STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER L. EVANS, Plaintiff-Appellant,	UNPUBLISHED October 22, 2009
v	No. 288546 Wayne Circuit Court
GROSSE POINTE PUBLIC SCHOOL SYSTEM, Defendant-Appellee.	LC No. 08-109953-CZ

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition based on the failure of service of process, MCR 2.116(C)(3). We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On April 17, 2008, plaintiff filed suit against defendant, averring that he had been discharged from his employment in violation of the Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq. Following an evidentiary hearing, the trial court found that the executive assistant to defendant's superintendent had been provided with a copy of the complaint, but not the summons.[1] Moreover, it is undisputed that plaintiff failed to serve the superintendent by registered mail as required by MCR 2.105(G)(8). However, before defendant moved for summary disposition based on the failure of service of process, it timely filed an answer and affirmative defenses to the complaint.

We need not address whether dismissal was appropriate given MCR 2.105(J)(3) because we conclude that it was precluded by MCR 2.102(E), which provides that a party not served

[1] Plaintiff challenges the propriety of the trial court making a factual finding with regard to a motion for summary disposition. However, pursuant to *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 288-289; 731 NW2d 29 (2007), we conclude that it was proper for the court to make the findings following a bench trial with respect to a motion brought pursuant to MCR 2.116(C)(3). Moreover, as the trial court was in the best position to judge the credibility of the witnesses, we find no clear error with regard to this finding.

before expiration of a summons is to be dismissed "unless the defendant has submitted to the court's jurisdiction." In *In re Gordon Estate*, 222 Mich App 148, 158; 564 NW2d 547 (1997), this Court held that "a party who enters a general appearance and contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections." The *Gordon* Court quoted *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181-182; 511 NW2d 896 (1993), as follows:

> Generally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court's jurisdiction, will constitute a general appearance. Only two requirements must be met to render an act adequate to support the inference that there is an appearance: (1) knowledge of the pending proceedings and (2) an intent to appear. *Ragnone v Wirsing*, 141 Mich App 263, 265; 367 NW2d 369 (1985). A party that submits to the court's jurisdiction may not be dismissed for not having received service of process. MCR 2.102(E)(2).

In *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 625; 750 NW2d 228 (2008), this Court stated that, "if an attorney files a paper with the court, the filing is deemed notice of the attorney's appearance." In the present case, defendant did not respond to the action by filing a motion to quash or a motion for summary disposition based on insufficient service of process. Instead, defendant filed an answer and affirmative defenses. Although defendant listed insufficient service of process as a defense, the answer was "an action on the part of a defendant that recognize[d] the pending proceedings", and it therefore constituted a general appearance. Because defendant filed the answer and thus made a general appearance, the action could not be dismissed for failure of service of process.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio