

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IGOR TSYGANSKIY : CIVIL ACTION
 :
 v. :
 :
 KRISTA & WILLIAM BEATTY, H/W : NO. 97-7249

MEMORANDUM AND ORDER

HUTTON, J.

February 27, 1998

Presently before this Court is the Petition of Plaintiff Igor Tsyganskiy for Alternative Service of Complaint and Extension of Time to Serve Complaint (Docket No. 3). For the reasons stated below, the plaintiff's Motion is **GRANTED in part and DENIED in part.**

I. BACKGROUND

This action for personal injuries sustained in an automobile accident in New Jersey was commenced on November 26, 1997, when the plaintiff filed his complaint. According to the affidavit submitted by plaintiff's counsel, the plaintiff has been unable to serve the defendants at their last known address. Thus, the plaintiff now asks this court for leave to serve notice via "U.S. Mail, First Class, postage pre-paid, Certified Mail and by posting the premises."

II. DISCUSSION

Federal Rule of Civil Procedure 4(e) allows service upon an individual "pursuant to the law of the state in which the

district court is located." In Pennsylvania, service must be made by a sheriff, or, in certain actions and in Philadelphia County, by a competent adult who is not a party to the action. Pa. R. Civ. P. 400 & 400.1.

Rule 430(a) of the Pennsylvania Rules of Civil Procedure provides that:

If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

"A sheriff's return of 'not found' or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment." Pa. R. Civ. P. 403(a) Note (citing Gonzales v. Polis, 357 A.2d 580 (Pa. Super. Ct. 1976)). Instead, Rule 430(a) requires that the plaintiff make a "good faith effort" to locate a defendant's correct address. Id. (citing Adoption of Walker, 360 A.2d 603 (Pa. 1976)).

The Note to Rule 403(a) provides examples of a "good faith effort:"

An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, and (3) examinations of local telephone directories,

voter registration records, local tax records, and motor vehicle records.

"While by no means exhaustive, this Note is at least indicative of the types of procedures contemplated by the legislature when enacting Rule 430." Deer Park Lumber, Inc. v. Major, 559 A.2d 941, 946 (Pa. Super. Ct. 1989). Under Rule 430, "more than a mere paper search is required." Id.¹

Accordingly, a successful Motion for Alternative Service requires at least two elements: 1) an unsuccessful attempt to properly serve the defendant; and 2) a good faith effort to locate the defendant. In the instant matter, the plaintiff has not shown that he has attempted to properly serve the defendant.

Rule 430(a) requires that the plaintiff attempt to make service "under the applicable rule." Pa. R. Civ. P. 430(a). Service within Philadelphia County may be made by the sheriff or by a competent adult who is not a party to the action. Pa. R. Civ. P. 400.1(a)(1) & (b). In any other county, "original process shall be served . . . only by the sheriff." Pa. R. Civ. P. 400(a); but see Pa. R. Civ. P. 400(b) (providing exceptions in certain actions). To meet this first element, the plaintiff states that the "Process Server has been unable to serve Krista

1. "The Note to Rule 430 indicates that inquiries be made of a defendant's relatives, friends, and employers. However, this assumes knowledge of such individuals on the part of the plaintiff or access to a source leading to the disclosure of such persons. No such awareness has been ascribed to the plaintiff." Otterson v. Jones, 690 A.2d 1166, 1168 n.4 (Pa. Super Ct. 1997).

Beatty and William Beatty at 17 Argyle Avenue, Oaks, PA, 19456," the defendants last known address. Pl.'s Pet. ¶ 3. This address is located in Montgomery County, Pennsylvania. Accordingly, process must be "served . . . only by the sheriff." Pa. R. Civ. P. 400(a).

Where process is served outside Philadelphia County "by a private process server, not the sheriff," and where the plaintiff failed to forward the process to the sheriff of the appropriate county, service is invalid. Dubrey v. Izaguirre, 685 A.2d 1391, 1394 (Pa. Super. Ct. 1996). It appears that the plaintiff used a private process server; moreover, the petition does not reflect that the process was forwarded to the sheriff of Montgomery County. Thus, the plaintiff's petition must be denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 27th day of February, 1998, upon consideration of the Petition of Plaintiff Igor Tsyganskiy for Alternative Service of Complaint and Extension of Time to Serve Complaint (Docket No. 3), IT IS HEREBY ORDERED that plaintiff's Motion is **GRANTED in part and DENIED in part.**

IT IS FURTHER ORDERED THAT:

(1) The plaintiff's Petition for Alternative Service is **DENIED**; and

(2) The plaintiff **SHALL** serve the defendants on or before April 20, 1998.

BY THE COURT:

HERBERT J. HUTTON, J.