IN THE UTAH COURT OF APPEALS

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Smith Springs, L.L.C., Plaintiff and Appellee, v. John P. Fullingim and Kristin K. Fullingim, Defendants and Appellants.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050621-CA F I L E D (December 7, 2006) 2006 UT App 488

Second District, Ogden Department, 020906507
The Honorable Parley R. Baldwin

Attorneys: Scott M. Ellsworth, R. Christopher Preston, and J. Craig Smith, Salt Lake City, for Appellants
J. Steven Newton and Bilinda K. Townsend, Sandy, for Appellee

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Before Judges Bench, Greenwood, and Thorne.

GREENWOOD, Associate Presiding Judge:

Defendants John P. and Kristin K. Fullingim appeal from a default judgment entered in favor of Plaintiff Smith Springs L.L.C., and from an order denying Defendants' motion for relief from judgment.[1]

Defendants first contend that the default judgment is void for lack of personal jurisdiction due to deficient service of process.[2] Defendants argue they were denied their due process

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1. The district court denied Defendants' motion for relief from judgment because they failed to proffer a meritorious defense and file within three months after the entry of the default judgment. Defendants contend that because the judgment was void for lack of jurisdiction they were not required to proffer a meritorious defense. It is unnecessary for us to address this argument because we conclude the court had personal jurisdiction.

2. Defendants also assert that the district court lacked
(continued...)

right to notice because the affidavit supporting Plaintiff's request for alternative service was misleading and did not demonstrate that Plaintiff exercised reasonable diligence in locating and serving Defendants. See Utah R. Civ. P. 4(d)(4)(A).

"For a court to acquire jurisdiction, there must be a proper issuance and service of summons. This requirement ensures that an individual will not be deprived of 'life, liberty, or property, without due process of law.'" Jackson Constr. Co. v. Marrs, 2004 UT 89,¶10, 100 P.3d 1211 (quoting U.S. Const. amend. XIV, § 1; Utah Const. art. I, § 7). We apply a correctness standard to determine whether service of process properly satisfied constitutional and statutory requirements and conferred personal jurisdiction on the district court. See Bonneville Billing v. Whatley, 949 P.2d 768, 771-72 (Utah Ct. App. 1997).

Defendants argue that Plaintiff's affidavit failed to establish that Plaintiff had exercised reasonable diligence under rule 4(d)(4)(A) of the Utah Rules of Civil Procedure in attempting to locate and serve Defendants before filing the motion for alterative service. Rule 4(d)(4)(A) requires that

> [w]here the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, . . . the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served . . . .

Utah R. Civ. P. 4(d)(4)(A). "To meet the reasonable diligence requirement, a plaintiff must take advantage of readily available sources of relevant information. A plaintiff who focuses on only one or two sources, while turning a blind eye to the existence of other available sources, falls short of this standard." Jackson Constr. Co., 2004 UT 89 at ¶20 (holding that plaintiff failed to exercise reasonable diligence by not consulting a telephone directory). Further, "[t]he diligence to be pursued and shown by the affidavit is that which is reasonable under the circumstances

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2. (...continued)
jurisdiction because Plaintiff filed its motion for alternative service on March 10, 2003, after its action had been dismissed without prejudice on February 12, 2003. However, the court later reinstated the action, based on Plaintiff's motion.

and not all possible diligence which may be conceived." Bonneville Billing, 949 P.2d at 775.

Specifically, Defendants maintain that Plaintiff's attempts to serve them were insufficient. They deny being advised by their staff that sheriffs attempted service at either of their residences, and they do not recall being sent or rejecting certified letters from Plaintiff. Defendants suggest that Plaintiff should have attempted to discover their last known address in Utah, which was coincidentally across the street from one of the members of Smith Springs. Defendants also urge that Plaintiff's representatives knew Defendants were represented by attorney Steven Clyde and therefore should have contacted him to request that he accept service on Defendants' behalf.

We conclude that Plaintiff exercised reasonable diligence in attempting to locate and serve Defendants before moving for alternative service under rule 4(d)(4)(A). First, Defendants do not deny that Plaintiff was successful in correctly ascertaining Defendants' addresses in both Texas and Utah. Second, Plaintiff provided evidence of its efforts to serve Defendants at their Texas residence--on two occasions by certified mail pursuant to rule 4(d)(2)(A), and on eight occasions by the Dallas County Sheriff's Office, which attempted personal service under rule 4(d)(1). See Utah R. Civ. P. 4(d)(1), 4(d)(2)(A). In addition, the Weber County Sheriff's Office twice attempted personal service at Defendants' Utah residence.[3] Finally, Steven Clyde withdrew as Defendants' counsel "shortly after[]" April 3, 2002, which was prior to initiation of this lawsuit.

Next, Defendants contend that the district court erred when, on October 14, 2003, the court clerk, rather than the judge, signed the default judgment in contravention of rule 55 of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 55(b)(1), (2) (stating that if a defendant was not personally served under rule 4(d)(1) then the judge, rather than a court clerk, must enter the judgment). We agree that under rule 55 the default judgment should have been signed by the judge. However, we conclude it was harmless error because on November 20, 2003, the judge reviewed the default judgment when he signed and entered an order stating that "[o]n August 20, 2003, the Default of Defendants . . . was entered." See Utah R. Civ. P. 61 ("[N]o error or defect in any ruling or order or in anything done or

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3. Although Plaintiff attempted service at this location after filing its motion for alternative service on March 10, 2003, it provides further support for Plaintiff's diligence in attempting to serve Defendants.

omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.").

We affirm.

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Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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William A. Thorne Jr., Judge