STATE OF MICHIGAN

COURT OF APPEALS

JOYCE N. WHITE and WILLIAM BERT JOHNSON,

Plaintiffs-Appellants,

v

ALLSTATE INSURANCE COMPANY, DOROTHY J. PEOPLES, and RENILDO GREENE,

Defendants-Appellees.

UNPUBLISHED
October 4, 1996

No. 185862
LC No. 94-431914-NI

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ.

PER CURIAM.

In this automobile negligence action, plaintiffs appeal by right the order granting defendant Allstate Insurance Company's motion for summary disposition under MCR 2.116(C)(8), and defendants Peoples' and Greene's motion to quash service of process under MCR 2.105(J)(3). We affirm in part and reverse in part, and remand for proceedings consistent with this opinion.

Plaintiffs Joyce White and William Johnson first contend that the circuit court erred in granting defendants Dorothy Peoples and Renildo Greene's motion to quash service of process under MCR 2.105(J)(3). We agree. This Court reviews de novo a lower court's interpretation of a court rule as a question of law. *Frank v William A. Kibbe & Associates, Inc*, 208 Mich App 346, 350-351; 527 NW2d 82 (1995).

Service of process rules are intended to satisfy the due process requirement that a plaintiff must give a defendant adequate notice of the pendency of an action. *Vincencio v Ramirez*, 211 Mich App 501, 504; 536 NW2d 280 (1995); *Hill v Frawley*, 155 Mich App 611, 613; 400 NW2d 328 (1986). Under MCR 2.105(A)(2), an individual properly may serve a defendant by sending a summons and a copy of the complaint by registered or certified mail; however, the signed return receipt from the mailing must be attached to a proof of service made in compliance with MCR 2.104(A)(2). In this case,

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* Circuit judge, sitting on the Court of Appeals by assignment.

defendants Peoples and Greene contend that they never received a copy of the summons. We find no evidence to demonstrate adequate proof of service.

On appeal, plaintiffs first attempt to establish adequate service by presenting the return receipts from their certified mailing of process to defendants. Although defendant Peoples signed her return receipt, defendant Greene's receipt was signed by a "T. Jackson." MCR 2.105(2) specifically states that delivery by registered or certified mail must be restricted to the addressee. Additionally, defendant Greene's receipt, as stamped by the post office, is dated one year before plaintiffs filed their complaint, leaving no doubt that service on Greene was inadequate.

Plaintiffs next offer an affidavit in support of their proof of service, following the methods outlined in MCR 2.104(A)(2). Plaintiff Johnson, however, acted as the notary public certifying his own affidavit and thus violated the principle that a notary cannot certify an act in which he has a personal interest. *La Fromboise v Porter*, 261 Mich 483, 485-486; 246 NW 193 (1933). Further, in the affidavit itself, plaintiffs state that they sent defendants a copy of only the complaint. They do not state that they sent a summons; therefore, service of process was deficient.

Although service of process was not adequate under MCR 2.105(A)(2), under MCR 2.105(J)(3), an action should not be dismissed due to improper service of process unless the service failed to inform the defendant of the action. A defendant acknowledges proper notice and waives service of process objections by entering a general appearance and contesting the cause of action on the merits. *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181; 511 NW2d 896 (1993). In this case, defendants Peoples and Greene filed an appearance on December 1, 1994, and contested the cause of action on the merits in their answer to plaintiffs' complaint by asserting affirmative defenses. Therefore, defendants Peoples and Greene waived any objections to proper service, and the circuit court erred in granting defendants' motion to quash service of process. We thus remand this case to the circuit court for further proceedings.

Plaintiffs also contend that the circuit court erred in granting defendant Allstate's motion for summary disposition under MCR 2.116(C)(8). This Court reviews de novo a lower court's ruling on a motion for summary disposition. *Patsy Johnson v Wayne Co*, 213 Mich App 143, 148-149; 540 NW2d 66 (1995).

MCL 500.3030; MSA 24.13030 provides that in an original action brought by an injured person, an insurer shall not be made, or joined as, a party defendant. Here, plaintiffs named Allstate Insurance Company, and later attempted to name Allstate's claims representative, Mark Wegener, as defendants. Because the statute clearly precludes any mention of insurance in an original action brought by the injured party, the circuit court correctly held that plaintiffs had no cause of action against these defendants.

Reversed in part and affirmed in part. Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson