

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA06-795

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

JACOB R. HARDEE, a minor
child through his Guardian Ad
Litem, Jason White, and
JOHNNY R. HARDEE and wife,
ANGIE HARDEE

v.

Catawba County
No. 05-CVS-308

LOWE'S COMPANIES, INC. and
JELD-WEN, INC.

Appeal by defendant Lowe's Companies, Inc. from order entered 2 March 2006 by Judge Timothy L. Patti in Catawba County Superior Court. Heard in the Court of Appeals 22 January 2007.

Sigmon, Sigmon, & Isenhower, by W. Gene Sigmon and Wes W. Barkley, for plaintiff-appellees.

Shumaker, Loop & Kendrick, LLP, by William H. Sturges, for Lowe's Companies, Inc., defendant-appellant.

MARTIN, Chief Judge.

Defendant Lowe's Companies, Inc. (hereinafter "Lowe's") appeals from an order denying its motion to dismiss for lack of personal jurisdiction and insufficient service of process. For reasons which follow, we dismiss the appeal.

On or about 1 February 2005, Jacob R. Hardee, a minor child through his Guardian Ad Litem Jason White, Johnny R. Hardee and Angie Hardee (collectively, "plaintiffs") filed a complaint against

Jeld-Wen, Inc. ("Jeld-Wen") and defendant Lowe's seeking to recover damages for injuries arising out of an accident that occurred while Johnny Hardee and his son Jacob were visiting a building supply retail store, allegedly owned and operated by defendant Lowe's.

On or about 4 April 2005, Lowe's filed a motion to dismiss the complaint on the ground plaintiffs never obtained proper service of the summons or complaint on Lowe's. The documents presented in support of the motion show that the only summons issued to Lowe's was directed to "Lowe's Companies, Inc., 2535 Hwy 70 SE, Hickory, NC 28602." A few days later, the manager of a Lowe's Home Centers, Inc. store located at 1550 21st Street, SE, Hickory, North Carolina, received a copy of the summons and complaint. The address on the envelope containing the summons and complaint had been stricken, and the handwritten address of "1550 21st Street SE" appeared on the outside of the envelope. No changes were made to the summons. The certified mail return receipt card identified Ms. Audrey Annas as the person who signed for the envelope. Mr. Carl E. Wyland, the manager of the store located on 21st Street, stated by affidavit that he is not, and has never been, an officer, director, managing agent or agent for service of process, for Lowe's Home Centers, Inc. or Lowe's Home Companies, Inc. and that no proper officer or agent for service of process for these corporate entities works at the store on 21st Street.

In *Love v. Moore*, 305 N.C. 575, 291 S.E.2d 141, *reh'g denied*, 306 N.C. 393 (1982) our Supreme Court held that no substantial right exists to permit an immediate appeal from an interlocutory

order denying a motion to dismiss for lack of personal jurisdiction unless it raises questions concerning due process and minimum contacts. *Id.* at 579-80, 291 S.E.2d at 145. We find *Love v. Moore* is factually indistinguishable from the instant case and is therefore controlling and binding. The instant case, too, solely involves the issue of the sufficiency of service of process and not the issue of minimum contacts. We deny defendant Lowe's alternative petition for writ of certiorari.

The appeal is dismissed.

Dismissed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).