

{¶6} "5. On January 23, 2001, the Putnam County Court issued an order forfeiting the license of Plaintiff, David Kuhlman, for failure to pay fines and costs totaling \$145.00 pursuant to R.C. §2935.27. See Exhibit C, attached hereto

{¶7} "6. The case was subsequently dismissed on May 29, 2001 for failure to obtain proper service and the license forfeiture was terminated by entry of the Putnam County Court, signed by Judge O' Malley and filed on May 3, 2001. See Exhibit D and Exhibit E, attached hereto.

{¶8} "7. In April of 2001, Mr. Kuhlman was cited for driving under suspension in Adrian, Michigan for which his truck was impounded and was prohibited from working for thirteen (13) days until the undersigned counsel was able to clear up the license forfeiture in Putnam County, Ohio."

{¶9} The only reasonable conclusion that the court can determine from the stipulation and the address used by plaintiff when he filed his complaint is that he always lived at 12675 Road F-12, Ottawa, Ohio 45875, and that he chose not to respond to the service of summons and orders of the Putnam County Court, Putnam County, Ottawa, which set the case for arraignment on Wednesday, January 17, 2001, at 9:30 a.m. or the judgment of the court dated January 23, 2001, notifying him that his driver's license had been suspended.

{¶10} Plaintiff argues that the service by certified mail was not completed because a law enforcement officer, rather than the court clerk, mailed the summons and complaint. The Putnam County Court, by journal entry dated May 29, 2001, dismissed the criminal charge without prejudice for "failure of service on behalf of the officer."

{¶11} Ohio Crim.R. 4(A)(3) states:

{¶12} "By law enforcement officer without a warrant.

{¶13} "In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, the officer may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance. The officer issuing the summons shall file, or

cause to be filed, a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.”

{¶14} Crim.R. 4(D)(3). Manner:

{¶15} “***

{¶16} “Summons may be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant’s usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant’s last known address by certified mail with a return receipt requested. When service of summons is made by certified mail it shall be served by the clerk in the manner prescribed by Civil Rule 4.1(1). ***”

{¶17} In this case Officer Hoschak prepared a summons and complaint and attempted to serve it upon plaintiff first by personal service, and then by certified mail on December 26, 2000, at plaintiff’s usual place of residence. The service of summons was made by certified mail by the officer but not by the clerk of the court, although the judicial orders were served by the clerk of the court.

{¶18} However, since plaintiff never accepted service of summons at any time, it is difficult for this court to understand how he was prejudiced by the failure of the clerk of courts, rather than the officer, to mail the service of summons by certified mail. Furthermore, plaintiff refused service from the court. Plaintiff was personally notified that he was going to be charged with a criminal offense, so he should not have been surprised when he was notified by the officer and did not accept the summons.

{¶19} For a professional truck driver, any traffic conviction could certainly affect his ability to make a living, and that would be especially true if there were a conviction for driving his vehicle while under suspension. This court can easily understand why the county court would want to set aside his conviction without

discussing the issues of why plaintiff, under these circumstances, had chosen to fail to honor the court's orders.

{¶20} Plaintiff's legal theory is that defendant was negligent and that such negligence was the proximate cause leading to the suspension of his driver's license. However, his driver's license was suspended by a court and registrar, and not by defendant.

{¶21} R.C. 2935.27 states in part:

{¶22} "(D) If a person who has a current valid Ohio driver's or commercial driver's license and who was issued a citation fails to appear at the time and place specified on the citation, fails to comply with Division (C) of section 2935.26 of the Revised Code, or fails to comply with or satisfy any judgment of the court within the time allowed by the court, *the court shall* declare the suspension of the person's license. Thirty days after the declaration, *the court shall* enter information relative to the suspension on a form approved and furnished by the registrar of motor vehicles, and forward the form to the registrar. *The registrar shall* suspend the person's driver's or commercial driver's license, send written notification of the suspension to the person at the person's last known address, and order the person to surrender the person's driver's or commercial driver's license to the registrar within forty-eight hours. No valid driver's or commercial driver's license shall be granted to the person until the *court* having jurisdiction of the offense that led to the suspension orders that the suspension be terminated. *The court shall* so order if the person, after having failed to appear in court at the required time and place to answer the charge or after having pleaded guilty to or been found guilty of the violation and having failed within the time allowed by the court to pay the fine imposed by the court, thereafter appears to answer the charge and pays any fine imposed by the court or pays the fine originally imposed by the court." (Emphasis added.)

{¶23} Additionally, the court finds that Wildlife Officer Hoschack's decision to file the underlying criminal charge was supported by probable cause.

Unfortunately, plaintiff made many unwise choices beginning with his decision to not respond to the charge that alleged that he was observed actively hunting deer from a vehicle. He did not respond to attempts at service of process upon him even though process was sent by the certified mail to his correct address by both the officer and the court.

{¶24} For these reasons, the court finds that plaintiff has failed to prove his claim by a preponderance of the evidence. Therefore, judgment shall be rendered in favor of defendant.

{¶25} This case was submitted to the court for decision on the merits based upon trial briefs and stipulations of fact. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

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