STATE OF MICHIGAN

COURT OF APPEALS

TERESA F. MITAN and KEITH J. MITAN,

Plaintiff-Appellees,

v

ROBERT M. REZNICK,

Defendant-Appellant.

UNPUBLISHED
June 15, 2004

No. 247555
Genesee Circuit Court
LC No. 02-073958-CZ

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying defendant's motion pursuant to MCR 2.116(C)(1), (2), and (3); MCR 2.102(E) to quash service of process. This case arose from defendant's allegedly improper seizure of two cars owned by plaintiffs pursuant to a writ of execution. We reverse.

Defendant first argues that the court erred when it determined pursuant to MCR 2.107(C)(3), that service of process was complete upon mailing. We agree.

A trial court's ruling on a motion pursuant to MCR 2.116(C)(2) is reviewed de novo. *Richards v McNamee*, 240 Mich App 444, 448; 613 NW2d 366 (2000). Interpretation of a court rule is a question of law that is reviewed de novo. *CAM Construction v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). "An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." MCR 2.105(J)(3). Defendant argues that he was not served within the summons timeframe and, thus, plaintiffs' suit should have been dismissed. The trial court determined that service of process was complete when mailed pursuant to MCR 2.107(C)(3). MCR 2.107(C)(3) provides in relevant part:

> Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.
>
> * * *
>
> (3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be

served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

Rules of statutory construction are used to interpret the court rules. *Hyslop v Wojjusik*, 252 Mich App 500, 505; 652 NW2d 517 (2002). The first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). MCR 2.107(A)(1) provides in relevant part, "Unless otherwise stated in this rule, every party who has *filed a pleading, an appearance, or a motion* must be served with a copy of every paper *later filed* in the action." Moreover, MCR 2.107(B)(1)(a) provides, "the original service of the summons and complaint must be made on the party as provided by MCR 2.105." Thus, the clear language of 2.107 indicates that it was not intended to govern service of process. Instead, 2.105 governs service of process. MCR 2.105(A)(2) allowed for service by certified or registered mail, return receipt requested, but specifically provides, "Service is made when the defendant acknowledges receipt of the mail." Therefore, because defendant did not sign for the summons and complaint until six days after expiration of the second summons period, the court should have dismissed the suit without prejudice. MCR 2.102(E)(1).

Defendant next argues that the court should not have granted a second summons where plaintiffs failed to establish good cause. We agree.

A trial court's grant of a second summons is reviewed for an abuse of discretion. MCR 2.102(D). "Factual findings underlying the good cause ruling are reviewed for clear error." *Bush v Beemer*, 224 Mich App 457, 465; 569 NW2d 636 (1997), citing MCR 2.613(C). The court's determination whether good cause exists is reviewed for an abuse of discretion. *Id.* at 464. A trial court may issue a second summons upon a showing of good cause. MCR 2.102(D). In the context of MCR 2.102(D), good cause means the plaintiff must establish due diligence in trying to serve process. *Id.* at 463-464.

Due diligence means a good faith effort. Where a plaintiff has failed to provide any evidence of effort, not to mention diligent effort, to serve a defendant during the original summons period, the suit may be properly dismissed. *Bush, supra* at 466. Because plaintiffs presented no facts to support their motion for a second summons, the grant of the summons was an abuse of discretion. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 1208 (2000). Therefore, the court's order granting a second summons requires reversal. Moreover, our resolution of this issue renders defendant's remaining issue moot. An issue is moot if it becomes impossible to fashion a remedy. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Reversed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens