



**IN THE
TENTH COURT OF APPEALS**

No. 10-18-00363-CV

**SHANNON PLUM, INDIVIDUALLY AND
D/B/A GLOBAL SERVICE COMPANY AND
GLOBAL GENERAL CONSTRUCTION SERVICES, LLC,
Appellant**

v.

**GENEVA DIANE FULLER,
Appellee**

**From the 278th District Court
Walker County, Texas
Trial Court No. 1728279**

MEMORANDUM OPINION

Geneva Diane Fuller filed a declaratory judgment action against Shannon Plum, individually and d/b/a Global Service Company seeking a declaration that Fuller was not indebted to Plum and that any lien on her property was null and void.¹ After many

¹ Fuller's claim against Global General Construction Services, LLC, was nonsuited after the default judgment against Plum, individually and d/b/a Global Service Company, was granted.

attempts to serve Plum personally,² the trial court ordered substituted service. Plum was allegedly served through this substituted service, two different times: once with the original petition and once with the amended petition. Plum never answered, and Fuller obtained a default judgment. Plum filed a motion to set aside the default judgment “and/or” a motion for new trial. The trial court denied the motion. Because the trial court had no jurisdiction over Plum to issue a default judgment, the trial court’s judgment is reversed.

In three issues on appeal, Plum asserts that the trial court erred in refusing to set aside the default judgment because: 1) Plum was not served in strict compliance with the rules governing service of citation; 2) there is no record of a damages hearing and the damages are unliquidated; and 3) Plum established the right to have the judgment set aside under the *Craddock* test. Because the first issue is dispositive, we only address that issue.

SERVICE OF CITATION

Absent proper service of process, a trial court does not have personal jurisdiction to render a default judgment against a non-answering defendant. *In re E.R.*, 385 S.W.3d 552, 563 (Tex. 2012). When, as in this case, a defendant has not filed an answer, a trial court acquires jurisdiction over that defendant solely on proof of proper service. TEX. R. CIV. P. 107(h) (prohibiting default judgment unless proof of proper service and return

² The process server asserted in an affidavit that Plum avoided service.

have been on file for ten days). Personal jurisdiction is a question of law which we review de novo. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 337 (Tex. 2009).

Strict compliance with the rules governing service of citation is mandatory if a default judgment is to withstand an attack on appeal. *Ins. Co. v. Lejeune*, 297 S.W.3d 254, 256 (Tex. 2009) (defective endorsement on return of citation); *Hubicki v. Festina*, 226 S.W.3d 405, 408 (Tex. 2007). There are no presumptions in favor of valid issuance, service, and return of citation in the face of an attack on a default judgment. *Primate Constr. v. Silver*, 884 S.W.2d 151, 152 (Tex. 1994) (no valid service where pre-printed return form indicated defendant served with copy of the original petition—a pleading in which it had not been sued even though a copy of the amended petition, in which it had been sued, was actually attached). Thus, even if a defendant has received actual notice of a pending lawsuit, a default judgment rendered upon defective service will not stand. *Hubicki v. Festina*, 226 S.W.3d 405, 408 (Tex. 2007).

Texas Rule of Civil Procedure 106 authorizes a trial court to order a substitute method of service. TEX. R. CIV. P. 106(b). When citation is made by an alternative method authorized by Rule 106, as it was in this case, proof of service must be made in the manner ordered by the court. TEX. R. CIV. P. 107; *Hubicki v. Festina*, 226 S.W.3d 405, 408 (Tex. 2007). Thus, any deviation from the trial court's order necessitates a reversal of the default judgment based on service. *Creaven v. Creaven*, 551 S.W.3d 865, 870 (Tex.

App.—Houston [14th Dist.] 2018, no pet.); *Vespa v. Nat'l Health Ins. Co.*, 98 S.W.3d 749, 752 (Tex. App.—Fort Worth 2003, no pet.).

Here, the trial court's order authorized substituted service "by serving a copy of the petition and a copy of this order by posting to the door wherein Defendant's residence is located." Plum contends the returns state only that the citation, not the petition or amended petition or the trial court's order, was served by posting. Thus, Plum's argument continues, service was defective because the petition was not served, the amended petition was not served, the trial court's order was not served, and the citation was not posted "on the door" of Plum's residence. Further, Plum argues that the record is absent of evidence that the person who served the citation was authorized by law or by order of the trial court to serve the citation.

Regardless of whether the record shows the process server was authorized to serve the citations, neither return indicates that a petition and a copy of the trial court's order were posted "on the door" of Plum's residence as required by the trial court's order. The returns only indicate that, in pre-printed form language, "a true copy of this Citation" was served on Plum and that such service was, in hand-written language, only "by posting." Thus, the returns are defective because neither shows strict compliance with the trial court's order of substituted service. Consequently, because the returns do not affirmatively show compliance with the order that approved an alternate method of service, the trial court had no jurisdiction over Plum to render a

default judgment. Without jurisdiction over Plum, the default judgment cannot stand.

CONCLUSION

Accordingly, Plum's first issue is sustained. Because of the disposition of Plum's first issue, we need not address Plum's remaining issues. We reverse the trial court's default judgment and remand the case to the trial court for further proceedings.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Reversed and remanded

Opinion delivered and filed August 26, 2020
[CVO6]

