

STATE OF MICHIGAN
COURT OF APPEALS

LETICIA N. H. LYDE,

Plaintiff-Appellee,

v

AVERY D. LYDE,

Defendant-Appellant.

UNPUBLISHED

March 17, 2011

No. 294607

Wayne Circuit Court

LC No. 08-110807-DM

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

SHAPIRO, P.J. (*concurring*).

I agree with the majority's decision to affirm, but write separately to address the issue of notice.

Defendant has never alleged a defect in the service of the summons and complaint and certainly acted with awareness of the proceedings. Indeed, defendant's challenge to jurisdiction acknowledged both plaintiff's right to seek a divorce "as a Michigan resident" and that their minor child's home state was Michigan under the Uniform Child Custody Jurisdiction Act (UCCJA). Defendant's sole argument on appeal for setting aside the default judgment is that he "did not receive proper notice of the motion for entry of default judgment," thereby precluding him from the opportunity to defend his interests. The record reveals otherwise.

On September 30, 2008, plaintiff's counsel filed a proof of service certifying that copies of the motion for entry of judgment and motion to waive six-month waiting period, as well as the re-notice of hearing, scheduling the motion hearing for October 20, 2008, were mailed to defendant on September 22, 2008. The address on the proof of service shows the proper spelling for defendant's street address as well as the correct zip code, and is the same address listed in the judgment of divorce, which defendant concedes on appeal is "the correct address." Because service is complete upon mailing, MCR 2.107(C)((3), and mailing creates a presumption¹ that

¹ Although this presumption may be rebutted, defendant made no attempt to do so before the trial court. Defendant's attempt to do so now, by filing an affidavit with this Court, is an improper expansion of the record. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d

the documents were received, see *Crawford v Michigan*, 208 Mich App 117, 121; 527 NW2d 30 (1994), plaintiff provided defendant with 30 days' notice—substantially more than the nine days required under MCR 2.119(C). I conclude that plaintiff did all that was required under the rules to provide notice to defendant.

/s/ Douglas B. Shapiro

783 (2002) (“This Court’s review is limited to the record established by the trial court, and a party may not expand the record on appeal.”). Even if I were to consider this evidence, I would conclude that defendant’s bare allegation that the motion and notice of hearing were not received—although they were mailed to the correct address, which was the same address to which other documents were mailed and received—seems entirely too convenient and self-serving, and lacks credibility.