

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Tom Persons, Geoffrey Chambers, Esq., & South Carolina Educational Credit for Exceptional Needs Children Fund,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2020-CP-36-00384

ORDER

RECEIVED

Oct 13 2023

SC Court of Appeals

A hearing was held on February 12, 2021 via the Judicial Branch's Virtual Courtroom. The Plaintiff appeared pro se. Defendant Chambers appeared pro se.

Defendant Chambers Motion to Dismiss: SCRCP 12(b)2, 12(b)4 and 12(b)5: Failure to Serve the Summons and Complaint and Lack of Jurisdiction

"A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a), SCRCP; see also S.C. Code § 15-3-20. "Copies of the original summons shall be served upon each defendant." Rule 4(a), SCRCP.

"The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend." White Oak Manor, Inc. v. Lexington Insurance Company, 407 S.C. 1, 8-9, 753 S.E.2d 537, 541 (2014) (quoting State v. Sanders, 118 S.C. 498, 502-03, 110 S.E. 808, 810 (1920)). "Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). "When a defendant is not properly served, 'the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void.'" Momani v. Van Surdam, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988) (quoting Wyman v. Hoover, 10 S.C. 135, 136 (1878)). "It is the

plaintiff's burden to show that the court has personal jurisdiction over the defendant.” Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005) (citing Jensen v. Doe, 292 S.C. 592, 594, 358 S.E.2d 148, 148 (Ct. App. 1987)).

An individual may be served “by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.” Rule 4(d)(1), SCRCPP. A corporation may be served “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Rule 4(d)(3), SCRCPP. “Service of a summons and complaint upon [an individual or corporation] may be made by . . . registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt.” Rule 4(d)(8), SCRCPP; see also Langley v. Graham, 322 S.C. 428, 430-31, 472 S.E.2d 259, 260-61 (Ct. App. 1996) (holding service ineffective where the defendant did not sign the return receipt and delivery was not restricted to the addressee only). “The person serving the process shall make proof of service thereof promptly and deliver it to the officer or person who issued same.” Rule 4(g), SCRCPP. “If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned.” Id. “The return along with the receipt or envelope and any other proof shall be promptly filed by the clerk with the pleadings and become part of the record.” Id.

Plaintiff failed to assert personal jurisdiction because the Summons was never served as of the hearing of Defendant Chambers’ motion to dismiss pursuant to Rule 12(b) SCRCPP.

The Plaintiff filed the Summons and Complaint in this action on September 11, 2020. Plaintiff served Defendants Connelly, Persons and Educational Credit for Exceptional Needs Children Fund within one week after filing the initial complaint. A month after other defendants were served, named Defendant Geoffrey Chambers submitted a letter requesting Plaintiff dismiss the lawsuit. Submission of this letter required an appearance in the electronic filing software. Plaintiff filed a motion to hold Defendant Chambers in default on November 30, 2020. On December 30, 2020 Defendant Chambers filed this Motion to Dismiss for failure to serve pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5).

Defendant Chambers also moved for dismissal under Rule 12(b)(3), 12(b)(6) and 12(b)(7) SCRPC. Defendant Chambers' supporting memo requested dismissal for failure to serve, failure to plead any facts sufficient to support any cognizable cause of action and immunity from suit afforded to actions undertaken in representation of a client in litigation.

Plaintiff Davis never mentions serving Defendant Chambers with the Summons and Complaint or Defendant Chambers ever accepting service. The Plaintiff alleges Defendant Chambers made an appearance associated with a letter filed with this Court and mailed to Plaintiff. The letter requested Plaintiff Davis dismiss this action and stated why it is frivolous. It did not accept service.

At the hearing Plaintiff Davis represented to the Court that he never served Defendant Chambers. The Court determined at that point that it did not have jurisdiction and could take no further action other than to dismiss. See Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). This Court lacked jurisdiction to consider Defendant Chambers' arguments that Plaintiff failed to plead facts sufficient to support any cognizable cause of action and immunity afforded to Defendant Chambers for his actions undertaken in the representation of a client in litigation.

Attempts to serve Defendant Chambers after the Court determined it lacked jurisdiction and could take no action other than dismissal are too late. The fate of this action against Defendant Chambers was sealed when the Plaintiff represented to this Court that he had never served Mr. Chambers.

Plaintiff's causes of action as to Defendant Geoffrey Chambers are hereby dismissed.

SO ORDERED.

DONALD B. HOCKER
CIRCUIT COURT JUDGE

Laurens, South Carolina
Date: 6/ /2021



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600384

Type: Order/Dismissal

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167