

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Souza v. Thurston

No. 19-4002, United States Court of Appeals for the Tenth Circuit (July 6, 2020)

SUMMARY

The Tenth Circuit reversed the district court's denial of a motion to compel compliance with a subpoena, holding that the district court's factual finding—that the petitioner had the respondent's residential address when he served the subpoena by certified mail—was clearly erroneous and unsupported by the record. The court found this error constituted an abuse of discretion, as the district court relied on it to conclude that certified mail did not reasonably ensure receipt under Federal Rule of Civil Procedure 45. The Tenth Circuit declined to address alternative grounds for affirmance (whether Rule 45 permits service by certified mail, whether the subpoena violated the 100-mile rule, or whether the respondent received it), leaving those issues for the district court on remand.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Timothy M. Tymkovich; Bobby R. Baldock; Jerome A. Holmes
JURISDICTION	Federal
DECIDED	July 6, 2020
DOCKET	19-4002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from district court order denying motion to compel compliance with subpoena and for contempt.
STANDARD OF REVIEW	Abuse of discretion; factual findings reviewed for clear error.
PRECEDENTIAL VALUE	unpublished
PARTIES	John Souza, in his capacity as custodian of Elevate, Inc. v. W. Wright Thurston

TOPICS

- civil procedure
- service of process
- discovery dispute
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in finding that Souza had Thurston's residential address at the time of mailing the subpoena.
2. Whether the district court abused its discretion in denying the motion to compel based on that finding.

HOLDINGS

1. The district court's factual finding that Souza had Thurston's residential address at the time he mailed the subpoena was clearly erroneous because it was unsupported by the record. The inference from the certificate of service was implausible, and there was record evidence suggesting otherwise.

KEY QUOTATIONS

“The subpoena was sent via certified mail to Mr. Thurston’s P.O. Box. It was eventually returned to sender marked ‘refused,’ with a hand-written notice date of October 27, 2017.” (3)

“The district court apparently inferred that Mr. Souza had the home address from the fact that it was listed on the certificate of service for his motion to compel compliance. But this inference strikes us as implausible because the motion to compel was filed over two months after the subpoena was mailed; therefore, the fact that Mr. Thurston’s address was on the certificate of service says nothing about whether Mr. Souza had the address at the time (two months earlier) when the subpoena was mailed.” (11-12)

FACTUAL BACKGROUND

John Souza, as custodian of Elevate, Inc., issued a subpoena to W. Wright Thurston, the former CEO, commanding production of documents in Atlanta, Georgia. The subpoena was sent via certified mail to Thurston's P.O. Box and was returned marked 'refused.' Souza filed a motion to compel compliance and for contempt in the District of Utah. Thurston claimed he never received the subpoena and argued that service by certified mail was improper and that the subpoena violated the 100-mile rule. The magistrate judge denied the motion, finding that service by certified mail was improper under the circumstances and that the subpoena was facially defective. The district court affirmed, holding that certified mail did not reasonably ensure receipt, based on findings that Souza had Thurston's residential address at the time of mailing and that Thurston never received the subpoena.

PROCEDURAL HISTORY

The district court denied the motion after finding that service by certified mail did not reasonably ensure receipt. Souza appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for additional proceedings consistent with the order and judgment, specifically to consider the remaining issues if necessary and appropriate.

CASES CITED

- EEOC v. Dillon Cos., Inc., 310 F.3d 1271 (10th Cir. 2002)
- United States v. Castorena-Jaime, 285 F.3d 916 (10th Cir. 2002)
- Boxer F2, L.P. v. Bronchick, 722 F. App'x 791 (10th Cir. 2018)
- Fisher v. Sw. Bell Tel. Co., 361 F. App'x 974 (10th Cir. 2010)
- Microsoft v. MBC Enters., 120 F. App'x 234 (10th Cir. 2004)
- Vallario v. Vandehey, 554 F.3d 1259 (10th Cir. 2009)
- Cartier v. Jackson, 59 F.3d 1046 (10th Cir. 1995)
- In re Bryan, 857 F.3d 1078 (10th Cir. 2017)
- Las Vegas Ice & Cold Storage Co. v. Far West Bank, Las Vegas Ice & Cold Storage Co. v. Far W. Bank, 893 F.2d 1182 (10th Cir. 1990)
- Aptive Envtl., LLC v. Town of Castle Rock, 959 F.3d 961 (10th Cir. 2020)
- Evers v. Regents of Univ. of Colo., 509 F.3d 1304 (10th Cir. 2007)
- Pac. Frontier v. Pleasant Grove City, 414 F.3d 1221 (10th Cir. 2005)
- Sabol v. Snyder, 524 F.2d 1009 (10th Cir. 1975)
- United States v. Gaines, 918 F.3d 793 (10th Cir. 2019)