

[Cite as *Potts v. Simpkins*, 2010-Ohio-1437.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93494

JENNIFER POTTS

PLAINTIFF-APPELLEE

vs.

TYSON SIMPKINS, ET AL.

DEFENDANTS

Appeal By: Iran Doss, Defendant-Appellant

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-580854 and CV-611129

BEFORE: Celebrezze, J., Rocco, P.J., and Kilbane, J.

RELEASED: April 1, 2010

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Iran Doss, appeals the trial court's grant of default judgment against him. After a thorough review of the record and pertinent case law, we reverse and remand.

{¶ 2} This appeal stems from a civil action filed by Jennifer Potts ("appellee") against appellant and various other defendants. In her complaint, which was filed on January 3, 2006, appellee alleged that appellant sexually assaulted her and should thus be held liable for assault, negligent infliction of emotional distress, and false imprisonment. Appellant's address for service on the complaint was 204 Solon Road, No. 3, Bedford, Ohio 44146. On January 4, 2006, the trial court granted appellee's motion for appointment of a process server in order to serve the complaint upon appellant. Although the record indicates that service was obtained upon appellant, the return on service of the writ indicates that the process server placed the complaint under the doorway of the residence on April 6, 2006. Appellee filed an amended complaint on May 14, 2007, listing the same address for appellant as was listed on the original complaint.

{¶ 3} Appellant never filed an answer or otherwise responded to appellee's complaint or amended complaint. On August 3, 2007, appellee filed a motion for default judgment against appellant. The certificate of service attached to appellee's motion for default judgment indicates that it was served on appellant at 4130 Lambert Road, Cleveland, Ohio 44121. We are

unable to find any link between this address and appellant. A hearing on the default judgment motion was held on September 27, 2007, and the motion was granted on October 5, 2007.

{¶ 4} Criminal charges were filed against appellant based on the alleged rape of appellee. It is undisputed that appellant was convicted of these charges and was being held in the Cuyahoga County Jail or Lorain Correctional Institution from March 27, 2006 until his conviction was vacated by this court in January 2008. See *State v. Doss*, Cuyahoga App. No. 88443, 2008-Ohio-449. According to appellant, he was actually released from incarceration in February 2008.

{¶ 5} Although the trial court granted appellee's default judgment motion in October 2007, damages were not determined until September 2008. The trial court awarded appellee \$250,000 in compensatory damages and \$500,000 in punitive damages.

{¶ 6} On May 19, 2009, appellant filed a motion for relief from judgment alleging that the trial court's judgment against him was void because he was never served with a copy of the summons and complaint. The trial court denied this motion without a hearing on May 26, 2009 stating that "[a]lthough the original complaint was served on the defendant's home address while the defendant was serving time in jail, the amended complaint as well as numerous journal entries from the court were delivered to the defendant's

home address after his release from prison. The defendant had ample time, following his release from prison in June of 2006, to obtain counsel and defend against the complaint. His failure to timely object is dispositive here. The motion is denied.”

{¶ 7} In response to this journal entry, appellant filed a motion for reconsideration, which indicated that he was not actually released from incarceration until February 2008 after his conviction had been vacated. On June 5, 2009, the trial court issued a journal entry recognizing that appellant was not actually released from incarceration until February 2008. The court went on to hold that “[t]he final judgment entry in this case was not entered until September of 2008. The fact remains that the defendant continued to receive notice about the pending lawsuit and failed to take steps to defendend [sic] his interests. Defendant Iran Doss also filed a separate law suit [sic] during the same period listing the address used for service in this case as his address. Defendant Doss cannot simultaneously use an address in one case and then decline service at that address in another case. Defendant’s request for relief is denied.” This appeal followed.

{¶ 8} Appellant presents two assignments of error for our review.¹ In his first assignment of error, he argues that the trial court committed

¹ Appellant’s assignments of error are contained in appendix A to this opinion.

reversible error in denying his motion for relief from judgment without a hearing. In his second assignment of error, he argues that the trial court erred in making factual findings without a hearing.

Law and Analysis

I. Service of Process

{¶ 9} Appellant first argues that because he was never properly served with the summons and complaint, the default judgment entered against him was void ab initio. We agree.

{¶ 10} When a party can demonstrate that they were not properly served, they are not required to satisfy the requirements of Civ.R. 60(B) in order to obtain relief from judgment. *Buckingham, Doolittle & Burroughs, L.L.P. v. Healthcare Imaging Solutions L.L.C.*, Summit App. No. 24669, 2010-Ohio-418, ¶13. If service of process is defective, the trial court lacks personal jurisdiction and any judgment rendered on the complaint is void ab initio. *Id.*; *Jain v. Vanderhoof* (Dec. 22, 2000), Lake App. No. 2000-L-016, *2.

{¶ 11} In this case, residence service was attempted pursuant to Civ.R. 4.1(C), which provides that “[r]esidence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein.” The process server indicated on the return on service of writ that he placed the summons and complaint under the

doorway of appellant's residence. Since Civ.R. 4.1(C) mandates that service is effected when a copy of the complaint is left with "some person of suitable age and discretion[,]" service was not effected in this case.

{¶ 12} This case is comparable to *Surgical Servs., Inc. v. Cremeans*, Cuyahoga App. No. 83493, 2004-Ohio-2330. In *Cremeans*, the process server taped the summons and complaint to the front door of the residence. *Id.* at ¶7. This court found that such an attempt at service does not comply with Civ.R. 4.1(C) and could not constitute effective service of process. *Id.*, citing *Jefferson Place Condo. Assoc. v. Naples* (1998), 125 Ohio App.3d 394, 708 N.E.2d 771. In *Cremeans*, the opposing party argued that the appellant waived any argument related to service of process when he called counsel for the opposing party. *Id.* at ¶8. This court held that "a defendant's awareness of the filing of an action against him or her does not dispense with the necessity of service of process." *Id.*, citing *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 157, 464 N.E.2d 538; *Haley v. Hanna* (1915), 93 Ohio St. 49, 112 N.E. 149.

{¶ 13} In this case, the trial court acknowledged that appellant never received service of the summons and complaint. The judge then held, however, that because appellant likely discovered the pendency of the suit upon his release from prison, he could have defended the claim earlier. The court relied on this analysis in denying appellant's motion for relief from

judgment. Regardless of appellant's awareness of the suit, however, the trial court lacked jurisdiction because residence service was never effected in the manner prescribed by Civ.R. 4.1(C). As such, the trial court's entry of default judgment against appellant was void ab initio. Appellant's first assignment of error is sustained.

{¶ 14} Our disposition of appellant's first assignment of error renders his remaining assignments of error moot. See App.R. 12(A)(1)(c). Accordingly, such assignments of error will not be addressed.

Conclusion

{¶ 15} Service was never effected upon appellant in a manner prescribed by the Ohio Rules of Civil Procedure. As such, the trial court lacked jurisdiction to render a binding judgment on the complaint. The default judgment is vacated to the extent that it relates to appellant.

{¶ 16} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR

Appendix A

Appellant's assignments of error:

I. "Defendant was denied due process of law when the court overruled his motion for relief from a void judgment without a hearing."

II. "Defendant was denied due process of law when the court made unsupported factual findings without a hearing."