[Cite as *Bartko v. Bartko*, 2020-Ohio-4302.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

GREGG BARTKO, :

Plaintiff-Appellee, :

No. 109272

v. :

TRACY LYN-MARIE KOTH BARTKO, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 3, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-19-377839

Appearances:

Carly A. Boyd, *for appellee.*

Fred P. Ramos, *for appellant.*

MICHELLE J. SHEEHAN, J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 25. The purpose of an accelerated appeal is to allow an appellate court to render a brief and conclusory decision. *State v. Trone*, 8th Dist.

Cuyahoga Nos. 108952 and 108966, 2020-Ohio-384, ¶ 1, citing *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶ 2} The Cuyahoga County Court of Common Pleas, Domestic Relations Division, granted plaintiff-appellee Gregg Bartko's ("Husband") complaint for divorce against defendant-appellant Tracy Lyn-Marie Koth Bartko ("Wife"). Wife now appeals, claiming the trial court lacked personal jurisdiction over her because she was not properly served with the complaint. Because we find Wife was properly served with the complaint, we affirm.

I. Procedural History and Substantive Facts

{¶ 3} Husband and Wife married on July 10, 2010. On August 2, 2019, Husband filed a complaint for divorce against Wife, requesting certified mail service of the complaint upon Wife at two different locations: 3673 W. 1o2nd Street and 3669 W. 102nd Street. The docket demonstrates that both certified mailings were returned "unclaimed" on August 13, 2019.

{¶ 4} On August 28, 2019, Husband filed another request for certified mail service, this time requesting service at a residence on Roanoke Avenue. On September 5, 2019, the complaint was delivered to this address and an individual named Jeannette Tighe signed for the complaint. The docket indicates, however, that Husband requested certified mail service at the Roanoke address yet again on October 8, 2019. That mail was returned unclaimed.

{¶ 5} On November 6, 2019, the trial court held a hearing on Husband's complaint for divorce. And on November 7, 2019, the trial court issued a judgment

entry of divorce, granting Husband a divorce from Wife, stating that Wife was "in default of Answer or other pleading although duly served with process, according to law."

{¶ 6} Thereafter, Wife filed a Civ.R. 60(B) motion for relief from judgment with the trial court concerning the court's November 7, 2019 order and then a notice of appeal in this court. While on appeal, Wife moved this court to remand the matter to the trial court for the sole purpose of ruling on the pending motion for relief from judgment. This court granted the limited remand. On March 10, 2020, the trial court denied Wife's motion for relief and the matter was returned to this court, where we entertain Wife's appeal of the trial court's judgment entry of divorce.[1]

{¶ 7} On appeal, Wife assigns one error for our review: The trial court erred by conducting a trial for divorce involving the parties since the court did not have personal jurisdiction over the defendant-appellant due to lack of proper service pursuant to Civ.R. 4.1.

II. Service of Process

{¶ 8} Wife contends in her sole assignment of error that the trial court did not have personal jurisdiction over her because she was not properly served with the

---

[1] On February 5, 2020, in its order granting the appellant's motion to remand, this court stated as follows: "The appeal is remanded * * *. In order to appeal the trial court's ruling on the motion for relief from judgment, the party must file a separate notice of appeal from the order and may request the matter be consolidated with the instant appeal." Wife has not appealed the trial court's denial of her motion for relief from judgment and therefore Wife's motion for relief is not before this court.

complaint. In support, she argues that there was nothing connecting her to the Roanoke Avenue address where service was made and Husband's reliance upon delivery of the complaint "to a friend" is improper.

{¶ 9} In response, Husband's counsel represents that she spoke with Wife on August 29, 2019, and Wife confirmed that she was living with her friend on Roanoke Avenue. Counsel also states that approximately one week after service was made at the Roanoke Avenue address, she and Wife's attorney began discussing the case and Husband's counsel forwarded to Wife's attorney certain discovery, including pay stubs and tax returns. Finally, counsel for Husband states that Wife's attorney reported that he and his client would be present at the November hearing.

{¶ 10} A trial court lacks jurisdiction to enter a judgment against a defendant if effective service of process has not been made on the defendant and the defendant has not appeared in the case or waived service. *Lakhodar v. Madani*, 8th Dist. Cuyahoga No. 91564, 2008-Ohio-6502, ¶ 11, citing *Money Tree Loan Co. v. Williams*, 169 Ohio App.3d 336, 2006-Ohio-5568, 862 N.E.2d 885, ¶ 18 (8th Dist.). And a judgment that has been rendered in the absence of personal jurisdiction over the defendant is void. *Lakhodar* at ¶ 11, citing *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64, 133 N.E.2d 606 (1956).

{¶ 11} Civ.R. 4(A) provides that "[u]pon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption." Under Civ.R. 4.1(A), service may be made by certified or express mail, personal service, or residential service. Furthermore, "service of process must be

made in a manner reasonably calculated to apprise interested parties of the action and to afford them an opportunity to respond." *Chilcote v. Kugelman*, 8th Dist. Cuyahoga No. 98873, 2013-Ohio-1896, ¶ 8, citing *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 406, 406 N.E.2d 811 (1980).

{¶ 12} If certified mail service under Civ.R. 4.1 is attempted, valid service is presumed to have been made "when the envelope is received by any person at the defendant's address." *Rokakis v. Estate of Thomas*, 8th Dist. Cuyahoga No. 89944, 2008-Ohio-5147, ¶ 12. "If a notice is sent by certified mail, return receipt requested, and thereafter a signed receipt is returned to the sender, a prima facie case of delivery to the addressee is established." *Kaufman & Cumberland v. Jalisi*, 8th Dist. Cuyahoga No. 80389, 2002-Ohio-4087, ¶ 16.

{¶ 13} The trial court's determination of whether service was completed will not be disturbed absent an abuse of discretion. *Money Tree Loan Co.*, 169 Ohio App.3d 336, 2006-Ohio-5568, 862 N.E.2d 885.

{¶ 14} The plaintiff bears the burden of obtaining proper service on a defendant. *Cincinnati Ins. Co. v. Emge*, 124 Ohio App.3d 61, 63, 705 N.E.2d 408 (1st Dist.1997). Where the plaintiff follows the civil rules governing the service of process, the service is presumed to be proper unless the defendant rebuts the presumption with sufficient evidence of nonservice. *Lakhodar*, 8th Dist. Cuyahoga No. 91564, 2008-Ohio-6502, at ¶ 13, citing *Rafalski v. Oates*, 17 Ohio App.3d 65, 66, 477 N.E.2d 1212 (8th Dist.1984), and *Grant v. Ivy*, 69 Ohio App.2d 40, 429 N.E.2d 1188 (10th Dist.1980). In order to rebut the presumption of proper service, the other

party must produce evidentiary-quality information demonstrating that he or she did not receive service. *McWilliams v. Schumacher*, 8th Dist. Cuyahoga Nos. 98188, 98288, 98390, and 98423, 2013-Ohio-29, ¶ 51, citing *Thompson v. Bayer*, 5th Dist. Fairfield No. 2011-CA-00007, 2011-Ohio-5897, ¶ 23. This evidence must be uncontradicted. *Rafalski*.

{¶ 15} Here, counsel for Husband represented that she spoke with Wife on August 29, 2019, and Wife confirmed that she was living with her friend on Roanoke Avenue. Husband's counsel amended Husband's initial request for service to be directed to the Roanoke address, and Wife was served the complaint by certified mail to that location. The record shows that an individual residing at the Roanoke Avenue address named Jeannette Tighe signed for the complaint on September 5, 2019, and the receipt was returned. Based upon this record, the trial court found in its judgment entry of divorce that Wife had been properly served. Moreover, because no transcript from the November hearing has been filed with this court, we presume regularity in the trial court proceedings and the presence of sufficient evidence to support the trial court's decision. *Bakhtiar v. Saghafi*, 2016-Ohio-8052, 75 N.E.3d 801, ¶ 3 (8th Dist.). We therefore find that valid service upon Wife can be presumed and the trial court did not abuse its discretion in concluding that service had been completed on Wife.

{¶ 16} We also find that Wife has not rebutted the presumption of proper service. Wife filed a motion for relief from judgment under Civ.R. 60(B) in which she attached her affidavit stating that she left the Roanoke address "prior to

receiving any service of the complaint." Wife's motion for relief, however, is not before this court because Wife has not appealed the trial court's denial of her motion for relief from judgment.

{¶ 17} It is well settled that a reviewing court decides cases based on the proceedings that existed in the record as it was preserved for appeal. *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157, ¶ 13 ("[A] bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial."). And "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. Because Wife's affidavit attesting to her residence was not before the trial court when it concluded that service was properly perfected, it cannot serve as a basis to determine that the trial court abused its discretion in deciding the service issue.

{¶ 18} In light of the foregoing, we find the trial court had personal jurisdiction over Wife.

{¶ 19} Wife's sole assignment of error is overruled.

{¶ 20} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

_____
MICHELLE J. SHEEHAN, JUDGE

PATRICIA ANN BLACKMON, P.J., and
RAYMOND C. HEADEN, J., CONCUR