

APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

Statia v. Orlet

2023 IL App (5th) 220731 · No. No. 5-22-0731 · Decided November 20, 2023

SUMMARY

The Illinois Appellate Court, Fifth District, held that an out-of-state process server properly served Christine Orlet by leaving the summons near her screen door after identifying her and determining that she was evading service. The court concluded that the return of service and testimony established personal jurisdiction and that the trial court improperly vacated Harry Statia’s default judgment under section 2-1401. The court reversed and remanded, finding Statia’s remaining appellate issue moot.

CASE DETAILS

COURT	Appellate Court of Illinois, Fifth District
WRITING FOR THE COURT	Justice McHaney; Justice Moore; Justice Vaughan
JURISDICTION	Illinois
DECIDED	November 20, 2023
DOCKET	No. 5-22-0731
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Statia appealed the circuit court's order granting Orlet's section 2-1401 petition, vacating Statia's default judgment, and denying Statia's motion to dismiss Orlet's petition.
STANDARD OF REVIEW	De novo review applies to an order granting a section 2-1401 petition on the ground that the judgment is void.
PRECEDENTIAL VALUE	Published Illinois Appellate Court opinion
PARTIES	Harry Statia v. Christine Orlet

TOPICS

- service of process
- personal jurisdiction
- default judgment
- civil procedure
- appellate procedure

PRACTICE AREAS

- Civil procedure
- Appellate procedure
- Real estate litigation
- Evidence

QUESTIONS PRESENTED

1. Whether the Oregon process server's act of leaving the summons and petition outside Orlet's screen door constituted valid personal service under Illinois law.
2. Whether the process server's nonnotarized return of service affidavit complied with the affidavit and certification requirements for out-of-state service.
3. Whether the circuit court obtained personal jurisdiction over Orlet and therefore erred in vacating the default judgment as void.
4. Whether Statia's challenge to the denial of his motion to dismiss Orlet's section 2-1401 petition remained justiciable after reversal of the order vacating the default judgment.

HOLDINGS

1. Personal service may be accomplished by placing the summons and related papers in the general vicinity of an unwilling defendant and announcing the nature of the papers; physical placement directly in the defendant's hand is not required. Under the circumstances, leaving the papers just outside Orlet's screen door was sufficient personal service.
2. The return of service complied with sections 2-203 and 2-208 because it identified the person served, stated the place, date, time, and manner of service, and used a certification substantially similar to the certification required by section 1-109; notarization was not required.
3. A return of service is prima facie evidence of proper service and may be impeached only by clear and convincing evidence, including affirmative evidence; Orlet's assertion that the documents were left on her porch did not rebut the presumption.
4. Statia's challenge to the denial of his motion to dismiss Orlet's section 2-1401 petition was moot because reversal of the order granting the petition eliminated the basis for that issue.

KEY QUOTATIONS

“no requirement exists that the process server physically place the papers in defendant’s hand.” (§ 20)

“general method” of placing the papers “in the general vicinity of the person to be served and announcing the nature of the papers.” (§ 20)

“In Illinois, the process server’s return affidavit is prima facie evidence of proper service, and the affidavit of service should not be set aside unless impeached by ‘clear and convincing evidence.’” (§ 25)

FACTUAL BACKGROUND

Statia purchased a residential property from Orlet and later discovered multiple alleged defects and undisclosed problems. After mediation failed, the parties arbitrated the dispute, and the arbitrator awarded Statia \$14,295. Statia petitioned to confirm the award, and an Oregon process server attempted to serve Orlet after learning she had moved from Illinois; the server ultimately left the summons and petition outside Orlet's screen door after identifying her through prior telephone communications, online photographs, and an in-person interaction. Orlet did not respond, a default judgment was entered, and she later sought to vacate it for lack of service.

PROCEDURAL HISTORY

Statia petitioned to confirm an arbitration award arising from a residential real-estate dispute. After Orlet did not respond, the circuit court entered a default judgment. Orlet later moved under section 2-1401 of the Illinois Code of Civil Procedure to vacate the judgment, arguing that she had not been properly served and that the court lacked personal jurisdiction. Following an evidentiary hearing, the circuit court vacated the default judgment; the appellate court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the circuit court of St. Clair County for further proceedings after reversal of the order vacating the default judgment.

CASES CITED

- *Cunningham v. Miller's General Insurance Co.*, 188 Ill. App. 3d 689, 693 (1989)
- *Manning v. Meier*, 114 Ill. App. 3d 835, 840 (1983)
- *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986)
- *Mitchell v. Seidler*, 68 Ill. App. 3d 478, 482 (1979)
- *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 716 (2010)
- *People v. Vincent*, 226 Ill. 2d 1, 18 (2007)
- *Cavanaugh v. Lansing Municipal Airport*, 288 Ill. App. 3d 239, 246 (1997)
- *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 13
- *In re Marriage of Kohl*, 334 Ill. App. 3d 867, 880 (2002)
- *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103-04 (2002)
- *Barnard v. Michael*, 392 Ill. 130, 135 (1945)
- *Forest Preserve District of Cook County v. Industrial Comm'n*, 305 Ill. App. 3d 657, 663-64 (1999)
- *Miller v. Town of Cicero*, 225 Ill. App. 3d 105, 110 (1992)
- *Walker v. Ware*, 2013 IL App (1st) 122364, ¶ 21
- *Dec v. Manning*, 248 Ill. App. 3d 341, 348 (1993)
- *In re Jafree*, 93 Ill. 2d 450, 453, 455 (1982)
- *Freund Equipment, Inc. v. Fox*, 301 Ill. App. 3d 163, 168 (1998)
- *Currier v. Baldrige*, 914 F.2d 993, 995 (7th Cir. 1990)
- *Hatmaker v. Hatmaker*, 337 Ill. App. 175, 181-82 (1949)
- *In re Marriage of Lewis*, 213 Ill. App. 3d 1044, 1047 (1991)
- *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Manley*, 2015 IL App (1st) 143089, ¶ 37
- *Paul v. Ware*, 258 Ill. App. 3d 614, 617-18 (1994)

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