COURT OF APPEALS
DECISION
DATED AND FILED

April 20, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1295 **Cir. Ct. No. 2009SC34**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

ADVANTAGE EMPLOYMENT SERVICE, LLC, D/B/A ADVANTAGE LAWNSCAPING SERVICE,

PLAINTIFF-RESPONDENT,

V.

DAWN MARTINSON, A/K/A DAWN GREEN,

DEFENDANT-APPELLANT,

CARL GREEN AND WESSMAN ESTATE, LLC,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Douglas County: GEORGE L. GLONEK, Judge. *Affirmed*.

¶1 BRUNNER, J.[1] Dawn Martinson, a/k/a Dawn Green, appeals a default judgment entered against her in a small claims action.[2] She contends the circuit court lacked personal jurisdiction due to improper service. We conclude Martinson was properly served and affirm.

BACKGROUND

¶2 This case has a convoluted procedural history. Advantage Employment Service, LLC, filed a small claims action against Carl Green and Wessman Estate, LLC, seeking $3,108.91 allegedly due under a lawn maintenance contract. Green contested his liability. The court scheduled a final hearing for April 17, 2009.

¶3 Meanwhile, Advantage filed amended pleadings adding Martinson—Green's wife—as a defendant based on her ownership interest in Wessman. Advantage was unable to accomplish personal service of the summons and complaint. The sheriff's department attempted service at the couple's residence, but neither Green nor Martinson answered the door. On the March 12, 2009, return date, the court granted an adjournment for publication and authorized the filing of an amended complaint, with a revised return date of April 9, 2009. Advantage attempted service by certified mail, but the letter was returned unopened. Publication was completed on March 26, 2009.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] To avoid confusion, we refer to Dawn Martinson, a/k/a Dawn Green, as "Martinson" throughout this opinion.

¶4 Neither Martinson, nor Green, nor a representative from Wessman appeared at the April 9 return date. A default judgment was entered against Martinson and Wessman. A final decision as to Green was delayed until the trial date on April 17, 2009. Two days before Green's hearing, Martinson petitioned to reopen the judgment against her. The court commissioner denied her motion.

¶5 Advantage failed to appear on April 17 and Green was dismissed from the suit. Green demanded a trial despite the dismissal, purporting to act on his own behalf as well as that of Martinson and Wessman. A de novo review hearing was set for May 15, 2009.

¶6 At the May 15 hearing, Martinson sought to reopen the judgment, claiming Advantage improperly served her by certified mail. Martinson argued she was unavailable for signature delivery but would have received any letter sent by regular mail. The court found that Advantage properly served the summons and complaint pursuant to WIS. STAT. § 799.12. Martinson appeals.

DISCUSSION

¶7 The decision to grant or deny a motion to reopen is one within the circuit court's discretion. *See* ***Kovalic v. DEC Int'l***, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994).[3] We affirm discretionary decisions of the circuit court if it examined the relevant facts, applied a proper legal standard, and used a

[3] ***Kovalic v. DEC International***, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994), dealt with a motion to reopen under WIS. STAT. § 806.07. Section 806.07 does not apply in small claims proceedings, however; WIS. STAT. § 799.29(1) is the exclusive procedure for reopening a default judgment in a small claims action. ***King v. Moore***, 95 Wis. 2d 686, 690, 291 N.W.2d 304 (Ct. App. 1980). Section 799.29(1), like § 806.07, speaks of the court's authority in permissive terms, and we believe the standard of review is the same under either statute.

demonstrated rational process to reach a reasonable conclusion. ***Bank Mut. v. S.J. Boyer Constr., Inc.***, 2009 WI App 14, ¶7, 316 Wis. 2d 266, 762 N.W.2d 826.

¶8 Martinson claims the circuit court never obtained personal jurisdiction due to defective service and, consequently, the judgment is void. A court gains jurisdiction over the parties to a lawsuit only by valid personal or substituted service of the summons and complaint. *See* WIS. STAT. § 801.04. In the absence of personal or substituted service, service may be made by mailing and publication. WIS. STAT. §§ 799.12(4), 801.11(1)(c). There is no dispute Advantage published a Class 1 notice pursuant to § 799.12(6). However, Martinson argues the circuit court should have applied the general service statute, § 801.11, rather than the statute governing service in small claims actions, § 799.12. Specifically, she contends Advantage was required to publish a Class 3 notice pursuant to WIS. STAT. § 801.11(1)(c).

¶9 We reject this argument. WISCONSIN STAT. § 799.12(1) states that all provisions of WIS. STAT. ch. 801 apply "[e]xcept as otherwise provided in this chapter." Section 799.12(6) allows service under WIS. STAT. § 801.11(1)(c) or service by publication of a Class 1 notice. Thus, Martinson's claim that Advantage was required to publish a Class 3 notice is meritless.

¶10 Martinson also argues service was improper because the mailing was done by certified mail and not regular mail. WISCONSIN STAT. § 799.12(6)(b) refers to a "mailing" generally and does not specify whether the mailing is to be done by certified or regular mail. A statute, however, must be construed in light of its purpose. ***Patterson v. Board of Regents***, 103 Wis. 2d 358, 360, 309 N.W.2d 3 (Ct. App. 1981). Service is intended to "give notice to the defendant of the pendency of an action against him." ***Keske v. Square D Co.***, 58 Wis. 2d 307, 311,

206 N.W.2d 189 (1973). This purpose is fulfilled whether the summons is sent by regular or certified mail. Since the use of certified mail fulfills the purpose of § 799.12(6)(b), it does not upset the orderly administration of the judicial process and is appropriate. *See* ***Patterson***, 103 Wis. 2d at 360.

¶11 Martinson raises myriad other issues, including that Advantage failed to exercise reasonable diligence to personally serve her; that Advantage failed to mail a copy of the summons "at or immediately prior to … publication" as required by WIS. STAT. § 799.12(6)(b); and that the certified mailing failed to comply with § 799.12(6)(b) because it did not include a notice of publication. Martinson failed to present any of these arguments to the circuit court and we deem them waived. *See* ***Tomah-Mauston Broad. Co. v. Eklund***, 143 Wis. 2d 648, 657-58, 422 N.W.2d 169 (Ct. App. 1988) (court need not consider issues initially raised on appeal).

¶12 Advantage argues it is entitled to costs, fees, and reasonable attorney fees for a frivolous appeal. *See* WIS. STAT. RULE 809.25(3). It claims Martinson knew or should have known the appeal was "without any reasonable basis in law or equity." *See* WIS. STAT. RULE 809.25(3)(c)2. This case's complex procedural posture requires that we deny Advantage's request because of the difficulty in determining what Martinson knew or should have known.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.