

22 Fla. L. Weekly Supp. 330a

Online Reference: FLWSUPP 2203BODY

Small claims -- Relief from judgment -- Default -- Vacation -- Service of process -- Defects -- Service was defective where return of service failed to note time when notice to appear and statement of claim were received by process server -- Service on employee was defective where process server failed to include statement showing why service was made on this employee, as opposed to an employee authorized by statute, and process server failed to allege that he first attempted to serve registered agent or that agent was absent -- Error to deny motion to quash service of process and motion for relief from judgment

BODY DETAILS, Appellant, v. SHAUN P. HARRINGTON, Appellee. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Civil Division. Case No. 502013AP000058XXXXMB. L.T. Case No. 2013SC004219XXXXNB. Division AY. August 15, 2014. Appeal from the County Court in and for Palm Beach County, Judge Laura Johnson. Counsel: Mitchell Sens, Plantation, for Appellant. Shaun P. Harrington, West Palm Beach, pro se Appellee.

(PER CURIAM.) Defendant/Appellant, Body Details, seeks review of a default final judgment. Body Details contends that the trial court erred in denying its Verified Motion to Quash Service of Process as well as its Motion for Relief from Final Judgment because the judgment was void due to improper service of process. We agree and reverse.

Plaintiff/Appellee Shaun P. Harrington filed a Statement of Claim against Body Details. The return of service states that Deputy Sheriff Mel Weinberg received the Statement of Claim and Notice to Appear on April 1, 2013 and served the same on Brittany Dail, an employee of Body Details, on April 2, 2013 at 11:00 a.m. After failing to appear at a pre-trial conference, a default judgment was entered in favor of Harrington in the amount of \$5,000.00 plus \$350.00 in court costs, for a total amount of \$5,350.00. Body Details filed a Verified Motion to Quash Service of Process and Motion for Relief from Judgment, arguing that service was improper because 1) the time at which Deputy Weinberg received the Notice to Appear and Statement of Claim is not listed on the return of service, and 2) the Notice to Appear and Statement of Claim were served upon an employee not statutorily authorized to accept service of process. The trial court denied both motions. We find that the trial court erred by denying the motions.

A trial court's ruling on a motion to quash service of process consists of a question of law subject to a de novo standard of review. *Hernandez v. State Farm Mut. Auto. Ins. Co.*, 32 So. 3d 695, 698 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D753a]. Strict compliance with the statutory provisions governing service of process is required in order to obtain jurisdiction over a party. *Nirk v. Bank of America*, 94 So. 3d 658 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D1863b]. Where other requirements for service of process, which do not directly implicate due process, have been violated, courts still have determined that service is defective, and no jurisdiction has been obtained over the defendant. *Id.* at 403.

When service of process is improper, the judgment shall be deemed void. *Willoughby v. Seese Realty Inc.*, 421 So. 2d 691, 692 (Fla. 4th DCA 1982). If a judgment is rendered void, the party is entitled to relief from that judgment. Fla. Sm. Cl. R. 7.190(b). Additionally, the requirement that the moving party establish excusable neglect and a meritorious defense is not applicable when the sufficiency of the service of process is at issue. *J.M. v. Dep't of Children & Families*, 938 So. 2d 620, 622 (Fla. 5th DCA 2006) [31 Fla. L. Weekly D2506a].

Body Details contends that the trial court erred in denying its Verified Motion to Quash Service of Process as Harrington failed to comply with sections 48.21(1) and 48.081, Florida Statutes; specifically, that 1) Deputy Weinberg failed to include on the return of service the time that the Notice to Appear and Statement of Claim were received by him and 2) he failed to deliver the Notice to Appear and Statement of Claim to Body Details' statutorily authorized representative. Each argument will be addressed in turn.

I. SECTION 48.21(1), FLORIDA STATUTES -- REQUIREMENT TO INCLUDE TIME OF

SERVICE

Process servers are required to note on the return-of-service form the date and time when the process comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served and, if the person is served in a representative capacity, the position occupied by the person. § 48.21, Fla. Stat. (2011). Thus, the legislature has deemed the failure to include the notation of time of service on the copy of the process left with the served party to be a requirement of service. *Nirk v. Bank of America, NA*, 94 So. 3d 658 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D1863b]. As strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms means that service is defective, resulting in a failure to acquire jurisdiction over the defendant. *Id.*

Here, the return of service fails to note the time when the Notice to Appear and Statement of Claim were received by Deputy Weinberg as required by section 48.21(1), Florida Statutes, and this lack of strict compliance with the service statute rendered service defective. *Nirk*, 94 So. 3d at 658. The subsequently entered judgment was therefore void, *Willoughby*, 421 So. 2d at 692, and Harrington was entitled to relief from that judgment, Fla. Sm. Cl. R. 7.190(b).

II. SECTION 48.081, FLORIDA STATUTES -- REQUIREMENTS FOR SERVING A CORPORATION

The intent of section 48.081, Florida Statutes, is to have service made upon someone who is held responsible by the corporation, "and it contemplates that service shall be made, whenever possible, upon the more responsible officers before resorting to service upon one of the inferior officers or agents of the corporation." *Bank of Am., N.A. v. Bornstein*, 39 So. 3d 500, 503 (Fla. 4th DCA 2010) [35 Fla. L. Weekly D1503a]; see § 48.081, Fla. Stat. (2011). To obtain personal jurisdiction over a corporate defendant, a return of process showing service on an inferior officer of a corporation must show that all superior officers designated in the statute were absent when service was attempted. *Bornstein*, 39 So. 3d at 503. Even if an employee were to state that he or she was authorized to accept service, that does not absolve the process server of the obligation to make further inquiry. *Id.*

Here, Deputy Weinberg served the Notice to Appear and Statement of Claim on Brittney Dail, an employee of Body Details. Deputy Weinberg failed to include a statement showing why service of process was made on this employee as opposed to an employee authorized by statute. Further, Deputy Weinberg failed to allege that he first attempted to serve the registered agent or that the agent was absent. Again, this lack of strict compliance with the statute rendered service defective. *Nirk*, 94 So. 3d at 658. The subsequently entered judgment was therefore void, *Willoughby*, 421 So. 2d at 692, and Harrington was entitled to relief from that judgment, Fla. Sm. Cl. R. 7.190(b).

For the aforementioned reasons, the trial court erred in denying Body Detail's Verified Motion to Quash Service of Process and its Motion for Relief from Judgment. Accordingly, we REVERSE and REMAND for further proceedings consistent with this opinion. (COX, J. KEYSER, and SASSER, JJ., concur.)

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