ¶¶ 8, 14.) Wiseman and defendant Raybine were both minors at the time of the accident. (*Id.* ¶ 7.) Plaintiff brought a complaint against all of the defendants on September 1, 2020. Plaintiff alleges, in addition to defendant Raybine's conduct, that he had been harmed by defendant William Onorato, who plaintiff alleges owned the vehicle, for negligently entrusting the vehicle to defendant Raybine. (*Id.* ¶¶ 7-8.) Plaintiff further alleged that defendant Lori DePeter ("Ms. DePeter"), defendant Raybine's parent, was aware of defendant Raybine's propensity for improper driving and failed to adequately supervise him. (*Id.* ¶¶ 2, 13.)

Plaintiff—Jeffrey Bennett, Esq.
Def DePeter—John Veilleux, Esq.
Def Raybine—Matthew Libby, Esq.
Def Onorato—Stephen Bell, Esq.
Def Geico—Clara Lyons, Esq.

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Finally, Wiseman alleges that he is entitled to uninsured and/or underinsured motorist coverage pursuant to a Geico policy that was in place at the time of the accident. (*Id.* ¶15.)

Based on the filings before the court, plaintiff has yet to complete service on defendant Geico. (Mot. Dismiss ¶ 26; Opp. ¶ 21.) After filing the lawsuit, plaintiff's attorney searched the term "Geico" on Maine's Department of the Secretary of State, Bureau of Corporations, Elections and Commissions, Corporate Name Search. (Opp. ¶ 2.) This search only turned up one result, which listed Melissa H. Murphy, Esq. as the registered agent. (*Id.* ¶¶ 2-3.)

Wiseman's counsel wrote to Attorney Murphy and asked her to accept service. (*Id.* ¶ 4.) Attorney Murphy replied that Geico had surrendered its foreign authority in Maine and she was no longer the agent. (*Id.* ¶ 5.) Wiseman then filed a motion requesting an enlargement of time to file a Return of Service for defendant Geico on December 11, 2020. On the same day, Wiseman's counsel, Jeffrey Bennett, Esq., received a phone call from Geico's counsel, Clara E. Lyons, Esq., informing Attorney Bennett that Geico had retained Attorney Lyons to defend it. (*Id.* ¶ 10.)

On January 22, 2021, Attorney Bennett's firm emailed Attorney Lyons asking if Geico would permit her to accept service. (*Id.* ¶ 11.) Attorney Lyons replied on January 25, 2021, informing Attorney Bennett that Geico refused to accept service. (*Id.* ¶ 12.) Plaintiff filed a motion to enlarge the service deadline on the same day. (Mot. Dismiss ¶ 22.) Plaintiff asked the court for more time so that he could serve Geico in Delaware, which he asserted was Geico's state of incorporation. (Mot. Enlarge Time ¶ 3.) The court granted the motion and plaintiff served Corporation Trust Company in Wilmington, Delaware on February 24, 2021. (Mot. Dismiss ¶ 24.)

It is unclear from the record what relationship Corporation Trust Company has to defendant Geico. Regardless, Corporation Trust Company forwarded the paperwork to defendant Geico when plaintiff attempted to serve process on it. (*Id.*) These papers named "Geico Insurance

Company” as the defendant in this action, when the correct name is technically “Geico General Insurance Company.” (*Id.*) Geico General Insurance Company is an active insurance company in the State of Maine and maintains a Maine agent for service of process in Portland, Maine. (*Id.* ¶ 19.) As a result of all of this confusion, defendant Geico filed a motion on March 17, 2021, asking the court to dismiss the claims against it on the basis that it was never properly served.

Standard

M.R. Civ. P. 3 states that when a civil action is commenced by filing the complaint, “the return of service shall be filed with the court within 90 days.” If the return of service is not timely filed, the action may be dismissed on motion or notice. *Id.* The rules do not mandate dismissal when there is no effective service; the court must consider all relevant facts when exercising its discretion whether to dismiss the complaint. *Maguire Constr., Inc. v. Forster*, 2006 ME 112, ¶ 10, 905 A.2d 813. “[A]ctual notice is the ultimate goal of any form of service, the discovery of a technical defect in service will not ordinarily negate the notice when actual notice is accomplished.” *Phillips v. Johnson*, 2003 ME 127, ¶ 24, 834 A.2d 938.

Discussion

Defendant Geico’s motion is based on a number of technical defects in service that stem from Attorney Bennett’s confusion as to the identity of the named defendant, its location and where its agents can be found. Service was ultimately made on Corporation Trust Company, which appears to be an agent for Geico Insurance Company, rather than Geico General Insurance Company, the named defendant in this action. Therefore, effective service has yet to be made on defendant Geico. However, the undisputed factual record also shows that Geico had actual notice of the lawsuit as early as December 11, 2020. Attorney Lyons contacted Attorney Bennett on December 11, communicating that Geico had retained her to defend it in this action. Geico

clearly had knowledge of the action when it retained Attorney Lyons. Defendant Geico also refused to accept service through Attorney Lyons, so the resulting delay is largely a product of their own insistence that they be served in a more formal manner. Finally, even if Corporation Trust Company is not a registered agent of defendant Geico, defendant Geico acknowledges that the paperwork served on Corporation Trust Company was forwarded to it. (Mot. Dismiss ¶ 24.)

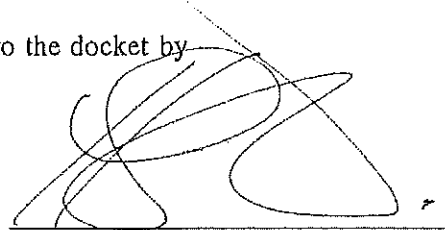
In light of all of the factors, it is clear that defendant Geico has had actual notice of this lawsuit for several months and a significant portion of the blame for the delay in effective service is due to its own actions. Therefore, the court finds that the technical deficiencies in service do not warrant a dismissal.

The entry is

Defendant Geico General Insurance Company's Motion to Dismiss is DENIED.

The Clerk is directed to enter this order into the docket by reference pursuant to M.R.Civ.P. 79(a).

Date: June 4th, 2021



Harold Stewart, II
Justice, Superior Court

Entered on the Docket: 06/08/21
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