

SUPREME COURT OF SOUTH DAKOTA

Darrell D. Spade and Michelle Spade v. Matthew Branum

Spade v. Branum, 643 N.W.2d 765 (S.D. 2002) · No. No. 22051 · Decided April 17, 2002

SUMMARY

The Supreme Court of South Dakota held that service by publication requires strict compliance with statutory requirements, including obtaining a court order before publication. The court affirmed dismissal of the plaintiffs’ personal injury action because they published the summons without first obtaining such an order, and actual knowledge or substantial compliance did not cure the defective service.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	KONENKAMP, Justice; SABERS, Justice; AMUNDSON, Justice; GORS, Acting Justice; GILBERTSON, Chief Justice; ZINTER, Justice
JURISDICTION	South Dakota
DECIDED	April 17, 2002
DOCKET	No. 22051
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a circuit court order dismissing their personal injury action for insufficient service of process after they published the summons without first obtaining a court order authorizing service by publication.
STANDARD OF REVIEW	The dismissal order and issues concerning the validity of service of process were reviewed de novo as questions of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Darrell D. Spade, Michelle Spade v. Matthew Branum

TOPICS

- service of process
- civil procedure
- statutory interpretation
- appellate procedure
- due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs could validly serve a summons by publication without first obtaining a court order authorizing publication.
2. Whether substantial compliance, actual knowledge, or estoppel could excuse the failure to obtain the required court order.

HOLDINGS

1. Service by publication requires strict compliance with the governing statutes, including a prior court order finding the statutory prerequisites satisfied; publishing the summons without such an order is insufficient as a matter of law.
2. Substantial compliance, the defendant's actual knowledge of the impending lawsuit, and alleged conduct by the defendant or his attorney do not cure the failure to obtain the required court order before service by publication.

KEY QUOTATIONS

"We affirm because service by publication requires strict compliance with statutory mandates, and a court order is an indispensable prerequisite to proper service by publication." (643 N.W.2d at 766)

"Because the Spades did not seek a court order allowing service by publication, their service upon Branum by publication was insufficient as a matter of law." (643 N.W.2d at 770)

FACTUAL BACKGROUND

The Spades brought personal injury and property-damage claims arising from a December 24, 1997 automobile accident. They filed suit on December 13, 2000, and delivered the summons and complaint to the sheriff for personal service on Branum, but the sheriff was unable to locate him. The Spades then published the summons in the Sioux Falls Argus Leader from February 6 through February 27, 2001, without first seeking or obtaining a court order authorizing publication.

PROCEDURAL HISTORY

The Spades filed a summons and complaint shortly before the limitations period expired and attempted personal service on Branum. After unsuccessful attempts, they published the summons without obtaining a court order. Branum moved to dismiss for insufficient service; the circuit court granted the motion, dismissing the personal injury claim with prejudice because the limitations period had expired and dismissing the property-damage claim without prejudice. The Supreme Court of South Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Schroeder v. City of New York, 371 U.S. 208, 212, 83 S. Ct. 279, 282, 9 L. Ed. 2d 255, 259 (1962)
- Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950)
- Wagner v. Truesdell, 1998 SD 9, 574 N.W.2d 627
- Lekanidis v. Bendetti, 2000 SD 86, 613 N.W.2d 542
- Openhowski v. Mahone, 2000 SD 76, 612 N.W.2d 579
- Jennings v. Montenegro, 792 So. 2d 1258 (Fla. Dist. Ct. App. 2001)
- Lewis v. Ramirez, 49 S.W.3d 561 (Tex. App. 2001)
- Mugavero v. Kenzler, 317 Ill. App. 3d 162, 251 Ill. Dec. 46, 739 N.E.2d 979 (2000)

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