

STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH M. HUNT and JAN M. HUNT,

Plaintiffs-Appellants,

v

MICHAEL BJELICA,

Defendant-Appellee.

UNPUBLISHED

December 13, 1996

No. 185379

Cass County

LC No. 93-000025-NO

Before: Sawyer, P.J., and Markman and H.A. Koselka,* JJ.

PER CURIAM.

Plaintiffs filed this personal injury action on January 12, 1993. However, plaintiffs had some difficulty in locating defendant. Eventually, plaintiffs obtained an address for defendant in Florida. However, the local sheriff was unable to serve defendant; apparently, he no longer lived at that address. Plaintiffs obtained a post office box address for defendant in Florida. A copy of the summons and complaint was sent to that address, but was returned unclaimed. Thereafter, plaintiffs obtained an order allowing for substituted service by publication.

Publication was not completed until more than one year after the filing of the complaint. Accordingly, the trial court granted defendant's motion for summary disposition based upon the failure to achieve service of process within one year. Plaintiffs' only argument on appeal is that service was adequate and, therefore, the trial court erred in dismissing the action. We disagree.

First, plaintiffs argue that service was adequate because the insurance carrier was served. In support of their position, plaintiffs rely upon *Hayden v Gokenbach*, 179 Mich App 594; 446 NW2d 332 (1989). Plaintiffs' reliance, however, is misplaced because they overlook the fact that in *Hayden*, the substituted service was ordered by the trial court. Substituted service is certainly allowable, if ordered by the trial court. See MCR 2.105(I). In the case at bar, plaintiffs did not obtain an order from the trial court permitting substituted service on the insurance carrier. Accordingly, plaintiffs cannot rely on service on the insurance carrier.

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

Next, plaintiffs argue that defendant should not be able to argue the lack of service because he avoided service by refusing the delivery of the express mail to his post office box. However, the notation by the postal service is that the mail was returned unclaimed, not refused. This is consistent with defendant's testimony at deposition that he had been traveling at the time and that by the time he received the notice that the overnight package was waiting for him and was able to pick it up at the post office, the post office had already returned it as unclaimed.

Finally, plaintiffs claim that substituted service was obtained by publication. The trial court did, in fact, approve of service by publication. However, MCR 2.106(D)(1) requires publication once a week for at least three consecutive weeks to achieve service by publication. The third publication did not occur until January 16, 1994, more than one year after the filing of the complaint. Under MCR 2.102(D), extension of the time for service can only be made up until one year after the filing of the complaint and, under MCR 2.102(E), an action is deemed dismissed if the defendant is not served within that one-year time period. Accordingly, substituted service had to have been completed by January 12, 1994. It was not. Therefore, the substituted service was ineffective and the trial court correctly dismissed the action.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer

/s/ Stephen J. Markman

/s/ Harvey A. Koselka