

SUPREME COURT OF SOUTH DAKOTA

Carmon v. Rose

2011 S.D. 18 (2011) · No. #25730 · Decided April 27, 2011

SUMMARY

The South Dakota Supreme Court considered whether substitute service of process on the defendant's wife at a Kentucky address validly occurred under SDCL 15-6-4(e). The court held that the address was the defendant's dwelling house and that service was valid, giving the trial court jurisdiction to enter a default judgment. The court also held that the trial court did not abuse its discretion in refusing to set aside the default judgment.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Meierhenry, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Zinter, Justice; Severson, Justice
JURISDICTION	South Dakota
DECIDED	April 27, 2011
DOCKET	#25730
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rose appealed from the denial of his motion to set aside a default judgment entered against him after substitute service of process.
STANDARD OF REVIEW	The validity of service of process is reviewed de novo. The denial of a motion to vacate or obtain relief from a default judgment is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published and precedential South Dakota Supreme Court opinion
PARTIES	Brian Rose v. Gregory Carmon

TOPICS

service of process default judgment civil procedure appellate procedure oil and gas

PRACTICE AREAS

civil procedure appellate procedure commercial litigation oil and gas service of process

QUESTIONS PRESENTED

1. Whether substitute service of process was valid when the summons and complaint were left with the defendant's wife at an address the defendant claimed he no longer used as his dwelling house.
2. Whether the circuit court abused its discretion by refusing to set aside the default judgment for lack of actual notice and alleged good cause.

HOLDINGS

1. Substitute service was valid because the evidence established that 2504 Little Hills Lane was Rose's dwelling house when service was made and that the requirements of SDCL 15-6-4(e) were satisfied.
2. The circuit court did not abuse its discretion by denying Rose's motion to set aside the default judgment because Rose failed to make a sufficient showing of good cause.

KEY QUOTATIONS

“Further, “substitute service must be made in strict compliance with the [authorizing] statute to ensure that the defendant will receive notice of the action.” (¶ 2)

“Therefore we hold that substitute service was valid and that the trial court had jurisdiction to enter default judgment against Rose.” (¶ 7)

“Doubts should ordinarily be resolved in favor of setting aside a judgment by default so that the case can be tried on the merits.” (¶ 8)

FACTUAL BACKGROUND

Carmon alleged that Rose participated in an oil and gas investment scheme that defrauded him. On December 3, 2009, a process server left the summons and complaint with Rose's wife at 2504 Little Hills Lane in Louisville, Kentucky, under South Dakota's substitute-service statute. Rose claimed he had separated from his wife, no longer lived at that address, and did not learn of the action until a credit check revealed the default judgment. Evidence showed that Rose continued to use the address for business and banking purposes, while Carmon's investigation found no evidence connecting Rose to the alternative address he identified.

PROCEDURAL HISTORY

Carmon sued Rose and other defendants in Minnehaha County, South Dakota, alleging a conspiracy to defraud arising from an oil and gas investment scheme. Substitute service was made on Rose's wife at a Louisville, Kentucky, address. After Rose failed to plead, the circuit court entered a default judgment. Rose later moved to set aside the judgment, arguing that service was invalid and, alternatively, that good cause supported relief from default. The circuit court denied the motion, and the South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lekanidis v. Bendetti, 2000 S.D. 86, 613 N.W.2d 542
- Yankton Ethanol, Inc. v. Vironment, Inc., 1999 S.D. 42, 592 N.W.2d 596
- Edsill v. Schultz, 2002 S.D. 44, 643 N.W.2d 760
- Peters v. Barker & Little, Inc., 2009 S.D. 82, 772 N.W.2d 657
- Grajczyk v. Tasca, 2006 S.D. 55, 717 N.W.2d 624
- Johnson v. Bruflat, 45 S.D. 200, 186 N.W. 877 (1922)
- Upper Plains Contracting Inc. v. Pepsi Americas, 2003 S.D. 3, 656 N.W.2d 323
- Strutton v. SDG Macerich Props. LP, 2005 S.D. 44, 695 N.W.2d 242

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