

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	Case No.: 2017-CP-08-2408
	)	
Delphine King,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
William C. Edwards and Blue Max	)	
Trucking, Inc.,	)	
Defendants.	)	

ORDER
RECEIVED
 MAY 31 2019
 SC Court of Appeals

This matter came before the Court on March 26, 2019 for a hearing on Defendant's motion to alter and/or amend judgment, Defendant's motion to set aside and/or void default judgment, and Plaintiff's motion to quash a subpoena issued by Defendant. Present before the Court were David Marshall for Plaintiff Delphine King, and Trey Thompson for Defendant William C. Edwards. After due deliberation, review of the motions and supporting documents, and hearing arguments of counsel, the Court denies Defendant's motions to alter, amend, or vacate the default judgment previously entered in this matter, and grants Plaintiff's motion to quash.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises from a motor vehicle accident that occurred on July 27, 2016. Plaintiff alleges a truck owned by Defendant Blue Max Trucking, Inc. and operated by William C. Edwards ("Edwards") attempted to pass Plaintiff's vehicle and collided with her vehicle, resulting in property damages and personal injuries. The Summons and Complaint in this action were filed on October 24, 2017. After unsuccessful attempts were made to obtain personal service on Defendant Edwards, the Court issued an Order of Publication on March 13, 2018. Defendant Edwards was served with the Summons and Complaint by publication and thereafter failed to answer or otherwise appear in this matter. An Order of Default was filed by the Court on July 20, 2018.

On August 29, 2018, the Court gave notice that a damages hearing would take place on September 10, 2018. On August 30, 2018, counsel for Plaintiff mailed correspondence to Defendant Edwards at his last known address, via United States Postal Service First Class Mail, notifying him of the September 10, 2018 damages hearing. The damages hearing went forward on September 10, 2018 as noticed. Defendant Edwards did not attend or make an appearance. On November 29, 2018, the Court entered a default judgment against Defendant Edwards in the amount of \$175,000.

On December 28, 2018, counsel for Defendant Edwards made an appearance and filed a motion to set aside and/or void the default judgment. On January 4, 2019, Defendant Edwards filed a motion to alter and/or amend the default judgment. Defendant's argument for both motions is the same: that the default judgment should be altered, amended, or vacated for lack of notice because notice of the damages hearing was sent to Edwards' last known address despite the prior failed attempt at personal service at the same address prior to service by publication. On March 4, 2019, counsel for Defendant Edwards sought to issue a subpoena to a non-party for information related to Defendant Edwards. On March 8, 2019, Plaintiff moved to quash the subpoena. The Court held a hearing on the pending motions on March 26, 2019.

DISCUSSION

I. Defendant's motions to alter, amend, or void the default judgment.

Rule 55(b)(2), SCRCP, states that notice of any trial or hearing on unliquidated damages shall be given to parties in default "by first class mail to the last known address" of such party, whether or not such party has appeared in the action. At issue in Defendant's motions is the meaning of "last known address" as stated in the rule. Defendant Edwards argues that because the failed attempted service of process at Edwards' last known address resulted in non-service that

later required service by publication, mailing notice of the damages hearing to the same address was unlikely to provide actual notice of the hearing to Defendant Edwards. Plaintiff argues she complied with the plain language of the rule in providing notice of the damages hearing to Defendant Edwards' last known address. Plaintiff also points to the lack of affidavits, testimony, or evidence indicating Defendant Edwards did not receive notice of the damages hearing, and cites S.C. Code § 56-1-230, which mandates that all persons with a South Carolina driver's license, like Defendant Edwards, are required by law to notify the DMV within 10 days of any permanent change of address. At all times between the accident and damages hearing, Defendant Edwards' address on file with the SCDMV was the same address where notice of the damages hearing was sent by first class mail. Thus, Plaintiff argues that notice of the damages hearing was properly sent to Defendant Edwards.

The Court notes that in all cases where service of process is made by publication after non-service at the defendant's last known address, service of notice of the damages hearing to the same last known address in accordance with Rule 55(b)(2) leads to the same due process arguments raised by Defendant Edwards in this case. However, it is not for this Court to modify the rules of civil procedure or service of process statutes; rather, our Legislature has provided a means for service by publication, which seemingly would never be necessary if personal service of process could always be made at the last known address. This Court is bound to follow the rules and statutes as adopted, and they are unambiguous in this instance. The Legislature has approved service by publication. The rules state how notice is to be given to a defaulting defendant.

In this case, the Court finds that notice of the damages hearing was appropriately given in accordance with Rule 55(b)(2) because it was mailed by first class mail to Defendant Edwards' last known address. It was reasonable for Plaintiff to send notice to such address, even despite the

prior failed attempt at personal service at the address, because it was the address on file with the SCDMV and the only address of Defendant Edwards known to Plaintiff. Thus, it was reasonable for Plaintiff to assume that the address was Defendant Edwards' permanent address and that he would receive such notice, either at that address or at a forwarding address. Plaintiff complied with the plain language of Rule 55(b)(2). Thus, the damages hearing went forward appropriately without Defendant Edwards' participation.

The Court finds that there are no reasons under either Rule 59(e) or Rule 60(b) to alter, amend, or void the default judgment entered in this case. Indeed, there is no affidavit or testimony from Defendant Edwards denying that he received notice of the damages hearing or otherwise explaining his history of addresses on file with the SCDMV. Arguments of counsel are not evidence. *See, e.g., Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 298, 701 S.E.2d 742, 754 (2010) ("mere arguments of counsel have long been recognized by this Court not to constitute evidence"). Perhaps Defendant Edwards received mail at the address on file with the DMV despite the inability of Plaintiff's process server to serve him personally there. Perhaps Defendant Edwards received mail forwarded to him from that address. Without any evidence on this issue, the Court cannot make a finding whether or not Defendant Edwards received actual notice of the hearing. Regardless, such finding is not necessary so long as the rules regarding service of process are followed, as they were in this case. *See, e.g., Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 295, 721 S.E.2d 430, 433 (2012) (reaffirming that "when the civil rules on service are followed, there is a presumption of proper service"). Given the presumption of proper service and lack of evidence to the contrary, the Court denies Defendant's motions to alter, amend, or void the default judgment that was entered following the damages hearing in this matter.

II. Plaintiff's motion to quash subpoena issued by Defendant.

Following entry of the default judgment, counsel for Defendant Edwards attempted to serve a subpoena on a non-party in Ohio to attempt to obtain contact information for Defendant Edwards. Plaintiff moved to quash the subpoena, arguing that a defaulting defendant is not entitled to conduct such discovery, but is instead limited to cross examining Plaintiff's evidence. *See, e.g., Limehouse v. Hulsey*, 404 S.C. 93, 744 S. E. 2d 566 (2013) (holding that a defaulting defendant is entitled only to cross-examination and objection to the plaintiff's evidence). Plaintiff also argues that such a subpoena should not be issued after a default judgment has been entered. Counsel for Defendant Edwards argues he should be allowed to serve such subpoena in an effort to obtain contact information for Defendant Edwards. Given that Defendant Edwards has made an appearance in this matter by filing a motion to alter, amend, or vacate the default judgment, the Court finds that Defendant Edwards' subpoena for Defendant Edwards' own contact information is not a subject of discovery that is necessary or appropriate after entry of the default judgment against Defendant Edwards. *See, e.g., Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005) (holding that a post-default judgment subpoena issued to a non-party was improper). Thus, the Court hereby grants Plaintiff's motion to quash Defendant Edwards' subpoena issued to Jeffery Biro, DO that was requested to be domesticated in Ohio.

IT IS SO ORDERED.

Date: _____

The Honorable Diane S. Goodstein
Presiding Judge, Berkeley County



Berkeley Common Pleas

Case Caption: Delphine King VS William C Edwards

Case Number: 2017CP0802408

Type: Order/Amend

This Order is Hereby GRANTED!

S/ Diane S. Goodstein (2112)

Certificate of Electronic Notification

Recipients

David Marshall - Notification transmitted on 04-25-2019 02:16:33 PM.

Joseph Thompson - Notification transmitted on 04-25-2019 02:16:33 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2017CP0802408

Official File Stamp:	04-25-2019 02:16:22 PM
Court:	CIRCUIT COURT Common Pleas Berkeley
Case Caption:	Delphine King VS William C Edwards
Document(s) Submitted:	Order/Amend Order/Amend
Filed by or on behalf of:	Diane Schafer Goodstein

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Joseph DuRant Thompson, III for William C
Edwards
David C. Marshall for Delphine King

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Blue Max Trucking Inc.

Joseph D. Thompson, III	111 Coleman Boulevard, Suite 301
P: (843) 720-3469	Mount Pleasant, SC 29464
E: jthompson@hallboothsmith.com	W: www.hallboothsmith.com
	P: (843) 720-3460 F: (843) 606-6536

May 30, 2019

RECEIVED

MAY 31 2019

SC Court of Appeals

Via Federal Express

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street (29201)
Post Office Box 11629
Columbia, SC 29211

Re: *Delphine King, Respondent v. William C. Edwards and Blue Max Trucking, Inc.,
Defendants, Of Whom William C. Edwards is the Appellant*
Appellate Case No.: 2019-000875
HBS File No.: 2010.0257

Dear Ms. Kitchings:

Per your correspondence dated May 28, 2019, enclosed please find the Orders challenged on appeal that were inadvertently not attached to the Notice of Appeal filed on May 23, 2019. Thank you in advance for your assistance.

Respectfully,

Joseph D. Thompson, III
Joseph D. Thompson, III *by*

JDT,III/vrb

Enclosures

cc: David C. Marshall, Esq.
Shane M. Burroughs, Esq.

ORIGIN ID:RBWA (843) 720-3460
 JOSEPH D. THOMPSON, III, ESQ.
 HALL BOOTH SMITH
 111 COLEMAN BLVD
 SUITE 301
 MOUNT PLEASANT, SC 29464
 UNITED STATES US

SHIP DATE: 30MAY19
 ACTWGT: 1.00 LB
 CAD: 103388659/INET4100

BILL THIRD PARTY

TO HON. JENNY ABBOTT KITCHINGS
 SOUTH CAROLINA COURT OF APPEALS
 1220 SENATE STREET

COLUMBIA SC 29201

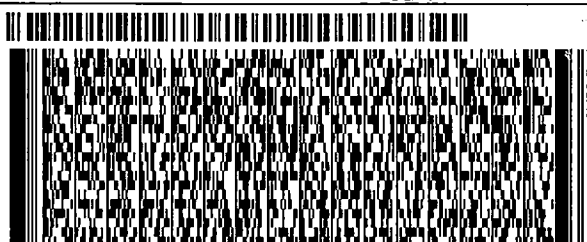
(803) 734-1890

REF: 2010.0257 KING V. EDWARDS

INV:

PO:

DEPT:



565.11/D66C/2340

FRI - 31 MAY 3:00P

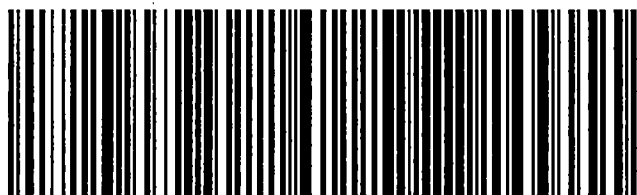
STANDARD OVERNIGHT

TRK#
0201

7753 4812 9697

28 USCA

29201
SC-US CAE



RECEIVED

MAY 8 1 2019

SC Court of Appeals

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.