

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TWENTY THREE THOUSAND AND SIXTY DOLLARS IN U.S. CURRENCY; 1988 HONDA ACCORD AND ALL CONTENTS, VIN #1HGCA5541JA096608; 1966 OLDSMOBILE CUTLASS AND ALL CONTENTS, VIN #338676M383395; ONE AMERITECH PAGER; ONE CENTURY CELLUNET PHONE; ONE RAM COMMUNICATIONS PAGER,

Defendants,

and

JASON DUVALL CAGE,

Claimant-Appellant.

UNPUBLISHED
October 15, 1996

No. 185172
LC No. 94-002366-CZ

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington,* JJ.

PER CURIAM.

In this forfeiture action under the controlled substances act, MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.*, the claimant appeals as of right the circuit court order denying his motion to set aside a default judgment. We affirm.

A motion to set aside a default judgment, except when grounded on a lack of jurisdiction over a defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1). The trial court's decision on whether to set aside the default judgment will not be disturbed on appeal absent an abuse of discretion. *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1992).

In the present case, the trial court correctly ruled that it did not need personal jurisdiction over the claimant. Because forfeiture proceedings are in rem proceedings, it is possession of the subject matter of the action that brings the res within the reach of legal process. *In re Forfeiture of \$28,088*, 172 Mich App 200, 203; 431 NW2d 437 (1988). Hence, we reject the claimant's argument that this case presents a dispute as to personal jurisdiction.

Further, having considered the claimant's arguments regarding the adequacy of the notice afforded to him in this case, we find that the claimant has failed to demonstrate good cause sufficient to warrant setting aside the default judgment. *Gavulic, supra*, pp 24-25. When evaluating the adequacy of notice, a court determines the notifying party's knowledge of the likely effectiveness of notice from the moment at which notice is sent. *In re Forfeiture of \$19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995). Here, there was evidence that the Kent County Prosecutor refiled this case in June of 1994 after the process server was unable to serve the claimant with a complaint for forfeiture by certified mail at either the Charlesgate or Watkins addresses. Although the efforts made by the process server and a detective after June of 1994 did not include attempted mail or personal service at the Charlesgate address, in light of their knowledge on the ineffectiveness of service at the Charlesgate address, the investigation conducted regarding the Watkins address, and the attempted mail and personal service at the Watkins address, the trial court did not err in finding notice adequate to meet constitutional standards. See *Krueger v Williams*, 410 Mich 144; 300 NW2d 910 (1981); *Ridenour v Bay Co*, 366 Mich 225; 114 NW2d 172 (1962); *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669; 413 NW2d 474 (1987). Notice by publication is sufficient to satisfy constitutional due process requirements when, under the circumstances, it is not reasonably possible or practical to provide more adequate notice. *Wortelboer v Benzie Co*, 212 Mich App 208, 218; 537 NW2d 603 (1995). See also MCR 2.105; MCR 2.106.

Having failed to demonstrate a defect in notice or the existence of good cause for setting aside the default judgment, the claimant has not established a basis for disturbing the trial court's denial of the motion to set side the default judgment. We express no opinion on whether a meritorious defense was shown.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ Thomas L. Ludington