STATE OF MICHIGAN

COURT OF APPEALS

JAMES B. ECKERSON, JR.,

Plaintiff–Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant–Appellee.

UNPUBLISHED
October 11. 1996

Nos. 174747, 174748
LC Nos. 93-15201-CM
93-15017-CM

Before: Reilly, P.J, and White, and P.D. Schaefer,* JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals of right from a March 31, 1994 order granting summary disposition to defendant pursuant to MCR 2.116(C)(7), and appeals by leave from a December 15, 1993 order of dismissal for failure to serve defendant with process. We reverse.

On August 18, 1993, plaintiff filed an action against the Department of Transportation (DOT) alleging personal injury as a result of an accident that occurred on September 4, 1991. Plaintiff sent defendant a copy of the summons and complaint by certified mail addressed to Patrick Nowak, Director of the DOT. Plaintiff received a return receipt dated August 27, 1993.

On September 8, 1993, an assistant attorney general sent plaintiff's counsel a letter stating that the summons and complaint had not been properly served, but that as the DOT's counsel, she would accept service if plaintiff would grant the DOT an additional thirty days to file an answer. Plaintiff's counsel did not respond, and the DOT did not file an answer or otherwise appear. The summons expired on November 17, 1993. On December 15, 1993, the trial court signed an order dismissing the case for failure to serve, pursuant to MCR 2.102. The notice of dismissal was sent by the court to plaintiff, not plaintiff's counsel. Plaintiff received the notice of dismissal and immediately notified counsel

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

on December 21, 1993. According to counsel, counsel then called the court and was told that a motion for reinstatement would not be accepted and that the case should be refiled.

Plaintiff refiled his case the same day. Defendant, upon being properly served with the second complaint, filed a motion for summary disposition, asserting that the statute of limitations had expired before the filing of the second complaint. Plaintiff responded arguing that because defendant received actual notice, the case should not have been dismissed. The trial court granted defendant's motion.

Since the DOT is a government body created by MCL 16.450; MSA 3.29(350), plaintiff was required to serve it pursuant to the provisions of MCR 2.105(G), which governs service of process on public or governmental bodies. Under MCR 2.105(G), service must be made personally on the president, chairperson, secretary, manager, clerk or other officer of the public body that has substantially the same duties as a president, chairperson, secretary, manager or clerk. In the alternative, service may be accomplished by sending a copy of the summons and complaint by registered mail to the officer and by personally serving a person in charge of the officer's office.

Plaintiff attempted service solely by sending the summons and complaint by certified mail to director Nowak, the DOT's head or chief executive officer. MCL 16.455; MSA 3.29(355). Plaintiff did not also serve a person in charge of director Nowak's office, or serve director Nowak personally. Thus, service was technically improper.

Nevertheless, improper service is not always an impediment to the maintenance of an action. MCR 2.105(J)(3) provides:

> An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

If a defendant receives actual notice, through the receipt of the summons and complaint, but the manner or content of service is in error, the suit may still be maintained. *Hill v Frawley*, 155 Mich App 611; 400 NW2d 328 (1986); *Bunner v Blow-Rite Insulation*, 162 Mich App 669; 413 NW2d 474 (1987); *Holliday* v *Townley*, 189 Mich App 424; 473 NW2d 733 (1991). If the improper manner of service satisfies due process by giving sufficient notice of the claim, dismissal is not warranted. *Hill, supra*, 155 Mich App 613; 400 NW2d 329. *Id.* Thus, if defendant had timely and actual notice of the action, service was sufficient.

Defendant claims that it did not have actual notice; only the Attorney General's office did. It further argues that since plaintiff did not respond to its letter, it assumed that plaintiff had reconsidered bringing the action, and therefore did not know the action was proceeding, and did not file an answer. However, plaintiff mailed the summons and complaint to the DOT, not to the Attorney General, and the DOT received the summons and complaint and placed them in the hands of its counsel.[1] Counsel thereafter acknowledged that the summons and complaint had been received, and counsel never

received any indication that the action was not proceeding. Although we do not condone plaintiff's failure to provide service in accordance with the rules set forth in MCR 2.102, we conclude that actual notice was received under MCR 2.105(J)(3).

In view of our decision, we need not address the remaining issues raised on appeal.

Reversed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer

[1] Although not necessary to our decision, we observe that it appears from oral argument that the assistant attorney general who received the summons and complaint and wrote to plaintiff's counsel regarding an extension of time in which to file an answer is the designated agent for personal service.