

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

ERIE INSURANCE COMPANY	:	CASE NO. 09-CV-00139
	:	
Plaintiff,	:	
	:	
vs.	:	JONATHAN P. HEIN, JUDGE
	:	
RIGOBERTO VENTURA, et. al.	:	
	:	
Defendants.	:	JUDGMENT ENTRY – Denying Default Judgment as requested by Plaintiff

This matter came before the Court upon the motion of the Plaintiff as filed September 2, 2009 which requests that a default judgment be granted against Rigoberto Ventura, as permitted by Civil Rule 55.

The pleadings indicate that the complaint was filed April 17, 2009. In the absence of a specific request, certified mail delivery of the summons was attempted by the Clerk of Courts, pursuant to Civil Rule 4(A) and (B), with the Defendant’s address listed in Dayton, Ohio. However, the post office returned the summons and indicated that delivery was attempted but that the Defendant was not known and that the post office was unable to forward the summons. Thereafter, counsel for Plaintiff filed a request for service of process upon the Ohio Secretary of State as permitted by R.C. 2703.20. This section, in its pertinent part, provides as follows:

2703.20 Service of process upon nonresident owners or operators of motor vehicles.
“Any nonresident of this state, being the operator or owner of any motor vehicle, who accepts the privilege extended by the laws of this state to nonresident operators and owners, of operating a motor vehicle or of having the same operated, within this state, or

any resident of this state, being the licensed operator or owner of any motor vehicle under the laws of this state, who subsequently becomes a nonresident or conceals his whereabouts, by such acceptance or licensure and by the operation of such motor vehicle within this state makes the secretary of state of the state of Ohio his agent for the service of process in any civil suit or proceeding instituted in the courts of this state against such operator or owner of such motor vehicle, arising out of, or by reason of, any accident or collision occurring within this state in which such motor vehicle is involved. Such appointment shall be irrevocable and binding upon the executor or administrator of such nonresident operator or owner.

Based on the holding in *Anson v. Tyree* (1986), 22 Ohio St.3d 223, the Court notes that R.C. 2703.20 has been found to be a “special statutory proceeding” such that its provisions need not comply with methods for service of process as established by the Rules of Civil Procedure. [See Civil Rule 4.4(A).] However, the trial court is charged with the duty to determine the factual circumstances of whether this statute applies. More particularly, the Court must determine whether any of the three circumstances described in R.C.2703.20 exists: (1) the Defendant was a resident who now is a non-resident, (2) the Defendant was always a non-resident, or (3) the Defendant has concealed himself. *Anson, supra.* at 226.

This duty upon the trial court is apparently to accomplish the purposes described in *Regional Airport Authority v. Swinehart* (1980), 62 Ohio St.2d 403, which relied on federal jurisprudence stated in *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane* at 314.

The Ohio Supreme Court then enunciated:

“So long as service is ‘reasonably calculated’ to reach interested parties, then the service is constitutionally sound. Accordingly, it is not necessary that service be attempted through the most likely means of success - ordinarily residence service; it is sufficient that the method adopted be “reasonably calculated” to reach its intended recipient. We believe therefore that certified mail service sent to a business address can comport with due process if the circumstances are such that successful notification could be reasonably anticipated.

“This position does not reflect a relaxed adherence to due process rights. Indeed, we look suspiciously at any service attempted by means falling short of that most likely to achieve success. * * *

Finally, the *Anson* Court exhorted the courts to "examine each case upon its particular facts to determine if notice was reasonably calculated to reach the interested party." *Id.* at 407.

This Court finds that the record is insufficient to determine whether Plaintiff properly invoked the provisions of R.C. 2703.20. What efforts were undertaken to locate Mr. Ventura via deposition of the co-defendant, or via internet research, or search of other public records? Does the post office have any forwarding order that had expired prior to attempted delivery? Was Mr. Ventura a licensed driver in Ohio or another state such that public records may provide his current location, or clues to unlocking his current location? Is there any reason to believe that Mr. Ventura moved to avoid responsibility for his conduct (i.e. to avoid service of process), such as moving immediately after the motor vehicle collision, or after demand for payment was made by Plaintiff?

For the above reasons, the Court defers its ruling on Plaintiff's pending motion for default judgment, pending submission of facts in support of service of process via R.C. 2703.20.

AND IT IS SO ORDERED.

JONATHAN P. HEIN, Judge

cc: Matthew Warner, Attorney for Plaintiff (via fax)
Anne Keeton, Attorney for Defendant Baker (via fax)