AFFIRM and Opinion Filed December 28, 2018

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01126-CV

WWLC INVESTMENT, L.P., Appellant
V.
SORAB MIRAKI, Appellee

On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-02539-2017

MEMORANDUM OPINION

Before Justices Bridges, Boatright, and Richter[1]
Opinion by Justice Bridges

WWLC Investment, L.P., appeals the trial court's judgment denying its bill of review. In six issues, WWLC argues there was no procedural basis for the trial court's final judgment, substituted service in the underlying suit was defective, the citation did not comply with Texas law, there was no attempted service upon a registered agent or partner of WWLC before the substituted service, the return of service was defective, and this Court should render judgment on the bill of review and remand on the substantive issues in the underlying litigation. We affirm the trial court's judgment.

In July 2011, "WLC Investment, L.P." amended its name to "WWLC Investment, L.P." and filed an assumed name certificate indicating that WWLC would conduct business under the

[1] The Hon. Martin Richter, Justice, Assigned

name "WLC Investment, L.P." The amendment listed "HPZ International, Inc." as its registered agent and gave HPZ's address in Richardson, Texas. In February 2013, WWLC and Sorab Miraki entered into a commercial lease agreement which was signed by Wendy Chen on behalf of WWLC. In May 2013, Chen purchased a home in Dallas which she subsequently designated as her homestead. In February 2015, Miraki and Chen, as "President" of WWLC, signed an amendment to the lease agreement deferring payment of rent until after WWLC made certain changes to the leased premises. In November 2015, Miraki sued WWLC claiming damages arising out of a breach of the lease. In December 2015, WWLC filed a petition in justice court seeking to have Miraki evicted from the leased premises for failing to pay his rent. The petition, which named "WLC Investments LP" as plaintiff, was signed by Chen and listed the address of her homestead property in Dallas. Also in December 2015, Miraki's counsel exchanged emails with Chen's former counsel. Miraki's counsel stated he had attached a copy of Miraki's original petition in the underlying lawsuit filed in connection with the leased property and asked Chen's counsel to "confirm whether [he would] accept service of process." Chen's counsel responded that Chen had "not agreed to let [him] accept service" and stated Chen "did not have the money to hire [him] or any other attorney."

Four times between January 21, 2016 and January 29, 2016, process server Tracy Edwards attempted to serve WWLC at Chen's homestead address with a copy of the citation and Miraki's first amended petition, but he was unsuccessful. On January 29, 2016, the Texas Secretary of State forfeited the charter of H.P.Z. International, Inc. On March 22, 2016, the trial judge signed an order authorizing service of process "by leaving a true copy of the citations to defendant WLC Investment, LP, with a copy of the petition attached, with anyone over sixteen years of age" at Chen's homestead address or "attaching a true copy of the citations to defendant WLC Investment, LP, with a copy of the petition attached, to the front door" of Chen's homestead address. On April

6, 2016, the process server delivered to "WLC Investment, LP By delivering to its Owner, Wendy Chen a true copy of this CITATION and PLAINTIFF'S FIRST AMENDED PETITION and ORDER ON PLAINTIFF'S MOTION FOR SUBSTITUTE SERVICE" by attaching a true copy of "the Citation to Defendant WLC Investment, LP, with a copy of the Petition attached, to the front door" of Chen's homestead address.

On November 28, 2016, the trial court entered a default judgment against WWLC awarding damages to Miraki. In June 2017, WWLC filed its original petition for bill of review alleging, among other things, that she was not properly served with Miraki's petition. Following a hearing, the trial court denied WWLC's bill of review, and this appeal followed.

In its first issue, WWLC argues the trial court erred in entering the final judgment that WWLC's petition for bill of review was denied because there was no procedural basis for the judgment. Specifically, WWLC argues the order setting the hearing at which the bill of review was considered addressed only an application for temporary injunction filed by WWLC and did not mention any additional matters such as WWLC's bill of review. In addition, WWLC argues, the order "does not state that a 'pretrial hearing' or trial is to be conducted regarding the threshold petition for bill of review issues." Under these circumstances, WWLC argues, the trial court erred in *sua sponte* entering the final judgment denying its petition for bill of review.

A trial court has a duty to schedule cases in a manner that will result in the expeditious resolution of disputes. *In re City of Dallas*, 445 S.W.3d 456, 463 (Tex. App.—Dallas 2014, no pet.). We will not interfere with the trial court's discretion to manage its docket without a clear showing of abuse. *Id.*

Here, at the hearing on June 14, 2017, the trial court inquired whether the bill of review was set to be heard or only the temporary restraining order. WWLC's counsel responded that only the "temporary injunction" was set. The trial court inquired further whether both matters had "the

same facts" and "overlap[ped] exactly." WWLC's counsel stated that "a higher evidentiary standard would be imposed on the bill of review elements" but agreed when the court asked if WWLC's counsel would be "using the same facts and same argument for both." The trial court asked when the bill of review could be set for a separate hearing. Counsel for WWLC and Miraki stated their availability and potential scheduling issues. The trial court then stated that the court was "going to go ahead and hear everything today." Following a discussion off the record, the hearing proceeded without further discussion. At the conclusion of the hearing, the following exchange occurred:

> COUNSEL FOR WWLC: Your Honor, before we adjourn for the Court, I would like to make one objection to the effect that – to the effect of the overall nature of the hearing. As I stated at the beginning of the hearing, we set this hearing only on the pure and sole issue of temporary injunction.
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> THE COURT: Okay. But you opted at the beginning of the hearing to move forward. We gave you the choice and you opted to move forward with both. That was your election.
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> COUNSEL FOR WWLC: Well, Your Honor, I had no choice, but I'm just –
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> THE COURT: You did have a choice. I told you we could reset it to mid June. You chose to move forward with the hearing. Now that we've had almost a three-hour hearing you already waived that. You told the Court your choice was to move forward on both. You were given the option to continue this until July.

The trial court clarified that she "said it could be reset to mid June" but "[i]t was mid July." Thus, it appears WWLC's counsel agreed to the trial court hearing the bill of review at the hearing on June 14, 2017 and chose not to have the bill of review set for a hearing in July. Under these circumstances, we cannot conclude the trial court erred in proceeding to hear the bill of review matter at the hearing on June 14, 2017. We conclude WWLC's first issue lacks merit.

In its second issue, WWLC argues the substituted service in this case is defective because the order authorizing substituted service and the return of service do not state the nature of the address for substituted service. Specifically, WWLC argues the order and return of service do not state "if the address is WWLC's usual place of business, usual place of abode or other place where

WWLC could probably be found." In its third issue, WWLC argues service is defective because there was no attempted service upon a registered agent or partner before the substituted service. WWLC argues that its registered agent was HPZ International, no attempt at serving HPZ International was made, and the citation and return of service to "Wendy Chen, Owner" was therefore defective. In particular, WWLC complains that "Owner" is not an appropriate person for service of citation upon a limited partnership. In its fourth issue, WWLC makes the closely related argument that service is defective because no attempt was made to serve HPZ International, WWLC's registered agent. In its fifth issue, WWLC argues service is defective because the return of service states that the "Petition," not the "First Amended Petition," was attached to the front door of Chen's homestead address. Because of the interrelated nature of these arguments concerning defects in service, we address them together.

A bill of review is an independent action to set aside a judgment that is no longer appealable or subject to challenge by a motion for new trial. *Thompson v. Henderson*, 45 S.W.3d 283, 287 (Tex. App.—Dallas 2001, pet. denied). Although it is an equitable proceeding, the fact that an injustice has occurred is not sufficient to justify relief by bill of review. *Id.* Because it is fundamentally important that some finality be accorded to judgments, a bill of review seeking relief from an otherwise final judgment is scrutinized by the courts "with extreme jealousy, and the grounds on which interference will be allowed are narrow and restricted." *Id.* (quoting *Alexander v. Hagedorn*, 226 S.W.2d 996, 998 (1950)).

To succeed in a bill of review, the petitioner must show it (1) has a meritorious defense to the claim alleged to support the judgment, (2) was prevented from making that defense because of the fraud, accident, or wrongful act of the opposing party or because of an official mistake, and (3) was not at fault or negligent. *Id.*

The bill of review plaintiff claiming non-service, however, is relieved of two elements ordinarily required to be proved in a bill of review proceeding. *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004). First, if a plaintiff was not served, constitutional due process relieves the plaintiff from the need to show a meritorious defense. *Id.* Second, the plaintiff is relieved from showing that fraud, accident, wrongful act, or official mistake prevented the plaintiff from presenting such a defense. *Id.* The bill of review plaintiff alleging it was not served, however, must still prove the third and final element required in a bill of review proceeding: that the judgment was rendered unmixed with any fault or negligence of its own. *Id.* at 97. It is a heavy burden, and the testimony of the plaintiff alone is not sufficient to overcome the presumption it was served. *Id.* n.3.

In reviewing a bill of review, every presumption is indulged in favor of the court's ruling, which will not be disturbed unless it is affirmatively shown that there was an abuse of judicial discretion. *Interaction, Inc./State v. State/Interaction, Inc.*, 17 S.W.3d 775, 778 (Tex. App.—Austin 2000, pet. denied). A trial court abuses its discretion when it acts in an unreasonable and arbitrary manner or without reference to any guiding rules or principles. *Id.*

There is no presumption in favor of proper issuance, service, and return of citation. *Primate Constr., Inc. v. Silver*, 884 S.W.2d 151, 152 (Tex.1994); *Greystar, LLC v. Adams*, 426 S.W.3d 861, 866 (Tex. App.—Dallas 2014, no pet.). If the record fails to affirmatively show strict compliance with the rules of civil procedure governing issuance, service, and return of citation, there is error apparent on the face of the record and attempted service of process is invalid and of no effect. *Adams*, 426 S.W.3d at 866. When the attempted service of process is invalid, the trial court acquires no personal jurisdiction over the defendant, and the default judgment is void. *Id.*

Texas Rule of Civil Procedure 106, which governs substituted service, provides in pertinent part:

> (b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service
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> (1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or
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> (2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

TEX. R. CIV. P. 106.

Here, the process server's affidavit in support of Miraki's motion for substituted service specifically stated he had attempted service five times and determined service was "impractical because said defendant absents him or herself and thereby evades service of said Citation." The affidavit further stated that "the most reasonable, effective way to give said Defendant actual notice of this suit is to deliver a copy of the CITATION and PLAINTIFF'S FIRST AMENDED PETITION to anyone over the age of sixteen (16), or by affixing to the front door *at the defendant's usual place of Abode*," Chen's homestead address. (emphasis added). Contrary to WWLC's argument, rule 106 did not require the order authorizing substituted service or the return of service to state the nature of the address for substituted service. *See id.* Instead, as required by rule 106, the affidavit in support of Miraki's motion for substituted service stated that Chen's home address was her usual place of abode. *See id.*; *James v. Comm'n for Lawyer Discipline*, 310 S.W.3d 586, 590-91 (Tex. App.—Dallas 2010, no pet.) (affidavit in support of motion for substituted service under rule 106, as opposed to only unsworn motion, required to state address was defendant's usual place of business or abode). We conclude Chen's second issue lacks merit.

To the extent Miraki did not attempt service on HPZ International, the record shows that HPZ's charter was involuntarily forfeited on January 29, 2016, and substituted service was accomplished on April 6, 2016. Forfeiture of HPZ's charter resulted in its dissolution. *Landrum*

v. Thunderbird Speedway, Inc., 97 S.W.3d 756, 758 (Tex. App.—Dallas 2003, no pet.). Further, at the time substitute service was effected, Chen was president and owner of WWLC. Each general partner of a limited partnership is an agent of that partnership. TEX. BUS. ORGS. CODE ANN. § 5.255(2). Under these circumstances, we cannot conclude the trial court abused its discretion in concluding Miraki's failure to serve HPZ and identification of Chen as "Owner" did not result in defective service and denying WWLC's bill of review. WWLC's third and fourth issues lack merit.

The return of service states the process server delivered to "WLC Investment, LP By delivering to its Owner, Wendy Chen a true copy of this CITATION and PLAINTIFF'S FIRST AMENDED PETITION and ORDER ON PLAINTIFF'S MOTION FOR SUBSTITUTE SERVICE" by attaching a true copy of "the Citation to Defendant WLC Investment, LP, with a copy of the Petition attached, to the front door" of Chen's homestead address. WWLC ignores the reference to "PLAINTIFF'S FIRST AMENDED PETITION" and fastens upon the subsequent reference to "the Petition" as a "failure to accurately state that the First Amended Petition was attached to the door." Because the return of service identified, in bold letters, the First Amended Petition as the document being delivered, we cannot conclude the subsequent reference to "the Petition" rendered service defective. We conclude WWLC's fifth issue lacks merit.

In its sixth issue, WWLC argues that the improper service upon WWLC should result in "rendition of judgment on the issue of the defective service, rendering the default judgment void." However, because we have concluded service was not improper, WWLC's sixth issue lacks merit.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

WWLC INVESTMENT, L.P., Appellant	On Appeal from the 416th Judicial District Court, Collin County, Texas
No. 05-17-01126-CV V.	Trial Court Cause No. 416-02539-2017.
	Opinion delivered by Justice Bridges.
SORAB MIRAKI, Appellee	Justices Boatright and Richter participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee SORAB MIRAKI recover his costs of this appeal from appellant WWLC INVESTMENT, L.P.

Judgment entered December 28, 2018.