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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PERRY KOSTER et al.,

Plaintiffs and Respondents,

v.

NERIZA J. RECLUSADO,

Defendant and Appellant.

G045233

(Super. Ct. No. 30-2010-00366407)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

Veatch Carlson, Bruce L. Schechter and Peter H. Crossin, for Defendant and Appellant.

Mains & Clark and Dana C. Clark for Plaintiffs and Respondents.

Neirza J. Reclusado appeals from a default judgment entered against her in this action for personal injuries arising from an automobile accident. She contends (1) the judgment is void because she was not served with process in accordance with the requirements of law; and (2) even if the service was proper, the court abused its discretion when it refused to grant her relief from the judgment on the basis she did not receive actual notice of the lawsuit.

We affirm the judgment. When a plaintiff is unable to serve a defendant with a summons and complaint by personal service, the law allows the service to be effected by substituted service. Substituted service is accomplished on a natural person (as distinguished from corporations and other entities) by “leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, *or usual mailing address . . .* in the presence of a competent member of the household or a person apparently in charge” (Code Civ. Proc., § 415.20, subd. (b), italics added.)

Reclusado challenged the propriety of substituted service made on her in this case, arguing only that at the time of the purported substituted service, she “was not residing” at the address (her father’s home) where plaintiff’s process server purported to make that substituted service on her. However, she made no claim that her father’s home was not still her “usual mailing address” at the time of the service. Moreover, her declarations provided persuasive evidence that it was. Because a person’s “usual mailing address” is a proper location to effect substituted service, Reclusado failed to demonstrate that service in this case had been ineffective, even assuming she was not *residing* at the address.

Reclusado’s contention the court abused its discretion in denying her relief from default based on her contention she had no “actual” notice of the summons and complaint is also unpersuasive. In making the argument, she simply assumes the court

was obligated to believe her, which it clearly did not. There was certainly substantial evidence which supported the court's conclusion that Reclusado's claim was "too dubious for me to credit," and thus we cannot conclude the court erred in reaching it.

FACTS

This case arises out of an automobile accident that took place on November 12, 2008. According to the police report, Reclusado was at fault, apparently because she ran a stop sign. Reclusado gave as her address a residence on Crown Valley Parkway in Mission Viejo (the Mission Viejo address). She also provided the name of her insurance carrier.

Commencing in December of 2008, counsel for plaintiffs, Perry and Lisa Koster, corresponded with Reclusado's insurance carrier, Farmers Insurance, regarding their claim of damages arising from the accident. In January of 2009, a Farmers representative told the Koster's counsel that Farmers was acknowledging "100 percent liability" for the accident, but would not disclose Reclusado's policy limits. Thereafter, Farmers reaffirmed its refusal to disclose policy limits, explaining that it did "not have permission from our insured to disclose her liability limits at this time, nor do we have permission to release . . . vehicle photos or repair estimate."

The Koster's counsel continued to correspond with Farmers, but was apparently unable to obtain an acceptable settlement of their claims. Consequently, on April 26, 2010, they filed their complaint for personal injury and property damage. Although the Koster's attorney asked Farmers to accept service of the complaint on behalf of Reclusado, Farmers declined.

In May of 2010, substituted service of the summons and complaint was effected on Reclusado by leaving a copy of the summons and complaint with her father – referred to on the proof of service as "Felipe Reclusado, Co-Occupant/Father," at the Mission Viejo address, and thereafter mailing the summons and complaint to that address.

Reclusado did not respond to the complaint in a timely fashion, and the Kosters took her default on July 7, 2010. The Kosters requested entry of a court judgment on November 9, 2010, and after conducting a prove-up hearing, the court entered judgment in favor of the Kosters on November 17, 2010.

On March 23, 2011, Reclusado moved to set aside entry of the default and the default judgment, citing two grounds: Code of Civil Procedure section 473, subdivision (d), which allows the court to set aside a “void” judgment; and Code of Civil Procedure section 473.5, which allows a court to set aside a judgment on the ground defendant did not receive “actual notice” of it.

Reclusado’s motion was based primarily on her declaration that she had moved out of her father’s Mission Viejo home, and into the home occupied by her husband and his mother, on April 23, 2010 – two and a half weeks prior to the process server’s delivery of the summons and complaint to the Mission Viejo address. However, Reclusado’s declaration included no specific contention that the Mission Viejo address had also ceased being her “usual mailing address.” Reclusado also claimed that she had never received *actual* notice of the complaint, although she did not provide any evidence, direct or circumstantial, to corroborate her bare denial of that receipt¹

In their opposition to the motion, the Kosters offered the court evidence that Reclusado had not actually gotten *married* until July 1, 2010 – more than a month after the substituted service – and thus that she could not have already moved in with her “husband” prior to that date. They also provided evidence that when Reclusado applied for her marriage license in June of 2010 – again, the month following service of the summons and complaint – the address she used was the Mission Viejo address. Finally,

¹ An example of direct evidence would be a declaration from Reclusado’s father, denying that he had been given the summons and complaint by a process server, and claiming they were not delivered by mail, or claiming that while he had received them, he did not give them to Reclusado. An example of circumstantial evidence would be a declaration describing some sort of estrangement between Reclusado and her father at the time of the substituted service, which might explain why he would decline to tell her about it – and why he might be unwilling to offer a declaration in support of her motion.

the Kosters offered evidence that when Reclusado received a speeding ticket in July of 2010 – nearly two months after service – she again used the Mission Viejo address.

The Kosters also pointed out that substituted service can also be made at a defendant’s “usual mailing address,” which can be different than his or her residence, and argued that even if Reclusado were not *residing* at the Mission Viejo address in May of 2010, she “clearly intended the Mission Viejo address to be used as her *usual mailing address*.”

In her reply, Reclusado simply dismissed the suggestion that substituted service could be properly made at her mailing address,² and in effect admitted she had continued to use the Mission Viejo address for that purpose. Specifically, Reclusado acknowledged she continued to use the Mission Viejo address for official purposes even after May of 2010, explaining she had done so because the address to which she had moved for the purpose of residing with her husband was *not intended to be a long-term residence for her*. As she put it, “[a]lthough I was residing in Bellflower when we applied for the [marriage] license, we intended to move out of the Bellflower apartment. As such, I listed the [Mission Viejo] address on the wedding license.” With respect to her use of the Mission Viejo address in connection with the traffic citation, she stated “I had not changed the address on my driver’s license prior to receiving a ticket in approximately July of 2010 because I knew my husband and I would be moving from the Bellflower address” In short, Reclusado specifically denied *residing* at the Mission Viejo address, while admitting she continued to use it as her mailing address.

The court denied the motion to vacate. The court first noted it had difficulty even accepting Reclusado’s contention she had left the Mission Viejo address in May of 2010, to move in with her “husband,” when she did not actually get married

² Reclusado’s reply brief actually includes an argument heading that states: “That Defendant Was Using The Crown Valley Address As Her Mailing Address Does Not Render Service Effective.” But of course, the statute specifically provides that substituted service *can be made* at defendant’s usual mailing address, as long as that is not “a United States Postal Service post office box.” (Code Civ. Proc., § 415.20, subd. (b).)

until July of that year. It then explained that in light of the evidence presented, it found service on Reclusado to have been proper. As to the claim that Reclusado had not received “actual notice” of the complaint, the court dismissed it as “too dubious for me to credit,” and pointed out that even if she hadn’t been living in Mission Viejo with her father at the time of service, it was undisputed that her insurance carrier was aware of the lawsuit, and it seemed inconceivable that her father would not have been willing to tell the carrier where she could be reached.

I

Reclusado first asserts that the default judgment is void, because the summons and complaint was not properly served on her in accordance with the requirements of Code of Civil Procedure section 415.20, subdivision (b). We disagree

Code of Civil Procedure section 415.20, subdivision (b), provides that “[i]f a copy of the summons and complaint cannot with reasonable diligence be personally delivered . . . a summons may be served by leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, or usual mailing address . . . in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, *or usual mailing address other than a United States Postal Service post office box . . .*, and by thereafter mailing a copy . . . [to] the place where a copy of the summons and complaint were left.” (Code Civ. Proc., § 415.20, subd. (b), italics added.)

Although Reclusado claims she moved out of her father’s house in Mission Viejo in April of 2010, prior to service of the summons and complaint upon her, and that she established her *residence* elsewhere, she did not offer any evidence that she had also abandoned that address *for purposes of receiving mail*. Specifically, we note there is no evidence Reclusado ever filed a change of address form with the United States Postal Service, notifying it that her mail should be sent to any different address, or that she otherwise made any effort to notify her correspondents of that move. To the contrary, the

only evidence before us establishes that Reclusado affirmatively *maintained* the Mission Viejo address as her mailing address, at least until July of 2010.

In fact, Reclusado herself acknowledged this in a declaration filed with the trial court, explaining that she had not expected her move to Bellflower in April of 2010 would result in a long-term residency, so she elected to continue using the Mission Viejo address for some period of time. She lived at one address, but got her mail at another. Under those circumstances, unless the mailing address was a post office box, substituted service could properly be made on her at either address.

The cases relied upon by Reclusado in support of her contention that service of process at the Mission Viejo address was insufficient are not on point, because none of those cases deals with the situation where the address used was in fact the defendant's *mailing address*. Instead, Reclusado simply acknowledges the rule allowing substituted service at a "dwelling house, usual place of [abode], usual place of business, or usual mailing address," before focusing *exclusively* on the issue of whether the Mission Viejo address would qualify as her "dwelling house."

But even assuming it would not, we nonetheless conclude Reclusado failed to establish it was also not her usual mailing address – and thus that service of process on her at that address would not comply with the requirements of the Code of Civil Procedure. Hence, we reject Reclusado's assertion that the judgment entered against her was void.

II

Reclusado also contends that even if she was properly served with process, the court nonetheless abused its discretion by denying her relief from the default based on her assertion that she did not receive "actual notice" of the lawsuit. In making this assertion, however, Reclusado simply ignores the fact that the court did not believe her claim. While she insists that "only the slightest evidence" is required to overturn a default, even that evidence would have to be believed.

Instead, Reclusado simply reasserts that “until January 14, 2011, [she] had no . . . actual notice of the lawsuit” and proceeds to point out there is no affirmative evidence to disprove her claim. But there was plenty of circumstantial evidence which undermines it, not the least of which is the uncontradicted evidence that her father personally accepted a copy of the summons and complaint at his home in May of 2010. The natural inference to draw is that he would have mentioned that occurrence to her – especially in the absence of some indication the two of them were estranged at the time. And she has not suggested that was the case.

Moreover, as we have already explained, it is clear Reclusado chose to continue using the Mission Viejo address as her mailing address throughout the period in which service was effected, and thus it is reasonable to assume she actually received mail sent to her there. Even if her father neglected to give her the personally delivered copy of the summons and complaint, it is reasonable to infer she would have received the additional copy sent in the mail. There was no evidence any other mail failed to reach her.

Because the court’s rejection of Reclusado’s claim that she never received actual notice of the lawsuit was supported by evidence, we cannot conclude the court abused its discretion in reaching that conclusion.

The judgment is affirmed. Respondents are to recover their costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.