

FILED IN THE COURT OF COMMON PLEAS

2017 APR 11 P 3:39

LAKE COUNTY, OHIO

MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

BRYAN ANTHONY REO

Plaintiff,

vs.

MARTIN LINDSTEDT, et al.

Defendants.

CASE NO. 15 CV 001590

OPINION & JOURNAL ENTRY

April 7, 2017

This matter is presented on the February 7, 2017 motion of plaintiff Bryan Anthony Reo to dismiss all counter-claimants upon whom service was not obtained.

Plaintiff Reo filed an action against defendants Martin Lindstedt alleging claims for defamation, false light and invasion of privacy. Defendant Lindstedt filed an answer and counterclaims on October 26, 2015. On November 6, 2015, defendant Lindstedt refiled his answer and counterclaim along with instructions to the clerk of court to serve these six purported counter-claimants: William Raymond Finck, Melissa Epperson, John Edward Britton, Clifton A. Emahiser, William Shawn DeClue, Joseph November and Anthony D. Reo. From the docket it appears that service was obtained on Finck, Epperson, Britton, Emahiser and DeClue. Service was not perfected on November and Anthony Reo.

Thereafter, on December 23, 2015, the answer and counterclaims of defendant Lindstedt was stricken and defendant Lindstedt was granted leave to file a pleading conforming to the Ohio Rules of Civil Procedure by January 6, 2016. Defendant Lindstedt filed an amended answer and counterclaim with the clerk of court on January 7, 2016. Based on the attached certificate of service, copies were sent by ordinary mail to, among others, Reo, Anthony Reo, Finck and Epperson.¹

¹ The certificate of service shows ordinary mail service was also made upon the Lake County Clerk of Court, the Ohio Attorney General Mike DeWine and the Office of Disciplinary Counsel.

Civ.R. 3(A) states a civil action is commenced by filing a complaint and obtaining service within “one year from such filing upon a named defendant * * *.” Here, defendant Lindstedt failed to perfect Civ.R. 4 service of his causes of action against November within the year provided by Civ.R. 3(A) and any claims against November were never commenced.

In addition, service was not perfected by defendant Lindstedt against Anthony Reo within the year of filing of the claim, which in this case was January 7, 2017, as proscribed by Civ.R. 3(A). However, defendant Lindstedt did send instructions to the clerk of court on January 10, 2017 to have the Lake County Sheriff perfect residence serve on Anthony Reo at 7143 Rippling Brook Lane, Mentor, Ohio . This attempt proved unsuccessful. Defendant Lindstedt thereafter sent instructions to the clerk of court on February 27, 2017 again requesting unspecified sheriff’s service on Anthony Reo. This too was unsuccessful.

By sending in a request for service on January 10, 2017 beyond the year proscribed in Civ.R. 3(A), defendant Lindstedt in essence dismissed and refiled his claims against Anthony Reo. As the Ohio Supreme Court has held,

“[w]hen a plaintiff files an instruction for service of a complaint that was filed more than a year prior, the instruction, by operation of law, is a notice of dismissal of the claims, and if the plaintiff had previously filed a notice dismissing a complaint making the same claim, the instruction, by operation of law, is a second notice of dismissal, resulting in dismissal with prejudice of the claims. (*Goolsby v. Anderson Concrete Corp.* (1991), 61 Ohio St3d 549, 575 N.E.2d 801, and *Olynky v. Scoles*, 114 Ohio St3d 56, 2007-Ohio-2878, 868 N.E.2d 254 construed and applied.)”

Sisk & Assoc.. Inc. v. Committee to Elect Timothy Grendell, 123 Ohio St.3d 447, 2009-Ohio-5591, 917 N.E. 2d 271, syllabus. Given that a request for service was made past the one year anniversary of the claim’s filing, that effectuated a dismissal and refiling of the claim against Anthony Reo, there exists no present basis for the court to dismiss the claims attempted to be asserted in the amended complaint against defendant Anthony Reo based on Civ.R. 3(A).

Defendant Lindstedt’s pleading also references an “intent to Joinder [sic] additional

Counter-defendants”² With the exception of Anthony Reo, defendant Lindstedt never provided instructions the clerk of court to perfect Civ.R. 4 service of the amended pleading on any of these individuals or institutions identified as “Counter-defendants.”

An examination of the certificate of service appended to the January 2016 pleading shows that defendant Lindstedt sent copies by ordinary mail to plaintiff Reo, Anthony Reo, Finck and Epperson.³ The ordinary mail service of this pleading was proper as to plaintiff Reo pursuant to Civ.R. 5(A). As for Finck and Epperson, each were served by certified mail on the November 2015 with the original counterclaim and each received service pursuant to Civ.R. 5(A) on the January 2016 of the amended pleading. No substantive differences in the claims or allegations exist between the two filings. Given this, the court finds that Civ.R. 5(A) service of the January 2016 pleading on both Finck and Epperson was proper.

As for Britton, Emahiser and DeClue, each was served by certified mail with the original counterclaim and each was in default of pleading when defendant Lindstedt was ordered to file an amended pleading that conformed to the Ohio Civil Rules of Procedure. Again the allegations and claims against Britton, Emahiser and DeClue were materially unchanged between the October 2015 filing and the January 2016 filing. Since these three parties were in default, defendant Lindstedt was not required under Civ.R 5(A) to reserve them. These claims remain pending.

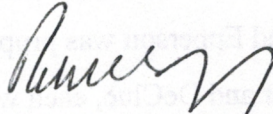
As for defendants “Pastor” Eli James, a.k.a. Joseph Kutz, a.k.a. Joseph Putz, a.k.a. Joseph November, Mark Downey, Deborah Downey, “Brian Reo’s mother”, Matthew Ott, Victor

² The amended pleading enumerates the following as additional defendants: “including but limited to” Anthony D. Reo, William Raymond Finck, “Pastor” Eli James, a.k.a. Joseph Kutz, a.k.a. Joseph Putz, a.k.a. Joseph November, Mark Downey and around thirty or more “counter-defendants and co-conspirators who have worked with Bryan Reo. The latter identified in the pleading are Deborah Downey, “Brian Reo’s mother”, Matthew Ott, Victor Switzer, Greg Howard, Dan Johns, Jeremiah Johns, Jeromy John Visser, Robert Hancock, Mike Delaney, William Shawn DeClue, Clifton Emahiser, Martin 41, Allen Rouse, Meggie Butts, Ezra Pound, Sven Longshanks, Howard McHugh, Daryl Menont Jenkins, Mark Potok, Southern Poverty Law Center, Paul Fromm and various unidentified John and Jane Does. Defendant Lindstedt lists these current co-conspirators William Finck and Melissa Epperson.

Switzer, Greg Howard, Dan Johns, Jeremiah Johns, Jeromy John Visser, Robert Hancock, Mike Delaney, William Shawn DeClue, Clifton Emahiser, Martin 41, Allen Rouse, Meggie Butts, Ezra Pound, Sven Longshanks, Howard McHugh, Daryl Menont Jenkins, Mark Potok, Southern Poverty Law Center, Paul Fromm and any unidentified John and Jane Does, the court finds that neither the October 2015 pleading nor the January 2016 pleading were served in the manner provided by Civ.R. 4 through Civ.R. 4.6 as to each of these defendants. Absent such, no cause of action was commenced as to these defendants and pursuant to Civ.R. 4(E), all claims against each of these defendants are dismissed without prejudice.

Based on the above, the motion of plaintiff Reo is moot and the same is denied.

IT IS SO ORDERED.



RICHARD L. COLLINS, JR.

Judge of the Court of Common Pleas

Copies:

Brett A. Klimkowski, Esq.
Pastor Martin Lindstedt, Defendant
William Raymond Finck, Defendant
Melissa Epperson, a.k.a. Finck, Defendant
John Edward Britton, Defendant
Clifton A. Emahiser, Defendant
William Shawn DeClue, Defendant