

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000663-MR

KELLY MATA-STOUT

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 15-CI-00995

W.W.M.S., INC.
AND TIM O'NEAL

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: Kelly Mata-Stout appeals the McCracken Circuit Court's dismissal of her claims against her former employer, Appellee W.W.M.S., Inc., and its president, Appellee Tim O'Neal. The issue for this Court to review is whether the trial Court properly dismissed Mata-Stout's complaint when no defendant was properly served. Having reviewed the record and finding no error, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Mata-Stout resides in Illinois, but worked for W.W.M.S. in Kentucky for a time. Tim O'Neal resides in Tennessee, but also worked for W.W.M.S. in Kentucky. Mata-Stout's complaint alleged that O'Neal subjected her to unwanted sexual propositions, and after bringing such behavior to W.W.M.S.'s attention, the company fired her.

Mata-Stout filed her complaint on December 28, 2015, and caused the summonses to be issued to the Appellees the same day. Mata-Stout elected to serve the Appellees via certified mail. The summons intended for W.W.M.S. was dispatched to its registered agent, Billy Hale, at an address in Paducah, while the summons for O'Neal was dispatched to an address in Union City, Tennessee. A CourtNet¹ case history indicated that both defendants were served on January 14, 2016.

Without submitting to the jurisdiction of the trial court, both defendants moved to dismiss, pursuant to CR 4.04 and 12.02, on February 25, 2016. The trial court issued an order on March 23, 2016, which granted the motion to dismiss W.W.M.S., but denied the motion of O'Neal. In that order, the trial court noted that the United States Postal Service ("USPS") delivery records did not match the CourtNet case history. Specifically, the trial court noted that using the

¹ CourtNet is a database service for the Kentucky Administrative Office of the Courts, intended to provide electronic access to certain information to subscribers, which include judges, court and clerk personnel, and attorneys. It is not an official record-keeping service, and that fact is noted on every record accessed using the service.

USPS tracking number revealed two attempted deliveries at the address designated for the registered agent, but no successful delivery.

The court later granted O’Neal’s motion in an order entered on April 8, 2016. The trial court noted that service on O’Neal was never made because delivery was actually made to another individual, James M. Doughton, who signed the certified mail receipt. Doughton, the court concluded, was not an agent of O’Neal, and for that reason, O’Neal was not properly brought before the court.

Neither dismissal was designated as prejudicial, nor did either order state it was final and appealable. Mata-Stout appealed the dismissals, arguing the trial court lacked a sufficient basis to dismiss either defendant.

II. ANALYSIS

Mata-Stout correctly points out that when a complaint is dismissed for failure to state a claim for which relief can be granted, the standard of review is whether the allegations in the complaint, taken as true, would entitle the non-moving party to relief. *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). However, Mata-Stout is incorrect in her assertion that the trial court dismissed her complaint on that basis.

The motion filed by the Appellees asked the trial court to dismiss the complaint pursuant to CR 12.02(b), (d),² and (e). Those subsections of Rule 12.02 concern lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process, respectively. “[S]ervice of summons is the procedure by which

² Though the motion actually invoked 12.02(c), the trial court appears to have addressed the motion as if it invoked CR 12.02(d).

a court having venue and jurisdiction over the subject matter of the suit asserts jurisdiction over the person of the party served.” *Omni Capital Int’l Ltd. v. Rudolf Wolf & Co., Ltd.*, 484 U.S. 97, 105 (1987) (quoting *Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438 (1946)). Because the determination of a trial court’s exercise of personal jurisdiction involves a legal, rather than factual, question, we review the trial court’s rulings *de novo*. *Auto Owners Ins. Co. v. Consumers Ins. USA, Inc.*, 323 S.W.3d 781, 783 (Ky. App. 2010).

Our review of the record confirms the conclusions of the trial court. No proof of proper service of either summons was presented. The trial court lacked personal jurisdiction over the defendants, and properly dismissed.

Further, because this dismissal was based entirely on a lack of jurisdiction, it did not operate as an adjudication on the merits pursuant to CR 41.02(3), and has no prejudicial effect. Mata-Stout may refile if the applicable statute of limitations has not lapsed. For this reason Mata-Stout’s argument that the trial court prematurely dismissed the action, and a better remedy would have been to allow her to attempt to have the Appellees served again, is moot.

III. CONCLUSION

The Court having examined the record and concluded the trial court committed no error, we hereby affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kurt A. Scharfenberger
Louisville, Kentucky

BRIEF FOR APPELLEE:

Stanley K. Spees
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