

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Jennifer Murphy, as Personal Representative )  
 of the Estate of Phyllis Gee, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 All Season’s Healthcare, LLC, All Seasons )  
 Healthcare, Inc., and TWG Polo Road, LLC )  
 d/b/a Mill Creek Manor, LLC f/k/a Amara )  
 Place at Columbia, )  
 )  
 Defendants. )  
 )

---

IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2023-CP-40-03086

**ORDER GRANTING  
 MOTION FOR SUMMARY JUDGMENT  
 ON BEHALF OF THE DEFENDANT,  
 ALL SEASONS HEALTHCARE, INC.**

**RECEIVED**  
**Oct 24 2024**  
**SC Court of Appeals**

This matter comes before the Court on April 17, 2024, on Defendant All Season’s Healthcare, Inc.’s Motion for Summary Judgment and Motion to Dismiss, filed March 12, 2024, pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and S.C. Code §15-79-125 and §15-36-100. The grounds for said Motion are that Defendant All Season’s Healthcare, Inc. was not properly served with the Notice of Intent to File Suit or Summons and Complaint pursuant to Rule 3 SCRCPP, that there was improper service pursuant to Rule 4 SCRCPP and that if this action were properly served, it is barred by the statute of limitations.

The pleadings, documents, and affidavits filed in this matter establish the following uncontested facts: All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. It provides nursing hospice care services to patients who have been deemed appropriate for end-of-life hospice care.

Its employees work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place but did provide hospice care to patients there.

At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc.

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff.

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. She requested that the Amara Place med tech administer medications, but they refused. Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt.

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. On or about June 12, 2023, the “Notice of Intent” action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. The return receipt was not signed by registered agent H. McCloy.

### **DISCUSSION**

Plaintiff failed to serve Complaint as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. Proper service by certified mail under SCRCF Rule 4(d)(8) is effected when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery **restricted to the addressee.**” Rule 4(d)(8) SCRCF. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation. In *Zanin*, the plaintiff attempted service by mail upon defendant ABP. *Zanin v. Carolina Specialty Products, Inc.*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff’s certified mailing was addressed to ABP’s owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a “D. Reilly.” *Id* at 1.

The Court in *Zanin* ruled that the plaintiff’s attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain

meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id.* The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

The present case is nearly identical to *Zanin*. Here, Plaintiff's filed Proof of Service for the Notice of Intent for the Greenwood County case dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." This return receipt, though marked for restricted delivery, is clearly not marked for restricted delivery *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Richland County Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. The affidavit of Elizabeth C. Moultrie confirms that counsel for Plaintiff did not restrict delivery to the addressee only.

Further, Defendant's registered agent Heather McCloy did not sign the return receipt, and Defendant does not know who signed the return receipts. The signature block only reads "ALL SEASONS." This occurred because Plaintiff did not serve either the Notice of Intent or the Summons and Complaint as required by Rule 4 and *Langley*; as a result, Defendant was never properly put on notice of Plaintiff's claims. The goal of Rules 3 and 4 of the South Carolina Rules of Civil Procedure, and service of process rules in general, is to require the plaintiff to provide sufficient notice to the defendant of what their claims are and the basis for those claims. Here, Plaintiff's failure to adhere to SCRCP Rule 4(d)(8) thwarted this goal, and Defendant would now suffer prejudice in having to defend claims served out of time due to Plaintiff's own error.

The Notice of Intent to File Suit must be served upon all named defendants in accordance

with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure. S.C. Code § 15-79-125(a). If a Summons and Complaint are not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing. Rule 3(a) SCRPC. Emailing process to an employee of a defendant is not sufficient service under the civil rules. *See Rule 4 SCRPC generally.*

Here, it is uncontested that the three-year statute of limitations ran on December 30, 2022. It is uncontested that Plaintiff filed their Notice of Intent to File Suit less than two months before the expiration of their statutory period in an improper county where no party was domiciled, and no events related to the allegations occurred. S.C. Code § 15-79-125(a) requires Plaintiff to file in a county in which venue would be proper for filing or initiating the civil action. This action was not filed in Richland County until June 12, 2023; 164 days after the running of the statute of limitations.

Also, since Plaintiff did not serve the Notice prior to December 30, 2022, Plaintiff was required to serve it within 120 days of filing; in this case, before April 29, 2023. Plaintiff filed her Richland County Summons and Complaint on June 13, 2023, and since the statute of limitations expired on December 30, 2022, Plaintiff had 120 days to serve this as well.

Plaintiff fails to show that any officer, managing or general agent, or any other agent authorized to receive service of process actually received and “signed” for the Complaint. Neither the Notice of Intent to File Suit nor the Summons and Complaint have been properly served on Defendant. Plaintiff, as the party asserting proper service, bears the burden of proving such proper service. Plaintiff asserts that Defendants must prove non-service; the Defendants have met this burden and have shown that there is no genuine issue of material fact that Defendant was not served in compliance with the South Carolina Rules of Civil Procedure.

Plaintiff failed to restrict delivery of their Notice of Intent to File Suit and Complaint to the addressee as shown by the return receipt, and thus created the scenario where no addressee listed on Plaintiff's initial service attempt, registered agent of Defendant, nor proper agent authorized to accept service on behalf of Defendant received any timely notice of Plaintiff's claims or filing. Plaintiff also cannot provide any evidence that the addressee herself ever received the mailed Notice of Intent or Summons and Complaint or wrote "ALL SEASONS" in the signature block due to failure to sufficiently restrict delivery. Plaintiff could have rectified the situation by hiring a process server when it became evident that Defendant was not properly served.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is GRANTED, and Plaintiff's claims are dismissed due to failure to comply with Rule 4(d)(8), and dismissal must be with prejudice as Plaintiff's claims are barred by the applicable statute of limitations.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Discovery is DENIED AS MOOT as a result of the Court's Dismissal of Plaintiff's action.

IT IS SO ORDERED.

---

Jocelyn Newman  
Chief Administrative Judge  
Fifth Judicial Circuit

April \_\_, 2024.



Richland Common Pleas

**Case Caption:** Jennifer Murphy , plaintiff, et al vs All Seasons Healthcare Llc ,  
defendant, et al

**Case Number:** 2023CP4003086

**Type:** Order/Summary Judgment

So Ordered

Jocelyn Newman